



Overview of Prior Appropriation Water Rights

Prior Appropriation Water Rights

The Prior Appropriation Doctrine is a method of regulating water rights used primarily in the western United States. In a prior appropriation jurisdiction, water rights are granted based on when a person uses water for a beneficial use. The water right continues as long as the water is being used for the same beneficial use. Unlike in a riparian system, water rights are not attached to land ownership.

The Prior Appropriation Doctrine is also described as “first in time, first in right” because the date of first water use determines the user’s priority to use the water. The earliest user of water has the superior right. Therefore, if there is not enough water for all users, the senior appropriators will be allowed to use all of their allotted water while the junior appropriators may receive only some or none of their allotted water.

Prior Appropriation Terminology

Appropriate: To have a perfected interest for the use of water.

Senior Appropriators: The users with the earliest in time perfected right to the use of water for a beneficial use.

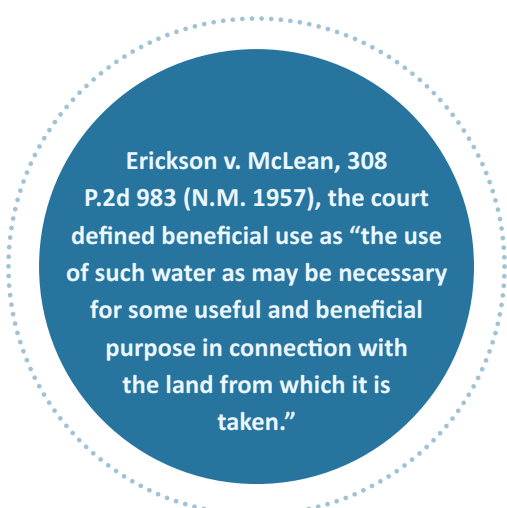
Junior Appropriators: Users of water who have appropriated later in time than senior appropriators.

Beneficial Use: The use of water for a beneficial purpose that is determined by the state.

Beneficial Use Doctrine

Under the Beneficial Use Doctrine, appropriators obtain water rights when water is used for a beneficial use. Once an appropriator puts the water to a beneficial use, the right is perfected. Generally, the right becomes absolute and its priority will not be defeated by more socially or economically important uses by a junior appropriator. Senior appropriators can make “a call on the river” to exert their water rights, even if the call disrupts or inconveniences other junior appropriators’ water rights. States determine beneficial uses. Beneficial uses of water can include:

- Irrigation use
- Industrial use
- Livestock use
- Drinking water use
- Domestic use
- Recreation use
- Fish and wildlife use



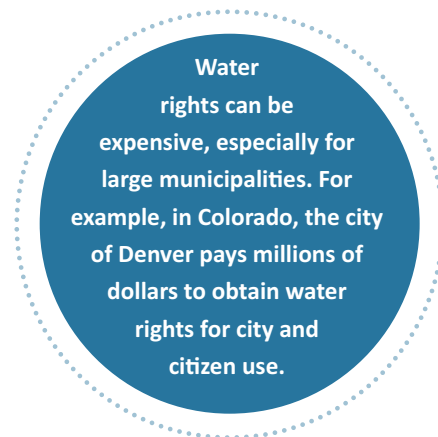
Erickson v. McLean, 308 P.2d 983 (N.M. 1957), the court defined beneficial use as “the use of such water as may be necessary for some useful and beneficial purpose in connection with the land from which it is taken.”

How do Prior Appropriation Rights Work

In prior appropriation states, an appropriator may obtain a perfected water right when there is: 1) an intent to apply water to a beneficial use, 2) a diversion of water from a natural source of water, and 3) the water is used for a beneficial use within a reasonable amount of time. Once water enters into a watercourse, it becomes subject to state control and available for private uses according to state law.

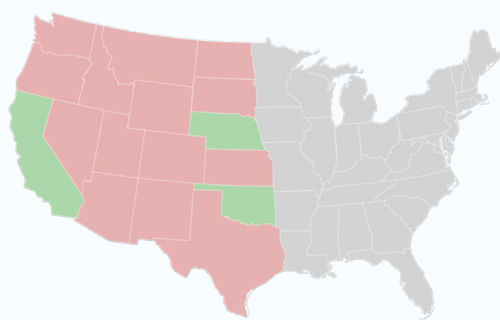
Intent	<ul style="list-style-type: none"> • An appropriator must intend to apply water for a beneficial use. • Under the Relation Back Doctrine, a water appropriator may perfect a water right with a priority date as of the time when there was an intent to appropriate.
Diversion of Water	<ul style="list-style-type: none"> • Historically, an appropriator had to physically divert water in order to provide notice to prospective appropriators. • Most states now consider water appropriated by various uses that do not require diversion. This helps maintain an in-stream flow of water. • In a permit state, to keep the priority date, the appropriator must complete construction of the water diversion within the time specified in the permit or state statute.
Beneficial Use	<ul style="list-style-type: none"> • An appropriator must use the water for a beneficial use within a reasonable amount of time. • A failure to use appropriated water for a beneficial use within a reasonable amount of time can result in the loss of the water right.

Unlike in a riparian jurisdiction, failure to use appropriated water can result in the loss of the water right. If appropriated water is intentionally not used, the right is considered abandoned. If appropriated water is unintentionally not used, then the right may be considered forfeited. Additionally, appropriators may not divert more water than is reasonably necessary to accomplish the beneficial use. Using more is considered waste and the appropriator may lose the water right. Depending on the state, appropriators may also need to ask permission to change their beneficial use or the location of their diversion.



States Using Prior Appropriation Water Principles

- *Prior Appropriation*
- *Hybrid Riparian & Prior Appropriation Principles*
- *Other System*



Where is the Prior Appropriation System Used?

Western states commonly use a prior appropriation system. The Prior Appropriation Doctrine was a way to encourage development in arid states where most land is distant from water resources. Although the methodology for prior appropriation water rights remains, most states have modified the system, and water use is governed by complex statutory methods. Most prior appropriation states require water permits and consider what appropriation rights are in the public interest.