

## HOUSE BILL NO. HB0307

Water management flexibility-2.

Sponsored by: Representative(s) Berger and Dockstader and  
Senator(s) Vasey

A BILL

for

1 AN ACT relating to water; providing for temporary water  
2 rights as specified; providing a definition; providing  
3 procedures; and providing for 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 is amended to read:

8

9 **41-3-110. Right to acquire temporary water rights for**  
10 **highway or railroad roadbed construction or repair;**  
11 **application; restrictions; fee.**

12

13 (a) Any person shall have the right to acquire by  
14 purchase, gift or lease the right to the use of water which  
15 may be embraced in any adjudicated or valid unadjudicated  
16 water right, or any portion thereof, for a period of not to

1 exceed two (2) years, for highway construction or repair,  
2 railroad roadbed construction or repair, drilling and  
3 producing operations, irrigation, municipal purposes, in-  
4 channel use or other temporary purposes, on its own behalf  
5 or on behalf of its agents, employees or contractors:  
6 provided, that if the proposed use is to be for public  
7 highway construction or repair under a contract with the  
8 state department of transportation, only the state  
9 transportation commission shall have the authority to  
10 acquire the water; and the state transportation commission  
11 shall have the sole and continuing responsibility for the  
12 acquisition, including the payment of all fees, royalties  
13 and other consideration for the use of and access to water  
14 and the right to acquire the rights to use shall not be  
15 delegated to a construction contractor or other third  
16 party; and further provided, that any temporary transfer  
17 shall be allowed only if no other appropriator is injured  
18 thereby. As used in this section, "in-channel use" means  
19 the temporary use achieved by either leaving the natural  
20 flows of a natural watercourse undiverted or introducing  
21 previously stored water into a natural watercourse for a  
22 beneficial use pursuant to this section. Any temporary  
23 transfer under this section shall be allowed only if no  
24 other appropriator is injured thereby.

1

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

18

19       (c) Only that portion of a water right so acquired  
20 which has been consumptively used under the historical use  
21 made of the water right, may be diverted by a temporary  
22 user. In determining the consumptive use of water rights  
23 for the direct use of the natural unstored flow of any  
24 stream for irrigation purposes, the return flow from those

1 rights shall be presumed to be fifty percent (50%). In  
2 those situations where an assumption of fifty percent (50%)  
3 return flow would be significantly in error, the state  
4 engineer shall have the prerogative of making a  
5 determination of the actual amount of return flow, and the  
6 amount of water which can be diverted for the temporary use  
7 provided herein shall be adjusted accordingly. The actual  
8 historic return flow, or the assumed return flow of fifty  
9 percent (50%) will be left in the stream for the use of  
10 downstream appropriators. The foregoing formula and  
11 procedure for the determination of consumptive use and  
12 return flow shall be limited to this section and shall have  
13 no application to any other statute of the state of  
14 Wyoming. Nothing herein contained shall be treated or  
15 construed as changing the prior use of water held by ~~said~~  
16 the owner or owners and as provided by the laws of the  
17 state of Wyoming.

18

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

1

2       (e) The state engineer shall not grant a temporary  
3 change of use application for in-channel use where the  
4 undiverted natural flows would be included as a portion of  
5 the consumptive share of water allocated to the state of  
6 Wyoming under any interstate compact or court decree. The  
7 amount of water appropriated for in-channel use in each  
8 river basin in Wyoming shall not result in more water  
9 leaving the state than the amount of water that is  
10 allocated by interstate compact or court decree for  
11 downstream uses outside Wyoming.

12

13       (f) Any change of use authorized under this section  
14 may be suspended at any time upon a determination by the  
15 superintendent of the water division within which the  
16 change of use occurs that the temporary change produces  
17 unanticipated injury to other water users. Any such  
18 suspension shall be subject to timely review by the state  
19 engineer.

20

21       (g) Any request for regulation to benefit a temporary  
22 in-channel use acquired under this section shall be made in  
23 writing in accordance with the provisions of W.S. 41-3-606.

24

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

15  
16       **Section 2.** W.S. 41-3-111 is repealed.

17  
18       **Section 3.** This act is effective immediately upon  
19 completion of all acts necessary for a bill to become law  
20 as provided by Article 4, Section 8 of the Wyoming  
21 Constitution.

22  
23                               (END)