

HOUSE BILL NO. HB0018

Notification of public land tenants-water rights changes.

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

A BILL

for

1 AN ACT relating to water; modifying requirements to notify
2 tenants occupying or utilizing state or public lands when a
3 change in use related to water rights occurs; requiring
4 consent of tenant to change in use; providing for hearings;
5 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. 41-3-104 by creating new subsections
10 (c) and (d), 41-3-114(c), (e)(intro) and (f),
11 41-3-401(b)(intro) and by creating a new subsection (g) and
12 41-4-506 are amended to read:

13

14 **41-3-104. Procedure to change use or place of use.**

15

1 (c) In addition to the requirements of subsection (a)
2 of this section, if the change in use or change in place of
3 use of the water right proposed to be changed is on state
4 or public land and the petitioner is a state or public land
5 management agency, the petitioner shall seek consent for
6 the proposed change from any affected tenant of the land.
7 If consent is obtained from the tenant, proof shall be
8 secured and attached to the petition. The petitioner shall
9 provide to the state engineer in writing a list of all
10 affected tenants from whom the petitioner has failed to
11 secure consent. The state engineer shall notify all such
12 tenants of their right to request a hearing as provided for
13 in subsection (d) of this section. In allowing a change in
14 use or change in place of use of a water right where the
15 place of use is on state or public land, the board of
16 control, or in the case of a change of place of use under
17 adjudicated surface water or groundwater permits only as
18 limited by W.S. 41-4-514(a), the state engineer, shall
19 consider all facts the board or the state engineer as
20 applicable believes pertinent to the transfer which shall
21 include but not be limited to the following:

22

23 (i) The economic loss to the tenant caused by
24 the change, if a tenancy currently exists;

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

(ii) Whether other sources of water are available for use by the tenant, if a tenancy currently exists;

(iii) Whether other sources of water are available to the petitioner for the new use or place of use.

(d) In the event consent is not obtained, the tenant may request a hearing in accordance with subsection (a) of this section.

41-3-114. Petition to change point of diversion or means of conveyance.

(c) If the petition is for a change in point of diversion and means of conveyance for all or a part of an appropriation, it shall include, in addition to the foregoing, the name, permit number and date of priority of the ditch or facility to which it is to be changed, and whether the petitioner is the sole owner of both facilities involved or has the consent of the other owners of both ditches or facilities. For any petition where the

1 appropriation is on state or public land and the petitioner
2 is a state or public land management agency, the petitioner
3 shall seek consent for the proposed change from any
4 affected tenant of the land. If consent is obtained from
5 the tenant, proof shall be secured and attached to the
6 petition. The petitioner shall provide to the state
7 engineer in writing a list of all affected tenants from
8 whom the petitioner has failed to secure consent.

9
10 (e) In event that written consents of tenants as
11 described in subsection (c) of this section or owners of
12 appropriations which divert between the old and new points
13 of diversion or the owners of ditches or facilities
14 involved in the proposed change are not secured and
15 attached to the petition, the petition shall be referred
16 to:

17
18 (f) The state engineer or the superintendent shall
19 set a hearing on the petition and give thirty (30) days
20 notice by registered mail of the time and place of the
21 hearing to the petitioner and any owners of appropriations
22 which divert between the old and new points of diversion
23 and any owners or users of ditches or facilities to be
24 affected by the proposed change and to any nonconsenting

1 tenants under subsection (c) of this section. The
2 petitioner shall provide the superintendent with a record
3 of the proceedings which shall be transmitted to the state
4 board of control with the superintendent's report. The
5 state board of control or the state engineer may make such
6 other regulations as may be found necessary. No petition
7 shall be granted if the right of other appropriators will
8 be injuriously affected. The attorney general shall
9 represent the state board of control or the state engineer
10 in any appeal.

