

Types of Petitions

Appeal from Endorsement of the State Engineer

41-4-514. Petition for amendment of permits; petition for amended certificate of appropriation; hearings on petition; notice; costs.

...The state board of control is authorized, upon the written petition of the owner, to issue amended certificates of appropriation for water rights that have been adjudicated for the purpose of correcting clerical errors and when in the judgment of the board it appears necessary. The total amount of the appropriation of water shall not exceed the amount set forth in the original certificate of appropriation and, in the case of an appropriation for irrigation use, the total area of the lands shall not exceed the total area described in the original certificate of appropriation. The amended area shall not exceed the area actually irrigated under the original right. Any petitioner shall be the owner of all the land involved in the petition, except that in cases where amendments are petitioned for in a regularly organized conservancy or irrigation district, the consent of the district board and the consent or agreement of the land owners directly involved is sufficient. Proper adjustments shall be made in any assessment levied against lands affected by the amendment. The rights of other appropriators shall not be injuriously affected thereby.

Upon petition for an amended certificate of appropriation of water, the state board of control may cause a public hearing to be held on the petition before the superintendent of the water division in which such appropriation is located, with notice of the hearing to be advertised in at least one (1) issue of a newspaper having general circulation in the community where the water right involved is situated. The state board of control shall hold a public hearing if requested to do so by any affected appropriator. The petitioner shall pay the cost of the publication prior to the time of hearing and provide a record of proceedings to be transmitted by the division superintendent to the state board of control, together with his report. At the time the petition is filed a fee not to exceed fifty dollars (\$50.00) for each amended certificate issued shall be collected by the state board of control with a deposit of sufficient funds to cover the cost of preparing and recording a certified copy of the order. The fees for recording shall be returned to the petitioner in case the petition is not granted.

41-4-517. Appeal from action of state engineer or order of board of control.

Any applicant who is aggrieved by the endorsement made by the state engineer upon his application, may, in writing, in an informal manner and without pleadings of any character, appeal to the board of control within sixty (60) days

of the date of receipt of notice of the endorsement, for an examination and reversal of any such action of the state engineer. Upon receipt of such an appeal, the secretary of the board of control shall notify the members of the board of control and upon receipt of replies from them shall fix a date, as early as may be possible, when such appeal shall be heard before the board. All parties and those who claim an adverse interest thereto, shall be notified and shall be given an opportunity to be heard. Any person aggrieved by any order or determination of the board of control in cases embracing such appeals from the state engineer, may appeal to the district court of the county in which the greatest use of water is proposed to be made under the application. The procedure in the appeal from a decision of the board of control shall be in conformity with the Wyoming Administrative Procedure Act and the Wyoming Rules of Appellate Procedure. The attorney general shall, in such cases, represent the state board of control.

Change in Use and/or Change in Place of Use

The definition of and order of preferred uses and the procedures for a change from a lower to a higher ranking use are set out in W.S. 41-3-102 through W.S.41-3-104. Other changes of use not involving a change to a preferred use can also be made as described below:

41-3-104.Procedure to change use or place of use.

When an owner of a water right wishes to change a water right from its present use to another use, or from the place of use under the existing right to a new place of use, he shall file a petition requesting permission to make such a change. The petition shall set forth all pertinent facts about the existing use and the proposed change in use, or, where a change in place of use is requested, all pertinent information about the existing place of use and the proposed place of use. The board may require that an advertised public hearing or hearings be held at the petitioner's 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, provided that the quantity of water transferred by the granting of the petition shall not exceed the amount of water historically diverted under the existing use, nor exceed the historic rate of diversion under the existing use, nor increase the historic amount consumptively used under the existing use, nor decrease the historic amount of return flow, nor in any manner injure other existing lawful appropriators. The board of control shall consider all facts it believes pertinent to the transfer which may include the following:

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

Change in Point of Diversion and/or Means of Conveyance
41-3-114. Petition to change point of diversion or means of conveyance.

Any person entitled to the beneficial use of water, whether under a permit issued by the state engineer or a certificate of appropriation issued by the board of control pursuant to W.S. 41-4-511, who desires to change the point of diversion or means of conveyance, or both, shall file a petition with:

- The board of control if the use of the water has been adjudicated under a certificate of appropriation;
- The state engineer in all other cases. The state engineer may consider a petition even if water has not been applied to beneficial use however, any change in point of diversion granted by the state engineer shall be in the vicinity of the original diversion, and provided:
 - The change shall not alter the original project concept; and
 - The water shall be diverted from the same source of supply described in the original permit.

