



Overview of Riparian Water Rights

Riparian Water Rights

The riparian regulatory framework is a method of regulating water rights used primarily in the eastern United States. In a riparian jurisdiction, a riparian owner may reasonably use the water adjacent to their land if the use does not interfere with the reasonable uses of other riparian owners. The riparian owner does not own the actual water in the watercourse. Instead, the riparian owner has rights and duties concerning the water use.

Riparian Terminology

Riparian Owner: The owner of land bordering a watercourse. A riparian owner has the right to use water and a duty to refrain from interfering with the rights of others.

Riparian Land: The land bordering a watercourse. In a pure riparian jurisdiction, the land must be contiguous and does not include tracts of riparian land in different watersheds.

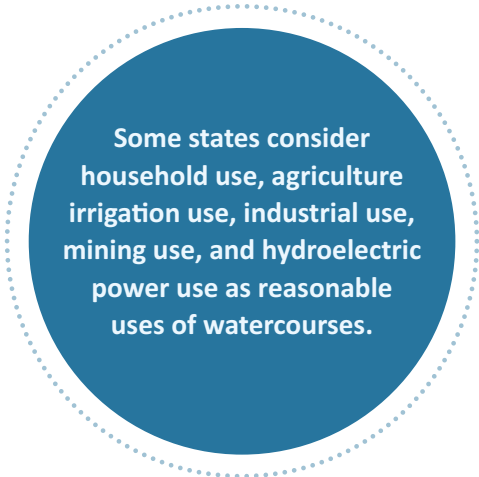
Watercourse: Watercourses generally include streams, lakes, ponds, marshes, and springs. Some jurisdictions include artificial bodies of water. Most jurisdictions presume that underground water is groundwater and not a riparian watercourse. Diffused surface water, runoff water, oceans, and bays are generally not considered watercourses.

Governing Legal Doctrines

Reasonable Use Doctrine

Under the Reasonable Use Doctrine, riparian owners can use water so long as it does not interfere with the reasonable uses of other riparian owners and rights of the public. To determine reasonable uses, courts or administrative agencies make a factual determination evaluating the interests of the landowners and society as a whole. Factors included in a reasonable use determination might include:

- The economic value of the use;
- The social value of the use;
- The extent of harm from the use;
- The protection of existing values;
- The suitability of the use to the watercourse;
- The purpose of the use.



Some states consider household use, agriculture irrigation use, industrial use, mining use, and hydroelectric power use as reasonable uses of watercourses.

How do Riparian Rights Work?

In a riparian jurisdiction, rights attach to riparian land. To gain riparian rights, a landowner must own property adjacent to a source of water that fits within the definition of watercourse. The definition of watercourse varies by state. The riparian owner does not own the water, but gains rights and duties related to water use. Over time, states have implemented regulations and permitting requirements to clarify water rights, duties, and uses.

Rights

- Make reasonable use of the water
- Access
- Fish
- Purity of the water
- Title to land beneath some watercourses
- Flow of the stream
- Wharf out

Duties

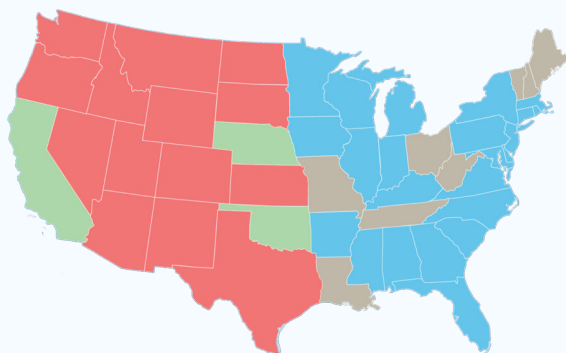
- Refrain from interfering with other riparian users.
- Refrain from interfering with public rights. Public rights depend on the state but can include the rights to travel, fish, recreate, and use surface water.

In a riparian jurisdiction, water rights are not lost if they are not used. Loss of riparian land through erosion or avulsion only destroys rights to the title of the land. The water use rights are not destroyed if the land is adjacent to the watercourse. When riparian land is transferred to a different land owner, the riparian rights are also transferred to the landowner, unless the rights have been severed from the land property.

An early case analyzing riparian rights was *Tyler v. Wilkinson*, 24 F.Cas. 472 (U.S. 1827). Justice Story stated that riparian users had an equal right to the use of water naturally flowing in the stream and each riparian was entitled to reasonable use of the waters.

States using Riparian Water Principles

- *Regulated Riparian*
- *Riparian*
- *Hybrid System*
- *Other Systems*



Where is the Riparian Doctrine Used?

Eastern states generally utilize a riparian regulatory framework. Approximately 31 states use some form of the Riparian Doctrine. Each state differs in how it has codified riparian use. States with comprehensive statutory and regulatory provisions are often called regulated riparian states. Regulated riparian states generally use a comprehensive permit system to regulate water diversion in order to protect the public interest. Hybrid states use a water regulation system that is a blend of riparian principles and other regulatory mechanisms, such as prior appropriation principles.