

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO. _____

Discharged water management.

Sponsored by: Joint Agriculture, State and Public Lands
and Water Resources Interim Committee

A BILL

for

1 AN ACT relating to water; providing for the management of
2 surface water discharges; authorizing the issuance of
3 general permits for discharged water as specified;
4 providing for additional management of water discharged
5 from coalbed natural gas wells; authorizing construction to
6 limit effects of excess surface discharges of coalbed
7 water; authorizing assessment of damages related to such
8 construction; providing definitions; providing a review
9 process; providing rulemaking authority; providing for
10 enforcement; providing for penalties; and providing for an
11 effective date.

12

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

1

2 **Section 1.** W.S. 41-3-116 and 41-3-507 are created to

3 read:

4

5 **41-3-116. Curtailment of excess surface discharges;**
6 **restrictions on water produced from coalbed natural gas**
7 **wells; orders; penalties.**

8

9 (a) The state engineer may order curtailment of any
10 surface discharges in excess of the natural capacity of a
11 channel upon a determination by the state engineer that
12 excess surface discharge is occurring. For purposes of
13 this section, "surface discharge" shall be as defined in
14 W.S. 41-3-507(p)(iv).

15

16 (b) Except as provided in W.S. 41-3-507 and
17 subsection (e) of this section, it is unlawful for the
18 quantity of water discharged from individual or combined
19 coalbed natural gas wells to exceed the natural capacity of
20 a channel with intermittent or ephemeral natural flow into
21 which the surface discharge occurs. For purposes of this
22 section, "natural capacity" shall be as defined in W.S.
23 41-3-507(p)(ii).

1

2 (c) In the event more than one (1) coalbed natural
3 gas well is causing the excess surface discharge described
4 in subsection (b) of this section, the curtailment of such
5 excess surface water discharge shall begin with the
6 operator with the most recently commenced surface discharge
7 and then proceed to the curtailment of any additional
8 discharges with increasingly older dates of discharge
9 commencement until the natural capacity of the channel is
10 no longer exceeded.

11

12 (d) Natural flow shall not be included in a
13 measurement of flow when determining a violation under this
14 section.

15

16 (e) Surface water discharges shall not be unlawful
17 if, on land he owns or controls, the landowner stores the
18 surface water discharges in any reservoir, makes beneficial
19 use of the surface water discharges or otherwise consents
20 to the flow of the surface water discharges that shall not
21 exceed the natural capacity of the channel.

22

1 (f) If either the landowner or any discharging party
2 is aggrieved by any order of the state engineer under this
3 section, the order may be appealed to the board of control
4 pursuant to W.S. 41-3-517.

5

6 (g) The state engineer shall adopt reasonable rules
7 and regulations necessary for the implementation and
8 administration of this section.

9

10 (h) Any violation of this section shall be punishable
11 pursuant to W.S. 41-3-616.

12

13 **41-3-507. Management of water discharged from coalbed**
14 **natural gas wells; definitions; rulemaking authority.**

15

16 (a) Surface discharge of produced water from any
17 coalbed natural gas well subject to permitting by the state
18 engineer into a channel with an intermittent or ephemeral
19 natural flow may be limited to the natural capacity of the
20 channel downstream of the discharge.

21

22 (b) A landowner, on land he owns or controls, may
23 store surface water discharges in any reservoir, make

1 beneficial use of the surface water discharges or otherwise
2 consent to the flow of surface water discharges that shall
3 not exceed the natural capacity of the channel.

4

5 (c) A landowner who believes he has been or will be
6 affected by surface discharges resulting from coalbed
7 natural gas wells and who has a reach of interest, may file
8 a written request with the state engineer stating the
9 nature and extent of the actual and potential effects of
10 those surface discharges in the reach of interest and
11 asking the state engineer to review the flow
12 characteristics of the actual or potential surface
13 discharges through the reach of interest.

14

15 (d) Upon receipt of the written request from the
16 landowner under subsection (c) of this section, the state
17 engineer shall proceed within ten (10) business days with
18 an evaluation of the natural capacity of the channel and
19 shall complete this evaluation within one hundred twenty
20 (120) days.

