10-15-1952

Summary of Water Law Principles and Basic Suggestions for Revising the South Dakota Water Laws

Kenneth Raschke

Kris Kristjanson

Follow this and additional works at: http://openprairie.sdstate.edu/agexperimentsta_ageconomics

Part of the Agricultural Economics Commons

Recommended Citation
Raschke, Kenneth and Kristjanson, Kris, "Summary of Water Law Principles and Basic Suggestions for Revising the South Dakota Water Laws" (1952). Agricultural Experiment Station Agricultural Economics Pamphlets. 81.
http://openprairie.sdstate.edu/agexperimentsta_ageconomics/81

This Pamphlet is brought to you for free and open access by the SDSU Agricultural Experiment Station at Open PRAIRIE: Open Public Research Access Institutional Repository and Information Exchange. It has been accepted for inclusion in Agricultural Experiment Station Agricultural Economics Pamphlets by an authorized administrator of Open PRAIRIE: Open Public Research Access Institutional Repository and Information Exchange. For more information, please contact michael.biondo@sdstate.edu.
SUMMARY OF WATER LAW PRINCIPLES
AND BASIC SUGGESTIONS FOR REVISIING
THE SOUTH DAKOTA WATER LAWS

Prepared by

Kenneth Raschke, School of Business Administration
University of South Dakota, Vermillion, South Dakota

Kris Kristjanson, Bureau of Agricultural Economics, U.S. Department of Agriculture, and South Dakota State College Experiment Station
State College Station, South Dakota

Agricultural Experiment Station
South Dakota State College
State College Station, South Dakota
This pamphlet was prepared for study purposes. It is based on two reports presented to the South Dakota Coordinating Committee for Missouri Basin Development. The necessary investigational work was sponsored by the South Dakota Natural Resources Commission, South Dakota State College and Experiment Station, University of South Dakota and the Bureau of Agricultural Economics.

Several people throughout the State have made suggestions for improving the water laws. In so far as possible these ideas have been incorporated in this report. Others who have ideas on this subject should present them to the Legislative Research Council for their consideration.
Proposals for revising the state water laws have been discussed by interested groups throughout the state. The South Dakota Coordinating Committee has prepared two reports on the problems involved and alternative solutions have been suggested.

This pamphlet is a summary of the basic suggestions which were considered by the South Dakota Coordinating Committee for Missouri Basin Development.

DETERMINATION OF VESTED RIGHTS

The first recommendations are directed at resolving the conflict between the riparian and appropriative doctrine. The law of water rights in South Dakota at the present time, embraces the common-law doctrine of riparian rights and the statutory doctrine of prior appropriation. The principles underlying these two doctrines are diametrically opposed to each other, and whenever the two exist in the same jurisdiction a certain amount of confusion arises. The former is based on the ownership of land contiguous to a stream, without regard to the time of use, or to any actual use at all, and the latter on the time of use and on actual use without regard to the ownership of land contiguous to the watercourse. Under the principles of prior appropriation, the law is well settled that the right to water flowing in the public streams may be acquired by an actual appropriation of the water for a beneficial use, 1/ that, if it is used for irrigation, the appropriator is

1/ Under the law of South Dakota, the right of appropriation applies only to non-navigable water and is subject to vested rights.
only entitled to the amount of water that is necessary to irrigate his land, by making a reasonable use of the water. State water codes have generally provided administrative procedure under which the extent of one's appropriation is measured and determined. In South Dakota that procedure is provided in Chapter 61 of the South Dakota Code of 1939. This procedure has been used extensively by irrigators within the state with no apparent confusion resulting from the principle itself. Therefore, no extensive explanation of this theory is included in this report.

Riparian rights arise out of the ownership of the land through or by which the stream of water flows. The right exists because the stream runs by the land. The landowner thus has the natural advantage resulting from the relative position of the land and the water. Inasmuch as these rights depend upon the ownership of land and since some questions have been raised as to what lands are to be considered riparian within the sense of the doctrine, that question is discussed first.

