



Wyoming Water Law

a summary

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Wyoming water law dates back to territorial days and is based on the “doctrine of prior appropriation.” Under this doctrine, the first person to put the water to beneficial use has the first right, meaning “first in time is first in right.” Therefore, water rights in Wyoming and in most of the western states are regulated by priority. Those with the earliest rights are entitled to water during periods of limited supply while those with later rights are denied water during such times.

The Wyoming Constitution provides that water from all natural streams, springs, lakes, and other collections is the property of the state.

Water Administration

The state engineer is the chief administrator of Wyoming waters. To manage these waters, the state is divided into four water divisions. Water Division 1 includes the North Platte, South Platte, Little Snake, and Niobrara river drainages. Water Division 2 includes all drainages north of the Niobrara and North Platte river drainages and east of the Big Horn Mountains. Water Division 3 includes the Big Horn and Clark’s Fork river drainages, and Water Division 4 includes the Green, Bear, and Snake river drainages.

A water division superintendent administers the waters of each water division with assistance from water and hydrographer commissioners. The four superintendents and the state engineer constitute the state board of control. The board meets quarterly to adjudicate or finalize water rights and to consider other matters pertaining to water rights such as changes in points of diversion, the approval of amendments, and the addition of corrections.

The state engineer’s office may be contacted for necessary forms and information through written correspondence or the Internet.

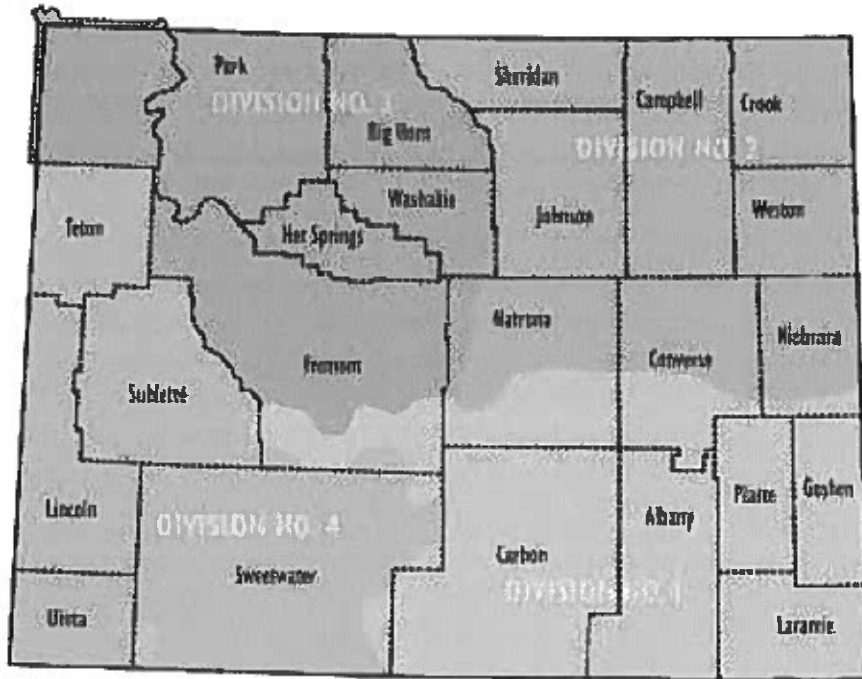
State Engineer’s Office
4th Floor East
Herschler Building
Cheyenne, WY 82002-0370
e-mail: seoleg@state.wy.us
Web site: www.seo.state.wy.us

Information also can be obtained from each of the water division superintendents’ offices, which are located in the following cities:

Water Division 1:	Torrington
Water Division 2:	Sheridan
Water Division 3:	Riverton
Water Division 4:	Cokeville

**Wyoming
Water
Divisions**

- Water Division 1:
Torrington
- Water Division 2:
Sheridan
- Water Division 3:
Riverton
- Water Division 4:
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Prior to Wyoming statehood in 1890, a water right could be established by a procedure predicated on the use of water and the filing of a claim with territorial officials. Water rights with priority dates before 1890 are termed "territorial" water rights. Since statehood, the only way a water right can be acquired in Wyoming is by securing a permit from the state engineer. Water rights cannot be obtained by means of historic use or adverse possession. Wyoming water law requires that certain procedures be followed to obtain a valid water right. Following is a summary of these procedures for surface water and groundwater.

