

*Jackson Lake Dam and Reservoir*

# Wyoming Water Law: A Summary

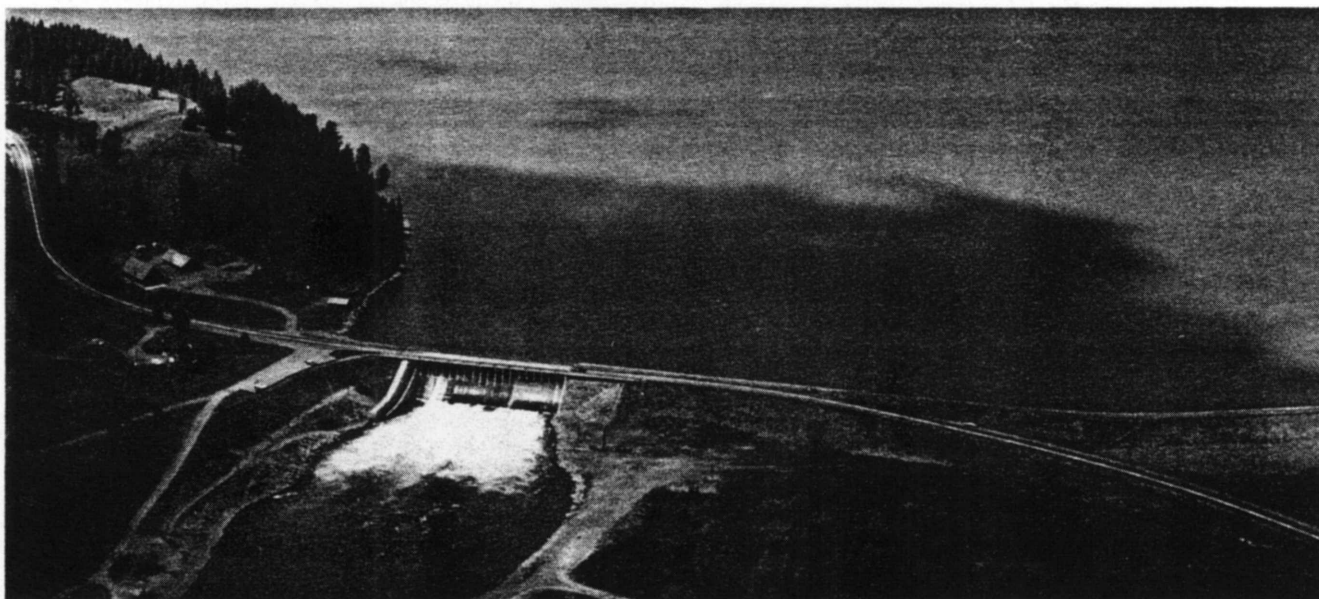
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Wyoming water law dates back to territorial days and is based on the "doctrine of prior appropriation." Under this doctrine the first to put the water to beneficial use has the

first right, or "first-in-time is first-in-right." Therefore water rights in Wyoming, and in most of the western states, are regulated by priority. This means the earliest rights are entitled to water during periods of limited supply, while those with later rights are denied water during these times.

The Wyoming Constitution provides that water of all natural streams, springs, lakes or other collections of still water are the property of the state. Therefore, through its constitution, Wyoming considers water so important that its use is regulated by the state.



## WATER ADMINISTRATION

The state engineer is the chief administrator of Wyoming waters. In administering Wyoming's water, the state is divided into four water divisions. Water Division No. 1 includes the North and South Platte River drainages and the Little Snake and the Niobrara River drainages. Water Division No. 2 includes all drainages north of the Niobrara and North Platte River drainages and east of the Big Horn Mountains. Water Division No. 3 includes the Big Horn and Clark's Fork River drainages and Water Division No. 4 includes the Green, Bear and Snake River drainages. A Wyoming map showing the water divisions is found below.

