

# Groundwater Law Activity Sheet

Over time, four doctrines of groundwater rights have evolved in the United States. Each state treats groundwater conflicts differently, relying on one or more of the following doctrines as the basis for its groundwater use law.

## 1. English Rule:

Groundwater use is a property right under this doctrine. A land owner has the right to use the water under his or her land at any time and for any purpose. He or she may also sell or allow others to use his or her water.

## 2. Reasonable Use Rule:

Groundwater use is a property right, but water may only be used for “reasonable” purposes. A property owner may use the water on the land from which it came or elsewhere, as long as his or her use is reasonable in comparison with neighbors needs and uses.

## 3. Correlative Rights Rule:

All land owners in an area have a right to use groundwater. The amount of water each land owner can use depends on the amount of land he or she owns. The landowner cannot pump more than his or her share of water, even for use on his or her own land if neighbors don’t have enough water to meet their needs.

## 4. Appropriation Rule:

This is the rule of “first in time, first in right.” Groundwater rights under this doctrine are not connected to land ownership. A person has a right to use groundwater if he or she has obtained it and put it to a beneficial use such as irrigation, mining, manufacturing, power generation, raising fish, watering farm animals, household or recreational uses. Water may be used on the land from which it came, or elsewhere. Appropriation rights may be sold or given to others.

Under the Appropriation Doctrine, in times of water shortage, those who have used the water longest may use all the water they have used in the past and newcomers may be left with little or no water. If a person stops using his or her share of water for a beneficial purpose, he or she may lose his or her right to use the water at all.

## Groundwater Law in Wisconsin

There have been several key cases establishing Wisconsin’s groundwater use law. Two of them are described here for you:

### 1. Huber vs. Merkel—Wisconsin Supreme Court 1903:

In 1903 a decision was made in the Wisconsin Supreme Court that influenced groundwater law for more than 70 years. This case involved two farmers, Mr. Huber and Mr. Merkel, who lived about ½ mile from each other. Both farmers owned flowing artesian wells.

Mr. Merkel had two wells on his property, one dug in 1899 and the other in 1900. Mr. Merkel used some of his water for a fish pond and some he sold to neighbors. Mr. Huber, like other land owners in the area, capped his well so that the water would not flow out when he was not using it. Mr. Huber’s well was dug in 1899 and his farm is 20 feet higher than Mr. Merkel’s.

There was enough water for both farms and neighboring homes until Mr. Merkel began letting his wells flow freely, maliciously wasting water to harm his neighbors. When Mr. Merkel’s wells were allowed to flow, water levels dropped in all neighboring wells and some of the wells stopped flowing. Mr. Huber took Mr. Merkel to court to try to stop him from wasting water from his artesian wells.

The case was fought all the way to the Wisconsin Supreme Court. In 1903, the Supreme Court decided that the English Rule used in Wisconsin at the time meant that a land owner had an absolute property right to use water under his/her property. Since Mr. Merkel had an absolute right to use groundwater under his property, he could consume, sell or even waste water from his wells if he wanted. So Mr. Merkel won the case and Mr. Huber probably had to find a way to pump water from his once-flowing artesian well.