Surface Water

Wyoming's first surface water laws were enacted in 1875. More comprehensive laws were adopted along with the state constitution in 1890. These laws state:

- If an individual, association, or corporation wants to use surface water, the interested party must first apply to the state engineer for a permit. Application forms are available from the state engineer's office, water division superintendents' offices, and county clerks' offices.
- An engineer or surveyor licensed to practice in Wyoming must make a survey and prepare the maps and plans needed to apply for a permit. Generally, this engineer or land surveyor also possesses the necessary application forms.
- Whoever is applying should submit an application form, maps, and plans along with a filing fee to the state engineer in one package of documents. A priority date is established by the date of an application's acceptance in the state engineer's office.

- ◆ Upon approval of the application, the state engineer issues a permit for developing the proposed water project.
 - The project must be completed within the time frame specified on the approved permit.
 - The state engineer must be notified on the appropriate forms when construction was completed and when the water was put to beneficial use. These forms are provided with the approved permit.
 - If, in the time prescribed, the project cannot be completed and the water cannot be put to use, the applicant may ask the state engineer to extend any or all of the time limits. The applicant should make the request before the original time limits expire and cite good cause for needing an extension. If an extension is granted, the date of priority remains the same.
- ◆ After the water has been put to beneficial use (or a reservoir constructed) and the construction completion and beneficial use notices have been submitted, a final proof of appropriation or construction must be submitted to the appropriate water division superintendent. This proof is then advertised in a local newspaper, and an inspection of the project is made. Only lands found to be irrigated or with uses developed or being used as reservoirs to store water will be accepted for adjudication. If the paperwork is in order and no protests are filed, a proof is submitted to the board of control. If the board approves the application, a certificate of appropriation and/or construction is issued and recorded in the county clerk's office in the county where the project is located as well as in the

state engineer's office. It is then listed in the tabulation of adjudicated rights for the respective division as evidence of an adjudicated water right. Once adjudicated, the water right is permanently attached to the specific land or place of use described on the certificate of appropriation and cannot be removed or changed except by action of the board of control. (See Page 8.) The adjudicated water right takes its place in the list of priorities for that particular stream. Water is delivered to that right only when sufficient water is available to meet all earlier water rights on the stream.

- ◆ Limits on unstored water for irrigation:
 - Water rights for irrigation are adjudicated on the basis of 1 cubic foot per second (cfs) per 70 acres.
 - Irrigation rights with priority dates of March 1, 1945, or earlier are entitled to an additional 1 cfs per 70 acres. Those individuals who hold such a water right are entitled to divert water in the volume of 2 cfs for each 70 acres of land before any water is made available to the holder of a water right with a priority date after March 1, 1945.

If there is not sufficient water to furnish 2 cfs to each individual with a pre-March 1, 1945, water right but there is more than enough to furnish 1 cfs to each person, the surplus water is divided on a pro-rata basis. If there is so little water that each holder of a pre-March 1, 1945, water right cannot receive 1 cfs, the water is regulated on a strict priority basis.

Any water beyond that required to furnish 2 cfs for each 70 acres of a pre-March 1, 1945, water right is first allocated to rights with priority dates after March 1, 1945, and before March 1, 1985. Wyoming's Excess Water Law

states that each water right with a priority date of post-March 1, 1945, but pre-March 1, 1985, is entitled to 2 cfs per 70 acres before any water is made available to post-March 1, 1985, water rights. If there is not sufficient water to furnish 2 cfs to each post-March 1, 1945, and pre-March 1, 1985, water right, but there is more than enough to furnish 1 cfs to each of these rights, the excess water is divided among the rights on a pro-rata basis.

