



Office of the Attorney General

Governor
Matthew H. Mead

Attorney General
Gregory A. Phillips

Water and Natural Resources Division
123 State Capitol
Cheyenne, Wyoming 82002
307-777-6946 Telephone
307-777-3542 Fax

Chief Deputy Attorney General
Peter K. Michael

Division Deputy
Jay A. Jerde

July 31, 2012

Barton H. Thompson, Jr.
Susan Carter, Assistant
Jerry Yang and Akiko Yamazaki
Environment & Energy Building, MC-4205
473 via Ortega
Stanford, CA 94305-4205

Re: MT v. WY: Supreme Court of the United States No. 137
Wyoming Law Regarding Intrastate Requests for Regulation or “Calls”

Dear Mr. Thompson

At the July 27, 2012, hearing on Wyoming’s Renewed Motion for Partial Summary Judgment, you requested that Wyoming provide materials related to requests for regulation or “calls” within the State of Wyoming. Wyoming provides this letter and the enclosed materials in response to your request.

First, I have enclosed the following Wyoming statutes which apply to water use regulation in Wyoming:

1. Wyo. Stat. Ann. § 41-3-503 – provides the general duties of Wyoming water superintendants including their control over water commissioners and duty to execute Wyoming water distribution law (priority of appropriation);
2. Wyo. Stat. Ann. § 41-3-603 – provides the general powers and duties of Wyoming water commissioners including their obligation to regulate the use of all state waters;
3. Wyo. Stat. Ann. § 41-3-604 – provides Wyoming water commissioners’ authority to regulate the distribution of state waters according to priority;
4. Wyo. Stat. Ann. § 41-3-605 – provides Wyoming water commissioners’ with arrest authority;

5. Wyo. Stat. Ann. § 41-3-606 – allows Wyoming water right holders to request that a water commissioner regulate water supply in accordance with established priorities and requires that requests for regulation be submitted in writing to a water commissioner or superintendent;
6. Wyo. Stat. Ann. § 41-3-613 – requires that the owners of irrigation works maintain substantial headgates, flumes or measuring devices so as to allow regulation by water commissioners;
7. Wyo. Stat. Ann. § 41-3-614 – prohibits the willful use or possession of water lawfully denied by a water commissioner; and
8. Wyo. Stat. Ann. § 41-3-616 – provides penalties for violation of Wyoming water laws.

Next, I have enclosed the following Wyoming State Board of Control Regulations and Instructions: 1) Part IV, Chapter I, Introduction to Wyoming Water Administration, § 6, Administrative Regulation, available at: <http://soswy.state.wy.us/Rules/RULES/8377.pdf>; and 2) Part IV, Chapter V, Petition Information, § 24, Request for Regulation, available at: <http://soswy.state.wy.us/Rules/RULES/8378.pdf>. These rules generally describe the process by which a water user can make a call for regulation, including the requirement that the request be in writing on a form provided by the Board of Control, or a letter containing essentially the same information. The Board of Control sample form is also enclosed. See Wyoming Board of Control Regulations and Instructions, Appendix A Sample Petitions and Forms, A-34, *Request for Regulation*, available at: <http://seo.state.wy.us/PDF/Field%20Administration%20Forms.pdf>.

Finally, I have enclosed pages seven through ten of the Wyoming State Engineer Office's Handbook for Field Water Administrators. This Handbook outlines the general responsibilities of Wyoming water commissioners as they relate to the regulation of Wyoming's waters, including the process a commissioner follows after receiving a written request for regulation.

I hope you find these materials helpful and responsive. Please contact me if you would like additional materials related to the regulation of Wyoming water rights.

Respectfully,



James Kaste
Senior Assistant Attorney General

Cc: By U.S. Mail and E-mail
John B. Draper
Jeffrey Wechsler
Jennifer Anders
James J. Dubois
William M. Jay
Jennifer Verleger
Michael Wigmore

Wyoming Statutes

C

West's Wyoming Statutes Annotated Currentness

Title 41. Water

▣ Chapter 3. Water Rights; Administration and Control (Refs & Annos)

▣ Article 5. Water Divisions and Superintendents

→ → § 41-3-503. Superintendents; duties generally

Said division superintendent shall have general control over the water commissioners of the several districts within his division. He shall, under the general supervision of the state engineer, execute the laws relative to the distribution of water in accordance with the rights of priority of appropriation, and perform such other functions as may be assigned to him by the state engineer. It shall be the duty of said division superintendent to regulate and control the storage and use of water under all rights of appropriation which have been adjudicated by the board of control or by the courts, and to regulate and control the storage and use of water under all permits approved by the state engineer, whether the rights acquired thereunder have been adjudicated or not.

