

SENATE FILE NO. SF0028

Water rights-penalties.

Sponsored by: Senator(s) Geis

A BILL

for

1 AN ACT relating to water rights; amending the penalties for
2 violating water laws as specified; and providing for an
3 effective date.

4

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

6

7 **Section 1.** W.S. 41-3-616 is created to read:

8

9 **41-3-616. Penalties for violation of water laws.**

10

11 (a) Unless otherwise provided, any person violating
12 any of the provisions of W.S. 41-3-112, 41-3-208, 41-3-301,
13 41-3-318, 41-3-614, 41-3-914, 41-3-919, 41-3-937, 41-3-938,
14 41-4-501, 41-5-107, 41-5-108 or 41-5-110 is guilty of a
15 misdemeanor punishable by a fine not to exceed one thousand
16 two hundred fifty dollars (\$1,250.00). Each day of
17 noncompliance with the provisions of these sections shall

1 be deemed a separate violation. The possession, use or
2 presence upon any person's land of water lawfully denied by
3 the water commissioner or other competent authority is
4 prima facie evidence of guilt.

5
6 (b) Failure to comply with an order issued by the
7 state engineer pursuant to W.S. 41-3-112, 41-3-208,
8 41-3-301, 41-3-318, 41-3-614, 41-3-914, 41-3-919, 41-3-937,
9 41-3-938, 41-4-501, 41-5-107, 41-5-108 or 41-5-110, shall
10 be a misdemeanor punishable by a fine not to exceed one
11 thousand two hundred fifty dollars (\$1,250.00), or
12 imprisonment for not more than three (3) months, or both.
13 Each day of noncompliance with the order shall be deemed a
14 separate violation.

15
16 (c) Whenever, after notice and an opportunity to be
17 heard, the state engineer finds the holder of any permit is
18 willfully violating or has willfully violated any provision
19 of a permit or any provision of W.S. 41-3-112, 41-3-208,
20 41-3-301, 41-3-318, 41-3-614, 41-3-914, 41-3-919, 41-3-937,
21 41-3-938, 41-4-501, 41-5-107, 41-5-108 or 41-5-110, or of
22 any order issued pursuant thereto, the state engineer may
23 cancel or suspend the permit or impose conditions on the
24 future use thereof to prevent further violation. An appeal

1 from any decision of the state engineer may be made to the
2 board of control.

3

4 (d) Whenever, after notice and opportunity to be
5 heard, the board of control finds the holder of any
6 certificate of registration or certificate of appropriation
7 is willfully violating or has willfully violated any
8 provision of the certificate or any provisions of W.S.
9 41-3-112, 41-3-208, 41-3-301, 41-3-318, 41-3-614, 41-3-914,
10 41-3-919, 41-3-937, 41-3-938, 41-4-501, 41-5-107, 41-5-108
11 or 41-5-110, or of any order issued pursuant thereto, the
12 board of control may cancel or suspend the certificate or
13 impose conditions on the future use thereof to prevent
14 further violation. An appeal from any decision of the
15 board of control may be taken to the district court.

16

17 **Section 2.** W.S. 41-3-112, 41-3-208, 41-3-301(a),
18 41-3-318, 41-3-613, 41-3-614, 41-3-914(b), 41-3-919,
19 41-3-937, 41-3-938, 41-4-501, 41-5-107, 41-5-108(b) and
20 41-5-110 are amended to read:

21

22 **41-3-112. Right to acquire temporary water rights for**
23 **highway or railroad roadbed construction or repair;**
24 **wrongfully causing diversion to be shut down.**

1

2 It shall be unlawful for any person ~~who~~ to wrongfully
3 ~~causes to be shut down~~ cause a diversion made under a
4 temporary water right required under and by virtue of this
5 act ~~shall, upon conviction thereof, be guilty of a~~
6 ~~misdemeanor and may be fined in an amount not to exceed one~~
7 ~~hundred dollars (\$100.00) for each day for which he shall~~
8 ~~cause such diversion to be wrongfully~~ to be shut down. Any
9 violation of this section shall be punishable pursuant to
10 W.S. 41-3-616.

11

12 **41-3-208. Diverting from owner prohibited.**

13

14 It shall be unlawful for anyone not the owner thereof to
15 divert and take from the natural channel of any interstate
16 stream designated by the certificate required in W.S.
17 41-3-206 flowing within the state of Wyoming, any foreign
18 water or in any manner interfere with the ability of the
19 owner of foreign water to transport the same in the natural
20 stream channel in Wyoming to the point of diversion and to
21 divert the same thereat. Any violation of this section
22 shall be punishable pursuant to W.S. 41-3-616.