11

12 **41-3-401. Failure to use water; extension of time;**
13 **initiation by benefitted or injured user; hearing; appeal.**

14

15 (b) When any water user who might be benefitted by a
16 declaration of abandonment of existing water rights or who
17 might be injured by the reactivation of the water right, or
18 who seeks to voluntarily relinquish their water rights,
19 desires to bring about a legal declaration of abandonment,
20 he shall present his case in writing to the state board of
21 control. The board has exclusive original jurisdiction in
22 water right abandonment proceedings. The board shall, if
23 the facts so justify, refer the matter to the
24 superintendent of the water division where the abandonment

1 is claimed to have occurred for public hearing. The total
2 absence of water to divert during an irrigation season
3 precludes the inclusion of any such period of nonuse
4 resulting therefrom in the computation of the successive
5 five (5) year period under this section. The following
6 persons have standing to petition the state board of
7 control to declare the abandonment of existing water rights
8 under this section:

9

10 (g) In the case where voluntary relinquishment is
11 sought where the place of use is on state or public land,
12 the holder of the certificate of appropriation, if a state
13 or public land management agency, shall seek consent for
14 the abandonment from any affected tenant of the land. If
15 consent is obtained from the tenant, proof shall be secured
16 and attached to the petition. The holder shall provide to
17 the state engineer in writing a list of all affected
18 tenants from whom the holder has failed to secure consent.
19 The state engineer shall notify all such tenants of their
20 right to request a hearing as provided in subsection (b) of
21 this section.

22

1 **41-4-506. Time limits for completing construction**
2 **work; extensions; forfeiture of rights; cancellation of**
3 **permit; notice of date of expiration to appropriator.**

4
5 (a) Whenever the state engineer places his
6 endorsement of approval on any application for a water
7 permit, he shall require that actual construction work be
8 completed within the time set by him in the permit. The
9 time set for completion shall not exceed a period of five
10 (5) years after the date of approval of application. In the
11 case of an application for a ditch permit, he shall further
12 require that the application of the water to beneficial use
13 must be completed before the date which he shall specify,
14 and which shall not be earlier than the date specified for
15 the completion of construction; and that final proof of
16 appropriation must be submitted within five (5) years after
17 the date specified for the completion of the application of
18 the water to beneficial use. He may limit the application
19 to a less period of time for the completion of construction
20 and application of water to beneficial use than is asked
21 for in the application. For good cause shown, the state
22 engineer may at any time, or from time to time, before the
23 date of expiration, extend any or all of these periods. An
24 extension of time for compliance with any of the specified

1 requirements shall be construed to automatically extend for
2 a like period the time for compliance with any of the
3 specific requirements in relation to which the time expires
4 thereafter. Default by the holder of the permit in any of
5 the specified requirements shall work a forfeiture of the
6 water right involved. The state engineer may upon such
7 default cancel the permit. The state engineer shall, by
8 registered mail, with a return receipt requested at least
9 three (3) months before default in any of these
10 requirements shall be operative, notify the permit holder,
11 at the post-office address given by him when the time
12 allowed will expire. If the permit holder cannot be reached
13 by registered mail, or if the address of the permit holder
14 is unknown, the state engineer shall publish notice of the
15 default for three (3) weeks in a newspaper of general
16 circulation published in the county, or in case there is no
17 newspaper of general circulation published in the county,
18 then in a newspaper published in the state of Wyoming and
19 in general circulation in the county, the last publication
20 to be at least two (2) months before cancellation of the
21 permit.

22

23 (b) Where a state or public land management agency
24 seeks to cancel a permit or eliminate a use or place of use

1 from a permit held in their name, and the affected place of
2 use described on said permit includes state or public land,
3 the agency shall notify any affected tenant of the land of
4 the intent to cancel by certified mail addressed to the
5 tenant at his address with return receipt requested. In
6 the case where a permit sought to be cancelled is in the
7 name of a person or entity other than the land management
8 agency, and where the place of use to be cancelled includes
9 state or public land, the permit holder shall notify the
10 land management agency of the intent to cancel.

11

12 **Section 2.** This act is effective July 1, 2012.

13

14

(END)