If there is so little water that each post-March 1, 1945, and pre-March 1, 1985, water right cannot receive 1 cfs, the rights are regulated on a strict priority basis. Post-March 1, 1985, water rights are entitled to 1 cfs per 70 acres only after all pre-March 1, 1985, rights have received 2 cfs per 70 acres.

When additional streamflow is available, it is not illegal to divert more than one's amount of appropriation when prior rights are satisfied,



the stream is not in regulation, and such water is not wasted as determined by the division superintendent or the local water commissioner.

Simplified Filing Procedures

For some water facilities and developments, a simplified filing process that does not require maps and plans prepared by a registered engineer or surveyor is acceptable. The following types of water uses are covered under the surface water special application procedure:

- ◆ Construction of small reservoirs for stock purposes, fishing-reserve waters, and wetland ponds where the capacity of such a reservoir does not exceed 20 acre feet of water or the height of the dam does not exceed 20 feet.
- ◆ Construction of flood-detention dams that
 - Store 50 acre feet of water or less;
 - Have a dam height not exceeding 20 feet;
 - Have, as a minimum, an outlet 18 inches in diameter; and
 - Have a dead storage that does not exceed 20 acre feet.
- ◆ Development of springs filed by one of two methods depending upon the rate of flow and how the water will be applied. The conditions that determine the method to use are described below.
 - If the spring flows 25 gallons per minute (gpm) or less and if the water is to be used only for stock watering and/or domestic uses, which include watering lawns and gardens not exceeding 1 acre in size, the spring must be filed as groundwater. No map is required. After the approval of the application, some type of artificial diversion



must be constructed to qualify for a water right. The proposed method of spring development and the means of conveying the water to the point of use must be described on the application under the section entitled "Remarks."

- If the spring flows in excess of 25 gpm (0.056 cfs) and is to be used for stock purposes only, surface water special application procedures must be followed. The use will be limited to 25 gpm (0.056 cfs).
- All springs flowing in excess of 25 gpm (0.056 cfs) or designated for other uses will be filed using surface water filing procedures. (See Page 2.)
- ♦ Domestic uses of water directly from a stream, which can be permitted under the special application process for uses up to 25 gpm.
- ♦ Any system using a catchment apron to collect direct flow for storage in a cistern or tank for later use in a guzzler (drinking

trough), which can be filed using surface water special application procedures.

Reservoir Storage

A reservoir is entitled to be filled in priority once each year if water is available. If water remains unused in the reservoir at the end of the normal use period, the water is designated as carry-over storage and counts toward providing water to meet the following year's supply for appropriation. Storage water may be attached by a secondary permit to specific lands or places of use.

Instream flow

The 1986 legislature declared that instream flow for maintenance or improvement of existing stream fisheries is a beneficial use of water that can be provided from natural stream flows or from storage water. A statutory procedure was established for the state and represented by the Wyoming Water Development Commission (WWDC) to appropriate specified flow rates for instream flows in segments of streams identified by the studies and reports of the Wyo-



ming Game and Fish Commission. The WWDC must conduct a hydrologic study to determine whether the instream flow can be provided from the natural flow of the stream or whether storage water from an existing or new reservoir will be needed for part or all of the instream flow. The WWDC report is supplied to the state engineer for consideration. If storage water is needed from a new reservoir project, normal legislative project authorization procedures must be followed by WWDC.

After receiving reports from the game and fish commission and WWDC, the state engineer may conduct an evaluation of the proposed appropriations for instream use. Before granting or denying a permit for instream flow in the specified stream segment, the state engineer must conduct a public hearing and consider all available reports and information. If granted, an instream flow permit can contain a condition for a review of the continuation of the permit at a future time.

