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An Agricultural Law Research Publication

Water Rights Tables

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This publication consists of two tables with information regarding water rights among the states. Table 1 summarizes each state's common law water rights. In the first column, the state's surface water regime is identified- either Riparian water rights or Prior Appropriation. In the second column, the common law water rights regime for percolating ground water is designated- the Absolute Dominion rule, the Reasonable Use rule, Prior Appropriation, the Correlative Rights doctrine, or the Restatement (Second) of Torts Rule. The third column designates whether the state has statutory rules ("regulated riparian") that modify or supplement the common law rule and whether those statutory rules apply to groundwater and/or surface water.

Table 2 briefly summarizes the type of regulated riparian requirements, the threshold at which the requirements apply, grandfathered water withdrawals and exemptions for those states that have regulated riparian rules.

➤ TABLE 1: State Water Rights

	Surface Water	Percolating Groundwater	Regulated Riparian
Alabama	R	RU	Yes- GW and SW
Alaska	PA	PA	
Arizona	PA	RU	Yes- GW
Arkansas	R	RU	Yes- GW and SW
California	R/PA	CR	Yes- SW ¹
Colorado	PA ²	PA	Yes- GW
Connecticut	R	AD ³	Yes- GW and SW
Delaware	R	RU	Yes
Florida	No common law water rights	No common law water rights	Yes ⁴ - GW and SW

Abbreviations:

PA = Prior Appropriation
R = Riparian
AD = Absolute Dominion
RU = Reasonable Use
CR = Correlative Rights
RSTMT = Restatement of Torts (Second)

¹ Some water districts and counties regulate groundwater.

² Prior appropriation does not apply to "nontributary water", which includes nontributary surface water and groundwater.

³ Some doubt exists as to whether common law water rights still exist in Connecticut. See, *City of Waterbury v. Town of Washington*, 260 Conn. 506, 800 A.2d 1102 (2002).

⁴ Florida has a unique system of five independent water management districts.

Georgia	R	AD	Yes- GW and SW
Hawaii	PA	CR	Yes- GW and SW
Idaho	PA	PA	
Illinois	R	RU	Yes- GW
Indiana	R	AD	Yes- SW ⁵
Iowa	R	CR	Yes- GW and SW
Kansas	PA	PA	Yes- GW and SW
Kentucky	R	RU	Yes- GW and SW
Louisiana	R	AD	
Maine	R	AD ⁶	
Maryland	R	RU ⁷	Yes- GW ⁸ and SW.
Massachusetts	R	AD	Yes- GW and SW
Michigan	R	RU	Very limited GW provisions. Great Lakes-St. Lawrence River Basin Water Resources Compact applies.
Minnesota	R	AD	Yes- GW and SW
Mississippi	PA?	AD ⁹	Yes- GW and SW
Missouri	R	RU	No.
Montana	PA	PA	

⁵ Groundwater withdrawals are regulated to a limited degree by the Emergency Groundwater Rights Act, IC 14-25-4.

⁶ Note that the legislature has purported to modify this rule in certain situations by statute, but that no court has applied the statute. MRSA tit. 38, § 404(2).

⁷ Maryland has created

⁸ Note that the Maryland Department of the Environment has adopted an unwritten rule that limits groundwater withdrawals to the amount that the department calculates (under a very conservative formula) that is recharged to the land owned or under the control of the withdrawer.

⁹ Little case law exists in Mississippi, but the leading case, while adopting the absolute dominion rule, indicates that Mississippi may adopt the reasonable use rule if faced with the appropriate case. *Board of Supervisors v. Miss. Lumber Company*, 31 So. 905 (Miss. 1902).

Nebraska	PA ¹⁰	RU/CR ¹¹	Yes- GW
Nevada	PA	PA	
New Hampshire	R	RU	Large groundwater withdrawals only. ¹²
New Jersey	R	RU ¹³	Yes- GW and SW
New Mexico	PA	PA	
New York	R	RU	Yes- GW and SW
North Carolina	R	RU	Yes- GW and SW
North Dakota	PA	PA	
Ohio	R	RSTMT	Yes- GW and SW
Oklahoma	R/PA	RU/CR ¹⁴	Yes- GW and SW
Oregon	PA ¹⁵	PA ¹⁶	
Pennsylvania	R	RU	
Rhode Island	R	AD	
South Carolina	R	No common law exists	Yes- GW and SW
South Dakota	R/PA	PA	
Tennessee	R	CR	Registration only
Texas	PA	AD	GW- underflow of a river section and groundwater conservation districts
Utah	PA	PA	
Vermont	R	AD ¹⁷	
Virginia	R	RU	Yes- GW and SW
Washington	PA/R	PA	
West Virginia	R	RU	Registration only
Wisconsin	R	RSTMT	Yes- GW and SW
Wyoming	PA	PA	

¹⁰ Nebraska recognizes some earlier, very limited, riparian rights in surface water.

¹¹ Nebraska uses the reasonable use rule for groundwater with correlative rights applying during times of shortage.

¹² Groundwater Protection Act, N.H. Rev. Stat. Ann. §§ 485-C:13 and 21.

¹³ *Meeker v. East Orange*, 77 N.J.L. 623, 638 (E. & A. 1909) has also been interpreted as adopting the correlative rights rule).