23

1 **41-3-301. Application for reservoir construction**
2 **permit; contents; procedure.**

3

4 (a) Any person, corporation, association, or
5 organization, of any nature whatsoever, hereafter intending
6 to store or impound, for beneficial uses, any of the
7 unappropriated waters of the state of Wyoming, shall,
8 before commencing construction of any works for such
9 purpose, or performing any work in connection with said
10 proposed construction, make an application to the state
11 engineer, for a permit to construct a reservoir. The
12 application must set forth the name and post office address
13 of the applicant; the source of the water supply; the
14 nature of the proposed use; the location and description of
15 the proposed work; the time within which it is proposed to
16 begin construction, and the time required for the
17 completion of construction. Maps and plans shall conform
18 with the provisions of W.S. 41-4-510. In case of reservoirs
19 where the storage is for stock purposes only and the
20 capacity does not exceed twenty (20) acre-feet and the
21 height of dam does not exceed twenty (20) feet, the state
22 engineer may issue a permit without the filing of a map on
23 tracing cloth; however the state engineer may require
24 certain information be submitted on special forms to be

1 furnished by him. Any violation of subsection (a) of this
2 section shall be punishable pursuant to W.S. 41-3-616.

3

4 **41-3-318. Penalties, cancellation of permit, for**
5 **failure to comply with W.S. 41-3-308 through 41-3-314.**

6

7 Failure to comply with the provisions of W.S. 41-3-308
8 through 41-3-314 shall subject the permit to cancellation
9 at any time pursuant to W.S. 41-3-616(c). Failure to comply
10 with any valid order issued by the state engineer pursuant
11 to W.S. 41-3-308 through 41-3-314, shall subject the permit
12 holder to ~~a penalty not to exceed five hundred dollars~~
13 ~~(\$500.00) per day for each day the violation continues. The~~
14 ~~state engineer is authorized to cancel any permit wherein~~
15 ~~the provisions of the above sections have not been, or are~~
16 ~~not being, complied with, and the cancellation shall~~
17 ~~operate as a forfeiture of all rights acquired under and by~~
18 ~~virtue of any permit theretofore approved by the state~~
19 ~~engineer. An appeal from any decision of the state~~
20 ~~engineer may be made to the board of control, and from the~~
21 ~~decision of the board of control appeal may be taken to the~~
22 ~~district court~~ penalty pursuant to W.S. 41-3-616(b).

23

1 **41-3-613. Headgates, flumes or measuring devices;**
2 **owners to construct and maintain; failure to comply.**

3

4 The owner or owners of any ditch or canal shall maintain,
5 to the satisfaction of the division superintendent of the
6 division in which the irrigation works are located, a
7 substantial headgate at the point where the water is
8 diverted, which shall be of such construction that it can
9 be locked and kept closed by the water commissioner; and
10 such owners shall construct and maintain, when required by
11 the division superintendent, flumes or other measuring
12 devices at such points along such ditch as may be necessary
13 for the purpose of assisting the water commissioner in
14 determining the amount of water that is to be diverted into
15 said ditch from the stream, or taken from it by the various
16 users. Any and every owner or manager of a reservoir,
17 located across or upon the bed of a natural stream, shall
18 be required to construct and maintain, when required by the
19 division superintendent, a flume or measuring device of a
20 plan to be approved by the state engineer, below such
21 reservoir at a point not to exceed six hundred (600) feet
22 distant therefrom, and a flume or measuring device above
23 such reservoir or each and every stream or source of supply
24 discharging into such reservoir, for the purpose of

1 assisting the water commissioner or superintendent in
2 determining the amount of water to which prior
3 appropriators are entitled and thereafter diverting it for
4 such prior appropriators' use. When it may be necessary,
5 for the protection of other water users, the division
6 superintendent has authority to require flumes to be
7 installed along the line of any ditch. If any such owner or
8 owners of irrigation works shall refuse or neglect to
9 construct and put in such headgates, flumes or measuring
10 devices after ten (10) days notice to do so by division
11 superintendent, it shall be the duty of the water
12 commissioner of the district in which such headgate is
13 located, on order of the division superintendent, to close
14 such ditch to the passage of water, and the same shall not
15 be opened or any water diverted from the source of supply,
16 under the penalties prescribed by ~~law for the opening of~~
17 ~~headgates lawfully closed~~ W.S. 41-3-614, until the
18 requirements of the division superintendent as to such
19 headgate, flumes or measuring device have been complied
20 with, and if any owner, or manager of a reservoir located
21 across the bed of a natural stream shall neglect or refuse
22 to put in such measuring device after ten (10) days notice
23 to do so by the division superintendent, the water
24 commissioner shall open the sluice gate or outlet of such

1 reservoir and the same shall not be closed under penalties
2 ~~of the law for changing or interfering with headgates~~
3 pursuant to W.S. 41-3-614, until the requirements of the
4 division superintendent as to such measuring devices are
5 complied with.

