

SENATE FILE NO. SF0080

Abandonment of water rights-limitations.

Sponsored by: Select Water Committee

A BILL

for

1 AN ACT relating to water; amending the conditions under
2 which abandonment of water rights applies as specified;
3 requiring rulemaking; and providing for an effective date.

4

5 *Be It Enacted by the Legislature of the State of Wyoming:*

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7 **Section 1.** W.S. 41-3-401(a) and 41-3-402(a) are
8 amended to read:

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10 **41-3-401. Failure to use water; extension of time;**
11 **initiation by benefitted or injured user; hearing; appeal.**

12

13 (a) Where the holder of an appropriation of water
14 from a surface, underground or reservoir water source
15 fails, either intentionally or unintentionally, to use the
16 water therefrom for the beneficial purposes for which it

1 was appropriated, whether under an adjudicated or
2 unadjudicated right, during any five (5) successive years,
3 he is considered as having abandoned the water right and
4 shall forfeit all water rights and privileges appurtenant
5 thereto. Notwithstanding any provision in this section to
6 the contrary, the holder of an appropriation for the
7 diversion and storage of water in a reservoir, from which
8 water or a portion thereof has not yet been beneficially
9 used for the purposes for which appropriated, or the owner
10 of a lawful dam or diversion system as defined in W.S.
11 41-3-307 under which appropriated water becomes unused due
12 to necessary repairs or replacement, may apply to the board
13 of control for an extension of time not to exceed five (5)
14 years, within which to use water or reactivate use of water
15 therefrom for the beneficial purposes for which it was
16 appropriated. In the application the holder shall
17 demonstrate the exercise of due diligence toward the
18 utilization of the appropriation, and that notwithstanding
19 the exercise of due diligence, reasonable cause exists for
20 nonuse. Reasonable cause includes but is not limited to
21 delay due to court or administrative proceedings, time
22 required in planning, developing, financing and
23 constructing projects for the application of stored water

1 to beneficial use which require in excess of five (5) years
2 to complete, delay due to requirement of state and federal
3 statutes and rules and regulations thereunder and any other
4 causes beyond the control of the holder of the
5 appropriation. Upon receipt of an application for
6 extension, the board of control shall proceed under the
7 provisions of W.S. 16-3-101 through 16-3-115 and may grant
8 an extension of time as it finds proper, not to exceed five
9 (5) years, for the application of the appropriated water to
10 the beneficial use for which it was appropriated. A prior
11 grant of extension of time hereunder does not preclude the
12 holder from applying for additional extensions of time,
13 each not to exceed five (5) years, upon similar application
14 and showing. The granting of an extension of time precludes
15 the commencement of an abandonment action against the
16 appropriation during the period of extension.

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18 **41-3-402. Initiation by state engineer; hearing;**
19 **appeal.**

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21 (a) When any appropriator has failed, intentionally
22 or unintentionally, to use any portion of surface,
23 underground or reservoir water appropriated by him, whether

1 under an adjudicated or unadjudicated right, for a period
2 of five (5) successive years, the state engineer may
3 initiate forfeiture proceedings against the appropriator
4 with the state board of control, to determine the validity
5 of the unused right. The state engineer shall designate the
6 area to be affected by the proceedings, not to contain in
7 area more than one (1) water division. The total absence of
8 water to divert during an irrigation season precludes the
9 inclusion of any period of nonuse resulting therefrom in
10 the computation of the successive five (5) year period. The
11 secretary of the board shall refer the matter for a hearing
12 to the superintendent of the water division where the
13 forfeiture is alleged to have occurred. This section does
14 not apply to any reservoir, lawful dam or diversion system
15 for which an extension has been granted during the period
16 of extension under W.S. 41-3-401(a).

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18 **Section 2.** The state engineer shall promulgate any
19 rules necessary to implement this act.

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1 **Section 3.** This act is effective immediately upon
2 completion of all acts necessary for a bill to become law
3 as provided by Article 4, Section 8 of the Wyoming
4 Constitution.

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(END)