The instream flow appropriation goes into effect the date the state engineer approves the permit. The water right cannot be adjudicated by the board of control for three years thereafter. The instream water right priority date is the date the application was received and recorded by the state engineer, and all senior pri-

ority water rights must be recognized in the administration of the stream. A change of use to instream flow from existing water rights may be sought through a petition to the board of control in which the state becomes the owner of the changed right.

The state engineer cannot issue an instream flow permit if it will result in the loss of a portion of Wyoming's consumptive share of water allocated by an interstate compact or a U.S. Supreme Court decree or if it will result in more water leaving Wyoming than is allocated for uses downstream.

Other persons can appropriate water downstream from an instream flow segment to within one mile of the Wyoming state line or within one mile upstream from state line reservoirs on the Big Horn, Green, and Snake rivers or within one mile of the main stem of the North Platte River.

Groundwater

The first Wyoming groundwater laws were enacted in 1945 and amended in 1947. A new groundwater law went into effect March 1, 1958, repealing and replacing the 1945 and 1947 laws. Major amendments were made in 1969.

Priority of Wells

- ◆ For all wells drilled prior to April 1, 1947, the priority date is the date the well was completed if a claim for the well was filed before March 1, 1958, as provided by the law.
- ◆ For wells drilled between April 1, 1947, and March 1, 1958, the date the well was registered established its priority date.
- ◆ After March 1, 1958, the priority date is the date the application for a permit to drill the well is accepted in the state engineer's office.

- ♦ An exception to the above is a well used solely for stock and/or domestic purposes. Until the enactment of the 1969 amendment to the groundwater law, such wells were exempt from filing and held a preferred right over wells used for all other purposes.
- ♦ Under the 1969 amendment, all domestic and/or stock wells drilled after May 24, 1969, and all wells drilled for other purposes establish priority on the date an application for permission to drill is received in the state engineer's office.
- ♦ Under the 1969 amendment, all domestic and/or stock wells drilled and used before May 24, 1969, and registered with the state engineer before December 31, 1972, established a priority date as of each well's completion and water use.

Domestic and Stock Water Uses (Groundwater)

The law defines domestic use as household use including lawn and garden watering for non-commercial family use where the area to be irrigated does not exceed 1 acre. The quantity of water to be pumped for family or stock use cannot exceed 25 gpm. A well may supply water to more than one but not more than three single-family dwellings and still be considered a domestic use provided that:

- The yield does not exceed 25 gpm;
- The total area of lawns and gardens to be watered does not exceed 1 acre;
- No charge, hidden or otherwise, is levied for the use of the water; and
- The water is not used in conjunction with a commercial endeavor.

Stock-watering use is defined as normal livestock watering. This includes any project

whereby water will be piped to no more than four points of use within one mile of a well. Large feedlot operations or any project whereby the water will be piped to five or more points of use or where the points of use are greater than one mile from the well are considered miscellaneous use.

Groundwater Permitting Procedures

The same general procedures for acquiring surface water rights apply to acquiring groundwater rights.

- ♦ Before a well is drilled, an application must be filed and approved by the state engineer. This requirement applies to all wells used for any purpose.
- ♦ Forms to be filed with the state engineer are available from that office, water division superintendents' offices, and county clerks' offices.
- ♦ A permit to construct a well will generally be granted as a matter of course by the state engineer. An exception could occur in a groundwater control area. The board of control may designate a groundwater control area where:
 - The use of groundwater is approaching a use equal to the current recharge rate,
 - Groundwater levels are declining or have declined excessively,





- The waste of water is occurring or may occur, and
- Other conditions exist or may arise that require regulation for protection of the public interest.
- ◆ A well must be completed and the water applied to beneficial use before the dates specified on the permit. The proper notice(s) verifying compliance must then be submitted to the state engineer's office.
- ◆ If an individual cannot complete construction of the well or put the water to use in the time prescribed, an extension may be requested (in writing) to the state engineer. "Good cause" should be stated in the request.
- ◆ A plat showing the location of the well(s) and the point(s) of use and the distribution system is required when the final proof of appropriation and beneficial use is filed.

