

Wyoming Water Law: A Summary

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Jackson Lake reservoir



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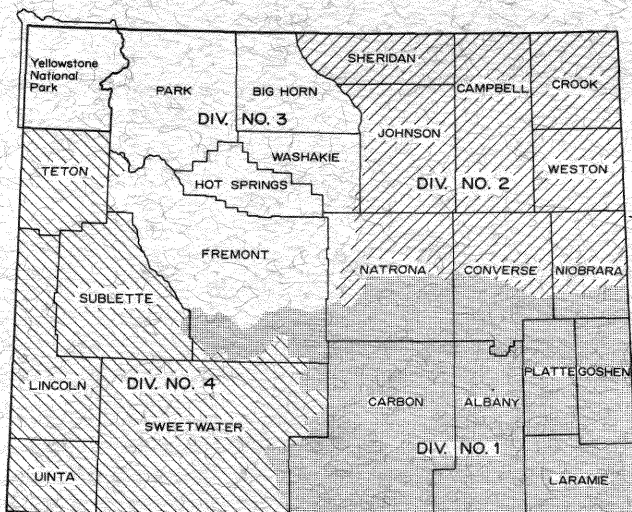
Wyoming water law dates back to territorial days and is based on the "doctrine of prior appropriation." Under this doctrine the first to put the water to beneficial use has the first right, or "first in time is first in right." Therefore, water rights in Wyoming, and in most of the western states, are 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.

Water Administration

The state engineer is the chief administrator of Wyoming waters. In administering these waters, the state is divided into four water divisions. Water division 1 includes the North Platte, South Platte River, Little Snake, and the Niobrara River drainages. Water division 2 includes all drainages north of the Niobrara and North Platte Rivers 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 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 of control meets quarterly to adjudicate or finalize water rights and to consider other matters pertaining to water rights, such as change in point of diversion, amendments or corrections of water rights.



Wyoming water divisions

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

State Engineer's Office
4th Floor East
Herschler Building
Cheyenne, Wyoming 82002-0370

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

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

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 both 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:

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, the water division superintendent's office or the county clerk'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, along with a filing fee, to the state engineer as a package. The priority date is established by the date of application acceptance 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, when construction was completed, and when water was put to beneficial use. The appropriate forms are provided with the approved permit.

7. If in the time prescribed, you cannot complete the project and put the water to use, 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.



Irrigation water

8. After the water has been put to beneficial use, or a reservoir constructed and the notices as outlined in point 6 submitted, you must submit a final proof of appropriation or construction to the appropriate water division superintendent. This proof is advertised in a local newspaper, and an inspection of the project is made. Only lands found to be irrigated and/or possessing a reservoir will be accepted for adjudication. If everything is found in order and no protests are filed, the proof is submitted to the Board of Control. A certificate of appropriation and/or construction is issued, if approved by the board of control, and is recorded in the county clerk's office in which 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. This is 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 except by action of the board of control to change the use or place of use (see page 7). 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 one 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 beyond 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 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 rights of way. 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, 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.

2. Construction of flood detention dams that:
 - a. Store 50 acre-feet of water or less
 - b. Have a dam height not exceeding 20 feet
 - c. Have as a minimum an outlet 18 inches in diameter, and
 - d. Have a dead storage that does not exceed 20 acre-feet.



Recreation water

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 that 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 lawns 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 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 the section titled "Remarks."
- b. 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).

- c. All springs flowing in excess of 25 gpm (0.056 cfs) or for other uses will be filed using surface water filing procedures (see page 2).

4. 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) can be filed using surface water special application procedures.

Reservoir Storage

A reservoir is entitled to be filled in priority once each year is 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.

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 streamflows or from storage water. A statutory procedure was established for the state, represented by the Wyoming Water Development Commission, to appropriate specified flow rates for instream flows in segments of streams identified by studies and reports of the Wyoming 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 use. The WWDC report is supplied to the state engineer for his 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 his own 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 review of 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. An instream water right has a date of priority as of the date that the application was received and recorded by the state engineer, and all senior priority water rights must be recognized in administration of the stream.

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

Other persons can appropriate water from instream flow on a segment of a stream within 1 mile of the Wyoming state line or within 1 mile upstream from major reservoirs on the Big Horn, Green, Snake, and North Platte rivers.

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 exempt 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 (Ground Water)

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
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.