Petitions for change in point of diversion shall be in affidavit form and shall set forth the name and address of the petitioner, the name of the ditch, pipeline, or other facility, the stream from which water is appropriated, the date of priority and the amount of the appropriation to be changed, permit number, ownership of appropriation, and the location of the present and the proposed new point of diversion by course and distance from a corner of the public land survey. If for irrigation, petitions shall describe the acreage irrigated in each legal subdivision, the reason for the proposed change, and state whether any other appropriator from the same source will be injured in any way, and whether the consent of all owners of intervening diversions has been obtained. The petition shall be accompanied by satisfactory evidence of ownership of the appropriation to be changed.

j required by the state engineer and state board of control, prepared under certificate of a registered land surveyor, and showing accurately the location of the stream, the location of the ditch or ditches involved, location of any intervening diversions, and if for irrigation, the location of the lands changed or affected by such change.

In event that written consents of owners of appropriations which divert between the old and new points of diversion or the owners of ditches or facilities involved in the proposed change are not secured and attached to the petition, the petition shall be referred to:

- The superintendent of the water division in which the change is proposed, if the right is adjudicated; or
- To the state engineer if the right is unadjudicated.

The state engineer or the superintendent shall set a hearing on the petition and give thirty (30) days notice by registered mail of the time and place of the

hearing to the petitioner and any owners of appropriations which divert between the old and new points of diversion and any owners or users of ditches or facilities to be affected by the proposed change. The petitioner shall provide the superintendent with a record of the proceedings which shall be transmitted to the state board of control with the superintendent's report. The state board of control or the state engineer may make such other regulations as may be found necessary. No petition shall be granted if the right of other appropriators will be injuriously affected. The attorney general shall represent the state board of control or the state engineer in any appeal.

A decision by the state engineer granting or denying a petition under paragraph (a)(ii) of this section may be appealed to the board of control. An appeal may be taken to the district court pursuant to W.S. 16-3-101 through 16-3-115 from an order of the board of control:

- Affirming, modifying or reversing a decision of the state engineer appealed to the board under this subsection; or
- Granting, modifying or denying a petition under paragraph (a)(i) of this section.

Correction or Amendment of Certificate

41-4-514. Petition for amendment of permits; petition for amended certificate of appropriation; hearings on petition; notice; costs.

The state board of control is authorized, upon the written petition of the owner, to issue amended certificates of appropriation for water rights that have been adjudicated for the purpose of correcting clerical errors and when in the judgment of the board it appears necessary. The total amount of the appropriation of water shall not exceed the amount set forth in the original certificate of appropriation and, in the case of an appropriation for irrigation use, the total area of the lands shall not exceed the total area described in the original certificate of appropriation. The amended area shall not exceed the area actually irrigated under the original right. Any petitioner shall be the owner of all the land involved in the petition, except that in cases where amendments are petitioned for in a regularly organized conservancy or irrigation district, the consent of the district board and the consent or agreement of the land owners directly involved is sufficient. Proper adjustments shall be made in any assessment levied against lands affected by the amendment. The rights of other appropriators shall not be injuriously affected thereby.

Upon petition for an amended certificate of appropriation of water, the state board of control may cause a public hearing to be held on the petition before the superintendent of the water division in which such appropriation is located, with notice of the hearing to be advertised in at least one (1) issue of a newspaper having general circulation in the community where the water right

involved is situated. The state board of control shall hold a public hearing if requested to do so by any affected appropriator. The petitioner shall pay the cost of the publication prior to the time of hearing and provide a record of proceedings to be transmitted by the division superintendent to the state board of control, together with his report. At the time the petition is filed a fee not to exceed fifty dollars (\$50.00) for each amended certificate issued shall be collected by the state board of control with a deposit of sufficient funds to cover the cost of preparing and recording a certified copy of the order. The fees for recording shall be returned to the petitioner in case the petition is not granted.

Involuntary (Declaration) of Abandonment

An involuntary abandonment is the forfeiture of a water right which has not been exercised for at least five successive years past when water was available to satisfy the water right. Years during which a water supply was not available are not included. A petition for involuntary abandonment may be brought before the board of control by an appropriator whose water right might benefit by a declaration of abandonment of an existing water right or whose water right might be injured by the reactivation of an unused water right. The State Engineer may also initiate abandonment proceedings under certain conditions as stated in W.S. 41-3-402.

41-3-401. Failure to use water; extension of time; initiation by benefitted or injured user; hearing; appeal.

