

For the Farmer

A Water Right is Appurtenant to the Land.

--Unless specified,
Water rights transfer with a deed--

Desert Land Act

It shall be lawful ... and upon payment of 25 cents per acre in which any desert land is situated, ..., by conducting water upon the same, ...: Provided, however, That the right to the use of water ..., on or to any tract of desert land of 320 acres ...; and such right shall not exceed the amount of water actually appropriated, ... and all surplus water over and above such actual appropriation and use, together with the water of all lakes, rivers, and other sources of water supply upon the public lands and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, ... purposes subject to existing rights. ... a patent for the same shall be issued to him.

43 U.S. Code § 321

Mar. 3, 1877, [19 Stat. 377](#); Mar. 3, 1891, [26 Stat. 1096](#); etc.

For the Rancher

A water right for use in stock raising on the public domain is a right... that since the right in the lands is merely possessory, not resting in grant, such right with the incident or appurtenant water right may be transferred by parol.

(Parol, A handshake agreement)

First State Bank of Alamogordo v. McNew, NM (1928)

Overruled in

Walker vs US, NM 2007

--Under the Constitutional Doctrine of Prior Appropriation--

The water rights that ranchers obtained by watering their livestock on federal land were appurtenant to their patented properties.

Joyce Livestock Co. vs US 2017
Pg 14 (Brochure Available)

For Informational Purposes

Brochures pdf on

[RanchersHaveRights.com](#)

Valid Existing Rights

Are Protected by Constitutions

"Subject to Appropriation for Beneficial Use"



--Water is separate from the land--

1866, Congress relinquished all claims to water rights on public land, and ceded them to the respective states.

Bakersfield Morning Echo,
Oct. 24, 1909

--"1866 Mining Law
authorizes non-federal
appropriations of water
on public lands.

Pre-FLPMA, October 21, 1976,
water rights
on Forest lands
are

"Valid Existing Rights"
for purposes of FLPMA."

<https://www.fs.usda.gov/land/water/bypass8.html>



--The Territorial supreme
court held that water
might be diverted from a
stream and used for
beneficial use.

Albuquerque Land & Irr. Co. v.
Gutierrez, NM, (1900)

--The Doctrine of Prior
Appropriation
was applied by the
earliest settlers to the
use of waters
for irrigation, mining, and
other beneficial purposes."
Lindsey v. McClure, (1943)

--New Mexico Supreme
Court ruled that waters
for stock raising is a
beneficial use.

Farmers' Development Co. v.
Rayado Land & Irr. Co, (1923)

--Upon Federal Lands
Decisions by the Secretary
SHALL Be Subject to
VALID EXISTING
RIGHTS

90 STAT 2786 Sect 701(h)

Vested Rights are
established under laws.
--Valid Existing Rights—
are Constitutional

with it? In 1907, while New Mexico was still a territory, the territory adopted a water code and authorized a territorial engineer to administer the terms of the code. The basis of this code was "first in time; first in right." The New Mexico Constitution, adopted in 1911, contains the following language in Article XVI:

1. All existing rights to the use of any waters in this state for any useful or beneficial purpose are hereby recognized and confirmed.
2. The unappropriated water of every natural stream, perennial or torrential, within the state of New Mexico, is hereby declared to belong to the public and to be subject to appropriation for beneficial use, in accordance with the laws of the state. Priority of appropriation shall give the better right.
3. Beneficial use shall be the basis, the measure and the limit of the right to the use