



## FACT SHEET: WATER RIGHTS ACROSS CANADA

Water rights vary between Canadian provinces. Each province falls into one of the following four approaches to water rights: prior allocation, public authority, riparian rights, or civil code. Aboriginal water rights play an important role in each province.

### Water Rights Terminology

Before getting into the details of each approach, it helps to clarify the meaning of key terms that relate to water rights.

- *Water taking* is the term that describes the actual capture and use of water. There are two kinds of water takings: water withdrawals and water diversions.
- *Water withdrawal*, describes a water taking that remains within the watershed or is returned to the watershed after use.
- *Water diversion*, is a water taking that is removed from a watershed.
- *Water rights transfer* usually refers to the exchange of a water right to a different holder, who may use the water in a different location or manner.

### Prior Allocation

Sometimes called 'first-in-time, first-in-right', the prior allocation system gives the licensee exclusive rights to use their water allocation in a system of seniority based on the age of the license. In a time of shortage, the older licensees have the right to take their full allocation before other licensees. This is the dominant approach to water rights in Western provinces of British Columbia, Alberta, Saskatchewan, and Manitoba, and to some extent in Nova Scotia.

- The system is based on the principle of "beneficial use", that water must be used for socially accepted purposes defined by regulation. If one does not take the full allocation of water and use it for the purpose specified under the license, then the rights to this water can be revoked.
- Under the prior allocation approach, most water rights are tied to land rather than to particular owners. Thus when the land is transferred so are the water rights.
- Historically, licenses have often been granted "in perpetuity".
- Limited uses, such as for domestic use, are permitted without a license.
- Prior allocation is often criticized for being under regulated and encouraging excess consumption of water to retain water rights. Another shortcoming of this approach is that environmental values of water (instream flows, recreational values, etc.) are not represented.
- Water rights transfers are one way to address some of these limitations, though to date Alberta is the only province with prior allocation to have incorporated water transfers into its water use legislation. In BC, the "transfer of appurtenance provision", that allows the licence holder to change the location of use of their water right, has been interpreted to allow some water transfers. Currently, no water transfers are permitted in Manitoba or Saskatchewan, though both provinces are considering their adoption.

## **Public Authority Management**

In the North (Yukon, Northwest Territories, Nunavut), a Public Authority makes decisions about water use that are then implemented by local water boards.

- All uses of water require a permit, with the exception of domestic and emergency uses.
- Like prior allocation, this approach also possesses a “use-it-or-lose-it” nature, however licenses may be cancelled or amended if it is in the public interest (ex. for low water situations).
- Licenses may be transferred, however in the North these transfers are rarely related to water shortages.
- In Nunavut, the Nunavut Water Board is the public authority governing the use or pollution of all water sources.
- The Yukon Water Board is the only board with a compensation process for senior licenses or domestic uses that will be negatively impacted by a new license.

## **Riparian Rights**

British in origin, the common law “riparian rights doctrine” entitles the owner of land that borders on a surface water source to riparian rights, such as access to water “in its natural quantity and quality”, and domestic water use rights on the land itself. In Ontario and in the Maritimes water allocation is in part governed by systems of riparian rights.

- Domestic uses on the land are not limited in quantity. Additionally, water for irrigation or manufacture on the land is permitted as long as the water is returned to its source in similar quantity and quality after use.
- Riparian rights are non-transferable and their water may only be used on riparian lands.
- Riparian rights apply to surface water, not groundwater.
- In Ontario, permits are required for any withdrawal from surface or groundwater sources in excess of 50,000 litres per day for industrial uses or bottling.

## **Civil Code Management**

Québec’s water is governed by the Civil Code of Québec, which establishes the use of all water resources (surface and groundwater) as “common to all”. Recent water policy specifies that the “government has a responsibility to regulate water use, establish priority use and preserve its quality and quantity, while taking the public interest into account”.

- Rather than having a single agency governing water allocations, permits for water are granted by the ministries that relate to the use of water. When water is used for power, the permit is issued by the Ministry of Natural Resources (and Hydro-Québec). When it is used for agricultural purposes, the Ministry of Agriculture and Fisheries is the permitting body. Drinking water and water supply permits fall under the purview of the Ministry of Municipal Affairs.
- Water rights transfers are prohibited.

## **Aboriginal Water Rights**

Prior to colonization, Aboriginal customs (or customary law) governed the use of water in Canada and continues to exist in tandem with Canadian law.

- Aboriginal rights and treaty rights, including certain customs and practices, became constitutionally protected in 1982. This means any rights, including water rights, not extinguished before 1982 can no longer be infringed upon by the government.
- All of the legal approaches described above can be subject to Aboriginal claims.
- There is the potential that Aboriginal and/or treaty rights to water “could govern water uses and take priority over all other uses (after ecological needs are met)”.