

A Guide for Wyoming Property Owners: Understanding Your Rights to Groundwater

Groundwater is a critical resource for many Wyoming property owners. In Wyoming, groundwater is treated like surface water. You must have a permit to use it. The only way to get a permit is through the State Engineer's office.

I. What Do I Need to Do to Drill a New Water Well on my Land?

A. Do I have a water right?

In Wyoming, water rights are tied to the land they benefit. Wyo. Stat. Ann. § 41-3-101. This means that in the normal transfer of land, the previous owner passes along the water rights associated with the land. *Scherck v. Nichols*, 55 Wyo. 4, 95 P.2d 74 (1939). Such rights may be to surface water or to groundwater. If the water right is not specified in the deed to your property, check the records in the county clerk's office and the State Engineer's office.

You can find instructions for how to search the State Engineer's records of existing water rights [here](#).

B. How do I get a water right?

If a water right did not come with your land, you must apply to the State Engineer's office to obtain one. Use Form U.W.5. Forms and instructions can be found [here](#). The filing fee for a permit to appropriate groundwater is \$50 for domestic, stock or coal bed methane use.

An application can be completed electronically through the e-permit system. You can find instructions for registering to use the e-permit system [here](#). The same e-permit system allows you to search existing water rights, as well as apply for a new water right.

C. Once I have a permit to appropriate water, what do I need to know about drilling a well?

Once you have a permit to appropriate water, you can construct a well to access the water. Wyo. Stat. Ann. § 41-3-930. You must complete Form U.W. 6 before doing so. You should receive a copy of this form with your approved water right permit. Complete and submit U.W. 6 within 30 days of constructing your well.

The State Engineer's Office has established minimum construction standards for private water supply wells. The intent of the standards is to ensure that the well is sufficiently sealed

from surface and subsurface contamination. Among other things, the standards specify steps that a well driller must take to complete and maintain a well. Local zoning ordinances or county health requirements may impose additional restrictions. You can find the standards and information describing them [here](#).

In general, anyone constructing, altering or rehabilitating a water well must have a state license. If you choose to drill a well yourself on land you own, you do not need a license. Wyo. Stat. Ann. §§ 33-42-101 through 33-42-117.

Approved permits contain deadlines for well completion and beneficial use. Generally, you must complete well construction and put the water to its permitted use(s) before December 31 of the year following approval of your permit to appropriate water.

II. Can I Use an Existing Water Well on My Land?

It is important to distinguish a water right from a well structure that exists on your land.

A. Does the State Engineer's Office have a record of a water right associated with the well?

The first step is to check with the State Engineer's office to determine whether someone has a valid water right associated with the well.

1. Is the owner of the water right a previous owner of the land?

In many cases, a previous owner of the land drilled any wells existing on it. The well and any associated water right generally transfers with title to the land.

2. Did someone who did not previously own the land use it to access a valid water right?

It is possible, however, that someone secured a water right to access groundwater through the well without owning the land. Wyoming's Legislature enacted the first groundwater laws in 1947. The law required registration of groundwater wells drilled after April 1, 1947. Although the 1947 law initially exempted stock and domestic wells from the registration requirement, the Wyoming Legislature eliminated this exemption in 1969. As of May 24, 1969, all groundwater wells required a permit from the State Engineer's Office before drilling could begin. The law required owners of wells drilled prior to May 24, 1969, to register with the State Engineer's Office.

Subsequent to 1969, any unregistered well was not considered to have a valid water right and could not expect to receive protection under the law. Wyo. Stat. Ann. § 41-3-905. Consequently, the State Engineer's Office should have a record of any valid water right associated with the well. If someone else holds a valid water right to access groundwater through a well on your land, you may want to negotiate an agreement to use some of the water from the well, but this may require amending or enlarging the water right because the water can only be used at the place of record, and for the purpose it was permitted. The well owner may have a prescriptive easement to use your land to access his water rights. *See Powder River Ranch, Inc. v. Michelena*, 103 P.3d 876, 878 (Wyo. 2005).