¹⁴ Oklahoma traditionally used the reasonable use rule, but that rule has been changed by statute. Okla. Stat. tit. 82 § 1020.9(B). Reasonable use still appears to apply to domestic uses. Uses established prior to the statutory change are grandfathered. Okla. Stat. tit. 82 § 1020.14.

¹⁵ Some historical riparian rights are recognized in Oregon.

¹⁶ Permit is only way to acquire use of groundwater since 1955.

¹⁷ Vermont adopted a statute adopting the correlative rights approach based on unreasonable harm in 1985. Vt. St. Ann. tit. 10, § 1410. The statute has never been applied.

➤ **TABLE 2: Regulated Riparian Regimes**

	Type of Requirement	Threshold	Grandfathered	Exemptions
Alabama	Registration/Reporting	100,000 gpd	NA	
Arizona (GW)¹⁸				
Arkansas	Registration			
Connecticut	Permit	50,000 gpd		
Delaware	Permit	50,000 gpd		
Florida	Water Management Districts	Varies		
Georgia	Permit	100,000 gpd		
Illinois	Permit (GW)	100,000 gpd		
Indiana	Registration/Reporting ¹⁹	100,000 gpd		
Iowa	Permit/Reporting	25,000 gpd		
Kentucky	Permit	10,000 gpd		Domestic, agricultural
Louisiana	Registration/Reporting (GW)	1,000,000 gpd ²⁰		
Maine	Select Permitting (GW)/Reporting (Agriculture- SW & GW)	“Significant” for permits/All agricultural SW and GW withdrawals must be reported		
Maryland (1933)	Permit	All ²¹		Domestic, agricultural (if annual use is less than 10,000 gallons per day)
Massachusetts	Registration/Permit	Permit- 10,000 gpd (or 9,000,000 in any 3 month period)		
Michigan	Reporting/Permitting	Reporting- 100,000 gpd ²² ; Permit- 2,000,000 gpd		Domestic

¹⁸ Arizona is a prior appropriation state for surface water.

¹⁹ Permits required in restricted use areas for new users or users who withdraw more than 100,000 gallons per day.

²⁰ Threshold for reporting. All groundwater withdrawals must be registered.

²¹ Additional requirements for withdrawals of surface and groundwater in excess of 10,000/day.

²² Agricultural withdrawals are reported to the Michigan Department of Agriculture, while all other withdrawals are reported to the Michigan Department of Environmental Quality.

Minnesota	Permit	Over 10,000 gallons in any one day; or 1,000,000 in any year; or any domestic use serving more than 25 persons		Domestic
Mississippi	Permit	Additional requirements above 20,000 gpd	Yes (1985)	Domestic and limited other
Missouri	Registration/Reporting	100,000 gpd		
Nebraska	Registration (GW)			
New Hampshire	Permit (GW)	57,600 in any 24-hour period		
New Jersey	Permit/Registration/Certification	Capability of withdrawing more than 100,000 gallons per day or combined pump capacity of greater than 70 gpm		Agriculture, aquaculture, horticulture. ²³
New York	Region-specific registration and permitting	Long Island counties- 45 gpm (permit); Great Lakes Basin- 100,000 gpd averaged over a 30-day period or 3,000,000 gallons during any 30-day period (registration)		

²³ An Agricultural Water Usage Certification or Agricultural Water Use Registration must be obtained from the County agricultural agent if a person has the capability to withdraw ground and/or surface water in excess of 100,000 gpd for agricultural, aquacultural or horticultural purposes.

North Carolina	Registration/limited permitting ²⁴	Agricultural users- 100,000 gpd; all other users- 10,000 gpd		
Ohio	Registration/Permit	Registration- 100,000 gpd; Permit- Average of 2,000,000 gpd over a 30 day period		
Pennsylvania	Registration/Reporting	10,000 gpd, averaged over any 30-day period (voluntary for all others)		
South Carolina	Registration/Reporting/limited permitting ²⁵	3,000,000 gpm		
Tennessee	Registration	10,000 gpd		Agriculture, limited other
Texas				
Vermont	Reporting/Permit (GW)	Commercial/Industrial- 20,000 gpd averaged monthly (reporting); 57,600 gpd (40 gallons/minute for 24 hours) (permit)		Agriculture- 57,600 gpd must report; public water systems, closed loop geothermal heat pumps
Virginia	Groundwater Management Areas (GW)	Permit required if more than 300,000 gpm in GWMA		
West Virginia	Reporting/registration			
Wisconsin	Reporting/Permit	GW- 100,000 gpd		

²⁴ In the 15 county capacity use area, permits required for ground water users of more than 100,000 gpd. Annual registration and reporting of withdrawals is required for surface and ground water users of more than 10,000 gpd.

²⁵ For groundwater, Ground Water Use Permits must be issued to all ground water systems located in a designated Capacity Use Areas designed to withdraw and use groundwater equal to or greater than 3,000,000 gallons in any month. The intention to install any well that will withdraw 3,000,000 gallons or more of groundwater in any month in the Coastal Plain, but outside of a Capacity Use Area, must be placed on public notice 30 days prior to drilling. For new and existing surface water withdrawals, a user is required to register and report the quantity of surface water withdrawn to the Department.