Where the holder of an appropriation of water from a surface, underground or reservoir water source fails, either intentionally or unintentionally, to use the water therefrom for the beneficial purposes for which it was appropriated, whether under an adjudicated or unadjudicated right, during any five (5) successive years, he is considered as having abandoned the water right and shall forfeit all water rights and privileges appurtenant thereto. Notwithstanding any provision in this section to the contrary, the holder of an appropriation for the diversion and storage of water in a reservoir, from which water or a portion thereof has not yet been beneficially used for the purposes for which appropriated, may apply to the board of control for an extension of time not to exceed five (5) years, within which to use water therefrom for the beneficial purposes for which it was appropriated. In the application the holder shall demonstrate the exercise of due diligence toward the utilization of the appropriation, and that notwithstanding the exercise of due diligence, reasonable cause exists for nonuse. Reasonable cause includes but is not limited to delay due to court or administrative proceedings, time required in planning, developing, financing and constructing projects for the application of stored water to beneficial use which require in excess of five (5) years to complete, delay due to requirement of state and federal statutes and rules and regulations thereunder and any other causes beyond the control of the holder of the appropriation. Upon receipt of an application for extension, the board of control shall proceed under the provisions of W.S. 16-3-101 through 16-3-115

and may grant an extension of time as it finds proper, not to exceed five (5) years, for the application of the appropriated water to the beneficial use for which it was appropriated. A prior grant of extension of time hereunder does not preclude the holder from applying for additional extensions of time, each not to exceed five (5) years, upon similar application and showing. The granting of an extension of time precludes the commencement of an abandonment action against the appropriation during the period of extension.

When any water user who might be benefitted by a declaration of abandonment of existing water rights or who might be injured by the reactivation of the water right, desires to bring about a legal declaration of abandonment, he shall present his case in writing to the state board of control. The board has exclusive original jurisdiction in water right abandonment proceedings. The board shall, if the facts so justify, refer the matter to the superintendent of the water division where the abandonment is claimed to have occurred for public hearing. The total absence of water to divert during an irrigation season precludes the inclusion of any such period of nonuse resulting therefrom in the computation of the successive five (5) year period under this section. The following persons have standing to petition the state board of control to declare the abandonment of existing water rights under this section:

- Any person who has a valid adjudicated water right or is the holder of a valid permit from the same source of supply which is equal to or junior in date of priority to the right for which abandonment is sought; or
- The holder of a valid water right entitled to surplus water under W.S. 41-4-318 through 41-4-324, petitioning to abandon a water right from the same source of supply if the right sought to be abandoned has a priority date of March 1, 1945, or earlier.

The superintendent shall notify the holders of water rights sought to be abandoned by certified mail that a hearing will be held. The hearing shall be conducted pursuant to all applicable provisions of the Wyoming Administrative Procedure Act. All notices shall advise interested parties of the time, place and purpose of the hearing. Parties initiating abandonment actions are designated as contestants. Water right holders or other persons with interests in the rights allegedly abandoned are designated as contestees. In any case where notice by certified mail cannot be accomplished an advertisement published once a week for three (3) consecutive weeks in a newspaper of general circulation in the county in which the abandonment is alleged to have occurred, naming the parties in the case and setting forth the time, place and purpose of the hearing is sufficient. Cost of advertising shall be paid by the contestant.

A transcript shall be made of the hearing and delivered to the superintendent. The contestant shall provide and pay for the costs of the record. At the conclusion of the hearing the transcript, all other evidence and the report of the superintendent shall be transmitted to the board by the superintendent. At

its next meeting the board shall vote to declare the right in question abandoned, either wholly or partially, or to decline to do so.

The board shall enter an order reflecting its action on the abandonment hearing, and shall, within sixty (60) days, send a certified copy of the declaration to each contestant and contestee. Appeals may be taken as provided by law.

An appropriation for irrigation use is not subject to partial abandonment for failure of the appropriator to irrigate part of the lands described in his permit or certificate of appropriation during the successive five (5) year period if:

- o Facilities to divert the water and to apply it to beneficial use upon the lands which were not irrigated existed in usable form during the period of nonuse; and
- o There was not a sufficient supply of water available, because of regulation for prior water rights or because shortage of supply resulted in insufficient water to satisfy the appropriation in full, to irrigate the lands for which abandonment is sought provided that a diligent effort was made to use the supply which was available.

Change of Location of Well

41-3-917. Change of location of well without loss of priority; ...

An appropriator of underground water may change the location of his well to a point within the same aquifer in the vicinity of the original location, without loss of priority, by securing approval of the state board of control if the groundwater right has been adjudicated **or if the groundwater right has not been adjudicated but the water has been applied to beneficial use**. In cases involving domestic or 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. No petition shall be granted if the rights of other appropriators shall be injuriously affected thereby. No petition granted shall increase the total amount of the appropriation of water set forth in the original permit. The state board of control and the state engineer may make such regulations as may be necessary to carry out the provisions of this section. The state engineer may approve a change of well location even if water has not been applied to a beneficial use.

Voluntary Abandonment

A voluntary abandonment of a water right is a deliberate relinquishment by its owner, which is accomplished by petition to the Board of Control.