CREDIT(S)

Laws 1890, ch. 8, § 14; Laws 1917, ch. 36, § 1.

Codifications: R.S. 1899, § 850; C.S. 1910, § 755; C.S. 1920, § 876; R.S. 1931, § 122-203; C.S. 1945, § 71-103; W.S. 1957, § 41-57.

Current through the 2012 Budget Session

(C) 2012 Thomson Reuters. No Claim to Orig. US Gov. Works.

END OF DOCUMENT

C

West's Wyoming Statutes Annotated Currentness

Title 41. Water

▣ Chapter 3. Water Rights; Administration and Control (Refs & Annos)

▣ Article 6. Water Districts and Commissioners

→ → **§ 41-3-603. Commissioners; general powers and duties; appeals from decisions**

(a) The water commissioner shall, as near as may be practicable, divide, regulate and control the use of the water of all streams, springs, lakes or other sources of water within his district as will prevent the waste of water or its use in excess of the volume to which the appropriator is lawfully entitled. The water commissioner has the authority to require the filling of any reservoir whenever practical and whenever water is available for storage from the stream from which the appropriation is established.

(b) Any person who may be injured by the action or inaction of the water commissioner has the right to appeal to the division superintendent and, from his decision, the person aggrieved may appeal to the state engineer. From the decision of the state engineer, an appeal may be taken to the district court of the county where the ditch or ditches, reservoir, well or wells over which the controversy arises are situated.

CREDIT(S)

Laws 1886, ch. 61, § 29; Laws 1901, ch. 102, § 1; Laws 1925, ch. 84, § 1; Laws 1971, ch. 27, § 16; Laws 1979, ch. 88, § 1.

Codifications: R.S. 1887, § 1359; R.S. 1899, § 891; C.S. 1910, § 802; C.S. 1920, § 923; R.S. 1931, § 122-304; C.S. 1945, § 71-306; W.S. 1957, § 41-63.

Current through the 2012 Budget Session

(C) 2012 Thomson Reuters. No Claim to Orig. US Gov. Works.

END OF DOCUMENT

C

West's Wyoming Statutes Annotated Currentness

Title 41. Water

▣ Chapter 3. Water Rights; Administration and Control (Refs & Annos)

▣ Article 6. Water Districts and Commissioners

→ → **§ 41-3-604. Commissioners; additional powers and duties; defense by county attorney**

It shall be the duty of the said water commissioner to divide the water of the natural stream or streams of his district among the several ditches and reservoirs taking water therefrom, according to the prior right of each, respectively, in whole or in part, and to shut and fasten, or cause to be shut and fastened, the headgates of ditches and shall regulate or cause to be regulated the controlling works of reservoirs, in times of scarcity of water, as may be necessary by reason of the priorities of right existing from said streams of his district. Such water commissioner shall have authority to regulate the distribution of water among the various users under any partnership or incorporated ditch or any ditch owned by joint owners not incorporated and not in a partnership, or partnership or incorporated reservoir or reservoir owned by joint owners not incorporated or not included in a partnership, where rights have been adjudicated, in accordance with existing decrees. Whenever, in the pursuance of his duties, the water commissioner regulates a headgate to a ditch or the controlling works of reservoirs, it shall be his duty to attach to such headgate or controlling works a written notice, properly dated and signed, setting forth the fact that such headgate or controlling works has been properly regulated and is wholly under his control and such notice shall be a legal notice to all parties interested in the division and distribution of the water of such ditch or reservoir. It shall be the duty of the county attorney to appear and defend the division superintendent or any water commissioner who shall be made a defendant in any case which may arise in the pursuance of the official duties of any such officer within the county of such county attorney.

CREDIT(S)

Laws 1890, ch. 8, § 42; Laws 1907, ch. 86, § 7; Laws 1931, ch. 109, § 1; Laws 1965, ch. 168, § 1; Laws 1965, Sp. Sess., ch. 22, § 1.

Codifications: R.S. 1899, § 890; C.S. 1910, § 801; C.S. 1920, § 922; R.S. 1931, § 122-303; C.S. 1945, § 71-303; W.S. 1957, § 41-64.

Current through the 2012 Budget Session

(C) 2012 Thomson Reuters. No Claim to Orig. US Gov. Works.

