

SENATE FILE NO. SF0084

Voluntary water conservation program.

Sponsored by: Select Water Committee

A BILL

for

1 AN ACT relating to water within Wyoming's portion of the
2 Colorado River basin; establishing a voluntary water
3 conservation program; providing an application and approval
4 process for the program; providing an appeal process;
5 authorizing the storage and release of water conserved
6 under the program; establishing a sunset date; providing
7 legislative findings; requiring a report; requiring
8 rulemaking; authorizing positions; providing an
9 appropriation; and providing for an effective date.

10

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

12

13 **Section 1.** W.S. 41-3-117 through 41-3-119 are created
14 to read:

15

16 **41-3-117. Definitions; short title.**

1

2 (a) As used in this act:

3

4 (i) "Colorado River basin" shall have the same
5 meaning as defined in the Colorado River Compact and in the
6 Upper Colorado River Basin Compact;

7

8 (ii) "Colorado River Compact" means the document
9 signed on November 24, 1922, by representatives from the
10 states of Arizona, California, Colorado, Nevada, New
11 Mexico, Utah, and Wyoming, and codified at W.S. 41-12-301;

12

13 (iii) "Colorado River system" shall have the
14 same meaning as defined in the Colorado River Compact and
15 the Upper Colorado River Basin Compact;

16

17 (iv) "Conservation project" means a voluntary
18 project approved by the state engineer that reduces
19 consumptive use within Wyoming's portion of the Colorado
20 River basin may help satisfy Wyoming's interstate compact
21 obligations through interstate agreements;

22

1 (v) "Consumptive use" means the depletion of
2 water for domestic and agricultural beneficial uses as
3 those terms are defined and referred to in the Colorado
4 River Compact and the Upper Colorado River Basin Compact
5 "consumptive use" shall be measured through methods
6 described in the Colorado River Compact or by other
7 methodologies approved by the Upper Colorado River
8 Commission. "Consumptive use" shall include losses incurred
9 at the system level and not just the actual crop water
10 consumption. "Consumptive use" also includes the full
11 amount of water:

12

13 (A) Consumed in association with the
14 production of electrical power other than hydropower;

15

16 (B) Diverted from the Upper Colorado River
17 system for which there are no return flows to that system,
18 including diversions outside the natural Colorado River
19 watershed.

20

21 (vi) "Curtailment" means the curtailment of
22 water use under the terms of the Upper Colorado River Basin
23 Compact;

1

2 (vii) "Involuntary water use regulation" means
3 the regulation of water rights by a Wyoming hydrographer or
4 water commissioner as authorized by law and in accordance
5 with established priorities or as ordered by a court of
6 competent jurisdiction;

7

8 (viii) "Program" means the voluntary water
9 conservation program authorized pursuant to this act;

10

11 (ix) "Upper Colorado River Basin Compact" means
12 the document signed on October 11, 1948, by representatives
13 from the states of Arizona, Colorado, New Mexico, Utah, and
14 Wyoming, and codified at W.S. 41-12-401;

15

16 (x) "Upper Colorado River Commission" means the
17 administrative agency created by article VIII of the Upper
18 Colorado River Basin Compact;

19

20 (xi) "This act" means W.S. 41-3-117 through
21 41-3-119.

22

1 (b) This act shall be known and may be cited as the
2 "Voluntary Water Conservation Program Act".

3
4 **41-3-118. Conservation project applications and**
5 **approval; sunset.**

6
7 (a) Any person with a right to beneficially use water
8 under a valid water right that diverts water from within
9 Wyoming's portion of the Colorado River basin may apply to
10 the state engineer for approval of a conservation project.
11 Conservation project applications submitted under this
12 section shall be in writing and filed in the office of the
13 state engineer on a form provided by the state engineer.
14 Conservation project applications may include multiple
15 water rights and multiple appropriators, and shall be
16 accompanied by any information that the state engineer may
17 require. If the applicant is not the owner of the
18 applicable water right, the applicant shall provide written
19 consent from the water right owner.

20
21 (b) For the purpose of providing notice of the
22 program and of conservation project applications to water
23 right owners and other interested persons, the state

1 engineer shall provide the opportunity for water right
2 owners and other interested persons to request notice of
3 conservation project applications by regular mail or by
4 electronic means. Any person requesting notice of
5 conservation project applications under this subsection
6 shall identify the water district or districts for which
7 their request applies and shall provide a valid mailing or
8 email address.

