

# Domestic Groundwater Exemptions:

*Will the Right for Water for Human Consumption Trump the  
Prior Appropriations Doctrine?*

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# US History of “Exempt” Unpermitted Wells

- Well water necessary to support domestic needs & agriculture practices in arid American West





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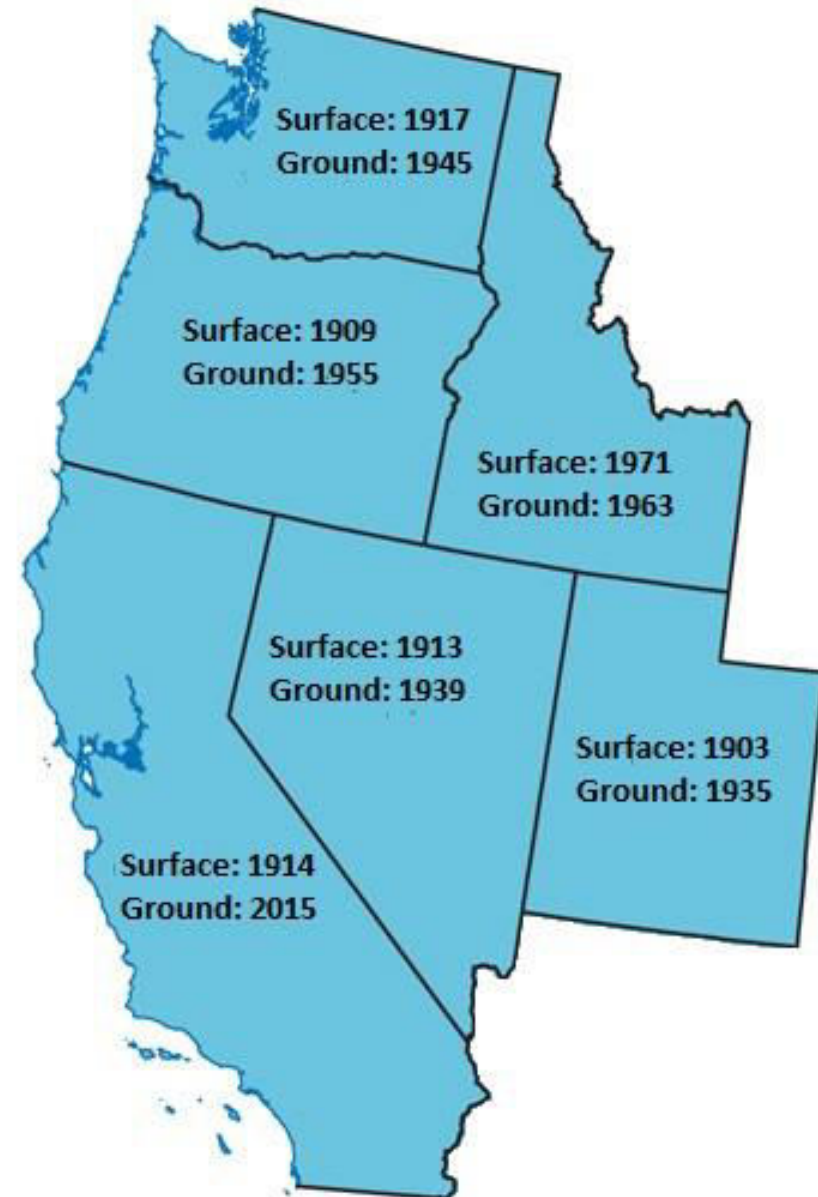
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## Surface & Groundwater Codes





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# States & Domestic Use Exemptions

- Nevada– culinary & household, lawn/garden watering, livestock/ domestic animal up to 1,800 gallons a day
- Oregon– No gallon limit for stock watering, reasonable use (no firm gallon limit) for lawn or garden watering under ½ acre, up to 15,000 gallons a day for domestic water use, up to 5,000 gallons a day for industrial use, down hole heat exchange use & watering school grounds that are 10 acres or less and located within a critical GW area
- Washington– domestic & stock: No gallon limit for stock watering, reasonable use (no firm gallon limit) for lawn or garden watering under ½ acre, up to 5,000 gallons a day for domestic water use & up to 5,000 gallons a day for industrial use
- Idaho– domestic, group domestic, stock watering, campgrounds, & ½ acre agricultural up to 13,000 gallons a day; OR a diversion with rate of less than .04 cubic feet per second up to 2,500 gallons a day
- California– ‘De Minimis Extractors’ that withdraw less than 2 acre feet per year for domestic uses
- Utah– No domestic use exemption



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# Human Right to Water

- International Law - UN
- U.S. “Right to Life”







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# United Nations

## **Universal Declaration of Human Rights (1948)–**

Everyone has right to life, liberty & security of person Article 3; Everyone has right to standard of living, including food Article 25

## **Convention on Law of Non-Navigable Uses of**

**International Watercourses (1997)–** Idea of human right to water presented; Convention did not pass





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# United Nations

**Committee on Economic, Social & Cultural Rights**– “Right to Water” essential to person’s right to health (2002); Set out fundamental conditions of survival: Safe drinking water, Water for sanitation

**UN Resolution on Human Right to Water & Sanitation (2010)**– Recognizes human right to safe & clean drinking water & sanitation; US abstained

**UN Draft Resolution on Human Right to Water & Sanitation (2013)**– Weakened language achieve stronger consensus. No final action taken





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# United States

Fifth Amendment: Federal Government may not deprive a person of life without due process

Fourteenth Amendment: Extends prohibition to states

State Constitutions “Right to Life” provided in: Nevada, Idaho, Washington, Montana





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# Implications of Right to Life

- Water, food & sanitation essential (to human life)
- Implies water needed to grow food
- Water “free” for sustaining human life?
- Can State deny use of public resource on one’s land that is necessary to sustain life?
- Under what set of facts, if any, would a domestic well prohibition become unconstitutional “as applied”



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**THE END**

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