Drinking Water

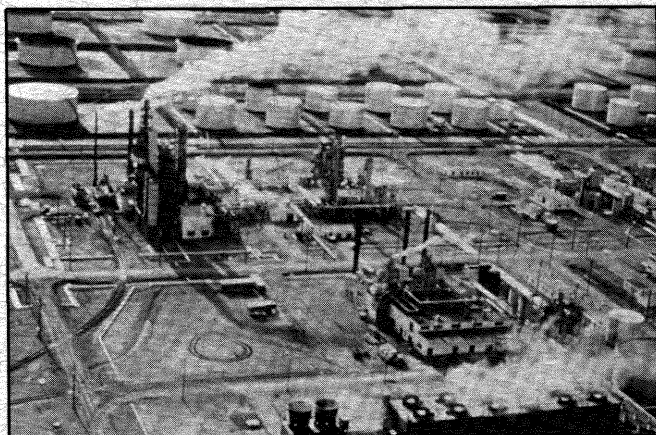
Stock watering use is defined as the normal watering of livestock, including any project whereby water will be piped to no more than four points of use within 1 mile of the well. Large feedlot operations or any project whereby the water will be piped to five or more points of use, or the points of use are greater than 1 mile from the well, are considered miscellaneous use.

Ground Water Permitting Procedures

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.



Industrial Water

The board of control may designate a ground water control area where:

- a. The use of ground water is approaching a use equal to the current recharge rate
 - b. Ground water levels are declining or have declined excessively
 - c. Conflicts between users are occurring or are foreseeable
 - 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 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 complete construction of the well, or put the water to use in the time prescribed, request in writing (to the state engineer) an extension of time. Be 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 in the state engineer's office as well. This is your evidence of an adjudicated water right.

Changes in Location and Depth

You may change a well location within the same aquifer in the vicinity of the original location or the well depth without loss of priority, provided you have obtained approval from the board of control if the ground water right has been adjudicated or the ground water right has not been adjudicated but the water has been applied to beneficial use. In cases involving domestic and stock water wells that are not adjudicated but whose 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.

Special Water Right Conditions for Ground Water

1. Remember that the permit to appropriate ground water carries with it no guarantee of a continued water level or artesian pressure.
2. Where underground waters in different aquifers are so interconnected as to constitute one source of supply, or 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 shall be correlated and a single schedule of priorities shall relate to the common water supply.
3. By-product water is water that has not been put to prior beneficial use, and is a by-product of some non-water-related economic activity and has been developed only as a result of such activity such as oil and gas production, mining, etc.

Preferred Uses

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

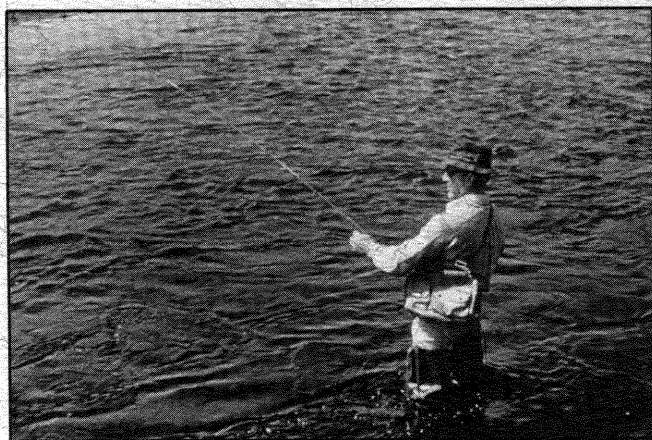
1. Drinking water for both humans and livestock
2. Water for municipal purposes
3. Water for steam engines and general railway use; water for cooking, laundering, bathing, and refrigerating (including the manufacturing of ice); water for steam and hot-water heating plants, steam power plants
4. Water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

Non-preferred Uses

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 for 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 just compensation is paid.



Fishing water

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 circumstances, you must secure permission. Do this by petitioning the 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 ensure that no injury occurs to the 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 current 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 with the board of control requesting permission for a change. The petition sets forth all pertinent facts about the existing use and the proposed change in use. When you request a change in place of use, all pertinent information about the existing use and the proposed place of use shall be specified in the petition. The board of control may require that an advertised public hearing be held at your expense. The petitioner shall provide a transcript of the public hearing to the board of control. 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.

Subdivisions with Attached Water Rights

Wyoming law 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 that have no other water right from the same source
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 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 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, but it must be brought 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, 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 precept

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.
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 waste water 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 head gate out of the stream. Any ditch loss between the head gate and the appropriator's land is the responsibility of the appropriator.

6. Temporary rights to 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, 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.

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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