9

10 (c) The state engineer shall publish notice of each
11 conservation project application filed under subsection (a)
12 of this section on the state engineer's website and shall
13 provide the regular mail or electronic notice required
14 under this section not less than thirty (30) days before
15 the state engineer issues a decision on the application.
16 The state engineer shall provide notice of each
17 conservation project application to all persons who have
18 requested notice of applications within that water district
19 and have provided a valid mailing or email address.
20 Additionally, not less than thirty (30) days before the
21 state engineer issues a decision on any conservation
22 project application that proposes to forego the diversion
23 and use of water for irrigation or for any other valid

1 water use purposes, the applicant shall certify to the
2 state engineer that the applicant made a good faith effort
3 to provide notice of the conservation project by personal
4 contact or regular mail to all owners of land adjacent to
5 conservation project lands and any contiguous lands owned
6 by the applicant. The certification shall include a list
7 that identifies all adjacent landowners that were notified
8 by the applicant. The owners of valid water rights whose
9 water rights may be injured by the proposed conservation
10 project, and any person who may be aggrieved or adversely
11 affected in fact by a conservation project, may provide
12 written comments to the state engineer not more than thirty
13 (30) days following the notice required by this subsection.

14

15 (d) The state engineer shall review each application
16 submitted under this section and any written comments that
17 are received under this section and shall approve only
18 those conservation project applications that are in
19 compliance with the requirements of this section and the
20 state engineer's regulations. The refusal or approval of an
21 application for a conservation project in accordance with
22 this section shall be endorsed thereon, and a record made
23 of such endorsement in the state engineer's office. The

1 application so endorsed shall be returned to the applicant
2 by regular mail. Approved applications shall also be posted
3 to the state engineer's website.

4

5 (e) The state engineer shall not approve a
6 conservation project application if the proposed
7 conservation project will:

8

9 (i) Injuriously affect the water rights of other
10 appropriators;

11

12 (ii) Not result in the reduction of historic
13 consumptive use;

14

15 (iii) Help satisfy Wyoming's interstate compact
16 obligations through interstate agreements. The state
17 engineer may refuse any conservation project application
18 that appears to be detrimental to the public interest or
19 that appears to provide for or aid in the interstate
20 marketing of water. The state engineer may approve a
21 conservation project subject to any conditions or
22 limitations that the state engineer determines are
23 necessary, including any conditions or limitations to

1 mitigate any local water impacts that a conservation
2 project may cause.

3

4 (f) Approved conservation projects shall not cause
5 the regulation of any other Wyoming water right by the
6 state of Wyoming. However, if an approved conservation
7 project is located on a source of supply that is being
8 regulated by a water commissioner under W.S. 41-3-606, the
9 water commissioner may prevent headgates of all downstream
10 diversions that are subject to the regulation from that
11 source of supply from diverting and using any water
12 conserved by the conservation project during the period of
13 time the source of supply is being regulated.

14

15 (g) The state engineer shall not approve a
16 conservation project application unless the applicant
17 demonstrates a recent history of consumptive use made under
18 the applicant's water right or the conservation project
19 helps satisfy Wyoming's interstate compact obligations
20 through interstate agreement or otherwise. A recent history
21 of consumptive use means consumptive use made under the
22 applicant's water right in not less than three (3) of the
23 five (5) years preceding the application. To determine the

1 historic consumptive use made under a water right, the
2 state engineer may utilize the methods adopted by the Upper
3 Colorado River Commission or by methods outlined in the
4 Colorado River Compact. For any conservation project where
5 the state engineer determines that alternative methods may
6 be better suited to determine the historic consumptive use,
7 the state engineer shall have the discretion to use those
8 alternative methods. The methods and procedures for
9 determining historic consumptive use under this subsection
10 shall not have application to any other statute of the
11 state of Wyoming.

12

13 (h) The state engineer shall not approve any
14 conservation project application, without the written
15 consent of the district, that includes water rights that
16 are appurtenant to lands within:

17

18 (i) An irrigation district;

19

20 (ii) A conservancy district; or

21

22 (iii) A watershed improvement district.