6
7 **41-3-614. Well, headgate or waterbox; prohibited**
8 **acts; penalty for violation.**

9
10 It shall be unlawful for any person who to willfully ~~opens,~~
11 ~~closes, changes or interferes~~ use or possess water which
12 has been lawfully denied by the water commissioner or other
13 competent authority or to open, close, change or interfere
14 with any well, pump, reservoir outlet valve, dam,
15 diversion, headgate or waterbox without authority. ~~, or who~~
16 ~~willfully uses water which has been lawfully denied him by~~
17 ~~the water commissioner or other competent authority, is~~
18 ~~guilty of a misdemeanor and shall be fined not exceeding~~
19 ~~five hundred dollars (\$500.00). The possession or use of~~
20 ~~water lawfully denied by the water commissioner or other~~
21 ~~competent authority is prima facie evidence of guilt~~ Any
22 violation of this section shall be punishable pursuant to
23 W.S. 41-3-616.

24

1 **41-3-914. Adjudication of waters within control area.**

2

3 (b) If any well owner, lessee or user within a
4 control area refuses to adjudicate a well, or supply the
5 necessary information to permit adjudication of any well,
6 the superintendent may tag and lock the pump or well to
7 prevent use of water therefrom. The penalty for interfering
8 with the tag or lock on a well is as provided in W.S.
9 ~~41-3-938~~ 41-3-616. The use of water from a well so tagged
10 and locked is prima facie evidence that the well owner,
11 lessee or user has violated the provisions of this section.

12

13 **41-3-919. Prohibited acts; penalty for violation.**

14

15 Any person who withdraws underground water or who fails to
16 stop or reduce the flow of underground water in violation
17 of any order of the state engineer made pursuant to this
18 act, or any person who does not have a permit, certificate
19 or vested right to appropriate underground water who shall
20 withdraw underground water from any well other than a well
21 for stock or domestic purposes as defined in W.S. 41-3-907,
22 is guilty of a misdemeanor and upon conviction shall be
23 punished under W.S. ~~41-3-614~~ 41-3-616.

24

1 **41-3-937. Cancellation or suspension of permits or**
2 **certificates.**

3
4 Whenever, after notice to and opportunity to be heard, ~~by~~
5 ~~such holder,~~ the state engineer finds that the holder of
6 any permit is ~~wilfully~~ willfully violating or has ~~wilfully~~
7 willfully violated any provision of such permit or any
8 provision of this act or of any order issued pursuant to
9 this act, the state engineer may cancel or suspend such
10 permit or impose conditions on the future use thereof to
11 prevent such violation, pursuant to W.S. 41-3-616(c).

12 Whenever, after notice to and opportunity to be heard by
13 such holder, the board of control finds that the holder of
14 any certificate of registration or certificate of
15 appropriation is ~~wilfully~~ willfully violating or has
16 ~~wilfully~~ willfully violated any provision of such
17 certificate or any provision of this act or of any order
18 issued pursuant to this act, the board of control may
19 cancel or suspend such certificate or impose conditions on
20 the future use thereof to prevent such violation, pursuant
21 to W.S. 41-3-616(d).

22

23 **41-3-938. Penalty.**

24

1 Any person who drills, digs or constructs any works for the
2 securing of underground water without having obtained a
3 permit is guilty of a misdemeanor and upon conviction shall
4 be punished under W.S. ~~41-3-614~~ 41-3-616.

