

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO. _____

Landowner flexibility & fisheries protection & restoration.

Sponsored by: Representative(s) Berger

A BILL

for

1 AN ACT relating to water; providing for temporary water
2 rights as specified; providing procedures; imposing a fee;
3 requiring a study and reports as specified; providing
4 definitions; providing a repealer date; providing a
5 statement of policy; and providing for an effective date.

6

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

8

9 **Section 1.** W.S. 41-3-116 and 41-3-117 are created to
10 read:

11

12 **41-3-116. Temporary water acquisition study; right to**
13 **acquire temporary water rights for trout fishery purposes;**
14 **application; restrictions; fee; sunset provision.**

1

2 (a) The state engineer's office, in consultation with
3 the Wyoming game and fish department, shall conduct and
4 coordinate a study that provides the following data for
5 each stream reach and each pilot temporary change
6 application approved under subsection (b) of this section:

7

8 (i) The length of the stream reach and how it
9 was determined;

10

11 (ii) An assessment of the expected fishery
12 benefits during the term of the temporary change period;

13

14 (iii) Legal standards and technical data used to
15 determine and substantiate the amount of water available
16 for stream flows through temporary change of existing
17 rights;

18

19 (iv) Conditions, if necessary, to ensure that
20 the temporary change for trout fishery purposes does not
21 injure other appropriators; and

22

1 (v) Methods and technical means used to monitor
2 use of water under each lease.

3

4 (b) The study described in subsection (a) of this
5 section is intended to assess and support an application by
6 which any person shall have the right to acquire by
7 purchase, gift or lease the right to the use of water which
8 may be embraced in any adjudicated or valid unadjudicated
9 water right, or any portion thereof, for a period not to
10 exceed ten (10) years for trout fishery purposes. The
11 priority of the temporary water right for trout fishery
12 purposes pursuant to this section is the same as the
13 priority of the water right approved for change. Any
14 temporary transfer under this section shall be allowed only
15 if no other appropriator is injured thereby. The following
16 shall apply:

17

18 (i) Before any right to such use shall become
19 operative, an application shall be made in writing on a
20 form provided or designated by the state engineer, with a
21 copy of any conveyance or agreement provided, and shall be
22 filed in the office of the state engineer for his
23 ratification and approval. Upon approval by the state

1 engineer, an order authorizing such use and designating the
2 method, place and period of use may be entered. The
3 application shall include information on the length and
4 location of the stream reach in which the stream flow is to
5 be maintained or enhanced;

6

7 (ii) No loss, abandonment or impairment of water
8 rights shall occur or attach as a result of the change of
9 use of water for trout fishery purposes, except as provided
10 by the conveyance or agreement and order of the state
11 engineer. Upon termination of the temporary use for trout
12 fishery purposes as stated in the order, any affected right
13 to the use of water shall automatically be reinvested with
14 all the rights, privileges and uses, and purposes
15 previously held and enjoyed;

16

17 (iii) As used in this section, "trout fishery
18 purposes" means the in-channel temporary use achieved by
19 either leaving the direct flows of a natural watercourse
20 undiverted or introducing previously stored water into a
21 natural watercourse to benefit trout populations in
22 Wyoming;

23

1 (iv) For direct flow water rights only that
2 portion of a water right so acquired which has been
3 consumptively used under the historical use made of the
4 water right, may be used by a temporary user. For
5 temporary uses that involve transferring stored water from
6 a consumptive to trout fishery purpose, reductions to
7 account for conveyance losses may be required;

8
9 (v) In determining the consumptive use of water
10 rights for the direct use of the natural unstored flow of
11 any stream for irrigation purposes, the return flow from
12 those rights shall be presumed to be fifty percent (50%).
13 In situations where an assumption of fifty percent (50%)
14 return flow would be significantly in error, the state
15 engineer may make a determination of the actual amount of
16 return flow and the amount of water which is available to
17 be used shall be adjusted accordingly. The historic return
18 flow or the assumed return flow of fifty percent (50%)
19 shall be left in the stream for the use of other
20 appropriators. The foregoing formula and procedure for the
21 determination of consumptive use and return flow shall be
22 limited to this section and W.S. 41-3-110(c) and shall have
23 no application to any other statute of this state. Nothing

1 in this section shall be treated or construed as changing
2 the prior use of water held by the owner or owners and as
3 provided by the laws of this state.

