

LWVC Water Interest Group- *Water Spotlight* June 2026

Allocating and managing today's precious water resources according to a centuries-old prior appropriation/riparian water-rights system implicates principles of social and environmental justice as well as 21st century hydrologic knowledge. In this month's Water Spotlight we uncover some thorny issues and present-day water availability problems.

From Time Immemorial

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Can you taste the dinosaur tears in your morning coffee?

The water supply on planet Earth is a zero-sum game: the total quantity remains constant, despite changes in form. Natural processes will eventually transform and propel every water molecule into a different form and phase of the perpetual water cycle. The water you drink today may have trickled from the eyes of a dinosaur millions of years ago. Glaciers melt and fill lakes and oceans; water evaporates into the atmosphere, falls as rain, is taken up by vegetation, or sinks into the ground, flows into rivers, or is integrated into the food chain.

Just as the water cycle is timeless and inevitable, so is the truism that water is life: for it is a human right. The air we collectively breathe is temporarily ours, but it cannot become personal property, and neither can water – because, like air, water belongs to us all. The California Constitution and Water Code make it possible for a person or entity to possess a conditional right to beneficially use¹ a specific quantity of water in a specific place and for a specific time and purpose. But the state, as trustee for the people², controls and regulates such “water rights.”

Laws and principles governing surface water use in the United States reflect the abundance of water in a geographic region and the relative ease of access to it. Where natural rivers, lakes and streams can support equitable sharing of supplies, adjacent landowners can acquire riparian rights to divert water for use on those adjacent lands. Such Riparian Water Rights are common in the eastern USA, but are fewer in arid western states including California.³ Most surface water rights in California are acquired through a “first in time – first in right” aka “Prior Appropriation” regime that allows conveying water to non-adjacent lands. Such water rights are prioritized

¹ “Beneficial use” is a legal term-of-art applied to water rights. Also known as the “reasonable use doctrine,” it is embodied in Article X of the California Constitution and state water code. All California water rights, regardless of when obtained, are subject to the continuing authority of the state to prevent waste and unreasonable use. *United States v. State Water Resources Control Board* (1986), 182 Cal.App.3d 82, commonly referred to as the “Racanelli Decision.”

² California’s trustee responsibilities under the “public trust doctrine” are explained in *National Audubon Society v. Superior Court*, a 1983 California Supreme Court case involving City of Los Angeles water diversions that harmed Mono Lake.

³ Under a California riparian right, water can only be diverted if it is used on land that drains back to the source from which it was taken. It cannot be diverted if the source-water is unnaturally flowing due to release from upstream storage or importation from another watershed. If there is insufficient water available for competing riparian users, they must share the available supply according to their needs.

according to the date the holder plans to put the water to use;⁴ and in times of scarcity, senior-in-priority water-users are not required to share the dwindling resource – even if it means junior-in-priority right-holders receive nothing.

The “First in Time, First in Right – Priority Appropriation” system of water allocation: A rough analogy to illustrate the complexities of applying it today:

Imagine the public highway system as a stand-in for public water resources (rivers, lakes, streams). Individual people can’t own stretches of state highways, but they have a right to use them when riding in passenger cars or buses, so long as the vehicles are lawfully registered and bear state-issued license plates. Efficient highways depend upon their capacities to handle numbers of vehicles. If every licensed vehicle simultaneously left its parking-spot to go somewhere, streets and highways would be grid-locked and useless – unable to physically accommodate the demand. To problem-solve this “over-allocated” situation using the prior-appropriation doctrine would mean allowing first highway-access to the oldest clunkers because of the early dates of their license-plates. Following them would be the next-in-time registered vehicles, and so on, until the highway system is so clogged that it can no longer handle new traffic. Junior right-holders -- persons with later-licensed cars – may never reach their intended destinations. But – older vehicles can be gas guzzlers and newer-licensed ones may allow people to travel more efficiently. Unfortunately, the system doesn’t allow jumping the priority line.⁵

Senior Water Rights & Over-Allocation of a Declining Resource

What happens – metaphorically speaking - if everyone holding a permit or license to use California surface water “turns on the taps” at once, and attempts to use the full quantity of water shown on the face of their water right (their “on paper” water right)? Because appropriative senior-right holders are not required to share water as in the riparian rights regime, they are entitled to use the full water quantity shown on their “paper,” even when that could make water unavailable for junior right-holders. Hence the more senior a water right, the more valuable it is in times of scarcity, and in the face of climate change when there is more water-resource uncertainty.

Complex water laws and regulations attempt to prevent abuses of the prior appropriation system by measures such as the “use it or lose it” (aka relinquishment) doctrine that allows the State Water Resources Control Board (SWB) to revoke a water right if the holder has failed to beneficially use it without a justifiable reason, or has abandoned the water-works project. If a senior water right is revoked or a quantity of it reduced for non-use, then that “paper water” can be better counted-upon to be physically present in the waterway in the future, and perhaps can be allocated to a new water-seeker. Detailed information about applying these and other California water laws and procedures can be found at

https://www.waterboards.ca.gov/waterrights/board_info/faqs.html#toc178761088

⁴ In California, the date of submittal to the State Water Resources Control Board (SWB) of an approved application for water use is the priority date. A diagram showing steps in the water right application & permitting process: https://www.waterboards.ca.gov/waterrights/board_info/docs/wr_appprocess.pdf From a water management as well as regulatory perspective, it is important for applicants to diligently develop their projects so that estimates and decisions about remaining water availability can be made on later applications for water from the same source.

⁵ At least in this analogy, the DMV has more plentiful mechanisms than the State Water Resources Control Board to detect improper or abandoned licenses

Allocating and managing today's precious water resources accordingly to a centuries-old prior appropriation water-rights system implicates principles of social and environmental justice as well as 21st century hydrologic knowledge. Some thorny issues and present-day water availability problems include:

- Quantifying and prioritizing as-yet unrecognized Tribal water rights. Some Native American tribes possess water rights dating to "time immemorial," or to the 1800's when the government created federal reservations for tribes dislocated from ancestral lands. For example, not covered in this article (watch for a subsequent one) are complexities of superimposing tribal water rights to the present-day status of ever-diminishing flows of the Colorado River.
- Protecting, if not defining and/or quantifying the water rights of nature and public trust interests in healthy ecosystems, and managing water rights according.

Key Takeaways re: Surface Water Rights in California

- The State of California is Trustee of the public's water, and must manage it in the public interest and according to the Public Trust Doctrine.
- Water-rights in California are overseen by the State Water Resources Control Board according to a regime based upon the Prior Appropriation Doctrine.
- A water right is a right to use a quantity of the public's water at a certain time and place, and for a certain purpose. Its continuing use is subject to compliance with constitutional constraints as well as conditions imposed by the State Water Resources Control Board.
- A water right's priority date is an important and valuable feature. In times of shortage, senior water right holders (with rights established earlier in time) may call for curtailment of junior users in order to receive their full water measure.