

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) and (e)(intro), 41-3-401(b)(intro)
11 and by creating a new subsection (g) and 41-4-506 are
12 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, the petitioner shall seek consent for the
5 proposed change from any affected tenant of the land. If
6 consent is obtained from the tenant, proof shall be secured
7 and attached to the petition. In allowing a change in use
8 or change in place of use of a water right where the place
9 of use is on state or other public land, the board of
10 control, or in the case of a change of place of use under
11 adjudicated surface water or groundwater permits only as
12 limited by W.S. 41-4-514(a), the state engineer, shall
13 consider all facts the board or the state engineer as
14 applicable believes pertinent to the transfer which shall
15 include the following:

16
17 (i) The economic loss to the tenant caused by
18 the change, if a tenancy currently exists;

19
20 (ii) Whether other sources of water are
21 available for use by the tenant, if a tenancy currently
22 exists;

23

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

4
5 (d) In the event consent is not obtained, the tenant
6 may request a hearing in accordance with subsection (a) of
7 this section.

8
9 **41-3-114. Petition to change point of diversion or**
10 **means of conveyance.**

11
12 (c) If the petition is for a change in point of
13 diversion and means of conveyance for all or a part of an
14 appropriation, it shall include, in addition to the
15 foregoing, the name, permit number and date of priority of
16 the ditch or facility to which it is to be changed, and
17 whether the petitioner is the sole owner of both facilities
18 involved or has the consent of the other owners of both
19 ditches or facilities. For any petition where the
20 appropriation is on state or other public land, the
21 petitioner shall seek consent for the proposed change from
22 any affected tenant of the land. If consent is obtained
23 from the tenant, proof shall be secured and attached to the
24 petition.

1

2 (e) In event that written consents of tenants as
3 described in subsection (c) of this section or owners of
4 appropriations which divert between the old and new points
5 of diversion or the owners of ditches or facilities
6 involved in the proposed change are not secured and
7 attached to the petition, the petition shall be referred
8 to:

9

10 **41-3-401. Failure to use water; extension of time;**
11 **initiation by benefitted or injured user; hearing; appeal.**

12

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

1 precludes the inclusion of any such period of nonuse
2 resulting therefrom in the computation of the successive
3 five (5) year period under this section. The following
4 persons have standing to petition the state board of
5 control to declare the abandonment of existing water rights
6 under this section:

7
8 (g) In the case where voluntary relinquishment is
9 sought where the place of use is on state or other public
10 land, the holder of the certificate of appropriation shall
11 seek consent for the abandonment from any affected tenant
12 of the land. If consent is obtained from the tenant, proof
13 shall be secured and attached to the petition. In the
14 event consent is not obtained, the tenant may request a
15 hearing in accordance with subsection (b) of this section.

16
17 **41-4-506. Time limits for completing construction**
18 **work; extensions; forfeiture of rights; cancellation of**
19 **permit; notice of date of expiration to appropriator.**

20
21 (a) Whenever the state engineer places his
22 endorsement of approval on any application for a water
23 permit, he shall require that actual construction work be
24 completed within the time set by him in the permit. The

1 time set for completion shall not exceed a period of five
2 (5) years after the date of approval of application. In the
3 case of an application for a ditch permit, he shall further
4 require that the application of the water to beneficial use
5 must be completed before the date which he shall specify,
6 and which shall not be earlier than the date specified for
7 the completion of construction; and that final proof of
8 appropriation must be submitted within five (5) years after
9 the date specified for the completion of the application of
10 the water to beneficial use. He may limit the application
11 to a less period of time for the completion of construction
12 and application of water to beneficial use than is asked
13 for in the application. For good cause shown, the state
14 engineer may at any time, or from time to time, before the
15 date of expiration, extend any or all of these periods. An
16 extension of time for compliance with any of the specified
17 requirements shall be construed to automatically extend for
18 a like period the time for compliance with any of the
19 specific requirements in relation to which the time expires
20 thereafter. Default by the holder of the permit in any of
21 the specified requirements shall work a forfeiture of the
22 water right involved. The state engineer may upon such
23 default cancel the permit. The state engineer shall, by
24 registered mail, with a return receipt requested at least

1 three (3) months before default in any of these
2 requirements shall be operative, notify the permit holder,
3 at the post-office address given by him when the time
4 allowed will expire. If the permit holder cannot be reached
5 by registered mail, or if the address of the permit holder
6 is unknown, the state engineer shall publish notice of the
7 default for three (3) weeks in a newspaper of general
8 circulation published in the county, or in case there is no
9 newspaper of general circulation published in the county,
10 then in a newspaper published in the state of Wyoming and
11 in general circulation in the county, the last publication
12 to be at least two (2) months before cancellation of the
13 permit.

14

15 (b) Where a public land management agency seeks to
16 cancel a permit or eliminate a use or place of use from a
17 permit held in their name, and the affected place of use
18 described on said permit includes state or other public
19 land, the agency shall notify any affected tenant of the
20 land of the intent to cancel by certified mail addressed to
21 the tenant at his address with return receipt requested.
22 In the case where a permit sought to be cancelled is in the
23 name of a person or entity other than the land management
24 agency, and where the place of use to be cancelled includes

1 state or other public land, the permit holder shall notify
2 the land management agency of the intent to cancel.

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

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6 (END)