END OF DOCUMENT

C

West's Wyoming Statutes Annotated Currentness

Title 41. Water

▣ Chapter 3. Water Rights; Administration and Control (Refs & Annos)

▣ Article 6. Water Districts and Commissioners

→ → **§ 41-3-605. Commissioners; power to arrest; procedure following arrests**

The water commissioners or their assistants, within their districts shall have power to arrest any person or persons offending, and turn them over to the sheriff of the proper county, and immediately upon delivering the person so arrested into the custody of the sheriff, it shall be the duty of the water commissioner making the arrest, to immediately in writing and upon oath, make complaint before the court of proper jurisdiction against the person arrested.

CREDIT(S)

Laws 1890, ch. 8, § 42; Laws 2004, ch. 42, § 1, eff. March 3, 2004.

Codifications: R.S. 1899, § 972; C.S. 1910, § 818; C.S. 1920, § 939; R.S. 1931, § 122-1206; C.S. 1945, § 71-305; W.S. 1957, § 41-65.

Current through the 2012 Budget Session

(C) 2012 Thomson Reuters. No Claim to Orig. US Gov. Works.

END OF DOCUMENT

Westlaw.

W.S.1977 § 41-3-606

Page 1

C

West's Wyoming Statutes Annotated Currentness

Title 41. Water

▣ Chapter 3. Water Rights; Administration and Control (Refs & Annos)

▣ Article 6. Water Districts and Commissioners

→ → **§ 41-3-606. Commissioners; performance of duties; requests for regulation**

Each water commissioner shall perform his duties under the general direction and supervision of the superintendent of his water division. Any holder of a Wyoming water right may request that the source of supply for his water rights be regulated by a water commissioner as authorized by law and in accordance with established priorities. Requests for regulation shall be in writing submitted to a water commissioner or water superintendent.

CREDIT(S)

Laws 1890, ch. 8, § 45; Laws 1901, ch. 102, § 2; Laws 1907, ch. 86, § 10; Laws 1991, ch. 157, § 1.

Codifications: R.S. 1899, § 894; C.S. 1910, § 805; C.S. 1920, § 926; R.S. 1931, § 122-307; C.S. 1945, § 71-309; W.S. 1957, § 41-66.

Current through the 2012 Budget Session

(C) 2012 Thomson Reuters. No Claim to Orig. US Gov. Works.

END OF DOCUMENT

© 2012 Thomson Reuters. No Claim to Orig. US Gov. Works.

C

West's Wyoming Statutes Annotated Currentness

Title 41. Water

▣ Chapter 3. Water Rights; Administration and Control (Refs & Annos)

▣ Article 6. Water Districts and Commissioners

→ → **§ 41-3-613. Headgates, flumes or measuring devices; owners to construct and maintain; failure to comply**

The owner or owners of any ditch or canal shall maintain, to the satisfaction of the division superintendent of the division in which the irrigation works are located, a substantial headgate at the point where the water is diverted, which shall be of such construction that it can be locked and kept closed by the water commissioner; and such owners shall construct and maintain, when required by the division superintendent, flumes or other measuring devices at such points along such ditch as may be necessary for the purpose of assisting the water commissioner in determining the amount of water that is to be diverted into said ditch from the stream, or taken from it by the various users. Any and every owner or manager of a reservoir, located across or upon the bed of a natural stream, shall be required to construct and maintain, when required by the division superintendent, a flume or measuring device of a plan to be approved by the state engineer, below such reservoir at a point not to exceed six hundred (600) feet distant therefrom, and a flume or measuring device above such reservoir or each and every stream or source of supply discharging into such reservoir, for the purpose of assisting the water commissioner or superintendent in determining the amount of water to which prior appropriators are entitled and thereafter diverting it for such prior appropriators' use. When it may be necessary, for the protection of other water users, the division superintendent has authority to require flumes to be installed along the line of any ditch. If any such owner or owners of irrigation works shall refuse or neglect to construct and put in such headgates, flumes or measuring devices after ten (10) days notice to do so by division superintendent, it shall be the duty of the water commissioner of the district in which such headgate is located, on order of the division superintendent, to close such ditch to the passage of water, and the same shall not be opened or any water diverted from the source of supply, under the penalties prescribed by W.S. 41-3-614, until the requirements of the division superintendent as to such headgate, flumes or measuring device have been complied with, and if any owner, or manager of a reservoir located across the bed of a natural stream shall neglect or refuse to put in such measuring device after ten (10) days notice to do so by the division superintendent, the water commissioner shall open the sluice gate or outlet of such reservoir and the same shall not be closed under penalties pursuant to W.S. 41-3-614, until the requirements of the division superintendent as to such measuring devices are complied with.