On principle, it would seem that all land forming a continuous tract which belongs to the owner of the bank of the stream should be considered as riparian, however far back from the bank it may extend, at least to the limit of the stream's watershed. This is subject always to the limitation that the use of water by one riparian owner must be reasonable with respect to the rights of other riparian owners. No South Dakota decisions resting upon this exact point have been discovered. According to the Supreme Court of South Dakota, which has made a general pronouncement upon this point, riparian land is that land bounded by a watercourse or lake or through which a stream flows. Land that is not within the watershed of a river is not riparian thereto, although
it may be a part of the entire tract which does extend to the river or the stream. Therefore, a riparian owner could not take any portion of such water away from the natural watershed and onto non-riparian lands and for non-riparian consumers. Inasmuch as the right to the use of water under the riparian doctrine arises by operation of law as an incident to the ownership of riparian land, of which the right is part and parcel, acquisition of the land automatically results in acquisition of the right.

The next basic question which requires consideration concerns what these rights are that arise on riparian lands. The general doctrine may be stated as follows: Every proprietor of land on the banks of a natural stream has an equal right to have the water of the stream continue to flow in its natural course, without diminution in quantity or deterioration in quality, except so far as either of these conditions may result from the reasonable use of the water for lawful purposes by upper proprietors. The riparian law recognizes no riparian rights whatever as gains through prior settlement or appropriation. The riparian rights of the owner are the same whether his possession of land antedates or is subsequent to the possession of other riparian claimants. These rights are appurtenant to the land and may be called into use whenever a person lawfully possessed of the use of the land may see fit to exercise such right.

These rights of riparian owners have at all times been divided into two classes, depending upon the use to which the water is to be put. These uses have been called ordinary and natural, or extraordinary and artificial. The so-called ordinary use includes the use of water for domestic purposes and for watering stock. The extraordinary use includes use for manufacturing, mining, and irrigation.

2/ Sayles v City of Mitchell 60 South Dakota 592.
It is sometimes stated that an upper proprietor may exhaust the stream for the supply of his natural wants, as for domestic purposes, for drink for himself and family, and for watering his cattle, his right in such case being measured by his own absolute necessity, regardless of the effect of the exercise of such right upon lower proprietors. Although no decided cases have been found upon this exact point, this seems to be the opinion of authorities upon the subject of water rights. It is uniformly recognized that the use of water for the so-called natural purposes, that is, for household and domestic purposes, is paramount to its use for irrigation, and that riparian owners are entitled to have their natural wants supplied before any owner can use the water for irrigation or for any other extraordinary purpose. However, no preference is given to any riparian owner because of the location of his land in respect to extraordinary uses, and the rights of all riparian owners are held to be exactly the same.

As may be noted from the above discussion, the riparian right includes the right to make use of the water for irrigation. This has been uniformly held in the Western States which accept the riparian doctrine. South Dakota has also adopted this ruling. The use of water for irrigation, however, must be reasonable in relation to the needs of other riparian owners. No riparian owner has the right to abstract all the waters of a stream for irrigation purposes if other riparian owners wish to make use of the water at such time. The quantity of water which any one riparian owner may divert for irrigation purposes in a given season from the stream to which his land is contiguous is, in both theory and practice, an exceedingly variable quantity. It depends upon the natural flow at a given time and the needs of all others.

3/ Lone Tree Ditch Co. v Cyclone Ditch Co. 15 S.D. 519
4/ Lone Tree Ditch Co. v Rapid City E. & G. L. Co. 16 S.D. 451,
   Land & Canal Co. v Reed 26 S.D. 466, Redwater Land Co. v Jones 27 S.D. 194
having similar rights who wish to make use of the flow at that time. The Supreme Court of South Dakota has said: "While the use of water by a riparian proprietor for irrigation necessarily involves a diminution its use must be with the least possible injury to other riparian owners. It must be limited to riparian land and actual needs of the proprietor." 5/ Having examined the right of a riparian proprietor to use the water of a stream for irrigation as to its existence and nature, our next inquiry concerns the extent of the right, that is: What are his duties as to such use in respect to other proprietors, particularly those proprietors who are non-riparian?

