

The 2020 Water Right Abandonment List and Options for Ag Water Right Holders

By Phil Brink and Greg Peterson

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Every ten years, the Colorado Division of Water Resources' (DWR) publishes its [water right abandonment list](#). The list – released on July 1, 2020 - represents water rights that each division engineer is recommending for abandonment based on real or perceived non-use over the last ten years. A water right may be placed on the abandonment list if the amount of water diverted over the past ten years is less than the decreed amount.

The DWR defines abandonment as “the termination of an absolute water right in whole or in part as a result of the *intent* of the owner to permanently discontinue the use of the water under that water right.” It is rare that an agricultural water right holder actually intends to abandon their water right.

“There can be several reasons why the decreed amount is not diverted in a given year or for multiple years” says water attorney David Kueter of Holsinger Law in Denver. The water source may be dry, or the water right may not be in priority at times when the field needs to be irrigated. Timely precipitation may reduce the need for irrigation. Repair or replacement of irrigation infrastructure – from headgates to ditches to land application equipment - may temporarily prevent diversion of water. Economic, health or legal obstacles can all stymie intentions to fully utilize a water right. Sediment and debris flows can block diversion structures and river and stream hydrology can change, rendering a diversion structure semi-functional or even non-functional. New property owners may not be aware of their water rights.

Management changes can also impact use. A few years ago, Mike Camblin, rancher and manager of the Maybell Ditch, took over irrigation of some fields that had not been fertilized previously. The addition of fertilizer increased grass production three-fold, which also increased the field's consumptive use of water.

Increased consumptive use may also result from warmer summers, which are predicted by climate models. CSU research has found that evapotranspiration comprises more than 99 percent of plant water use. Increased temperatures drive forage and crop consumptive use higher. Cutting ag water rights down to their current consumptive use will permanently hurt growers' ability to adapt to a warmer climate.

Water users who wish to challenge termination of their water right due to abandonment should file a written [statement of objection](#) with the Division 6 Engineer. An objection statement is needed for each water right. The deadline for filing is July 1, 2021, but Kueter recommends getting started now as it may take time to pull together supporting evidence. “Usually there are no silver bullets,” says Kueter, “it's more the totality of the circumstances that caused the water right to be under-utilized.”

A water right is removed from the abandonment list if the Division Engineer agrees with the supporting evidence provided. A revised abandonment list will be published by January 31, 2022. Protests to the revised list must be filed with division Water Court by June 30, 2022. The Water Court will begin considering protests in October 2022.

The Colorado Ag Water Alliance will be [hosting a workshop](#) on this and other issues on December 7th in Craig.

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