23

1 (j) For any conservation project that proposes to
2 temporarily forego the diversion and use of the direct
3 natural flow of water for irrigation purposes, the total
4 period of the conservation project approved under this
5 section shall not exceed five (5) consecutive years. After
6 the expiration of a conservation project approved under
7 this section that participated in the program for not less
8 than two (2) and not to exceed five (5) consecutive years,
9 the water right shall be used for its adjudicated or
10 permitted purpose for a period of not less than two (2)
11 years before becoming eligible for any further
12 participation in the program. This subsection shall not
13 apply to approved conservation projects that forego the
14 diversion and use of the direct natural flow of water for
15 irrigation purposes that also achieve long-term reductions
16 of consumptive use through irrigation system improvements.

17

18 (k) No loss, abandonment or impairment of any water
19 rights involved in an approved conservation project shall
20 occur or attach as a result of the conservation project.
21 Upon termination of the conservation project, the water
22 right holder's rights, privileges, uses and purposes held

1 under the original appropriation shall be automatically
2 reinvested.

3

4 (m) Any appeal of the state engineer's endorsement
5 upon a conservation project application shall be made in
6 the following manner:

7

8 (i) Any applicant who is aggrieved by the
9 endorsement made by the state engineer upon his application
10 may appeal the action of the state engineer to the board of
11 control within thirty (30) days after service by regular
12 mail of the notice of rejection of the application;

13

14 (ii) Any owner of a valid water right whose
15 water right will be injuriously affected by the state
16 engineer's approval of a conservation project may appeal
17 the action of the state engineer to the board of control
18 not later than thirty (30) days after the notice of
19 approval of the conservation project is posted on the state
20 engineer's website pursuant to subsection (d) of this
21 section;

22

1 (iii) Pursuant to an appeal under paragraph (i)
2 or (ii) of this subsection, the board of control shall
3 appoint a hearing officer and conduct a contested case
4 hearing in accordance with its rules and regulations and
5 the Wyoming Administrative Procedure Act. The decision of
6 the board of control shall be subject to judicial review
7 under W.S. 16-3-114;

8
9 (iv) Any person not entitled to an appeal under
10 paragraph (i) or (ii) of this subsection and who is
11 aggrieved or adversely affected in fact by the state
12 engineer's approval of a conservation project may seek
13 judicial review of the state engineer's action pursuant to
14 W.S. 16-3-114. Judicial review shall be sought within
15 thirty (30) days after the notice of approval of the
16 conservation project is posted on the state engineer's
17 website pursuant to subsection (d) of this section.

18
19 (n) Conservation project applications or approved
20 conservation projects under this section shall not be
21 considered or construed as applications for use of water
22 outside of the state of Wyoming, or transfers of use of

1 water outside the state of Wyoming, for purposes of W.S.
2 41-3-115.

3

4 (o) The state engineer shall assess a fee not to
5 exceed fifty dollars (\$50.00) for the review of
6 conservation project applications under this section. This
7 fee shall accompany a conservation project application and
8 shall be retained and deposited whether the application is
9 approved, refused or withdrawn.

10

11 (p) Information provided by an applicant or included
12 as part of a conservation project under this act shall not
13 be subject to W.S. 16-4-203(d)(xiv).

14

15 (q) No new conservation project shall be authorized
16 under this section on or after July 1, 2032.

17

18 **41-3-119. Storage of conserved water.**

19

20 (a) The state engineer and the Wyoming water
21 development office are hereby authorized to pursue the
22 ability to store water conserved under the program in any
23 reservoir in the Colorado River Basin located within

1 Wyoming. The state engineer and Wyoming water development
2 office are further authorized, in a manner consistent with
3 contracts entered into with the United States Bureau of
4 Reclamation, to store or facilitate the storage of
5 conserved water in any bureau of reclamation reservoir.

6

7 (b) Conserved water stored in any reservoir under
8 this section shall only be released for one (1) or more of
9 the following purposes:

10

11 (i) Beneficial consumptive use within the state
12 of Wyoming through direct delivery or exchange;

13

14 (ii) Mitigating the impacts of curtailment or
15 involuntary water use regulation on Wyoming water right
16 holders;

17

18 (iii) Helping to satisfy any portion of
19 Wyoming's interstate compact obligations through interstate
20 agreements or otherwise, including participating in an
21 Upper Colorado River basin program.