21

22 (e) If the state engineer finds the capacity in the
23 reach of interest is less than the natural capacity of the

1 water course, the state engineer or superintendent of the
2 water division in which the reach of interest exists shall
3 order the necessary construction of additional capacity in
4 the reach of interest, up to the natural capacity of the
5 water course.

6

7 (f) In the event more than one (1) coalbed natural
8 gas operator is causing surface discharge in excess of the
9 capacity of the reach of interest, the order under
10 subsection (e) of this section shall be prorated. The
11 costs of construction resulting from the order shall be
12 prorated to each operator contributing to the excess of the
13 capacity of the reach of interest, based upon the
14 percentage of each operator's contribution to the total
15 excess surface discharge.

16

17 (g) All parties included in the order under
18 subsection (e) of this section shall provide a construction
19 plan to the landowner and the state engineer for review.

20

21 (h) The landowner and the state engineer's office
22 shall review and approve the construction plan, which shall
23 include requirements for access, mitigation of damages

1 caused by construction and reclamation. Reclamation
2 requirements may include removal of facilities, fixtures or
3 other features constructed under the construction plan.
4 The construction work under the construction plan shall be
5 completed within one (1) year after the state engineer's
6 written approval of the construction plan, unless the time
7 is extended in writing by the state engineer.

8

9 (j) If the landowner fails to provide written
10 approval of the final construction plans or fails to
11 provide written approval for access for planning,
12 construction or reclamation, the construction order shall
13 be revoked.

14

15 (k) The state engineer is authorized to assess
16 damages related to construction against the discharging
17 party or parties, in addition to those covered by the
18 construction plan, upon receipt, review and approval of
19 documentation submitted by the landowner or any party
20 included in the order.

21

22 (m) If either the landowner or any discharging party
23 is aggrieved by any order of the state engineer under this

1 section, the order may be appealed to the board of control
2 pursuant to W.S. 41-3-517.

3

4 (n) The state engineer shall adopt reasonable rules
5 and regulations necessary for the implementation and
6 administration of this section.

7

8 (o) Any violation of this section shall be punishable
9 pursuant to W.S. 41-3-616. Nothing in this section shall
10 in any way limit, delay or preempt the exercise or
11 assertion of any other civil or administrative claim or
12 remedy available to any landowner or any person or entity
13 discharging coalbed natural gas water.

14

15 (p) As used in this section and in W.S. 41-3-116:

16

17 (i) "Landowner" means the person or entity with
18 fee title to the land containing the reach of interest and
19 who is filing a request under this section;

20

21 (ii) "Natural capacity" means the bank to bank
22 hydraulic carrying capacity, expressed in cubic feet of
23 water per second of time, of the primary naturally formed

1 channel through which runoff would typically flow, using
2 the predominant cross-sectional characteristics exhibited
3 by the channel in the vicinity of the reach of interest.
4 These channel cross-sections may be obtained upstream or
5 downstream of the reach of interest;

6

7 (iii) "Reach of interest" means that section of
8 a water course with intermittent or ephemeral flow that is
9 alleged to have insufficient hydraulic capacity to convey
10 water when compared to the natural capacity of a channel;

11

12 (iv) "Surface discharge" means surface discharge
13 from coalbed natural gas operations.

14

15 **Section 2.** W.S. 35-11-302(a)(v) is amended to read:

16

17 **35-11-302. Administrator's authority to recommend**
18 **standards, rules, regulations or permits.**

19

20 (a) The administrator, after receiving public comment
21 and after consultation with the advisory board, shall
22 recommend to the director rules, regulations, standards and
23 permit systems to promote the purposes of this act. Such

1 rules, regulations, standards and permit systems shall
2 prescribe:

3

4 (v) Standards for the issuance of permits as
5 authorized pursuant to section 402(b) of the Federal Water
6 Pollution Control Act as amended in 1972, and as it may be
7 hereafter amended, including general permits;

8

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

10

11

(END)