

## Water Right FAQ

(Not legal advice – consult an attorney for specific situations)

1. ***What is the difference between groundwater rights and surface water rights and how do they relate?***

Commonly, the right to divert surface water requires a water right permit issued by the state, although lands abutting surface water (such as lakes, streams and springs) may have riparian rights that allows a landowner to divert and use the water without a water right permit.

Generally, the right to pump groundwater does not require a water right permit. Landowners with riparian rights and those with overlying groundwater rights must share the available supply equitably.

The other major category of water right is the appropriative right. This is a right, issued by the state, to a specific quantity of water to be diverted at a specific time for specific uses on designated land and limited by a specific rate of diversion. It is almost always junior to riparian and overlying rights – that is, riparians and overlyers must have their water needs satisfied before appropriators can divert.

Water occurring below ground can be hydrologically connected to surface water, such that groundwater pumping can affect the surface water supply. Overlying and riparian right holders must share the interconnected supply; neither has priority over the other, although both have priority over appropriative right holders.

2. ***Can someone drill a well and take out as much water as he wants?***

Pumpers of groundwater are limited in several ways. First, their pumping may not unreasonably interfere with others' wells -- the "drawdown" effect. Second, as mentioned above, pumpers are not entitled to more than their equitable share of the available water supply, together with all other overlying users and riparians. If the use of water is on land that does not overlie the groundwater source, the pumper cannot pump unless the water needs of all riparians and overlyers are first satisfied.

3. ***What is the effect of non-use of water rights?***

If the holder of a riparian right or overlying right does not use the water, the right is not lost. If an *appropriator* does not use water for five years when water is available, the right may be revoked by the state. Downstream diversion by others does not affect the status of an upstream right. Upstream diversion that deprives any right holder of needed water can ripen into a *prescriptive* right if continued for five years, preventing the downstream right holder from using his water right.

4. ***How is over-allocation resolved?***

Generally by litigation brought by an affected water right holder against the offending diverter or against all diverters on a stream.

The State Water Resources Control Board has a stream adjudication process, by which it prioritizes and quantifies all water rights on a stream, but it can be costly and take many years.

5. ***Can water be taken from drainage and used in another?***

Surface water: An appropriator can take water from one drainage for use in another, if the water right permit so authorizes. Of course it is subject to the rights of riparians and overlying rights in the basin of origin, as well as other appropriative rights with earlier priority dates.

Riparian rights do not authorize storage for more than 30 days. Appropriative permits include the place of storage of water in their terms and conditions. The place of storage designated in the permit need not be located in the drainage from which the water is first diverted.

Groundwater: Groundwater can be pumped and piped out of the drainage for use only so long as it is surplus to the needs of all riparian and overlying rights within the drainage, and surplus to all appropriative rights initiated earlier.

6. ***Can water be taken from one drainage and emptied into another in the form of effluent?***

It can, but effluent can be discharged into a stream only with the permission of the Regional Water Quality Control Board through an NPDES (National Pollution Discharge Elimination System) Permit. The NPDES permitting process requires consideration of environmental issues, and public notice and hearing.

7. ***How much do people with water rights have to care about the surroundings? For example, if well water depletes the groundwater and may affect trees, wetlands, etc.***

Water rights are a type of property right. A similar question would be: How much does a rancher need to care about the surroundings? The answer is that a property owner has the legal duty to use his or her property reasonably so as not to injure others. That includes natural resources, other property owners (water users), and the public.

The difficult issue is: How are these limits enforced? Generally, by local regulation, by state law, and by the courts. . However, for any diversion from a stream or lake, the Department of Fish and Game requires a “Notice of Streambed Alteration” each year and issues an authorization only after considering environmental issues, and conditioning the diversion so as to protect the natural environment. (Fish & Game Code § 1600 et. seq.)

Appropriative water rights have permit conditions that must be observed; violations can be brought to the attention of the State Water Resources Control Board by an administrative complaint, a very simple process to initiate. The Board will then investigate and may impose civil penalties and a cease and desist order.

Riparian and groundwater rights are limited by public trust and public nuisance principles, which generally can be enforced only through court action.