

The Water Rights Process

STATE WATER RESOURCES CONTROL BOARD

A water right is a legal entitlement authorizing water to be diverted from a specified source and put to beneficial, nonwasteful use. Water rights are property rights, but their holders do not own the water itself – they possess the right to use it. Some water rights require a permit or license from the State Water Resources Control Board, whose objective is to ensure that the state's waters are put to the best possible use and that the public interest is served.

In making decisions, the Board must keep three goals in mind:

- Developing water resources in an orderly manner.
- Preventing waste and unreasonable use of water.
- Protecting the environment.

The State Board's duties are not limited to permits and licenses. It may be called upon to adjudicate water for entire systems or to act as a "referee" or fact-finder in court cases involving water rights.

Water Right Law

Water right law in California and the rest of the West is different from the laws governing water use in the eastern United States.

Seasonal, geographic, and quantitative differences in precipitation caused California's system to develop into a unique blend of two kinds of rights; riparian and appropriative. Other types of rights exist in California as well, among them reserved rights (water set aside by the federal government when it reserves land from the public domain for specific purposes) and Pueblo rights (a municipal right based on Spanish and Mexican law).

In 1849, thousands of fortune seekers flocked to California following the discovery of gold. Water development in the United States proceeded on a scale never seen before as the "forty-niners" built extensive networks of flumes and waterways to work their claims. The water carried in these systems often had to be transported far from the original river or stream. The self-governing maverick miners applied the same "finders-keepers" rule to water as they did to their mining claims – it belongs to the first miner to assert ownership.

To stake their water claims, the miners developed a system of "posting notice" which signaled the appropriative right system. It allowed others to divert available water from the same river or stream, but their rights existed within a hierarchy of priorities. The "first in time, first in right" principle became an important feature of modern water rights law.

In 1850, California entered the Union as the 31st state. With statehood, California adopted the English common law; such law also included riparian doctrine. One of the first actions taken by its lawmakers was to adopt the common law of riparian rights.

Riparian rights usually come with owning a parcel of land that is adjacent to a source of water. A riparian right entitles the landowner to use a correlative share of the water flowing past their property. Riparian rights do not require permits, licenses, or government approval. They apply only to the water which would naturally flow in the stream. Riparian rights do not entitle a water user to divert water to storage in a reservoir for use in the dry season or to use water on land outside of the watershed. Riparian rights remain with the property when it changes hands, although parcels severed from the adjacent water source generally lose their right to the water.