

Water Rights Law: Prior Appropriation

The scarcity of water in the Rocky Mountain and southwestern states has led to the development of a system of water allocation very different from that which exists in regions graced with more abundant rainfall. Rights to water are established by actual use of the water, and maintained by continued use and need. Water rights are treated similarly to rights to real property, can be conveyed, mortgaged, and encumbered in the same manner, all independently of the land on which the water originates, or on which it is used. The following is a summary of the legal framework governing water rights in the arid areas of the country.

Doctrine of Prior Appropriation

The use of water in many of the states in the western U.S. is governed by the doctrine of prior appropriation, also known as the "**Colorado Doctrine**" of water law. The essence of the doctrine of prior appropriation is that, while no one may own the water in a stream, all persons, corporations, and municipalities have the right to use the water for beneficial purposes. The allocation of water rests upon the fundamental maxim "first in time, first in right." The first person to use water (called a "senior appropriator") acquires the right (called a "priority") to its future use as against later users (called "junior appropriators").

In order to assure protection of senior water right priorities and to maximize the use of this scarce and valuable resource, many states have adopted detailed schemes for the determination and administration of water rights. These state regimens define to a large extent just what a water right is.