CREDIT(S)

Laws 1890, ch. 8, § 46; Laws 1901, ch. 92, § 1; Laws 1907, ch. 86, § 15; Laws 2005, ch. 82, § 2, eff. July 1, 2005.

Codifications: R.S. 1899, § 930; C.S. 1910, § 740; C.S. 1920, § 851; R.S. 1931, § 122-420; C.S. 1945, § 71-311; W.S. 1957, § 41-71.

W.S.1977 § 41-3-613

Page 2

Current through the 2012 Budget Session

(C) 2012 Thomson Reuters. No Claim to Orig. US Gov. Works.

END OF DOCUMENT

© 2012 Thomson Reuters. No Claim to Orig. US Gov. Works.

C

West's Wyoming Statutes Annotated Currentness

Title 41. Water

▣ Chapter 3. Water Rights; Administration and Control (Refs & Annos)

▣ Article 6. Water Districts and Commissioners

→ → **§ 41-3-614. Well, headgate or waterbox; prohibited acts; penalty for violation**

It shall be unlawful for any person to willfully use or possess water which has been lawfully denied by the water commissioner or other competent authority or to open, close, change or interfere with any well, pump, reservoir outlet valve, dam, diversion, headgate or waterbox without authority. Any violation of this section shall be punishable pursuant to W.S. 41-3-616.

CREDIT(S)

Laws 1890, ch. 8, § 42; Laws 1901, ch. 86, § 1; Laws 1979, ch. 88, § 1; Laws 2005, ch. 82, § 2, eff. July 1, 2005.

Codifications: R.S. 1899, § 971; C.S. 1910, § 817; C.S. 1920, § 938; R.S. 1931, § 122-1205; C.S. 1945, § 71-304; W.S. 1957, § 41-72.

Current through the 2012 Budget Session

(C) 2012 Thomson Reuters. No Claim to Orig. US Gov. Works.

END OF DOCUMENT



West's Wyoming Statutes Annotated Currentness

Title 41. Water

▣ Chapter 3. Water Rights; Administration and Control (Refs & Annos)

▣ Article 6. Water Districts and Commissioners

→ → **§ 41-3-616. Penalties for violation of water laws**

(a) Unless otherwise provided, any person violating any of the provisions of W.S. 41-3-112, 41-3-208, 41-3-301, 41-3-614, 41-3-914, 41-3-919, 41-3-938, 41-4-501, 41-4-504, 41-5-107, 41-5-108 or 41-5-110 after receipt of a written notice of violation from the state engineer's office or the board of control is guilty of a misdemeanor punishable by a fine not to exceed one thousand two hundred fifty dollars (\$1,250.00). Each day of noncompliance with the provisions of these sections after receipt of a written notice of violation from the state engineer's office or the board of control shall be deemed a separate violation. The possession, use or presence upon any person's land of water lawfully denied by the water commissioner or other competent authority is prima facie evidence of guilt.

(b) Failure to comply with a written order issued by the state engineer pursuant to W.S. 41-3-112, 41-3-208, 41-3-301, 41-3-318, 41-3-614, 41-3-914, 41-3-919, 41-3-938, 41-4-501, 41-5-107, 41-5-108 or 41-5-110, shall be a misdemeanor punishable by a fine not to exceed one thousand two hundred fifty dollars (\$1,250.00), or imprisonment for not more than three (3) months, or both. Each day of noncompliance with the order shall be deemed a separate violation.

(c) Whenever, after notice and an opportunity to be heard, the state engineer finds the holder of any permit is willfully violating or has willfully violated any provision of a permit or any provision of W.S. 41-3-112, 41-3-208, 41-3-301, 41-3-318, 41-3-614, 41-3-914, 41-3-919, 41-3-937, 41-3-938, 41-4-501, 41-5-107, 41-5-108 or 41-5-110, or of any order issued pursuant thereto, the state engineer may cancel or suspend the permit or impose conditions on the future use thereof to prevent further violation. An appeal from any decision of the state engineer may be made to the board of control.

(d) Whenever, after notice and opportunity to be heard, the board of control finds the holder of any certificate of registration or certificate of appropriation is willfully violating or has willfully violated any provision of the certificate or any provisions of W.S. 41-3-112, 41-3-208, 41-3-301, 41-3-614, 41-3-914, 41-3-919, 41-3-937, 41-3-938, 41-4-501, 41-5-107, 41-5-108 or 41-5-110, or of any order issued pursuant thereto, the board of control may cancel or suspend the certificate or impose conditions on the future use thereof to prevent further violation. An appeal from any decision of the board of control may be taken to the district court.