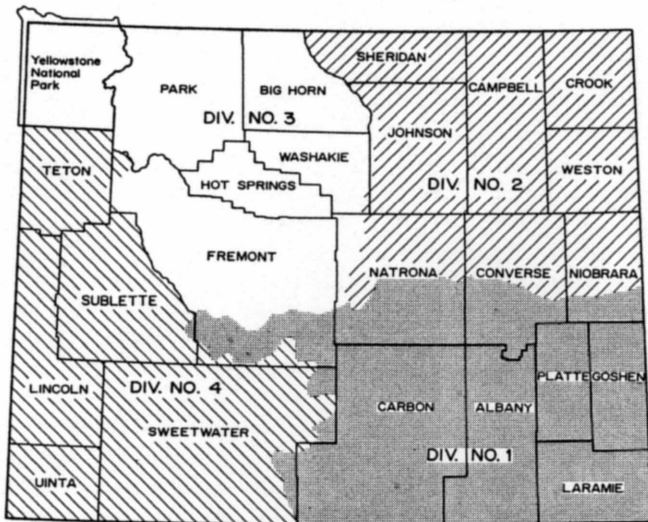
A water division superintendent administers the waters of each water division with assistance from water commissioners and hydrographer-commissioners. These four superintendents and the state engineer constitute the state board of control. The board meets quarterly to adjudicate or finalize water rights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

When you write the state engineer for necessary forms and information, address correspondence to:

State Engineer's Office  
Herschler Building  
Cheyenne, Wyoming 82002

You can also obtain information from each of the water division superintendents' offices, which are presently located in these Wyoming cities:

Water Division No. 1: Torrington  
Water Division No. 2: Sheridan  
Water Division No. 3: Riverton  
Water Division No. 4: Cokeville



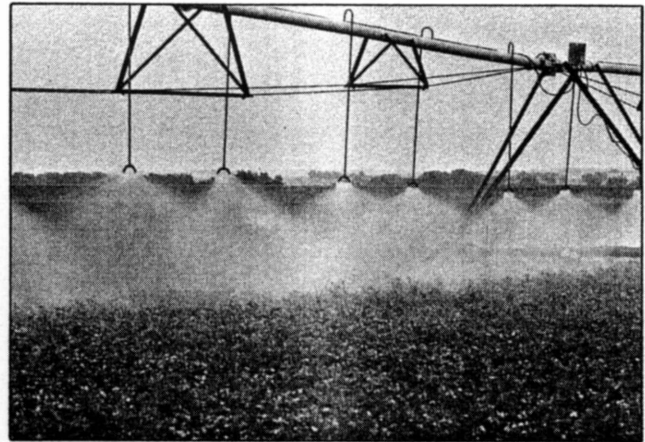
Wyoming Water Divisions

Prior to 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 historic use or adverse possession in any case. Wyoming water law requires that you follow certain procedures to obtain a valid water

right. Following is a summary of these procedures for surface and ground water.

## SURFACE WATER

Wyoming's first surface water laws were enacted in 1875. More comprehensive laws were adopted along with the state constitution in 1890. In brief, and paraphrased, these laws state:



Irrigation Water

1. If you (or an association or corporation) want to use surface water, you must first apply to the state engineer for a permit. Application forms are available from the state engineer's office.

2. An engineer or surveyor, licensed to practice in Wyoming, must make a survey and prepare the maps and plans needed to apply for your permit. Generally this engineer or land surveyor also has the necessary application forms.

3. Submit the application form, maps and plans, and a filing fee to the state engineer as a package. The priority date is established by the date of acceptance of the application in the state engineer's office.

4. Upon approval of the application, the state engineer issues a permit for developing the proposed water project.

5. You must complete and beneficially use the project within the time specified on the approved permit.

6. You must notify the state engineer on appropriate forms of the dates construction began, when construction was completed, and when water was put to beneficial use. The appropriate forms are provided with the approved permit.