Stated generally, non-riparian owners have no rights in streams at common law. Whatever rights they have acquired in streams have been the result of statutory enactments, primarily under the doctrine of prior appropriation, which exists in South Dakota subject to the vested rights of the riparian owners. The riparian doctrine then necessarily gives to the riparian owner the right to stop a non-riparian owner from taking any of the water from the stream if he so desires to exercise that right. Entirely immaterial is any inquiry into actual present damage suffered or not suffered by the riparian proprietor to his present use. A riparian proprietor's right is not created by use; it is a right to the undisturbed use of his land, whether present or future, arising from the natural situation of his property with access to the stream. He may use the water when he will. Absence of actual damage to use at the time he complains does not prevent the act of the non-riparian owner being wrongful; even in fact when the complaining proprietor is not himself using, nor contemplating to use the water at all. The courts will act at law by giving nominal damages, or in equity by injunction, to establish his right to future use of his land. 6/

5/ Land Canal Co. v Reed 26 S. D. 466
6/ Lux v Hagg in 69 Cal. 255
The foregoing is a very brief summary of the law of riparian rights as it exists generally. It is this doctrine that has been recognized by South Dakota Supreme Court decisions. It was in doubt for a considerable period in this state, but the law now appears to be in favor of the doctrine. In 1922 it was held in Cook v. Evans \(^2\) that public lands entered after the passage by Congress of the Desert Land Act of March 3, 1877, were divested by that act of all riparian rights except for domestic purposes. In 1940 in the case of Platt v. Rapid City \(^3\) the Court concluded that in view of the United States Supreme Court decision in the California-Oregon Power Co. case, it had been in error in making the 1922 ruling and they restored the riparian doctrine to the position it had occupied in South Dakota before 1922.

In 1907, South Dakota undertook, by legislation, to substitute in the state the doctrine of prior appropriation for that of riparian rights. This was commonly called the Dry-Draw Act. \(^2\) The act itself set forth the procedure necessary to gain water rights on the public watercourses of the state and attempted to abrogate the riparian rights that had not been used for a specified period of time. In the case of St. Germain Ditch Co. v. Hawthorne Ditch Co. \(^10\) Supreme Court of South Dakota held this legislation to be unconstitutional, saying that the riparian right was a vested property right and that such property rights in waters in this state could not be confiscated or interfered with by any such act of the legislature. The Court said specifically: "A riparian water right cannot be lost by disuse, and a statute providing that when a party entitled to the use of water fails to use all or

\(^2\) 45 S. D. 31  
\(^3\) 291 N W 600  
\(^2\) Ch. 180 Session Laws of 1907  
\(^10\) 32 S. D. 260
any portion of the waters claimed by him, for a period of three years, such
unused waters shall revert to the public, is void as to a riparian owner as
depriving him of vested rights, though valid as to one claiming through
appropriation." Hence, the one attempt made in this state to limit the ripar-
ian right failed and the riparian doctrine is still a part of the law of the
state. Inasmuch as the riparian doctrine and appropriative doctrine oppose
each other, and under present law cannot be reconciled, some uncertainty
exists. This adds to the problems of the farmer who is irrigating or who is
considering investments in irrigation equipment. As matters now stand, the
farm irrigator takes a very definite risk. As no legislation protects the man
who does not live next to the stream, this non-riparian owner is subject to
court injunction issued at the demand of riparian owners whether or not they
are using the water. Such orders would prevent him from using water for
irrigation after his investment had been made. A problem is also involved
where irrigation projects are already in operation. Where the bulk of the
irrigators are non-riparian owners, whose right to the water is based upon
the appropriative doctrine, and where the water is fairly scarce, the upper
riparian owner who is not a member of the irrigation project may, by means
of pump irrigation, draw the water from the stream and diminish the flow to
such an extent as to deprive the lower non-riparian owners of the water.

