

Common Misconceptions about Wyoming Water Law

1. “My great-grandfather built this ditch back around 1903. What do you mean I don’t have a water right?” **Response:** With the exception of pre-Statehood water rights (Territorial Appropriations), you must obtain a permit from the State Engineer PRIOR TO commencement of construction of any project proposing to appropriate water for a beneficial use.
2. “My banker told me that the reservoir on the property I am buying belongs to me and I want to be sure you put it in my name.” **Response:** It depends. For a stock reservoir (in-place use), the current land owner may claim ownership of the reservoir using an Affidavit (sworn statement). The water stored in an irrigation reservoir (Primary Permit) WITH a Secondary Permit is controlled by the owner of the points of use identified in the Secondary Permit. For a reservoir WITHOUT a Secondary Permit, we consider the reservoir owner to be that shown by the records in our office. Any reservoir may be assigned to a new owner by executing an Assignment of Permit OR by inclusion of the reservoir (by name and Permit Number) in the Warranty Deed or Certificate of Ownership that transfers ownership of a piece of property.
3. “My banker told me that I must have all the water rights put in my name.” **Response:** A direct flow water right attaches to the point of use and there is no need to “put it in your name”. Many times, a piece of irrigated property may be split into numerous ownerships and the BOC would not consider putting a single owner onto a Certificate with many “owners”.
4. “The State Engineer issued me this ditch permit so now I can enter your property to install my head gate and cut my ditch.” **Response:** Not without the permission of the owner. The issuance of a permit DOES NOT constitute the granting of a right-of-way.
5. “I filed my application so now I can build my reservoir.” **Response:** No. An application ≠ a permit.
6. “I filed my application before my neighbor but he received his permit first. Now he has the senior water right.” **Response:** No, he doesn’t. The priority date of a permit is established when the application is RECEIVED AND FILED FOR RECORD, regardless of how long it takes to issue the permit.
7. “I am looking at purchasing a piece of property that is being irrigated. What is the water right attaching to the property?” A search of our records revealed no water right. How can that be? **Response:** Under Wyoming Water Law, water stored in an irrigation reservoir may be used anywhere in the State. There is a good chance that the seller is irrigating the property in preparation of selling it but will probably discontinue irrigation once the sale is final. Buyer beware!
8. “There is a ditch that crosses a piece of property that I just purchased. Since it is on my property, I certainly must have the right to use the ditch.” **Response:** Not necessarily. Unless your lands are covered by a water right carried by the ditch, you have no claim to the water or the ditch.
9. “There is a ditch that crosses a piece of property that I just purchased. I certainly have the right to fill in the ditch since it crosses my property right where I want to build my new barn.” **Response:** No. “One who destroys a private irrigating ditch is liable for the difference in the value of the land belonging to the owner without the ditch and with it.” Sutherland on Damages (4th ed. Vol. 4, pg. 3760)

10. “There is a ditch that crosses a piece of property that I just purchased. I certainly have the right to enjoy the aesthetics provided by the ditch and now I want to build a bridge across the ditch to enhance the beauty and functionality of my property.” Response: The ditch owner has the right to maintain his ditch and this includes a “reasonable” distance on each side of the ditch to run equipment. Unless you agree to maintain the ditch on your property, any structures could be destroyed by his ditch-cleaning equipment.
11. “There is a ditch that crosses a piece of property that I just purchased. My neighbor now wants to enter MY property and clean out the ditch. I certainly can stop him, can’t I?” Response: No. A 1965 Wyoming Attorney General addressed this question in quoting from Weil in “Water Rights in the Western States” when he said: “As in the case of any easement, the ditch owner as the dominant, has the duty of keeping the ditch in repair, and not the landowner. Correspondingly, he has the right of entry upon the servient estate to make repairs and to clean out the ditches, and if the landowner interferes, injunction lies.”
12. “There is a stream that crosses a piece of property that I just purchased. I certainly have the right to use that water since it is on my property.” Response: Not necessarily. Wyoming does not recognize riparian rights. Wyoming is a Prior Appropriation Doctrine state and a permit is required in order to divert water. There is a provision in the law that provides for the use of water for instream stock use.
13. “My neighbor and I have irrigation rights under the same permit. I think that my neighbor is taking more water than he is entitled to and I am out of water. I’ll call the Water Commissioner and he’ll set my neighbor straight.” Response: Not necessarily. Our jurisdiction ends at the headgate and does not extend down the ditch. We may be asked to help mediate a dispute but the final say may be a civil matter.
14. “I have an old ditch that crosses the neighbor’s property. A new owner has moved in next door and wants to build a house near the ditch and, without telling me, he has lined the ditch with concrete so it won’t flood his basement. I just received the bill for the ditch-lining job and he expects me to pay it.” Response: A co-owner of a ditch should never undertake maintenance expenses without first consulting the other owners of the ditch. Unless it can be shown that all co-owners will benefit from the improvement, it may be difficult to recover the full cost.
15. “Back in 1952, my dad moved the headgate of our ditch upstream to a better site where it won’t wash out every spring during high runoff. The point of diversion used to be on our property but now is on the BLM. The BLM just found this out and says our water right isn’t valid because we didn’t get permission from the State Engineer’s Office or the BLM and now they said we have to move our headgate off the BLM.” Response: This one is a little tricky. As for trespassing on BLM property, this is a Right-of-Way issue and not our fight. As for the water right issue, the key is the date that the change was made. Prior to 1965, there was no statute requiring that a change in point of diversion be recorded with the State Engineer or Board of Control. If the amended water right were to call for priority regulation, the Superintendent may choose to not honor the call until the record is corrected to reflect the on-the-ground situation or the headgate is moved back to the location of record.