

Temporary conservation under DM and Wyoming abandonment law

Under Wyoming's abandonment law, any failure to use available water under a water right, including voluntary participation in a demand management program, for *fewer than five successive years* should not result in a forfeiture of the right.

Water right holders are encouraged to seek independent legal advice regarding their specific circumstances.

Wyoming Statutes §§ 41-3-401 & 402

- ❖ A water right holder who fails to use the water for its beneficial purpose, either intentionally or unintentionally, during any five successive years, is considered as having abandoned the water right and forfeits the right.
- ❖ Lack of water to fulfill the right excuses non-use (either low flow or regulation).
- ❖ Forfeiture is not operative until a formal declaration of abandonment has been made (by the Board of Control).
- ❖ Resumption (reactivation) of use prior to a declaration of abandonment preserves the right.
- ❖ Abandonment proceedings may be initiated by the State Engineer, or any person who has a water right from the same source of supply which is equal to or junior in date of priority to the right to be abandoned.
- ❖ Person bringing the abandonment action must show they will be benefitted by the abandonment or injured by reactivation of the right.
- ❖ Surplus water rights (March 1, 1945) and excess water rights (March 1, 1985) are subject to abandonment.
- ❖ Partial abandonment of an irrigation right for partial nonuse during a five-year period may not be sought so long as there was insufficient water to satisfy the water right in full, provided that a useable diversion existed and a diligent effort was made to use the available supply.
- ❖ The holder of a storage right that has not been applied to beneficial use may apply to the Board of Control for an extension of time for up to five years showing reasonable cause for non-use. An extension precludes an abandonment action, and is renewable.
- ❖ Abandonment is not favored in the law, and must be proven by clear and convincing evidence.
- ❖ Abandonment proceedings are decided by the Board of Control, with ability to appeal to the courts.