It is recognized that the problems involved in the controversy between
riparian and non-riparian owners probably will not be present in the contem-
plated project on the Missouri River. The problem is present in the over-all
irrigation picture in South Dakota.

Recognizing that the problem does exist, the question remains as to what
may be done to alleviate the situation and remove the risk. It is true that
a number of states have been faced with somewhat the same problem and have
arrived at a fairly workable solution. The question is often asked: If they can do so, why cannot South Dakota follow the same plan? The answer is not that simple. An examination of the other states that have attempted it will show that they achieved results primarily because irrigation was highly developed in those states and its importance and need for orderly development were recognized. The courts in those jurisdictions have felt that the appropriation doctrine is better adapted to promote the conservation and highest beneficial use of both surface and ground water than the riparian doctrine and have upheld statutes which tend to limit and in some respects abrogate the latter. Since the decision in Platt v. Rapid City was laid down, the development of irrigation in this state has increased and its advantages in certain areas can be readily seen and admitted. In order to progress to a point at which irrigation can be used most effectively and water used most beneficially, some proposal in the realm of legislative action seems necessary. This sub-committee recognizes the difficulties attendant upon the installation of any new system of water right law or any modification of the riparian doctrine. If it is to solve the problem, legislation necessarily requires the cooperation of both administrators and courts.

Although both the riparian and appropriation doctrines are present in this state, at least in theory, in actual practice it is the appropriation doctrine that is recognized by water users. As they are already using the appropriation doctrine, any legislative action emphasizing this doctrine will only give legal sanction to what has been established through custom.
After a study of the experiences of other states, it is suggested that the determination of vested property rights in water be made as follows:

The vested rights shall be classified into Class A and Class B rights. All riparian owners shall be recognized to have Class A vested rights to the reasonable beneficial use of water to which they are riparian for domestic purposes, power, recreation, and fishing. Class B vested rights are granted to those who actually have been applying water under reasonable methods of diversion to a reasonably beneficial use other than in the exercise of a Class A vested right. Class B rights shall be given priority in the order in which water was first put to beneficial use. As soon as practicable after the passage of this act, the State Water Board or authorized representative shall proceed with the necessary steps to gather data and other information as may be essential to the proper understanding and determination of vested rights of all parties using water for beneficial purposes other than in the exercise of Class A rights. Such observations and measurements shall be reduced to writing and made a matter of record in the office of the State Water Board.

Farmers and others who do not qualify for Class B rights, but who wish to appropriate waters not demanded by Class A and B rights for irrigation or other similar uses are authorized, regardless of whether they are riparian or non-riparian owners, to file applications for rights with the State Water Board. The State Water Board, or authorized representative will accept these applications, record them in order of their priority, review them, and, upon its own motion or at the request of interested persons, hold public hearings. So long as the applications for appropriation rights meet the requirements of the law, involve reasonable water uses, and do not impair the vested right of Class A or Class B users or the rights held by prior appropriators, the Board is required to issue permits for the appropriation of
stated volumes of irrigation water. After a reasonable period, during which the irrigator must construct or install his irrigation facilities and begin to use the water under the terms of his permit, he receives a license which recognizes his future water use rights. The rights of these applicants are filed in the order in which their applications are received. Each owner receives a priority right to the supply of water available at the time, this supply being limited to any surplus above that required to fill the needs of Class A and B users and prior appropriators.