22

1 (c) The state engineer is hereby authorized to
2 investigate other reservoirs located within Wyoming's
3 portion of the Colorado River basin and assess their
4 suitability for the storage of water conserved under the
5 program. For any reservoir found to be suitable for the
6 storage of water conserved under the program the state
7 engineer is further authorized, in a manner consistent with
8 contracts entered into with the reservoir owner, to store
9 or facilitate the storage of conserved water in such
10 reservoir.

11

12 **Section 2.**

13

14 (a) The state engineer is authorized two (2)
15 additional full-time equivalent positions for the period
16 beginning with the effective date of this act and ending
17 June 30, 2028 to implement the requirements of this act. It
18 is the intent of the legislature that these two (2)
19 full-time positions be included in the standard budget
20 request for the state engineer for the 2029-2030 fiscal
21 biennium and thereafter.

22

1 (b) There is appropriated five hundred ten thousand
2 dollars (\$510,000.00) from the general fund to the state
3 engineer for purposes of funding the positions authorized
4 in subsection (a) of this section and any other expenses
5 necessary to implement this act. This appropriation shall
6 be for the period beginning within the effective date of
7 this act and ending June 30, 2028. This appropriation shall
8 not be transferred or expended for any other purpose and
9 any unexpended, unobligated funds remaining from this
10 appropriation shall revert as provided by law on June 30,
11 2028. It is the intent of the legislature that this
12 appropriation not be included in the standard budget
13 request for the state engineer for the 2029-2030 fiscal
14 biennium and thereafter.

15

16 **Section 3.** The legislature finds that, since 2000,
17 the Colorado River basin has experienced a prolonged period
18 of unusually low water flow conditions and drought, which
19 is considered the worst drought in the past one thousand
20 two hundred (1,200) years. Under federal law and practice,
21 the secretary of the interior must consult with the
22 Colorado River basin states and such state representatives
23 as each governor may designate regarding Colorado River

1 system operations. In order to help inform that federal law
2 and practice, and to foster interstate comity, the
3 voluntary conservation program authorized by section 1 of
4 this act is intended to help support Wyoming's involvement
5 in a broader Upper Colorado River basin program should one
6 be approved by the representative designated by Wyoming's
7 governor and the Upper Colorado River Commission. This act
8 is also intended to help Wyoming water users manage severe
9 and prolonged drought conditions and any associated water
10 use reductions and impacts in Wyoming's portion of the
11 Colorado River basin.

12

13 **Section 4.**

14

15 (a) For the purpose of providing notice of the
16 program created in section 1 of this act and of
17 conservation project applications to water right owners and
18 other interested persons, the state engineer shall:

19

20 (i) Not later than ninety (90) days after the
21 effective date of this act, cause to be published in at
22 least three (3) newspapers published within Wyoming's
23 portion of the Colorado river basin one (1) time each week

1 for three (3) consecutive weeks a notice of the Voluntary
2 Water Conservation Program Act and how water right owners
3 and other interested persons may obtain program
4 information;

5

6 (ii) Not later than ninety (90) days after the
7 effective date of this act, cause to be published in at
8 least two (2) Wyoming trade publications related to the
9 irrigated agriculture water use sector a notice of the
10 Voluntary Water Conservation Program Act and how water
11 right owners and other interested persons may obtain
12 program information;

13

14 (iii) Not later than one hundred twenty (120)
15 days after the effective date of this act, hold at least
16 three (3) public meetings at different locations within
17 Wyoming's portion of the Colorado river basin that provide
18 notice of the Voluntary Water Conservation Program Act and
19 how water right owners and other interested persons may
20 obtain program information.

21

22 **Section 5.** The state engineer shall promulgate all
23 rules necessary to implement this act.

1

2 **Section 6.** Nothing in this act shall be interpreted
3 or construed to impair or otherwise modify existing
4 agreements or any rights, obligations, claims or defenses
5 of the state of Wyoming under the Colorado River Compact,
6 the Upper Colorado River Basin Compact or any other federal
7 law, state law, administrative rule, regulation or
8 guideline.

9

10 **Section 7.** The state engineer shall file a report
11 with the select water committee and the joint agriculture,
12 state and public lands and water resources interim
13 committee on or before October 1, 2026 and on or before
14 October 1 of each year thereafter until 2031, detailing the
15 operation of the program implemented under this act. The
16 report under this section shall include recommendations to
17 each committee regarding the continuance of the program and
18 any advantageous or necessary statutory changes.

19

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

5

6

(END)