This plat must be certified by an engineer or land surveyor licensed to practice in Wyoming.

- ◆ After the final proof of appropriation has been filed, the division water superintendent inspects the project, and the proof is advertised. If everything is in order and no protests are filed, a certificate of appropriation is issued by the board of control. The certificate is recorded in both a county clerk's office and in the state engineer's office. This is evidence of an adjudicated water right.

Changes in Well Location and Depth

Well locations and other changes may be made without loss of priority if the following conditions are met:

- ◆ The new well location is in the same aquifer and in the same general vicinity as the old location,
- ◆ Permission is obtained from the board of control for any well relocation where the beneficial use of the water is for something other than stock or domestic and the water has been put to beneficial use,
- ◆ Permission is obtained from the state engineer for any stock or domestic well relocation and any well relocation for other types of wells where the water has not yet been put to beneficial use, and
- ◆ Temporary changes in well location requiring approval by the board of control can be approved by the division superintendent.

Special Water Right Conditions for Groundwater

- ◆ A permit to appropriate groundwater carries with it no guarantee of a continued water level or artesian pressure.

- ◆ Where underground waters in different aquifers are so interconnected as to constitute one source of supply or where underground water and surface water are so interconnected as to constitute one source of supply, priorities of rights to the use of the interconnected waters must be correlated and a single schedule of priorities must relate to the common water supply.
- ◆ By-product water is water that has not been put to prior beneficial use, is a by-product of some nonwater-related economic activity, and has been developed only as a result of another activity such as oil and gas production or mining.

Preferred Uses

Wyoming water law defines the preferred uses of both surface water and groundwater and lists them in the following order:

- ◆ Drinking water for both humans and livestock;
- ◆ Water for municipal purposes;
- ◆ Water for steam engines, general railway use, cooking, laundering, bathing, refrigerating (including ice manufacturing), steam and hot-water heating plants, and steam power plants; and
- ◆ Water for industrial purposes.

Non-Preferred Uses

All water uses other than those listed as preferred uses are considered non-preferred. When a water supply is insufficient to meet water rights, rights with a preferred use do not take precedence over a non-preferred use. The priority date of a water right, preferred or non-preferred, determines who is entitled to water. The only way to obtain a preferred right from a

non-preferred prior right is by purchase or condemnation through court action. The right of condemnation cannot be used by industrial concerns to obtain water rights. However, groundwater wells yielding 25 gpm or less and used solely for domestic and stock purposes do have preferred rights over wells for all other uses, regardless of their priority dates.

For example, someone with an irrigation water right (non-preferred use) with an early priority is entitled to use water even when it may involve denying water to a municipality (preferred use) with a later right. The municipality may acquire, through condemnation if necessary, the earlier irrigation right and change it to municipal use provided just compensation is paid.

Keeping Water Rights Valid

To keep a water right valid when changes are made in the point of diversion, the location of a well, the location of an irrigation ditch, or similar circumstances, permission must be secured. If the water right is adjudicated, one should petition the board of control. If it is not adjudicated, the petition should be sent to the state engineer's office.

In most instances, obtaining permission for changes does not change the priority date of the water right but keeps the water right up to date and legal. Public hearings on changes may





be held to ensure that no injury occurs to other water-right holders because of the change. One should keep a water right in proper standing so that no legal questions are raised concerning its validity.

Change in Use

An individual who owns an adjudicated water right and wishes to change it from its current use or from its place of use must file a petition with the board of control requesting permission for a change. When requesting a change in place of use, all pertinent information about the existing use and the proposed place of use should be specified in the petition. The board of control may require that an advertised public hearing be held at a petitioner's expense. A petitioner must provide a transcript of the public hearing to the board of control. A change in use or change in place of use may be allowed.