5

6 **41-4-501. Permit required prior to construction of**
7 **ditches, canals or other distributing works; contents of**
8 **application; unlawful diversion or use of water prohibited.**

9

10 Any person, association or corporation hereafter intending
11 to acquire the right to the beneficial use of the public
12 water of the state of Wyoming shall, before commencing the
13 construction, enlargement or extension of any ditch, canal
14 or other distributing works, or performing any work in
15 connection with said construction, or proposed
16 appropriation, make an application to the state engineer
17 for a permit to make such appropriation. Such application
18 must set forth the name and post-office address of the
19 applicant, the source of the water supply, the nature of
20 the proposed use, the location and description of the
21 proposed ditch, canal or other work, the time within which
22 it is proposed to begin construction, the time required for
23 completion of construction and the time required for the
24 complete application of the water to the proposed use. Any

1 person who shall ~~wilfully~~ willfully divert or use water to
2 the detriment of others without compliance with law shall
3 be deemed guilty of a misdemeanor, ~~and on conviction~~
4 ~~thereof, shall be fined in a sum not exceeding one hundred~~
5 ~~dollars (\$100.00), or by imprisonment in the county jail~~
6 ~~for a term not exceeding six (6) months, or by both such~~
7 ~~fine and imprisonment; and the possession or use of water,~~
8 ~~except when a right of use is acquired in accordance with~~
9 ~~law, shall be prima facie evidence of the guilt of the~~
10 ~~person using it~~ punishable pursuant to W.S. 41-3-616.

11

12 **41-5-107. Removal or destruction of bridges or**
13 **flumes.**

14

15 Whenever any person, persons or corporation shall remove or
16 destroy any bridge or flume which crosses any ditch, canal
17 or other irrigation works, when said flume or bridge is in
18 good condition a legal right for such crossing having been
19 acquired, said person, persons or corporations must replace
20 said bridge or flume, in as good condition as before
21 removal. If said bridge or flume is removed by the owner or
22 owners of the said ditch, canal or irrigation works; it
23 shall be the duty of the water commissioner to keep the
24 controlling works of the said ditch, canal or irrigation

1 works closed until the said bridge or flume is properly
2 replaced. ~~if~~ It shall be unlawful for any other person ~~or~~
3 ~~persons shall to~~ remove or destroy any such bridge or
4 flumes. ~~they shall be deemed guilty of a misdemeanor and~~
5 ~~shall be subject to a fine of not more than one hundred~~
6 ~~dollars (\$100.00) or imprisonment in the county jail for~~
7 ~~not more than ninety (90) days, or both such fine and~~
8 ~~imprisonment~~ Any violation of this section shall be
9 punishable pursuant to W.S. 41-3-616.

10
11 **41-5-108. Driving or floating logs, timber or lumber**
12 **on streams.**

13
14 (b) Anyone violating any of the provisions of this
15 section, shall, ~~on conviction, be fined in any sum not~~
16 ~~exceeding one hundred dollars (\$100.00), or imprisoned in~~
17 ~~the county jail not exceeding three (3) months, or by both~~
18 ~~such fine and imprisonment~~ be subject to penalty pursuant
19 to W.S. 41-3-616.

20
21 **41-5-110. Prohibited acts; penalty for violation.**

22
23 It shall be unlawful for any person ~~or persons who shall~~
24 ~~knowingly and wilfully cut, dig or break down, or open any~~

1 ~~gate, bank, embankment or side of any ditch, canal or~~
2 ~~reservoir, flume, tunnel or feeder in which such person or~~
3 ~~persons may be joint owners, or without authority, to~~
4 ~~willfully interfere with or damage any dam, diversion~~
5 ~~structure or means of conveyance whether jointly owned by~~
6 ~~the person, on the property or in the lawful possession of~~
7 ~~another, ~~or in the lawful possession of another or others,~~~~
8 ~~and used for the purpose of irrigation, milling,~~
9 ~~manufacturing, mining or domestic purposes,~~ with intent
10 ~~maliciously~~ to injure any person, ~~association or~~
11 ~~corporation,~~ or for his ~~or her~~ own gain, ~~unlawfully, with~~
12 ~~the intention of stealing, taking or causing to run or pour~~
13 ~~out of such canal or reservoir, feeder or flume, any water~~
14 ~~for his or her own profit, benefit or advantage,~~ to the
15 injury of any other person, ~~persons, association or~~
16 ~~corporation~~ lawfully ~~in~~ entitled to the use of such water,
17 ~~or of such ditch, canal, tunnel, feeder or flume, he, she,~~
18 ~~it or they, so offending shall be deemed guilty of a~~
19 ~~misdemeanor, and on conviction thereof shall be fined in~~
20 ~~any sum not exceeding one hundred dollars (\$100.00), and~~
21 ~~may be imprisoned in the county jail not exceeding six (6)~~
22 ~~months, or both, in the discretion of the court diversion~~
23 ~~structure or means of conveyance. Any violation of this~~
24 ~~section shall be punishable pursuant to W.S. 41-3-616.~~

1

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

6

7

(END)