CREDIT(S)

**Wyoming State Board of
Control Regulations and
Instructions**

CHAPTER I

appear in various court decrees entered in that adjudication and the same have been incorporated into the official water records of the state.

Section 5. Ground Water.

a. W.S. 41-3-901 through 41-3-938 constitute a comprehensive ground water code. Although the use of ground water is not administered in exactly the same manner as is the use of surface water, a permit system is in effect in Wyoming. Prior to commencement of construction of a ground water development, a permit to appropriate ground water must be obtained from the State Engineer. Upon completion of construction and application of the water to beneficial use, and submission of proper documents, a proof is presented to the State Board of Control for adjudication. The statutes give authority to the State Engineer to resolve disputes involving interference between ground water appropriations or between surface water and ground water appropriations. For a detailed explanation of the procedures to be followed, see the Regulations and Instructions of the State Engineer's Office.

b. The statutes also provide procedures whereby a "ground water control area" may be designated by the State Board of Control upon the recommendation of the State Engineer after the Board holds a public hearing. After the boundaries of a newly designated control area are geographically and stratigraphically determined, all previously unadjudicated ground water rights (excepting stock, test wells or domestic ground water rights) within the control area are adjudicated. The State Engineer works with an advisory board, which is elected from within the control area. W.S. 41-3-915 provides that the appropriators in a control area "may agree to any method or scheme of control of withdrawals, well spacing, apportionment, rotation or proration of the common supply of underground water," and same may be instituted if ordered by the State Engineer.

Section 6. Administrative Regulation. Any person with a water right in a stream system may in writing, request the hydrographer commissioner or water commissioner to regulate the source of supply for his or her benefit. If regulated during periods of decreased natural supply, the priority of the appropriations will be observed as nearly as practical and the

CHAPTER I

headgates for the junior-most appropriations may be adjusted in order to satisfy senior appropriations. The request shall be made in writing on a form provided by the State Board of Control (see Appendix A of these Regulations and Instructions for a sample). Upon approving a proper request for regulation, the hydrographer commissioner or water commissioner will act to limit each water right in accordance with the priority and amounts recorded in the official records of the state. Both direct flow and the filling of storage rights are regulated in the same priority manner. The regulation of ground water appropriations generally follows priority regulation except for ground water appropriations located within control areas. W.S. 41-4-208 requires the Board to publish a tabulation of adjudicated water rights to facilitate regulation. Where special provisions for administration of water rights arise by judicial decree, such rights shall be administered in accordance with applicable laws.

Section 7. Reservoir Storage.

a. A reservoir is entitled to be filled in order of priority once each year if water is available. The water year is defined as from October 1 through September 30 of the following year. If water remains unused in the reservoir at the end of the water year, this water is termed "carry-over storage" and is counted toward providing the water to meet the following year's supply for the appropriation. For example, if a reservoir which has a right to store one thousand acre-feet has two hundred acre-feet remaining in storage which is carried over into the following year, then this appropriation would be entitled to again accrue only the remaining appropriated capacity (800 a.f.) as the storage right comes into priority on the permitted source of supply.

b. In order to conserve the waters of the state, it is a necessary requirement that all reservoirs be filled at times that will not interfere with or that will provide the least interference with the use of water by direct flow appropriators and thereby prevent a waste of water. W.S. 41-3-603 provides authority to the hydrographer commissioner or water commissioner to control reservoir filling and reads in part as follows:

CHAPTER V

(5) A "Notice of Intention to Rotate" must be filed with the appropriate hydrographer commissioner or water commissioner on a form provided for that purpose by the hydrographer commissioner or water commissioner;

(6) Written approval to the proposed rotation must be obtained from the appropriate hydrographer commissioner or water commissioner prior to commencement of any rotation and such approval shall be endorsed on the rotation form.

b. Requests to rotate must be delivered to the appropriate hydrographer commissioner or water commissioner on a facsimile of the appropriate form or in some other written form acceptable to the hydrographer commissioner or water commissioner which provides the same information (see sample form in Appendix A accompanying these Regulations and Instructions).

Section 24. Request for Regulation. Any holder of a water right may request that the source of supply for their water rights be regulated by the state water administrators as authorized by law and in accordance with established priorities (see W.S. 41-3-503, W.S. 41-3-504, W.S. 41-3-604 and W.S. 41-3-111). Requests for regulation shall be in writing. An appropriate form may be used, or a letter which contains essentially the same information may also be used (see sample form in Appendix A accompanying these Regulations and Instructions).