7. If you cannot begin, complete and/or put the water to use in the time prescribed, the state engineer may be requested to extend any or all of the time limits. Make your request before the original time limits expire, and cite good cause for needing an extension. If a time extension is granted, the date of priority remains the same.

8. After the water has been put to beneficial use, or a reservoir constructed and the notices as outlined in #6 submitted, you must submit a final proof of appropriation or construction to the appropriate division water superintendent who then submits it to the board of control. This proof is advertised in a local newspaper and an inspection of the project is made. Only lands found to be irrigated or actual reservoir capacity will be accepted for adjudication. If everything is found in order and no protests are filed, a

certificate of appropriation or of construction is issued by the board of control and recorded in the county clerk's office in which the project is located as well as in the state engineer's office. This is evidence of an adjudicated water right. Once adjudicated, the water right is permanently attached to the specific land described on the certificate of appropriation, and cannot be removed except by action of the state board of control to change the use or place of use (see p. 5). The adjudicated water right takes its place in the list of priorities for that stream. Water is delivered to that right only when sufficient water is available to meet all earlier water rights on that stream.

9. Limits on unstored water for irrigation:

a. Water rights for irrigation are adjudicated on the basis of 1 cubic foot per second (cfs) per 70 acres.

b. Water rights with priority dates of March 1, 1945 or earlier are entitled to an additional 1 cfs per 70 acres. If you hold such a water right, you 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 pre-March 1, 1945 water right, but more than enough to furnish 1 cfs to each of such rights, then the surplus water is divided among those rights on a pro rata basis. If there is so little water that each pre-March 1, 1945 right cannot receive 1 cfs, they are regulated on a strict priority basis.

Any water above that required to furnish 2 cfs for each 70 acres of pre-March 1, 1945 water rights 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 more than enough to furnish 1 cfs to each of these rights, the excess water is divided among those 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.

For post-March 1, 1985 water rights, those rights are entitled to 1 cfs per 70 acres only after all pre-March 1, 1985 rights have received 2 cfs per 70 acres. Under the Excess Water Law, the post-March 1, 1985 water rights may also receive 2 cfs if water is available.

10. The granting of a water right by the state engineer does not include the granting of ditch easements and right-of-ways. You must negotiate these with the affected landowners.

## SIMPLIFIED FORMS

The state engineer may issue you a permit for water storage and development of a spring. File a simplified form, which does not require maps and plans prepared by a registered engineer or surveyor for the following water uses:

1. Construction of small reservoirs for stock purposes only and fishing reserve waters, where the capacity of such a reservoir does not exceed 20 acre-ft of water or the height of the dam does not exceed 20 ft.

2. Construction of flood detention dams that:

a. Store 50 acre-ft of water or less.

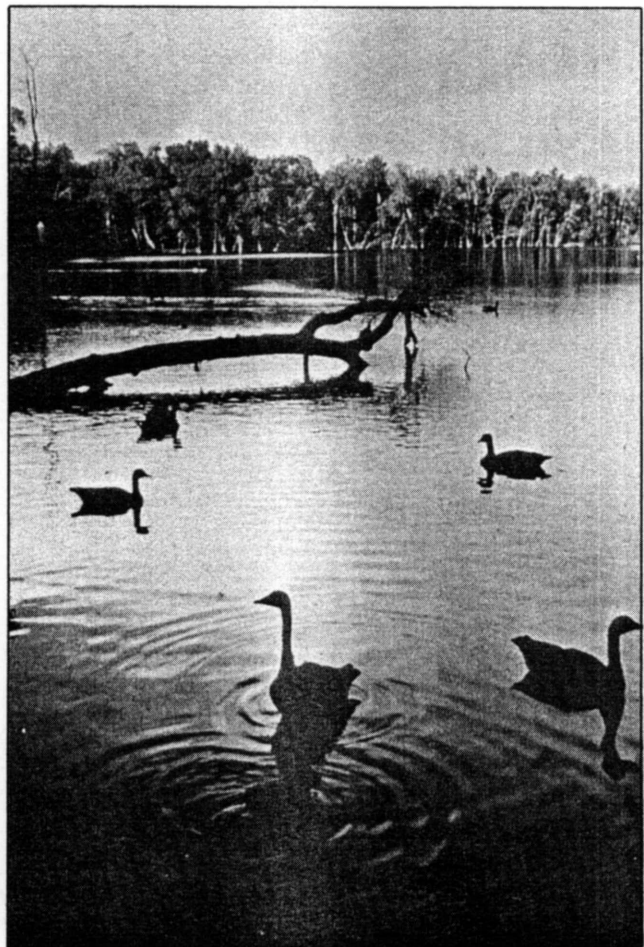
b. Have a dam height which does not exceed 20 ft.

