

## HOUSE BILL NO. HB0070

Landowner flexibility & fisheries protection & restoration.

Sponsored by: Representative(s) Berger, Gingery and  
Jorgensen and Senator(s) Burns, Case and  
Larson

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.**

15

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

23           (v) Methods and technical means used to monitor  
24 use of water under each temporary change.

1

2 (b) The study described in subsection (a) of this  
3 section is intended to assess and support an application by  
4 which any person shall have the right to acquire the right  
5 to the use of water which may be embraced in any  
6 adjudicated water right, or any portion thereof, for a  
7 period not to exceed ten (10) years for trout fishery  
8 purposes. For applications granted after July 1, 2014, the  
9 term of the temporary change for trout fishery purposes  
10 shall not exceed five (5) years or July 1, 2019, whichever  
11 comes first. The right to surplus or excess direct flow  
12 shall not be included in the amount of water temporarily  
13 changed to a trout fishery purpose. The priority of the  
14 temporary water right for trout fishery purposes pursuant  
15 to this section is the same as the priority of the water  
16 right approved for change. Any temporary transfer under  
17 this section shall be allowed only if no other appropriator  
18 is injured thereby. When evaluating injury, the state  
19 engineer's office may consider mitigating potential impacts  
20 to water right holders who may have historically benefited  
21 from seasonal water use interruptions of the downstream  
22 senior appropriator filing a temporary water right change  
23 for trout fishery purposes. The following shall apply:

24

1           (i) Before any right to such use shall become  
2 operative, an application shall be made in writing by the  
3 holder of the water right on a form provided or designated  
4 by the state engineer, with a copy of any conveyance or  
5 agreement provided, and shall be filed in the office of the  
6 state engineer for his review and approval. If approved by  
7 the state engineer, an order authorizing such use and  
8 designating the method, amount, place and period of use may  
9 be entered. The application shall include information on  
10 the length and location of the stream reach in which the  
11 stream flow is to be maintained or enhanced;

12

13           (ii) The applicant for a temporary change for  
14 trout fishery purposes shall publish a notice of the  
15 application in a newspaper of general circulation in the  
16 area near the proposed stream segment within thirty (30)  
17 days of the application being filed. If a hearing is  
18 required pursuant to paragraph (iii) of this subsection,  
19 additional notice of the hearing shall be published once  
20 each week for at least two (2) consecutive weeks prior to  
21 the hearing which notice shall briefly describe the  
22 application;

23

1           (iii) Prior to granting or denying the  
2 application, the state engineer may hold a public hearing.  
3 The state engineer may require the applicant to pay for the  
4 costs of the hearing;

5  
6           (iv) No loss, abandonment or impairment of water  
7 rights shall occur or attach as a result of the temporary  
8 change of use of water for trout fishery purposes, except  
9 as provided by the conveyance or agreement and order of the  
10 state engineer. Upon termination of the temporary use for  
11 trout fishery purposes as stated in the order, any affected  
12 right to the use of water shall automatically be reinvested  
13 with all the rights, privileges and uses, and purposes  
14 previously held and enjoyed;

15  
16           (v) As used in this section, "trout fishery  
17 purposes" means the in-channel temporary use achieved by  
18 either leaving the direct flows of a natural watercourse  
19 undiverted or introducing previously stored water into a  
20 natural watercourse to benefit trout populations in  
21 Wyoming;

22  
23           (vi) For a temporary change application pursuant  
24 to this section that involves a water right historically

1 used for an agricultural beneficial use, the right shall  
2 return to the same land and original purpose when the term  
3 of the temporary change for trout fishery purposes has  
4 expired. If at any time during the period of temporary use  
5 the ownership of the encumbered water right is severed from  
6 the ownership of the land or is the subject of a change of  
7 use or place of use application or any other petition with  
8 the board of control which would preclude use of the water  
9 right for its original agricultural purpose, the temporary  
10 water right for trout fishery purposes shall immediately  
11 become null and void;

12

13 (vii) For direct flow water rights only that  
14 portion of a water right so acquired which has been  
15 consumptively used under the historical use made of the  
16 water right, may be used by a temporary user. For  
17 temporary uses that involve transferring stored water from  
18 a consumptive to trout fishery purpose, reductions to  
19 account for conveyance losses may be required;

20

21 (viii) In determining the consumptive use of  
22 water rights for the use of the natural direct flow of any  
23 stream for irrigation purposes, the return flow from those  
24 rights shall be presumed to be fifty percent (50%). In

1 situations where an assumption of fifty percent (50%)  
2 return flow would be significantly in error, the state  
3 engineer may make a determination of the actual amount of  
4 return flow and the amount of water which is available to  
5 be used shall be adjusted accordingly. The historic return  
6 flow or the assumed return flow of fifty percent (50%)  
7 shall be left in the stream for the use of other  
8 appropriators. The foregoing formula and procedure for the  
9 determination of consumptive use and return flow shall be  
10 limited to this section and W.S. 41-3-110(c) and shall have  
11 no application to any other statute of this state. Nothing  
12 in this section shall be treated or construed as changing  
13 the prior use of water held by the owner or owners and as  
14 provided by the laws of this state.