A second possible solution does not involve legislation and presents no problem so far as constitutionality is concerned. This remedy is condemnation. It is possible for a group within an irrigation district or any other comparable unit, to condemn for public use the riparian rights within that unit. This procedure, however, requires court action and necessitates the payment of the farmers so deprived of their riparian right. Inasmuch as the determination of how much is to be paid is left to a jury, a group cannot be certain what the expense of this condemnation proceeding will be, and when the final determination is made, it may be discovered that the expense is not worth the result.

Third suggested solution is the one reached in Nebraska. According to the decision in Crawford Co. v. Hathaway, 67 Neb. 325, 93 N.W. 781 (1903) the Irrigation Act of 1889 abrogated the riparian rule and substituted prior appropriation, so that the rights thereafter acquired to waters flowing in natural channels are to be tested and determined by the doctrine of prior appropriation. However, this legislation had the effect only of preventing the acquisition of riparian rights in the future. It could not abolish the riparian rights already
accrued. The decision also established that the riparian owner is entitled to only so much of the ordinary and natural flow of the stream as is necessary for his use, and cannot lawfully claim, as against an appropriator, the flow of the flood waters. 12/ This question was also considered in the case of McCook Irrigation & Water Power Co. v. Crows 14/ and Cline v. Stock. 15/

"The effect of these decisions, which put the riparian owner who does not make actual use of the water before the time of vesting of appropriative rights in a position where he can do nothing but recover damages for the impairment of his riparian rights which, as measured by the Nebraska court, are not likely to be substantial, was to eliminate much of the advantage of riparian rights as against appropriative rights on the same stream. In other words, the riparian owner's claim to a right superior over that of an appropriator from the same source appears to depend in substance upon his having put the waters to actual use before the right of the appropriator accrued." 16/

"The Nebraska statutes prescribe a complete procedure for appropriating water, which consists of making application to the Department of Roads and Irrigation for a permit to make the appropriation and taking all prescribed subsequent steps to perfect the right. Adjudication of water rights and disposition of water is also provided for. The exclusive procedure for

13/ The rule of riparian rights was likewise thoroughly considered in the opinion in the case of Meng v. Coffee, 67 Neb. 500, 93 N.W. 713 (1903), filed on the same day as the opinion in Crawford Co. v. Hathaway.
14/ 70 Neb. 109, 115, 96 N.W. 996 (1903), 102 N.W. 249 (1905)
15/ 71 Neb. 70, 98 N.W. 454 (1904); 102 N.W. 265 (1905)
acquiring an appropriative right is that contained in the statutes."

These three possible solutions tend to limit the doctrine of riparian rights:

1. The proposal which classifies the right in water according to its use and gives non-riparian appropriators a vested right upon the filing and approval of their claim.

2. Condemnation, in which the riparian right is purchased outright by the irrigation organization or the State.

3. The Nebraska solution, in which the theory of actual and reasonable use is adopted and injunction against a non-riparian owner is not permitted.

These three solutions favor the appropriation doctrine, as do most western states. These changes were felt to be necessary inasmuch as the common-law riparian doctrine was found to be unsuited to water development in the more arid areas. It was natural that some other rule, laying greater emphasis upon beneficial use, and affording protection to enterprises based upon feasibility of diversion of water and application to lands whether or not contiguous to watercourses, should have developed from the necessities of the environment. The so-called doctrine of prior appropriation appeared adequate for this purpose. Although by no means a perfect system, it was proved more generally satisfactory for conditions in most of the West than has the common-law doctrine.

**ADMINISTRATION**

The second suggestion relates to the administration of the waters of the state. It is suggested that control of all waters of the state and all portions of the law dealing with waters, shall be administered by a water board. This board shall consist of the following members: The State Engineer; Enterprise Irrigation District v. Tri-State Land Co., 92 Neb. 121, 138 N.W. 171 (1912)
the State Geologist; a representative of the Natural Resources Commission; the Secretary of Agriculture or designated representative; a representative of the State Game, Fish, and Parks Commission; a State Sanitary Engineer representing the State Board of Health; and a person representing the general public to be appointed by the Governor of the State of South Dakota. This Board shall have the power to delegate portions of their authority to any person or group of persons in order to carry out the purposes of the act. For example, the issuing of all water permits could be delegated to the State Engineer.