c. Have as a minimum an outlet 18 inches in diameter and

d. Have a dead storage which does not exceed 20 acre-ft.

3. Development of springs may be filed on by one of two methods, depending upon the rate of flow and the use to which the water will be applied. The conditions which determine the method to use are described below:

a. 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 includes watering of lawn and gardens not exceeding 1 acre in size), the spring shall be filed as ground water. No map is required. After the approval of the application, some type of artificial diversion must be constructed to qualify for a

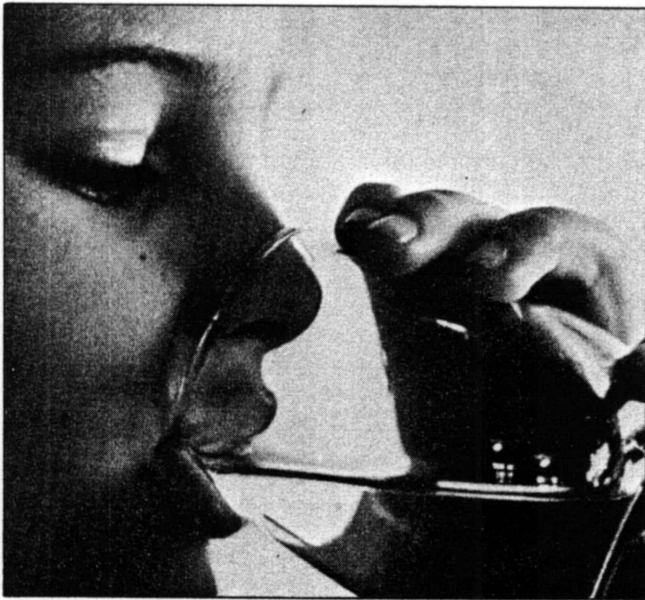


*Recreation Water*

water right. The proposed method of development of the spring and means of conveying the water to the point of use must be described on the application under REMARKS.

b. If the spring flows in excess of 25 gpm (0.056 cfs) OR if the water will be used to irrigate more than 1 acre OR if the water will be used for any purpose other than stock watering or domestic, a surface water application form (s.w.d.) must be submitted using surface water





*Drinking Water*

procedures. Preparation of this application, and the map which must accompany it, requires the services of a professional engineer or land surveyor licensed to practice under Wyoming law. The engineer or land surveyor will handle the preparation of these applications and the accompanying maps, as well as their submission to the state engineer.

## 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 towards providing water to meet the following year's supply for appropriation.

## GROUND WATER

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

## PRIORITY OF WELLS

1. For all wells drilled prior to April 1, 1947, the date of priority is the date the well was completed if a claim for the well was filed before March 1, 1958 as provided by the law.

2. For wells drilled between April 1, 1947 and March 1, 1958, the date the well was registered established its priority date.

3. 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.

4. An exception to the above is a well used solely for stock and/or domestic purposes. These wells, until the enactment of the 1969 amendment to the ground water law, were exempted from filing and held a preferred right over wells used for all other purposes.