15

16 (c) Nothing in this section shall be construed to  
17 supersede, impair or abrogate the rights of the state of  
18 Wyoming to fully utilize and appropriate to consumptive  
19 beneficial use those quantities of water allocated to the  
20 state of Wyoming by interstate compact or United States  
21 supreme court decree. The state engineer shall not grant a  
22 temporary change of use application for trout fishery  
23 purposes where the undiverted natural flows would be  
24 included as a portion of the consumptive share of water

1 allocated to the state of Wyoming under any interstate  
2 compact or decree. The amount of water appropriated for  
3 temporary trout fishery purposes in each river basin in  
4 Wyoming shall not result in more water leaving the state  
5 than the amount of water that is allocated by interstate  
6 compact or court decree for downstream uses outside  
7 Wyoming.

8

9 (d) In accordance with the provisions of W.S.  
10 41-3-506, any change of use authorized under this section  
11 may be suspended at any time upon a determination of the  
12 superintendent of the water division within which the  
13 temporary change of use occurs that the temporary change  
14 produces unanticipated injury to other water users. The  
15 suspension shall be subject to timely review by the state  
16 engineer.

17

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

22

23 (f) Notice for any measuring device necessary to  
24 monitor or regulate a temporary trout fishery use acquired

1 under this section shall be required under the provisions  
2 of W.S. 41-3-613. The party acquiring a temporary use for  
3 such purpose, as designated on the state engineer's order  
4 approving the temporary use, shall be responsible for  
5 providing and installing any measuring device and securing  
6 access necessary to install and maintain the device needed  
7 for regulation or monitoring of stream flow as determined  
8 by the state engineer or superintendent of the water  
9 division within which the use is located. Any measuring  
10 device or adjustable and lockable headgate, if needed on  
11 any diversion within the affected stream reach for proper  
12 regulation of the temporary trout fishery use, shall be the  
13 responsibility of the owner of the diversion.

14

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

22

23 (h) A new temporary change of use application for  
24 fishery purposes may be filed using the same procedures as

1 obtaining an initial temporary change of use under this  
2 section.

3

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

10

11 (k) The state engineer's office shall submit to the  
12 governor and the legislature:

13

14 (i) During the first five (5) years of the pilot  
15 temporary change and conserved water for trout fishery  
16 purposes program, an annual study progress report  
17 documenting any application approved pursuant to this  
18 section during the previous year;

19

20 (ii) A five (5) year study progress report not  
21 later than December 1, 2014, including the information  
22 specified in subsection (a) of this section for each  
23 temporary change application for trout fishery purposes  
24 granted under subsection (b) of this section; and

1

2 (iii) A final study report not later than  
3 December 1, 2019 which summarizes the ten (10) year program  
4 including recommendations for future direction regarding  
5 either the extension or termination of the right to  
6 temporarily use water rights for trout fishery purposes in  
7 Wyoming.

8

9 (m) This section is repealed effective July 1, 2019.

10

11 **41-3-117. Conserved water projects for landowner**  
12 **flexibility and trout fishery purposes; right to use**  
13 **conserved water temporarily for trout fishery purposes;**  
14 **sunset provision.**

15

16 (a) On and after July 1, 2009, a holder of a water  
17 right who conserves water may voluntarily and temporarily  
18 transfer the conserved water to a fishery purpose pursuant  
19 to W.S. 41-3-116. Temporary change applications approved  
20 pursuant to this section shall be allowed only if no other  
21 appropriator is injured thereby.

22

23 (b) As used in this section, "conserved water" means  
24 water made available for trout fishery purposes from an

1 existing valid appropriation through application of water-  
2 saving methods.

3

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

5

6 **Section 2.** It is the declared policy of this state to  
7 encourage the conservation of water including the filing of  
8 temporary change of water use applications which maintain  
9 irrigated acres while at the same time providing public  
10 benefits in terms of improved trout fishery health.

11

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

13

14

(END)