If such an allowance is granted, the quantity of water transferred by the granting of the petition should not exceed the amount of water historically diverted under the existing use. Furthermore, the historic rate of water diversion and the amount consumed cannot exceed that diverted and consumed under the existing use. Finally, such a petition, if allowed, should not decrease the historic amount of return flow or in any manner injure other existing lawful

appropriators. The board of control will consider all facts it believes to be pertinent to a transfer. These may include the following:

- ♦ The economic loss to the community and the state if the use from which the right is transferred is discontinued,
- ♦ The extent to which such economic loss will be offset by the new use, and
- ♦ Whether other sources of water are available for the new use.

In all cases in which the matter of compensation is in dispute, the question of compensation shall be submitted to the proper district court for determination.

Subdivisions with Attached Water Rights

Wyoming law provides that any time a parcel of land with water rights attached is subdivided, the developer must dispose of the water rights in one of three ways:

- ♦ Voluntarily abandon the water rights, removing them from the land forever;
- ♦ Transfer the water rights to other owned lands that have no other water rights from the same source; or
- ♦ Develop a subdivision irrigation plan showing which lands have the water rights, the amount of the water rights, the location of supply and waste ditches, and other information necessary for the protection of individual lot owners in retaining water rights on the land.

Each of these actions requires review by the state engineer's office or the board of control before the subdivision can be approved by the respective county.

Water Right Abandonment

A water right for surface water or groundwater not used for five successive years (when water is available to satisfy the right) is considered abandoned, but a statutory procedure must be followed to bring about legal abandonment. The law provides a procedure for abandonment. The abandonment process must be initiated by an affected water user who has a priority equal or junior to the right being abandoned or by the state engineer. If a right is declared abandoned, the user forfeits all water rights, easements, ditch rights, and the like, and the water again becomes subject to appropriation. Water must have been available but not used for an abandonment to take place. Wyoming law provides standing so that abandonment action can be brought by a pre-March 1, 1945, water-right holder against a senior pre-March 1, 1945, water-right holder to protect the right to surplus water.

Wyoming Water Law and Related Principles

To accommodate the administrative realities of Wyoming water law, the following principles are followed:

- ◆ Beneficial use is the basis, measure, and limit to the right to use water at all times.
- ◆ To bring about a more economical use of an available water supply, two or more water rights' owners may rotate their combined water in priority after obtaining the permission of the water commissioner.
- ◆ The water right owner is responsible for ditch maintenance so that the water does not flood or damage the property of others.
- ◆ The water right owner is responsible at all times for waste water.
- ◆ Priority regulation is not automatic. Water

appropriators may elect to decline calling for state regulation.

- ◆ In administering water to the various appropriations on a stream, the state is obligated to attempt to deliver the full amount of any appropriation in priority at its head gate out of the stream. Any ditch loss between the head gate and the appropriator's land is the responsibility of the appropriator.
- ◆ During regulation by the state, tagged diversions may not be tampered with under penalty of law.
- ◆ Temporary rights to water uses for oil well drilling, highway construction, etc., may be granted by the state engineer upon submission of a proper application.
- ◆ In a case where a ditch was in place before any houses or other property, the property owners are compelled to protect themselves from any damage created by seepage from the ditch. If, because of seepage, a newly built ditch creates damage to property that was present before the ditch was built, the ditch owners shall be liable for any damage.
- ◆ During extreme shortages, instream stock-water use may be declared against diversions.





Interstate Compacts and Court Decrees

As a headwaters' state, Wyoming is party to seven interstate compacts, two U.S. Supreme Court decrees, and one U. S. District Court decree. Many of the river basins have established interstate commissions to ensure compliance with the allocations made under these compacts and decrees.

Summary

In Wyoming, a valid right to the use of water may be acquired only by following the procedures established by state law for both surface water and groundwater.

Water users should be sure of the status of their water rights. A way to accomplish this is to check the records in a county clerk's office or at the state engineer's office. The records indicate an appropriation amount, the priority of the right, and how and where the water is to be used. If there are any questions, check with the state engineer's office and request complete information on the status of the water right in question.