Another alternative suggested by the State Engineer is as follows:

"The administration of the waters of the state shall be vested in a three-man Water Policy Board with the Natural Resources Engineer as Executive Secretary. This Board would decide whether or not and to what extent the state would cooperate with the U.S.G.S. on stream-gauging programs and ground-water surveys and the like. They would also decide as to the State's cooperation with the Corps of Engineers on flood control and drainage projects. The Board would request appropriations for federal cooperative programs. The Board would also settle any controversies that might come to the State Engineer's Office or to the State Geological Office relative to water policy. Delegations having ideas relative to water policy would be referred to the Water Policy Board. The State Engineer's Office would operate as at present with the exception that there would be created a new "division of waters" under the direct operation of an Irrigation and Drainage Engineer who would act on all applications and matters pertaining to irrigation and drainage under the general supervision of the State Engineer. Under this division would be the three functions of "flowing streams," "dry draws" and "ground water." The
consultation and services of the State Geologist would be available to the
Irrigation and Drainage Engineer in connection with Geological matters per-
taining to ground water."

**DRAINAGE**

The third suggestion relates to drainage problems. The following pro-
visions are suggested for a new section of the water code.

A landowner shall have a right to damages caused by seepage from irrigation
canals or drainage ditches.

A lower landowner shall have a cause of action against an upper landowner
for excessive damages caused by flooding due to widening or cleaning of
natural water courses.

A lower landowner shall have the right to damages from an upper land-
owner who is irrigating and who has not made every reasonable effort to pro-
vide drainage ways to carry water off his farm to an adequate drainage way.

**GROUND WATERS**

The fourth suggestion relates to Ground Waters.

Definitions:

(a) "Ground Water" is water under the surface, whatever may be the geologic
structure in which it is standing or moving.

(b) "Well" is an artificial excavation or opening in the ground, made by means
of digging, boring, drilling, jetting, or driving, or by any other artificial
method, for the purpose of obtaining ground water. "Well driller" is any
person or group of persons who drill or otherwise install a well or wells, for
compensation, upon the land of the well driller or upon other land.

**OWNERSHIP:** Subject to the provisions of this code the owner of the land owns
the water standing thereon, or flowing over or under its surface, but not
forming a definite stream. The waters of underground streams and artesian basins are hereby declared to be public waters and to belong to the public and to be subject to appropriation for beneficial use. Provided, however, that nothing herein contained is intended to impair the existing water rights based upon application to beneficial use.

**BENEFICIAL USE:** Beneficial use is the basis, the measure and the limit to the right to use of the waters described in this act.

**ADMINISTRATION:** All portions of the law dealing with ground waters shall be administered by the State Water Board.

**RULES:** The Water Board is hereby given the power and it is made their duty to formulate rules and regulations for the purpose of carrying out the provisions of this act, which rules and regulations shall be printed and made available for distribution to all applicants.

**ADMINISTRATOR OF WELLS:** The Board shall select one of their number to act as an administrator of wells to have general oversight of well operations and carrying out of the provisions of the law. It will also be the duty of the administrator to provide for the licensing and bonding of drillers, and to provide for gathering and storage of information on wells, reservoirs, and ground water geology and its interpretation and use in the administration of the ground-water program.

**APPEALS:** The decision of the Water Board shall be final in all cases, unless appeal be taken to the circuit court of the county in which the appropriation is to be made within thirty days after the decision of the Board in the manner provided by law for appeals.

