

wellcare[®] information for you about **Who Owns the Water?**

Ever wondered who owns the water in the underground source, known as an aquifer, that supplies your well and drinking water system? Who gets access to water during drought and shortages? If your local government can limit a developer's access to dwindling water supplies to build new homes?

The answers to these questions vary from state to state and are rarely simple. The rights to ground water are governed by state statutes and case law that have evolved over the last century. Today, states generally follow one of five "rules" in deciding "Who Owns the Water?"

The Absolute Dominion Rule

Permits a landowner to intercept ground water that would otherwise have been available to a neighboring water user and even to monopolize the yield of an aquifer without incurring liability.

Eight states adopted or indicated a preference for the Absolute Dominion rule: Connecticut, Indiana, Louisiana, Maine, Massachusetts, Mississippi, Rhode Island and Texas.

The Reasonable Use Rule

Limits a landowner's use of water to those uses that have a reasonable relationship to the use of the overlying land. The rule is essentially the rule of absolute ownership with exceptions for wasteful and off-site use.

Twenty-one states adopted or indicated a preference for the Reasonable Use rule: Alabama, Arizona, Arkansas, Delaware, Florida, Georgia, Illinois, Kentucky, Maryland, Missouri, Nebraska, New Hampshire, New York, North Carolina, Oklahoma, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia and Wyoming.

Four of these states adopted the Reasonable Use rule in conjunction with the Prior Appropriation rule: Arkansas, Delaware, Missouri and Wyoming. Another state, Nebraska, adopted a Reasonable Use rule in conjunction with the Correlative Rights rule.

The Correlative Use Rule

Maintains that the authority to allocate water is held by the courts. Owners of overlying land and non-owners or transporters have co-equal or correlative rights in the reasonable, beneficial use of ground water. A major feature of this doctrine is the concept that adjoining lands can be served by a single aquifer. Therefore, the judicial power to allocate water protects both the public's interest and the interests of private users.

Six states adopted or indicated a preference for the Correlative Rights rule: California, Hawaii, Iowa, Minnesota, New Jersey and Vermont.

The Restatement of Torts Rule

Holds that a landowner who uses ground water for a beneficial purpose is not subject to liability for interference if certain conditions are met. The water withdrawal cannot cause unreasonable harm to a neighbor by lowering the water table or reducing artesian pressure, cannot exceed a reasonable share of the total store of ground water and cannot create a direct and substantial effect on a water-course or lake.

Three states adopted or indicate a preference for the Restatement of Torts doctrine: Michigan, Ohio and Wisconsin.

The Prior Appropriation Rule

Maintains that the first landowner to beneficially use or divert water from a water source is granted priority of right. The amount of ground water this priority, or senior, appropriator may withdraw can be limited based on reasonableness and beneficial purposes. Some states have replaced or supplemented the Prior Appropriation doctrine with a permit system.

Twelve states adopted or indicate a preference for the Prior Appropriation rule: Alaska, Colorado, Idaho, Kansas, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah and Washington.

States Need to Clarify Water Rights Issues

Water Systems Council is encouraging state governments to reconsider their policies concerning water rights, in order to ensure fairness, balance, efficiency and choice in water supply decisions. We recommend that states make a definitive, modern pronouncement on the rule followed in their states, rather than relying on common law court decisions dating back to the late 19th and early 20th centuries.

States that adhere to the Absolute Dominion rule should be encouraged to adopt a Reasonable Use rule or a Correlative Rights rule for groundwater management. These approaches balance the individual rights of landowners with those of other uses of the same aquifer. At the same time, these rules promote the most efficient use of this vital natural resource.

Ground water law also should take into account the differences between and the potential impacts of high volume withdrawals from large capacity wells and small withdrawals from individual household wells. Rules should not impose the same restrictions on low impact individual wells as on large capacity wells.

Restrictions on private well owners regarding withdrawal of ground water should be considered only as a last resort. These restrictions also should require proof of imminent depletion or contamination of the water supply.

For more information on state laws governing ground water

Who Owns the Water: A Summary of Existing Water Rights Laws, published by Water Systems Council – available in print by calling 202-625-4387 or online at: www.watersystemscouncil.org. Click on “state and federal policy activities” to find a link to the report.

For more information on your drinking water

The following sites provide up-to-date information on efforts to protect public water supplies and steps you can take as a private well owner:

Home*A*Syst Program: www.uwex.edu/homeasyst

American Water Works Association: www.awwa.org

Water Quality Association: www.wqa.org

wellcare® Hotline for Well Owners: 888-395-1033

The Groundwater Foundation: www.groundwater.org

For more information about wells and other wellcare® publications

wellcare® is a program of the Water Systems Council (WSC). WSC is a national nonprofit organization dedicated to promote the wider use of wells as modern and affordable safe drinking water systems and to protect ground water resources nationwide.

Well owners and others with questions about wells or well water can now call the new wellcare® hotline at 888-395-1033 or visit www.watersystemscouncil.org



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Well water naturally better... Contact your local water well professional