

ENROLLED ACT NO. 76, SENATE

FIFTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING
2003 GENERAL SESSION

AN ACT relating to water; providing for restoration of wrongful modifications to irrigation facilities; providing for recovery of costs in specified circumstances; providing for attorney fees as specified; and providing for an effective date.

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

Section 1. W.S. 41-5-111 is created to read:

41-5-111. Irrigation facility modification and maintenance.

(a) Any person who, acting directly or indirectly through an agent or representative, in trespass or in other violation of the rights of a user, wrongfully modifies an existing irrigation ditch or other irrigation facility in any manner that diminishes the capacity or adversely affects the utility of the ditch or irrigation facility is liable to the users for all restoration costs. If restoration is not feasible and the effort or cost of maintaining the modified ditch or facility is increased, then the person is thereafter liable to the users for the amount of increased maintenance that results from the modifications.

(b) For cases in which restoration is feasible, any adversely affected user may serve a written demand for restoration. If restoration is not feasible and requires increased maintenance, efforts or costs, any adversely affected user may serve a written demand for immediate and continued maintenance. A copy of this section shall be annexed to the written demand. The demand shall be delivered to the actor in person, or if the actor cannot be found then the demand shall be delivered conspicuously to

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the actor's usual place of business or residence. If the actor fails to accomplish complete restoration or all the currently necessary maintenance within forty-eight (48) hours after the written demand is delivered in accordance with this subsection, the user may perform the restoration and may do the maintenance that is then necessary, as well as that which becomes necessary thereafter, and may recover the reasonable costs thereof from the actor. If the modification is so gross that restoration cannot reasonably be completed within the forty-eight (48) hour period, then the duty to restore is satisfied when:

(i) Within twenty-four (24) hours after delivery of the demand, the actor undertakes a good faith effort to mitigate harm to other users and to restore the facility and the effort is:

(A) Commensurate with the magnitude of harm or potential harm to the users; and

(B) Continuously and diligently pursued to completion in a timely manner.

(c) Every user who provides the restoration or maintenance shall have a lien on the actor's interest or property that is involved in the modification. If the property involved is land, the lien extends to one (1) acre, unless the modification extends or covers more than one (1) acre, in which case the lien shall extend to all the additional land covered by the modification. If the land subject to the modification is located in any city, town or subdivision, the lien shall extend to each entire lot upon which the modification is located. If the actor's interest or property is only a ditch right or reservoir right, or such, then the one (1) acre shall be at the site

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where the water under the actor's ditch or reservoir right, or other interest is first applied to beneficial use.

(d) In order to have a perfected lien, a lien claimant shall file with the county clerk a lien statement that conforms to the requirements of W.S. 29-1-301, and shall notify the last known owner as provided in W.S. 29-1-301. The county clerk shall file and index the statement as provided in W.S. 29-1-301. When so perfected, the lien may be enforced in the same manner as provided in W.S. 29-4-101 and 29-4-102 and is subject to the limitation in W.S. 29-2-109.

(e) If litigation is necessary to enforce the lien, the prevailing party shall be awarded reasonable attorney's fees and costs of litigation, to be fixed and awarded by the court, unless the court finds that the nonprevailing party had reasonable grounds to expect to prevail.

(f) The remedies provided by this section are not exclusive but are supplemental to other remedies in law or equity. This section does not in any way alter or affect law regarding water rights, covenants, easements or other servitudes, or other rights.

(g) As used in this section:

(i) "Actor" means a person who wrongfully modifies an existing irrigation ditch or other irrigation facility as specified in subsection (a) of this section;

(ii) "User" means an individual, ditch company whether organized or unorganized, irrigation district, or other person or entity lawfully permitted to use water under an adjudicated or other valid water right who uses a ditch or facility for conveyance of direct flow, or waste

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water, or storage of water in the beneficial use of water under the water right.

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

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____
DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk