

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

Eleven states have either formally adopted or have indicated a preference for the Absolute Dominion rule: Connecticut, Georgia, Indiana, Louisiana, Maine, Massachusetts, Minnesota, Mississippi, Rhode Island, Texas, and Vermont.

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.

Seventeen state courts have either formally adopted or have indicated a preference for the Reasonable Use rule: Alabama, Arizona, Arkansas, Delaware, Illinois, Kentucky, Maryland, Michigan, Missouri, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Pennsylvania, Virginia, and West Virginia.

Wyoming has adopted the Reasonable Use rule in conjunction with the Prior Appropriation doctrine. Florida has abolished common law groundwater rights but uses a Reasonable Use rule in allocating permits. Nebraska has adopted a Reasonable Use rule in conjunction with the Correlative Rights doctrine.

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 groundwater. 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 permits protects both the public's interest and the interests of private users.

Courts in five states have either formally adopted or have indicated a preference for the Correlative Rights rule: California, Hawaii, Iowa, Oklahoma, and Tennessee. Vermont appears to have adopted the rule by statute. Nebraska uses a combination of the Reasonable Use rule and the Correlative Rights doctrine.

The Restatement of Torts Rule

Holds that a landowner who uses groundwater 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 groundwater and cannot create a direct and substantial effect on a watercourse or lake.

Two states, Ohio and Wisconsin, have either formally adopted or have indicated a preference for the Restatement of Torts doctrine.

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 groundwater 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.

Thirteen states have either formally adopted or indicated a preference for the Prior Appropriation rule: Alaska, Colorado, Idaho, Kansas, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

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.

Groundwater 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 groundwater 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 Who Owns the Water?

You can view: *Who Owns the Water: A Summary of Existing Water Rights Laws*, published by Water Systems Council – available online at: <https://www.watersystemscouncil.org/free-water-well-resources/>. You can also contact your licensed well contractor, local health department, state environmental agency, or the **wellcare®** Hotline.



Information to help maintain and protect your water well system:

wellcare® is a program of the **Water Systems Council (WSC)**. WSC is the only national organization solely focused on protecting the health and water supply of an estimated 23 million households nationwide who depend on private wells (according to the U.S. EPA).

This publication is one of more than 100 **wellcare®** information sheets available FREE at www.watersystemscouncil.org.

Well owners and others with questions about wells and well water can contact the **wellcare®** Hotline at 1-888-395-1033 or visit www.wellcarehotline.org to fill out a contact form or chat with us live!

JOIN THE WELLCARE® WELL OWNERS NETWORK!

By joining the FREE **wellcare®** Well Owners Network, you will receive regular information on how to maintain your well and protect your well water.

Contact us at 1-888-395-1033 or visit www.wellcarehotline.org to join!