**Wyoming State Board of
Control Request for
Regulation Form**

Appendix A
Sample Petitions and Forms

A GENERAL REQUIREMENT FOR REQUESTING REGULATION IS THE MAINTENANCE OF A SATISFACTORY HEADGATE AND MEASURING DEVICE AT THE LEGALLY-RECORDED DIVERSION POINT SO AS TO ENABLE THE HYDROGRAPHER COMMISSIONER OR WATER COMMISSIONER TO DETERMINE IF THE REQUEST FOR REGULATION HAS BEEN SATISFIED. IF YOU DO NOT HAVE AN APPROVED HEADGATE AND MEASURING DEVICE PRESENTLY INSTALLED, YOUR REQUEST FOR REGULATION WILL BE SUBJECT TO REVIEW BY THE HYDROGRAPHER COMMISSIONER OR WATER COMMISSIONER AND/OR DIVISION SUPERINTENDENT.

THE APPROPRIATOR IS OBLIGATED TO NOTIFY THE HYDROGRAPHER COMMISSIONER OR WATER COMMISSIONER PRIOR TO THE DATE WHEN WATER WILL NO LONGER BE USED SO THAT PROPER ADJUSTMENTS MAY BE MADE TO AVOID THE WASTE OF WATER.

REQUEST FOR REGULATION

Pursuant to W.S. 41-3-603, 41-3-604, 41-3-606, 41-3-304 and 41-3-111 revised statutes 1977, I hereby request Regulation of _____

and tributaries and is requested to supply my (our) appropriation of water through the _____

Ditch(es) or Reservoir(s) under Permit Nos. _____, with priority(s) of _____ until _____.

Signed: _____

Received on _____, 2____.

Hydrographer Commissioner or Water Commissioner
District No. _____, Division No. _____

Request approved: _____
Request denied: _____

Comments: _____

**Wyoming State Engineer's
Office Handbook**

3. The proposed rotation must not result in injury to any other appropriators.
4. The rotation proposed is limited to one season.
5. Any objections to the rotation are to be considered only when filed by the parties that might be injured.

The above first four rules have been formulated to avoid the abuse of the right of rotation, to see that a rotation occurs and to protect the rights of other appropriators on a stream.

Regulation

Upon receiving a written request for regulation by an appropriator, it is the duty of the Commissioner to regulate all upstream appropriations to the extent necessary to supply the requesting appropriation its full entitlement if available. A request for storage delivery will usually place the affected segment of the stream under priority regulation for the direct flow rights as well. It is highly recommended that priority regulation or storage delivery be requested in writing and identify the appropriation, priority, (amount of storage delivery) and length of time regulation is requested along with the signature of the party making the request. Forms are available for convenience. (W.S. 41-3-304, 41-3-604, 41-3-606)

Prior to regulating the stream, check the point of diversion the request is for to verify the shortage of supply. If adequate supply is available at the point of diversion to satisfy the full appropriation, the request is denied. It is the responsibility of the owner of that diversion to see that all available water is diverted to fill the appropriation before a request for regulation will be honored. For example, if water is being lost through a leaky diversion dam owned by the appropriator requesting regulation, then regulation will not be made until all water available can be diverted on a reasonable basis. If the full appropriation is not available at the requesting diversion, the Commissioner should then proceed to regulate upstream, including tributaries, by closing all senior priorities down to their appropriations and shutting off those juniors in order of priority dates necessary to deliver the full appropriation to the requesting point of diversion if still in priority. When regulating any diversion, it is required to attach a Notice (or tag) to the control device advising appropriators that the diversion is under regulation (W.S. 41-3-604). Whenever possible you should contact the affected appropriators as soon as possible.

If during regulation it may be proven that the water deprived the upstream junior can not be conveyed to the downstream senior it is termed a "futile call" and the regulation ceases allowing the junior to make beneficial use of the water.

