

A Brief Guide to the *Regulated Riparian Model Water Code*

by Dale B. Thompson, Roger Williams University School of Law

[Text of code is available at <http://www-personal.umich.edu/~rabrams/regulrip.htm>]

- I. Chapter 1: Declarations of Policy
 - A. Very broad policy interests
 - B. Public interest definition
 - 1. Sees waters of state as resource owned by state in trust for public
 - 2. This is not equivalent to the public trust doctrine
 - 3. More that water is a resource that must maintain some public control, via regulation in the public interest
 - C. Importance of efficient and productive use of water
 - 1. Many types of uses included in this focus
 - 2. Role of both efficiency and equity during shortfalls
 - 3. Legal security for water rights
 - 4. But, parties themselves may voluntarily modify or sell rights, subject to protection of 3rd parties
 - 5. Regulation of interbasin and interstate transfers
 - D. Quantity/quality interaction
 - 1. Should this be done by single agency?
 - E. Encouragement of Conservation
 - F. Maintenance of Minimum flows
 - G. Recognition of local interests
- II. Chapter 2: General Provisions
 - A. Basic rule: use is allowed only if it is Reasonable
 - B. No prohibition based on location of use: ok if used on nonriparian or nonoverlying land
 - 1. This is big change from prior common law riparian reasonable use
 - 2. Also, big change from American reasonable use groundwater doctrine
 - C. No unreasonable injury to other water rights
 - D. Regulation of rights
 - 1. Rights themselves have protection as property
 - 2. But State can regulate these property rights in public interest
 - 3. Courts have unanimously ruled that this regulated riparian system is not a taking in moving from a traditional riparian system
 - 4. Exempted uses covered by reasonable use doctrine
 - E. Definitions
 - 1. Various ones
 - 2. Reasonable Use: use of water as is necessary for economic and efficient use, without waste, without unreasonable injury to others, and in the public interest
- III. Chapter 3: Waters Subject to Allocation
 - A. All waters, with exception, subject to allocation
 - B. Transboundary waters, and small sources exempted
 - C. Protected minimum flows (these minimums are not allocated)
- IV. Chapter 4: Administration
 - A. State Agency & its powers
 - B. Funding & authority

- C. Fees
 - 1. Application fees
 - 2. Water use fees
- D. Planning responsibilities
 - 1. Comprehensive Allocation Plan
 - 2. Drought management strategies
 - 3. Statewide data
- E. Coordination with other branches & levels of government
- V. Chapter 5: Enforcement & Dispute Resolution
 - A. Rights to hearings, except frivolous claims
 - B. Dispute resolution
 - C. Judicial review
 - D. Civil enforcement (notice of violations, penalties)
 - E. Criminal enforcement
- VI. Chapter 6: Establishing a Water Right
 - A. Permit required for withdrawal of water
 - 1. Permit requirement does not create or destroy property rights
 - 2. Simply is regulation of existing right
 - 3. Similar to zoning of land uses
 - 4. But even more special public nature of water resources - regulation can be extended even further
 - 5. Small withdrawals are exempted
 - 6. May register withdrawals that are not subject to permits
 - B. Permit procedures
 - 1. Content of a permit
 - 2. Procedures on notice, contest of permit
 - C. Basis of water right
 - 1. Standards
 - a. Proposed use is reasonable
 - b. Withdrawal not exceed safe yield
 - c. Consistent with allocation plan
 - 2. Determining whether use is reasonable: 6R-3-02
 - a. Various factors recommended
 - b. State can chose own factors
 - 3. Preferences among water rights: 6R-3-04 [same considerations as 6R-3-02]
 - 4. Prior investment in facilities to use or withdraw water is irrelevant to permit decision
 - 5. Standards for interbasin transfers
 - D. Coordination of water allocation and water quality regulation
 - 1. Allocation and transfer decisions done in manner to protect quality
 - 2. Permits may combine quantity and quality terms
- VII. Chapter 7: Scope of the Water Right
 - A. Permit Terms & Conditions
 - B. Modification of water rights / permits
 - C. Restrictions during Water Shortages (Part 3)
- VIII. Chapter 8: Multijurisdictional Water Transfers
- IX. Chapter 9: Water Conservation & Supply Augmentation