If no record of the well on your land exists with the State Engineer's Office, no valid water right associated with the well exists.

B. Can someone acquire a right to water through continued use?

Sometimes property rights can be acquired through long-term, uninterrupted use (think "squatter's rights"). The legal term for this is to "adversely possess" or to acquire through adverse possession.

In Wyoming, the right to use water is not something that can be adversely possessed. The only way a person can obtain a water right in Wyoming is by application to the State Engineer. Wyo. Stat. Ann. § 41-3-501. The Wyoming Supreme Court has explicitly held that "it is impossible to acquire water rights by adverse possession." *Lewis v. State Bd. of Control*, 699 P.2d 822, 825 (Wyo. 1985).

However, it may be possible for someone to obtain access to a well on your property through adverse possession. To establish adverse possession, someone must show that use of the well is "actual, open, notorious, exclusive and continuous for ten years as required by Wyoming statute. Wyo. Stat. Ann. § 1-3-103. *See Galiher v. Johnson*, 432 P.3d 502, 510 (Wyo. 2018).

Moreover, if someone obtains title to land through adverse possession any water right tied to the land will pass to the new owner. *See Lewis*, 699 P.2d at 825 n. 3.

C. If no water right exists, can I use or remove the well structure?

A well structure is generally treated as personal property. In most cases, you have the right to personal property on land you have acquired. Personal property such as a fence or shed may encroach on another's property. This might happen if the property boundary or ownership of the property is unclear. Under some circumstances, courts may allow an encroachment to remain. In other cases, a landowner may lawfully remove the encroachment. *See Osborn v. Pine Mountain Ranch*, 766 P.2d 1165, 1167 (Wyo. 1989).

III. Can I lose a water right if I don't use the water?

Yes, abandonment of a water right is possible when the water is not put to use for five (5) successive years. Wyo. Stat. Ann. §§ 41-3-401, -402. Abandonment, however, requires a declaration of abandonment. Action by the Board of Control declaring a water right abandoned is necessary. The Board of Control will provide notice to the water right holder prior to declaring the right abandoned. Wyo. Stat. Ann. §§ 41-3-401, -402.

RESOURCES

State Engineer's Office

<https://seo.wyo.gov/home>

Brief History of Groundwater Appropriation in Wyoming:

<https://seo.wyo.gov/ground-water>

Forms and instructions for Groundwater Appropriation:

<https://seo.wyo.gov/ground-water/applications-forms-and-instructions>

Instructions for using the E-permit system (for searching existing water rights + applying for a new one)

https://drive.google.com/file/d/1NiQevmnhm12E-mMv1JTBAjFJl6OqrP_1/view

Water well construction

<https://seo.wyo.gov/ground-water/water-well-construction>

County Clerk Records

Searching county clerk and county assessor records is another way to determine the existence of a groundwater well right for your property. A Certificate of Appropriation, the document that solidifies your groundwater well right, is typically recorded in the county where the property is located. Well sharing agreements are often recorded as well. Finally, real estate transfers many times include reference to the water rights serving the land.

GIS Mapping/ Surveys

Groundwater Atlas of Wyoming:

<https://www.arcgis.com/apps/webappviewer/index.html?id=09ebeedba94048a0b1ec4dcfc71eb9b5>

For more information regarding your property, legal descriptions, surveys, and more, you may also use the Bureau of Land Management, Government Land Ownership Survey Search:

<https://glorerecords.blm.gov/search/default.aspx#searchTabIndex=0&searchByTypeIndex=1>

Other Useful Information Sources

Craig Cooper, *A History of Water Law, Water Rights and Water Development in Wyoming* (2004), available at https://wwdc.state.wy.us/history/Wyoming_Water_Law_History.pdf

James J. Jacobs, Gordon Fassett & Donald J. Brosz, *Wyoming Water Law: A Summary* (1995), available at <http://library.wrds.uwyo.edu/wrp/90-17/90-17.html>.

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