5. Under the 1969 amendment, all domestic and/or stock wells drilled after May 24, 1969, and all wells drilled for other purposes, establish a priority as of the date the

application for permit to drill is received in the state engineer's office.

6. Under the 1969 amendment, all stock and/or domestic wells drilled and used before May 24, 1969, and registered with the state engineer before December 31, 1972, established a priority date as of the well's completion and water use.

## DOMESTIC AND STOCK WATER USES

The law defines domestic use as household use, including the watering of lawns and gardens for noncommercial 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 shall not 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:

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

Stock watering use is defined as the normal watering of livestock, including any project whereby water will be piped to 4 or less points of use within 1 mile of the well. Large feedlot operations or any project whereby the water will be piped to 5 or more points of use or the points of use are greater than 1 mile from the well are considered miscellaneous use.

The same general procedures to acquire surface water rights apply to acquiring a ground water right.

1. Before a well is drilled, you must file an application and have it approved by the state engineer. This requirement applies to all wells used for any purpose.

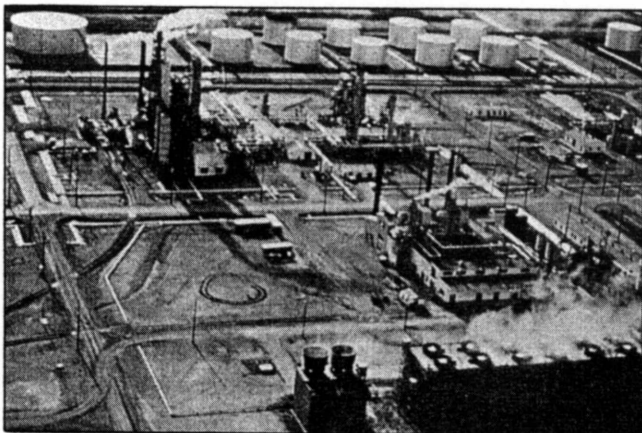
2. Forms to be filed with the state engineer are available from that office, the water division superintendent's office or the county clerk's office.

3. A permit to construct a well will generally be granted as a matter of course by the state engineer. An exception may be in a ground water control area. The board of control may designate a control area where

- a. The use of ground water is approaching a use equal to the current recharge rate; or
- b. Ground water levels are declining or have declined excessively; or
- c. Conflicts between users are occurring or foreseeable; or
- d. The waste of water is occurring or may occur; or
- e. Other conditions exist or may arise that require regulation for protection of the public interest.

4. You must begin construction of a well within a year after the permit is granted, and notify the state engineer's office by submitting a notice of commencement. You must complete the well and apply the water to beneficial use before the dates specified on the permit, and submit the proper notice(s) verifying compliance to the state engineer's office.

5. If you cannot begin construction of a well, complete it and/or put the water to use in the time prescribed, request in writing (to the state engineer) an extension of time. Be



*Industrial Water*

sure to state good cause in the request.

6. A plat, showing the location of the well(s) and the point(s) of use and distribution system, is required at the time of filing the final proof of appropriation and beneficial use. Have this plat certified by an engineer or land surveyor licensed to practice in Wyoming.

7. After you have filed final proof of appropriation, an inspection of the project is made by the division water superintendent and the proof is advertised. If everything is in order and no protests are filed, you are issued a certificate of appropriation by the board of control. It is recorded in the county clerk's office where the project is located and the state engineer's office as well. This is your evidence of an adjudicated water right.

8. You may change a well location within the same aquifer in the vicinity of the original location, without loss of priority, provided you have obtained approval from the state board of control if the groundwater right has been adjudicated or the groundwater right has not been adjudicated but the water has been applied to beneficial use. In cases involving domestic and stock water wells which are not adjudicated but the water has been applied to beneficial use, the state engineer may approve a change of location. If the right is not adjudicated and the water has not been applied to beneficial use, approval for the change in location may be granted by the state engineer. For all wells, the state engineer may approve a change in well location even if the water has not been put to a beneficial use.

