

SENATE FILE NO. SF0071

Temporary instream flows.

Sponsored by: Senator(s) Case, Decaria, Larson and Massie
and Representative(s) Thompson and
Zwonitzer, Dn.

A BILL

for

1 AN ACT relating to instream flows; providing for
2 acquisition of temporary instream flows; and providing for
3 an effective date.

4

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

6

7 **Section 1.** W.S. 41-3-110 by creating a new subsection
8 (b), by amending and renumbering (b) as (c) and by
9 renumbering (c) and (d) as (d) and (e), 41-3-1002(c) and
10 41-3-1007 are amended to read:

11

12 **41-3-110. Right to acquire temporary water rights for**
13 **highway or railroad roadbed construction or repair; right**
14 **to acquire temporary water rights for instream flows;**
15 **application; restrictions; fee.**

16

1 (b) The state shall have the right to acquire by
2 purchase, gift or lease the right to the use of water which
3 may be embraced in any adjudicated or valid unadjudicated
4 water right, or any portion thereof, for a period of not to
5 exceed two (2) years, for instream flow purposes, on its
6 own behalf, provided:

7
8 (i) Only the state shall have the authority to
9 acquire the water pursuant to W.S. 41-3-1007(a)(ii); and

10
11 (ii) Any temporary transfer shall be allowed
12 only if no other appropriator is injured thereby.

13
14 ~~(b)~~(c) Before any right to ~~such~~ use pursuant to
15 subsection (a) or (b) of this section shall become
16 operative, an application must be made in writing on a form
17 provided or designated by the state engineer, with a copy
18 of any conveyance or agreement provided, and it shall be
19 filed in the office of the state engineer for his
20 ratification and approval. Upon approval by the state
21 engineer, an order authorizing such use and designating the
22 method, place, and period of use may be entered. No loss,
23 abandonment or impairment of such water rights shall occur
24 or attach as a result of such change or use, except as

1 provided by said conveyance or agreement and order of the
2 state engineer, and upon termination of the temporary
3 diversion and use, as stated in the order, any affected
4 right to the use of water shall automatically be reinvested
5 with all the rights, privileges and uses, and purposes
6 theretofore held and enjoyed.

7

8 ~~(e)~~(d) Only that portion of a water right so acquired
9 which has been consumptively used under the historical use
10 made of the water right, may be diverted by a temporary
11 user. In determining the consumptive use of water rights
12 for the direct use of the natural unstored flow of any
13 stream for irrigation purposes, the return flow from those
14 rights shall be presumed to be fifty percent (50%). In
15 those situations where an assumption of fifty percent (50%)
16 return flow would be significantly in error, the state
17 engineer shall have the prerogative of making a
18 determination of the actual amount of return flow, and the
19 amount of water which can be diverted for the temporary use
20 provided herein shall be adjusted accordingly. The actual
21 historic return flow, or the assumed return flow of fifty
22 percent (50%) will be left in the stream for the use of
23 downstream appropriators. The foregoing formula and
24 procedure for the determination of consumptive use and

1 return flow shall be limited to this section and shall have
2 no application to any other statute of the state of
3 Wyoming. Nothing herein contained shall be treated or
4 construed as changing the prior use of water held by said
5 owner or owners and as provided by the laws of the state of
6 Wyoming.

7
8 ~~(d)~~(e) The state engineer shall assess a fee not to
9 exceed one hundred dollars (\$100.00) for his review and
10 approval of temporary water agreements. This fee shall
11 accompany the agreement application and shall be retained
12 and credited to the general fund whether the agreement or
13 request is approved or denied.

14
15 **41-3-1002. Instream flows to be by stream segment;**
16 **waters for permanent instream flows may be sold,**
17 **transferred or otherwise conveyed under certain**
18 **restrictions; ownership restricted.**

19
20 (c) Storage water appropriated for the purpose of
21 providing instream flows in specified stream segments or
22 existing water rights which are permanently converted to
23 instream flow under provisions of W.S. ~~41-3-1007~~
24 41-3-1007(a)(i) of this act may later be sold, transferred

1 or otherwise conveyed to any other purpose pursuant to the
2 requirements of W.S. 41-3-104, except that the board of
3 control shall require that an advertised public hearing be
4 held.

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6 **41-3-1007. Acquisition of existing rights for**
7 **instream flow purposes.**

8

9 (a) The state of Wyoming may:

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11 (i) Permanently acquire any existing water
12 rights in streams of Wyoming by transfer or gift for the
13 purpose of providing instream flows, provided that a change
14 in use of the right acquired shall be in accordance with
15 W.S. 41-3-104;

16

17 (ii) Temporarily acquire any existing water
18 rights in streams of Wyoming by purchase, gift or lease for
19 the purpose of providing instream flows, provided that a
20 change in use of the right acquired shall be in accordance
21 with W.S. 41-3-110.

22

23 (b) Any right acquired and changed shall be in the
24 name of the state of Wyoming and shall be administered by

1 the state engineer and the board of control, who shall
2 insure that the use of water for instream flows shall not
3 interfere with existing water rights or impair the value of
4 such rights or related property. The game and fish
5 commission shall act as a petitioner in a petition for
6 change in use under this section.

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8 ~~(b)~~(c) Any such water rights acquired and changed
9 shall be limited to a specified stream segment by the board
10 of control with priority date intact.

11

12 **Section 2.** This act is effective July 1, 2009.

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(END)