

SENATE FILE NO. SF0068

Prescriptive easement for water conveyances.

Sponsored by: Select Water Committee

A BILL

for

1 AN ACT relating to prescriptive easements; establishing  
2 prescriptive easements for water conveyances; providing  
3 requirements for the width and use of a prescriptive  
4 easement as specified; requiring the state engineer's  
5 office to maintain an informational document; providing  
6 notice to purchasers; specifying applicability and  
7 providing for an effective date.

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

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11 **Section 1.** W.S. 34-1-158 is created to read:

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13 **34-1-158. Prescriptive easement for water conveyance.**

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15 (a) A prescriptive easement for a water conveyance  
16 may be established if a water user has used and maintained

1 a water conveyance under a claim of right for a period of  
2 ten (10) years during which the use has been:

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4 (i) Continuous and uninterrupted;

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6 (ii) Open and notorious; and

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8 (iii) Hostile.

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10 (b) If a water user establishes paragraphs (a)(i) and  
11 (ii) of this section, there is a rebuttable presumption  
12 that the use has been hostile under paragraph (a)(iii).

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14 (c) The holder of a prescriptive easement for a water  
15 conveyance established as provided in subsections (a) and  
16 (b) may:

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18 (i) File a notice describing the prescriptive  
19 easement consistent with the requirements of W.S. 34-1-141  
20 in the office of the county clerk in which the prescriptive  
21 easement or a portion of the easement is located;

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1           (ii) Access, use, maintain and repair the water  
2 conveyance located within the easement in accordance with  
3 law. Maintenance, as used in this section, shall include  
4 the right of the holder of the prescriptive easement to  
5 temporarily remove infrastructure in or spanning the water  
6 conveyance system provided that:

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8           (A) Before the temporary removal for  
9 maintenance purposes of infrastructure that a landowner  
10 uses for ingress or egress, the holder of the prescriptive  
11 easement shall provide reasonable written notice given the  
12 extent and estimated time for maintenance but in no case  
13 shall notice be provided less than forty-eight (48) hours  
14 before any temporary removal;

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16           (B) Any temporary removal of a landowner's  
17 infrastructure for the purpose of water conveyance system  
18 maintenance shall be reasonable and minimize any burden on  
19 the landowner.

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21           (d) As used in this section:

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1           (ii) "Water conveyance" means a man made canal,  
2 ditch, drain ditch or pipeline that conveys water for  
3 agricultural purposes;

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5           (ii) "Water user" means a water user or the  
6 water user's predecessor who owns an adjudicated or valid  
7 unadjudicated water right being conveyed in a water  
8 conveyance.

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10          (e) The width of a prescriptive easement for a water  
11 conveyance shall be based on the size and volume of water  
12 in the conveyance system and shall:

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14           (i) Be of a reasonable width sufficient to  
15 utilize equipment suitable for the operation and  
16 maintenance of the water conveyance;

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18           (ii) Be from the center line of the conveyance  
19 system but may vary from each side of the center line to  
20 reasonably facilitate the size of equipment, placement of  
21 dredge material and the topography that the conveyance  
22 system traverses.

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1           (f) The state engineer's office shall maintain and  
2 post to its website an informational document regarding  
3 legal aspects related to water conveyance easements. This  
4 document shall not constitute legal advice. All real estate  
5 transactions involving property through which a water  
6 conveyance passes through shall include notice of this  
7 document.

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9           **Section 2.** Nothing in this act shall be construed to  
10 interfere with or modify any existing easement or property  
11 right, including a valid water right, nor alter any rights  
12 or duties associated with any existing easement or property  
13 right, as established by law.

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15           **Section 3.** This act is effective July 1, 2023.

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(END)