Headgates

Section 41-3-613 of Wyoming Statutes provides that the owner of a ditch shall construct and maintain to the satisfaction of the Superintendent, a substantial headgate at the point of diversion that may be locked and kept closed by the Hydrographer. In practice it has generally been the procedure to order these installations only where needed. This office has approached the problem by surveying the facilities on each watershed, as time allows, and then issuing simultaneously orders for needed gates and flumes on an entire watershed, as nearly as possible. By this procedure it is felt all water users on a stream are receiving the same treatment. Steel gates with adjusting worm and hand wheel have been specified and to date compliance has been very good. The Hydrographer is the key man in obtaining compliance with orders issued. It has been found that if he will keep in contact with the water users offering his assistance in design, installation, etc., almost 100% compliance occurs. However, if this is not done and compliance is strictly the problem of the appropriator, then very poor compliance and public relations result. Orders should not be issued unless it is intended they will be enforced after the appropriator has been given every opportunity to comply.

Measuring Devices

Section 41-3-613, Wyoming Statutes, provides that appropriators shall construct when required by the Superintendent, flumes or other approved measuring devices at the diversion or along the line of any ditch as necessary for the purpose of assisting the Hydrographer in determining the amount of water being diverted into a ditch or from the ditch for the different appropriations.

The same procedure as for headgates has generally been followed. The Parshall flume has been the device generally specified, except in cases where there is not sufficient fall in the ditch to allow satisfactory operation of the Parshall flume. When properly installed, the Parshall has proven to be the most adaptable and reliable device in general use. It cannot be too highly recommended that the Hydrographers assist in locating and installing these flumes. All possible fall or drop below these flumes should be obtained so that when grass and moss conditions occur the flume does not submerge. The velocity of approach should also be watched closely. Generally when the flume is set at the highest elevation practical this takes care of itself. The extension service bulletin (Irrigation Water Measurement) is highly recommended as a handbook for measurement where devices of one type or another are in use. In some instances Hydrographers have been furnished with a current meter for use where proper measuring devices have not been installed or are not operable. This is a delicate and expensive instrument and deserves the best of care. It should be dried off after each use and carried in a dust and shock proof container. Special oil for use on the meter will be furnished and if used only occasionally they should be periodically spin checked. An A-A meter should revolve 1½ to 2 minutes freely when spun by hand in still air as in a vehicle. As there is a good deal involved in learning the use and maintenance of a current meter, this is best done by personal instruction and will not be considered here.

Records

An accurate and concise record of daily activity is a must for the Hydrographer. It follows then that a uniform type report that will be filed with the Superintendent is desirable. Forms for diversion records and weekly activity reports for submission to the Superintendent are furnished to the Hydrographer and have been highly satisfactory. Under the provisions of Section 41-3-608 of Wyoming Statutes, this report to the Superintendent has been required of Hydrographers and is a definite part of their duties. Automation of the reporting of diversion records in recent years has increased the efficiency of this reporting. Keeping the Superintendent informed of diversions through use of these records can often alleviate many problems when irrigators call with questions.

The responsibilities placed upon the Superintendent in supervising actual water administration and in the accumulation of records of actual water diversion continues to increase. These records are of considerable value in many ways. Good records will often settle controversies that arise concerning administration. Actual diversion records also can be used when various changes are proposed in petitions to the Board of Control. These records will be of great assistance to the Board in determining if the petition should be allowed or not. One of the best means of protecting Wyoming in defending its right to the use of its water from demands by other states will be a reliable record of past amounts of use.

The Hydrographer is obligated to prepare an annual report on stream diversions and water usage. In order to accomplish this it will be necessary that all Assistant and seasonal Hydrographers follow through with their reports in a timely fashion at the end of each water year.

Surplus Water

Whenever the supply of water in a stream reaches the point that there is water available over and above that needed to fill all appropriations with priority senior to March 1, 1945 then this stream is

said to be in surplus flow condition. When surplus flows are available, this surplus water is to be divided proportionally, when in regulation, among these senior rights, (if adjudicated) up to an additional 1 c.f.s. per 70 acres, or 1 c.f.s. per 35 acres total supply. It is the duty of the Hydrographer to regulate and divide proportionately this surplus water. Post March 1, 1945 rights can be denied water if none is available while trying to satisfy this double appropriation to the senior rights. (W.S. 41-4-318 through 324)

Excess Water

Whenever the supply of water in a stream reaches the point that there is water available over and above that needed to fill all appropriations with priority senior to March 1, 1945 plus their Surplus water right, plus all appropriations with priority senior to March 1, 1985, then this stream is said to be in excess flow condition. When excess flows are available, this excess water is to be divided proportionally among those adjudicated rights with priorities between March 1, 1945 and March 1, 1985, up to an additional 1 c.f.s. per 70 acres, or 1 c.f.s. per 35 acres total supply. It is the duty of the Hydrographer to regulate and divide proportionately this excess water. Post March 1, 1985 rights can be denied water if none is available while trying to satisfy this double appropriation to the senior rights. (W.S. 41-4-329 through 331)