9. Remember that the permit to appropriate ground water carries with it no guarantee of a continued well level or artesian pressure.

## **PREFERRED USES**

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

1. Water for drinking purposes for both man and beast.
2. Water for municipal purposes.
3. Water for use of steam engines and general railway use, water for culinary, laundry, bathing, refrigerating (including the manufacturing of ice), for steam and hot water heating plants, and steam power plants.
4. Industrial purposes.

## **PREFERRED AND NON-PREFERRED USES**

### *Relationship*

All uses of water other than those listed as preferred uses are considered non-preferred.

When the 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 you can obtain a preferred right from a non-preferred prior right is by purchase or by condemnation through court action. The right of condemnation cannot be used by industrial concerns to obtain water rights. However, ground water 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 date of priority.

Example: 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 due compensation is paid.

## **KEEPING WATER RIGHTS VALID**

To keep a water right valid when changes are made in the point of diversion, in the location of a well, in the location of an irrigation ditch, or similar changes, you must secure permission. Do this by petition to the state board of control if the water is adjudicated. If it is not adjudicated, send your petition to the state engineer.

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 the changes may be held to insure that no injury occurs to other water right holders because of the change. Keep the water right in proper standing so no legal questions are raised concerning its validity.

## **CHANGE IN USE**

If you own a water right and wish to change it from its present use to another use, or from the place of use under the existing right to a new place of use, you must file a petition requesting permission for a change. The petition sets forth all pertinent facts about the existing use and the proposed change in use. Where you request a change in place of use, all pertinent information about the existing place of use and the proposed place of use shall be specified in the petition. The board may require that an advertised public hearing(s) be held at your expense. The petitioner shall provide a transcript of the public hearing to the board. The 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 shall not exceed the amount of water historically diverted under the existing use. Furthermore, the historic rate of diversion and the amount consumed cannot exceed that under the existing use. Finally, such a petition, if allowed, shall not decrease

the historic amount of return flow, or in any manner injure other existing lawful appropriators. The board of control considers all facts it believes pertinent to the transfer. These may include the following:

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

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

## LANDS WITH ATTACHED WATER RIGHTS

### *Subdivisions*

Wyoming law now provides that any time you subdivide a parcel of land with water rights attached, you (the developer) must dispose of the water rights in one of three ways:

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

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

## WATER RIGHT ABANDONMENT

A water right for surface or ground water not used for 5 successive years is considered abandoned but a statutory procedure must be followed to bring about legal abandonment. The law provides a procedure for abandonment, but it must be brought by an affected water user(s) 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, even though senior in priority, against another pre-March 1, 1945 water right holder to protect the right to surplus water.

## WYOMING WATER LAW

### *Basic precepts*

1. Beneficial use is the basis, measure and limit to the right to use water at all times.
2. To bring about a more economical use of the available water supply, two or more water users may rotate the use of their combined water rights after obtaining permission of the water division superintendent or water commissioner.

3. You are responsible for maintenance of your ditches so that the water therefrom does not flood or damage the property of others.

4. You are responsible for your wastewater at all times.

5. In administering water to the various appropriations on a stream, the state is obligated to deliver the full amount of any appropriation in priority at its headgate out of the stream. Any ditch loss between the headgate and the appropriator's land is the responsibility of the appropriator.

6. Temporary uses of water such as for oil well drilling, highway construction, etc., may be granted by the state engineer upon proper application.

7. In any 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 a newly built ditch, because of seepage, creates damage to property which was present before the ditch was built, the ditch owners shall be liable for any damage.



*Fishing Water*

## 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 and ground water.

Water users should be sure of the status of their water rights. Check the records in the county clerk's office, or through the state engineer's office. The records indicate the appropriation amount, 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.

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