

**b-ëiÉêà-t ~iÉë-i ~i Weäiçêá-ä
mÉëéÉÁiá Èë~ aÇ-bã ÈëÖiá Ö-
qÉÉäÇë**

Steven T. Miano and Michael E. Crane

Allocation of water has long been considered a concern primarily for the western United States. In the eastern states, water quality issues have generally predominated, with allocation issues taking a backseat in this wetter region. Things appear to be changing, however, as eastern water supplies have become increasingly erratic due to overuse, short-term droughts, and potential long-term climatic changes. These factors have, in turn, been aggravated by past and present development patterns, which have exacerbated the situation by covering groundwater recharge areas with impervious surfaces (buildings, parking lots); by surface and groundwater pollution, which places potential water supplies off-limits or requires expensive treatment; and by increasing salt intrusion into groundwater supplies, caused primarily by overpumping of groundwater aquifers in coastal areas.

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In the western United States, where water quantity issues historically have been important, the allocation of

surface and groundwater supplies typically occurs based on the ?-ééçéëa-iä È-äöÜië?-éöëiÉä KqÜäë-éöëiÉä-äë-ä çëi-
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Water allocation under the appropriative system is also not always as cut-and-dried as one might expect. Not all western watercourses have been fully quantified, meaning that a user's current allocation and the remaining amount of available flow are not always known. In addition, prescriptive (adverse) rights, abandoned and otherwise forfeited water rights can create important gaps in the official record, leading to time-consuming and expensive litigation. Finally, as discussed further in this article, the need to reserve water for other uses, which may be protected by statute, introduces a new wrinkle in the system. For example, under the Endangered Species

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RESTATEMENT (SECOND) OF TORTS & HSOA.

While none of the factors listed in the Restatement is, by itself, determinative, the purpose of the use tends to carry greater weight than the other factors. Typically, as previously stated, domestic or "natural" water use is preferred over "artificial" uses. Some jurisdictions do, however, provide statutory preferences for certain nondomestic uses, such as agriculture or power generation.

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Adding to the lack of certainty for all current riparian users is the fact that competing uses are rarely, if ever, static. What is deemed to be a reasonable use one day may not be a reasonable use the next, due to ever-changing economic and/or political factors.

Therefore, even a more senior riparian user may in theory lose its entire flow, without compensation, if a new riparian user challenges an existing use and a court decides that the new use is more eE-eca-AaEKfa-eE-AraAE-Aci eie-OEaEe-aoo-OaE-E-EaiaaO-i eEe-eca-E-CEeEaAEI-Ai-i-iUae-ae-Ao-ac-a-E-ae-~AEei-aaioKqUi ei-a-eO-i aEai-A-a-AE-a-~CE-U-i-i eEee-i aCEe-iUE-eae-ea-a-eoeiEa-aEi Ee-U-i E-ei-ao-eEai eE-~AAEee-i-c-i -iEe-aa-Acaie-ei-i-c-eEaacE-i eEee-i aCEe-iUE-i EeiEea-e-eeceEa-iaE-eoeiEa-Kfa-iUE-b-eil-eaa-aa-e-i aAEei-aaio-E-naeie-Nce-Oeci aCi -iEe-AEA-i eE-a-aei-eoeiEa-e-i eEC-i-c-aaA-iE-Oeci aCi -iEe-ae-c-U-i E-~Ac-a-ecaEai-cN-?eE-eca-AaE-i eEK-f-a-N-Ai-eca-E-a-aOU-i-eO-i E-iU-i-AEA-i eE-ei eEao-c-e-Naci ?-cN-Oeci aCi -iEe-ae-a-CE-CaNaai-ai-c-CEiEeaaAEI-aC-~AAEee-i-c-Oeci aCi -iEe-CEeEaCe-aa-e-ei-ca-i Eaa-CEe-iU-Ei UaAU-A-a-AE-aci EeEC-Nce-aaAcE-eEC-~AAEee-i-c-Oeci aCi -iEe-iUEeE-a-~o-AE-Ei Ee-a-CEe-i aAEei-aaio-i aiU-Oeci aCi -iEe-ei eEaaEK

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In recognition of the weaknesses inherent in the allocation of water in the eastern United States, approximately half of the eastern states have moved toward a regulatory solution, the Administrative Permit System of water allocation, or, to use a term coined by Professor Joseph W Dellapenna of Villanova, "Regulated Riparianism." See, e.g., The Law of Water Allocation in the Southeastern States at the Opening of the Twenty-First Century, 2 U. ARK. LITTLE Rock L. REV 9, 33 (2002). The primary difference between the Administrative Permit System of water allocation and the models discussed earlier is that, generally, no water may be withdrawn from a water source (except for individual residential use) without a

Even in the best of times, the systems used to allocate both ground and surface water in iUE-E-eiEea-r KpKU-i E-eca-E-E-aaO-CEiEAEiEC-N-i eK

permit from the state in which the withdrawal is
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While the Administrative Permit System seems to
 overcome many of the problems inherent in the other sys-
 tems, only about half the eastern states have so far
 adopted this system. The remaining eastern states
 continue to rely on more traditional riparian rights
 systems. Many of these remaining states, however, seem
 to have recognized the need for greater state control over
 water allocation and are moving toward further water
 regulation. Pennsylvania is an example of this trend.
 Aside from those areas of the state that are covered by

interstate water compacts and certain limited instances of
 withdrawals by public water supply agencies,
 Pennsylvania does not use an Administrative Permit
 System. Pennsylvania, however, recently enacted iUE=
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A number of federal laws
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 water quality for various
 reasons other than human
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The Delaware River Basin Compact creates a system
 for regulating and managing individual withdrawals of
 both surface water and groundwater within the basin area,
 based on a comprehensive plan. A permit for water with-
 draws is required, however, only in those areas of the
 basin where the commission has determined that demands

on water resources may create a shortage or otherwise interfere with the commission's comprehensive plan for the basin. In practice, the commission delegates the authority to issue permits to the respective state in which the withdrawal is contemplated, if that state is deemed to have an effective water use allocation system. This delegation is superseded when the commission declares a water emergency.

Emergencies are declared when the commission determines that a shortage of water exists in a basin and that the shortage is likely to continue for a period of time that is longer than the period of time that it would take to develop a comprehensive plan for the basin. The commission may also declare a shortage of water in a basin if it determines that the water resources in the basin are insufficient to meet the needs of the basin.

1. If the commission determines that a shortage of water exists in a basin, it may declare a shortage of water in the basin.

The commission may also declare a shortage of water in a basin if it determines that the water resources in the basin are insufficient to meet the needs of the basin. The commission may also declare a shortage of water in a basin if it determines that the water resources in the basin are insufficient to meet the needs of the basin.

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