4

5 (c) Nothing in this section shall be construed to
6 supersede, impair or abrogate the rights of the state of
7 Wyoming to fully utilize and appropriate to consumptive
8 beneficial use those quantities of water allocated to the
9 state of Wyoming by interstate compact or United States
10 supreme court decree. The state engineer shall not grant a
11 temporary change of use application for trout fishery
12 purposes where the undiverted natural flows would be
13 included as a portion of the consumptive share of water
14 allocated to the state of Wyoming under any interstate
15 compact or decree. The amount of water appropriated for
16 temporary trout fishery purposes in each river basin in
17 Wyoming shall not result in more water leaving the state
18 than the amount of water that is allocated by interstate
19 compact or court decree for downstream uses outside
20 Wyoming.

21

22 (d) Any change of use authorized under this section
23 may be suspended at any time upon a determination of the

1 superintendent of the water division within which the
2 change of use occurs that the temporary change produces
3 unanticipated injury to other water users. The suspension
4 shall be subject to timely review by the state engineer.

5

6 (e) Any request for regulation to benefit a temporary
7 trout fishery water use acquired under this section shall
8 be made in writing in accordance with the provisions of
9 W.S. 41-3-606.

10

11 (f) Notice for any measuring device necessary to
12 monitor or regulate a temporary trout fishery use acquired
13 under this section shall be required under the provisions
14 of W.S. 41-3-613. The party acquiring a temporary use for
15 such purpose, as designated on the state engineer's order
16 approving the temporary use, shall be responsible for
17 providing and installing any measuring device and securing
18 access necessary to install and maintain the device needed
19 for regulation or monitoring of stream flow as determined
20 by the state engineer or superintendent of the water
21 division within which the use is located. Any measuring
22 device or adjustable and lockable headgate, if needed on
23 any diversion within the affected stream reach for proper

1 regulation of the temporary native or wild trout fishery
2 use, shall be the responsibility of the owner of the
3 diversion.

4

5 (g) If the property to which a temporarily changed
6 water right pursuant to this section is appurtenant is
7 transferred, the temporary change remains in effect unless
8 the term of the temporary change is complete or another
9 temporary change application is submitted to and approved
10 by the state engineer.

11

12 (h) Nothing in this section shall grant nor shall it
13 be construed to grant the right of ingress or egress
14 through or upon private property to reach streams where
15 temporary trout fishery flows are maintained, nor shall it
16 operate or be so construed as to grant any right of eminent
17 domain to acquire the right of ingress or egress through
18 private property to any waters so maintained.

19

20 (j) A new temporary change of use application for
21 fishery purposes may be filed using the same procedures as
22 obtaining an initial temporary change of use under this
23 section.

1

2 (k) The state engineer shall assess a fee not to
3 exceed one hundred dollars (\$100.00) for his review and
4 approval of an application pursuant to this section. This
5 fee shall accompany the application and shall be retained
6 and credited to the general fund whether the application is
7 approved or denied.

8

9 (m) The state engineer's office shall submit to the
10 legislature:

11

12 (i) A five (5) year study progress report not
13 later than December 1, 2014, including the information
14 specified in subsection (a) of this section for each
15 temporary change application for trout fishery purposes
16 granted under subsection (b) of this section; and

17

18 (ii) A final study report not later than
19 December 1, 2019 which summarizes the ten (10) year program
20 including recommendations for future direction regarding
21 either the extension or termination of the right to
22 temporarily use water rights for trout fishery purposes in
23 Wyoming.

1

2 (n) This section is repealed effective July 1, 2019.

3

4 **41-3-117. Conserved water projects for landowner**
5 **flexibility and trout fishery purposes; right to use**
6 **conserved water temporarily for trout fishery purposes;**
7 **sunset provision.**

8

9 (a) A holder of a water right who conserves water may
10 retain the right to the conserved water if it is
11 voluntarily and temporarily transferred to a fishery
12 purpose pursuant to W.S. 41-3-116. Temporary change
13 applications approved pursuant to this section shall be
14 allowed only if no other appropriator is injured thereby.

15

16 (b) As used in this section, "conserved water" means
17 water made available for trout fishery purposes from an
18 existing valid appropriation through application of water-
19 saving methods.

20

21 (c) This section is repealed effective July 1, 2019.

22

1 **Section 2.** It is the declared policy of this state to
2 encourage the conservation of water including the temporary
3 change of water use applications which maintain irrigated
4 acres while at the same time providing public benefits in
5 terms of improved fishery health. In furtherance of this
6 policy, holders of water rights who conserve water may
7 retain the right to the conserved water if it is
8 voluntarily transferred to a fishery purpose pursuant to
9 this act.

10

11 **Section 3.** This act is effective July 1, 2009.

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13

(END)