101 on Forfeiture vs. Abandonment Under Prior Appropriation Doctrine

Forfeiture
We’ve all heard “Use it or Lose it” referring to the Prior Appropriation System. The use it or lose it concept is the term we use for legal forfeiture which will apply to your water rights of use depending on your jurisdiction and type of water right. Generally, this concept requires beneficial use of water appropriated under state law over a specific time interval. In some states (like Nevada and Oregon), “use it or lose” is statutorily controlled, the law describes when a water user must exercise their water right of use. In Oregon both groundwater and surface water certificates require water use once for every five consecutive year time frame. ORS 540.610. In Nevada, the statute provides that only groundwater certificated uses are subject to forfeiture for non-use if not used at least once every five years. NRS 534.090. Thus, if you last used your certificated water right of use in 2011, you best put whatever water is available for appropriation under your certificate in place for 2016! Make sure to use it so you are not at risk of losing it!

Abandonment
Use it or lose it as defined by the water code should not be confused with abandonment, a court made doctrine that may be more broadly applied. Abandonment will cause cancellation of a water use by intention not to use. Intention can be established by expression as in a written document or by a physical act. The physical act of abandonment can include placing a permanent structure over or on top of water righted lands. If you plan to build the next industrial sized plant, packing shed, scale house, onion storage, fill in your ditch, or take out your diversion structures, etc., you should file that water use transfer or change application prior to any construction!
While this gives you the very “basic” overview of these two legal concepts, Schroeder Law Offices can provide a more detailed explanation