Use of Bed of Stream

In case the owners of any reservoir shall desire the use of the bed of a stream or other water course for the purpose of carrying stored or impounded water to the consumer or the use of any ditch to carry or transmit through the same, any such stored or impounded water, they shall in writing notify the Hydrographer the date of the proposed release, its amount in acre feet, rate of release in c.f.s. and the names of persons and ditches entitled to its use and such other matters as may be necessary to properly distribute the water. It shall then be the duty of the Hydrographer to regulate the headgates of the various diversions which are entitled to its use. (W.S. 41-3-304)

Taking a Ditch Under Regulation

When two or more owners or lessees in an irrigation ditch or reservoir (that is not incorporated) are unable to agree relative to the distribution or diversion of water received through their ditch or from the reservoir, it shall be lawful for them to apply to the Hydrographer in writing to take sole charge of such ditch or reservoir. He shall then take exclusive charge of such ditch or reservoir for the purpose of dividing the water therefrom in accordance with established rights and continuing such work until the necessity shall cease to exist.

When the term of this employment exceeds three consecutive days he shall be paid for his service by the interested water users in proportion to the established rights of each. Any payments not made for such services after written demand has been made, shall be a lien upon any land or other property owned by an interested water user refusing to pay and may be collected in any court of jurisdiction. (W.S. 41-6-301)

Tagging Headgates

Tags are furnished by the State for posting at headgates which have been regulated. These tags state the date regulated and indicate the penalty for disturbing the regulation. In some areas under close regulation these are in routine use, in other areas they are only used when difficulty is experienced with appropriators changing the regulation made by the Hydrographer. It is recommended that all headgates under regulation be tagged. Once a tag is attached, the Hydrographer is responsible for its enforcement. Also, in attaching tags the Hydrographer is responsible for their removal when no longer necessary. (W.S. 41-3-604)

Prosecution of violations involving tagged headgates must be handled by the County Attorney of the County where the violation occurs. A complete packet of information, forms, instructions and examples covering our agency arrest procedures is available from your superintendent. If it appears such a situation is developing, it is advisable for the hydrographer to contact his Superintendent as early as possible, to begin the process of developing his case.

Use of Water for Temporary Purposes

If water for temporary use is to be secured by a present day filing, then a water right permit must be obtained from the State Engineer. A copy of the approved permit and print of the approved map is sent to the appropriate Hydrographer, for his information, as soon as the application is granted. A temporary permit may be subordinated to a junior permanent permit under W.S. 41-3-111.

Under provisions of Sections 41-3-110 through 41-3-112, Wyoming Statutes 1991, valid water rights used for some other purpose can be temporarily changed for some temporary purposes. A request for this temporary change in use must be made to the State Engineer. A form is available entitled Water Agreement For Temporary Use. If the request for change in use is found in order, the State will issue a Temporary Agreement granting the change. A copy of the Temporary Agreement and the sketch map are furnished to the Hydrographer, by the State Engineer's Office, to assist him in regulating the temporary use.

Use of water for temporary purposes can have a marked effect on return flow to the stream when compared to the return flow resulting from the historic use of water under the right. For this reason, the Hydrographer must assess what this change in return flow may be, as well as any other effects on the stream, resulting from the temporary use. He must then make the appropriate adjustments in either the amount diverted for temporary purposes and/or the amount remaining for diversion by the appropriator to minimize the affect on the other water appropriators, by this temporary use. W.S. 41-3-110(c) presumes 50% (but allows adjustment) of the amount taken from unstoried irrigation flow will be left in the stream for appropriators downstream of these lands.

A Temporary Agreement or temporary Permit also contains a clause stating that whenever use of the water is to commence that the proper Hydrographer is to be notified and water taken under his supervision, and that the permit or agreement will expire at a specified date.

In any case where it is observed that water is being used for temporary purposes, but you do not have a copy of the Agreement or Permit authorizing this use, then the person in charge should be immediately contacted and requested to produce a copy of the agreement or permit. If this is not forthcoming, either the Superintendent or State Engineer's Office should be contacted by phone for instructions. In any instance where it is apparent that there is no permit, the pump should be closed down and tagged.

In some cases, in order to determine the amount of water actually being diverted, it may be necessary to request that a meter be placed on the pump although this generally is done as a matter of course.

Marking Headgates

A program has been commenced in some areas of attaching, to the headgates of active appropriations, plates containing the information needed for regulation as shown below: