

SENATE FILE NO. SF0149

Temporary water rights-replacement water.

Sponsored by: Senator(s) Meier and Representative(s)  
Davison

A BILL

for

1 AN ACT relating to water; providing temporary water rights  
2 for replacement water as specified; providing procedures;  
3 providing a definition; and providing for an effective  
4 date.

5

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

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8 **Section 1.** W.S. 41-3-101 and 41-3-110 are amended to  
9 read:

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11 **41-3-101. Nature of water rights and beneficial use.**

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13 A water right is a right to use the water of the state,  
14 when such use has been acquired by the beneficial  
15 application of water under the laws of the state relating  
16 thereto, and in conformity with the rules and regulations

1 dependent thereon. Beneficial use shall be the basis, the  
2 measure and limit of the right to use water at all times,  
3 not exceeding the statutory limit except as provided by  
4 W.S. 41-4-317. In addition to any beneficial use specified  
5 by law or rule and regulation promulgated pursuant thereto,  
6 the use of water for the purpose of extracting heat  
7 therefrom is considered a beneficial use subject to prior  
8 rights. Water being always the property of the state,  
9 rights to its use shall attach to the land for irrigation,  
10 or to such other purposes or object for which acquired in  
11 accordance with the beneficial use made for which the right  
12 receives public recognition, under the law and the  
13 administration provided thereby. Water rights for the  
14 direct use of the natural unstored flow of any stream  
15 cannot be detached from the lands, place or purpose for  
16 which they are acquired, except as provided in W.S.  
17 41-3-102 and 41-3-103, pertaining to a change to preferred  
18 use, and except as provided in W.S. 41-4-514. The temporary  
19 use of replacement water under W.S. 41-3-110 shall be  
20 considered a beneficial use.

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22 **41-3-110. Right to acquire temporary water rights for**  
23 **highway or railroad roadbed construction or repair;**  
24 **application; restrictions; fee.**

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2 (a) Any person shall have the right to acquire by  
3 purchase, gift or lease the right to the use of water which  
4 may be embraced in any adjudicated or valid unadjudicated  
5 water right, or any portion thereof, for a period of not to  
6 exceed two (2) years, for highway construction or repair,  
7 railroad roadbed construction or repair, drilling and  
8 producing operations, replacement water, or other temporary  
9 purposes, on its own behalf or on behalf of its agents,  
10 employees or contractors: provided, that if the proposed  
11 use is to be for public highway construction or repair  
12 under a contract with the state department of  
13 transportation, only the state transportation commission  
14 shall have the authority to acquire the water; and the  
15 state transportation commission shall have the sole and  
16 continuing responsibility for the acquisition, including  
17 the payment of all fees, royalties and other consideration  
18 for the use of and access to water and the right to acquire  
19 the rights to use shall not be delegated to a construction  
20 contractor or other third party; and further provided, that  
21 any temporary transfer shall be allowed only if no other  
22 appropriator is injured thereby.

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1           (b) Before any right to such use shall become  
2 operative, an application must be made in writing on a form  
3 provided or designated by the state engineer, with a copy  
4 of any conveyance or agreement provided, and it shall be  
5 filed in the office of the state engineer for his  
6 ratification and approval. Upon approval by the state  
7 engineer, an order authorizing such use and designating the  
8 method, place, and period of use may be entered. No loss,  
9 abandonment or impairment of such water rights shall occur  
10 or attach as a result of such change or use, except as  
11 provided by ~~said~~the conveyance or agreement and order of  
12 the state engineer, and upon termination of the temporary  
13 diversion and use, as stated in the order, any affected  
14 right to the use of water shall automatically be reinvested  
15 with all the rights, privileges and uses, and purposes  
16 theretofore held and enjoyed.

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18           (c) Only that portion of a water right so acquired  
19 which has been consumptively used under the historical use  
20 made of the water right, may be diverted by a temporary  
21 user. In determining the consumptive use of water rights  
22 for the direct use of the natural unstored 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 those situations where an assumption of fifty percent (50%)  
2 return flow would be significantly in error, the state  
3 engineer shall have the prerogative of making a  
4 determination of the actual amount of return flow, and the  
5 amount of water which can be diverted for the temporary use  
6 provided herein shall be adjusted accordingly. The actual  
7 historic return flow, or the assumed return flow of fifty  
8 percent (50%) will be left in the stream for the use of  
9 downstream appropriators. The foregoing formula and  
10 procedure for the determination of consumptive use and  
11 return flow shall be limited to this section and shall have  
12 no application to any other statute of the state of  
13 Wyoming. Nothing herein contained shall be treated or  
14 construed as changing the prior use of water held by ~~said~~  
15 the owner or owners and as provided by the laws of the  
16 state of Wyoming.

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18 (d) The state engineer shall assess a fee of not to  
19 exceed one hundred dollars (\$100.00) for his review and  
20 approval of temporary water agreements. This fee shall  
21 accompany the agreement application and shall be retained  
22 and credited to the general fund whether the agreement or  
23 request is approved or denied.

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1       (e) As used in this title, "replacement water" means  
2 water from a surface or well source that is used to restore  
3 amounts to a senior appropriator as mitigation for water  
4 lost due to the use by, or other act of, a junior  
5 appropriator by making available water to the aquifer or  
6 stream for use by appropriators in order of priority. If  
7 the proposed replacement water is from a well, the state  
8 engineer shall not approve a temporary use under subsection  
9 (a) of this section if the well draws more than fifty  
10 percent (50%) of its water from a source that interferes  
11 with the senior right claiming interference. The state  
12 engineer may utilize funds from the water development  
13 commission to mitigate interference and provide replacement  
14 water to the benefit of all water right holders. He may  
15 purchase replacement water, increase efficiency of water  
16 usage and utilize other means to the benefit of all water  
17 right holders. The utilization and expenditure of funds  
18 shall only be done upon approval and recommendation of the  
19 water development commission and approval by the  
20 legislature in the same manner as water projects approved  
21 under W.S. 41-2-114.

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

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(END)