**VESTED RIGHTS:** Any person claiming to be owner of a vested right to water from any of the underground sources in this act described, by application
of waters therefrom to beneficial use, may make and file with the Water
Board a declaration in a form to be prescribed by it. This should set forth
the beneficial use to which said water has been applied, the date of first
application to beneficial use and the continuity thereof, the location of
the well, and if such water has been used for irrigation purposes the de-
scription of the land upon which such water has been so used and the name
of the owner of the land. Such declaration shall be verified, but if the
declarant cannot verify the same of his own personal knowledge he may do so
on information and belief. Permits other than those required under exist-
ing law, shall not be required for wells on which construction has commenced
or has been completed prior to the Act.

APPROPRIATION OF WATER: Any person, desiring to appropriate any of the waters
described in this act, shall make an application to the Water Board in a
form to be prescribed, in which said applicant shall designate the particular
underground stream, channel, reservoir or lake from which the water is pro-
posed to be appropriated, the beneficial use to which it is proposed to
apply such water, the location of the proposed well, the name of the owner
of the land on which such well will be located, the amount of water applied
for, the use for which it is desired and if the proposed use is irrigation,
the description of the land to be irrigated and the name of the owner thereof.

GRANTING OF PERMITS: If the use to which the water is to be put is a domes-
tic use, the Board shall grant the permit and the filing of the application
shall be merely for record. If the filing be for any other use and if it
shall appear that there are no unappropriated waters in the desiganted source,
or that the proposed appropriation would impair existing water rights from
such source, the application shall be denied.
CHANGE IN LOCATION: The owner of a water right may change the location of his well or change the use of the water but only upon application to the Water Board and upon showing that such change or changes will not impair existing rights, and only upon following the procedure prescribed in the case of original applications.

LOSS OF RIGHT: When for a period of three years the owner of a water right in any of the waters described in this act shall have failed to apply the same to the use for which the right was vested, was appropriated or shall have been adjudicated, such water right shall be forfeited and the water so unused shall revert to the public and be subject to further appropriation.

DRILLERS LICENSE: No person engaged in the business of drilling or constructing wells in this state shall operate without first securing and thereafter maintaining a license, which license and current renewal shall always be plainly displayed at a conspicuous place on the premises where the work is being conducted. The fee for such license shall be twenty five dollars and a like sum must be paid each calendar year prior to June first for renewal thereof. The license shall be issued only to those well diggers deemed qualified by the Board. The fee shall be paid to and the license and renewals issued by the Water Board. The Board shall deposit all funds collected by it in a ground-water fund to be withdrawn by the Board upon vouchers properly audited, for the purpose of administering this act. For violating the regulations listed here, each driller shall be subject to a fine of not less than $500 and not more than $1000.

RECORDS: Any driller, or contractor, drilling a well shall keep a complete record and log of the well, recording the depth, thickness, and character of the different strata penetrated, together with the dates when the work was
begun and completed, the amount, weight, and size of casing set, and the number of inches of flow from such well above the casing. When the well is completed, he shall file the same with the Water Board.

The Water Board shall keep records of all wells drilled in the State in such a manner as to be always available to the public. Whenever the Board shall request them, such records shall include the location of each well, the driller's records, sets of samples and the logs therefrom, electric logs and other well-survey records, methods used in drilling, casing, and finishing each well, analysis of waters, data on pressures and production, and any and all information that may be useful in the development and future use of the water supplies or the care of individual wells.

WILD WELLS: The State Water Board shall recommend and take such steps as are necessary in order effectively to plug those wells which have become "Wild Wells," or unused wells.

**DRY DRAW AND LIVE STREAM**

The words "dry draw" and "water course" as used in this section shall be construed to mean any ravine or water course not having an average flow of at least 0.4 cubic feet per second (20 miner's inches) of water during the period May 1 to September 30, inclusive.

The State Water Board or its authorized representative shall list all live streams by name or other designation for each county, and all other water courses shall be dry draws.

Location notices (permits) on "dry draws" shall be posted and filed with the State Water Board for all types of dams for irrigation or stock-watering purposes.