

ENROLLED ACT NO. 62, SENATE

SIXTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2026 BUDGET SESSION

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

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

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

41-3-117. Definitions; short title.

(a) As used in this act:

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

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

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

(iv) "Conservation project" means a voluntary project approved by the state engineer that reduces consumptive use within Wyoming's portion of the Colorado

ENROLLED ACT NO. 62, SENATE

SIXTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2026 BUDGET SESSION

River basin or that may help satisfy Wyoming's interstate compact obligations through interstate agreements or under a valid court order entered by a court of competent jurisdiction;

(v) "Consumptive use" means the depletion of water for domestic and agricultural beneficial uses as those terms are defined and referred to in the Colorado River Compact and the Upper Colorado River Basin Compact. "Consumptive use" also includes the full amount of water:

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

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

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

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

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

(ix) "Upper Colorado River Basin Compact" means the document signed on October 11, 1948, by representatives

ENROLLED ACT NO. 62, SENATE

SIXTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2026 BUDGET SESSION

from the states of Arizona, Colorado, New Mexico, Utah, and Wyoming, and codified at W.S. 41-12-401;

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

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

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

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

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

(b) For the purpose of providing notice of the program and of conservation project applications to water right owners and other interested persons, the state engineer shall provide the opportunity for water right owners and other interested persons to request notice of

ENROLLED ACT NO. 62, SENATE

SIXTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2026 BUDGET SESSION

conservation project applications by regular mail or by electronic means. Any person requesting notice of conservation project applications under this subsection shall identify the water district or districts for which their request applies and shall provide a valid mailing or email address.

(c) The state engineer shall publish notice of each conservation project application filed under subsection (a) of this section on the state engineer's website and shall provide the regular mail or electronic notice required under this section not less than thirty (30) days before the state engineer issues a decision on the application. The state engineer shall provide notice of each conservation project application to all persons who have requested notice of applications within that water district and have provided a valid mailing or email address. Additionally, not less than thirty (30) days before the state engineer issues a decision on any conservation project application that proposes to forgo the diversion and use of water for irrigation, the applicant shall certify to the state engineer that the applicant made a good faith effort to provide notice of the conservation project by personal contact or regular mail to all owners of land adjacent to conservation project lands and any contiguous lands owned by the applicant. The certification shall include a list that identifies all adjacent landowners that were notified by the applicant. The owners of valid water rights whose water rights may be injured by the proposed conservation project, and any person who may be aggrieved or adversely affected in fact by a conservation project, may provide written comments to the state engineer not more than thirty (30) days following the notice required by this subsection.

ENROLLED ACT NO. 62, SENATE

SIXTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2026 BUDGET SESSION

(d) The state engineer shall review each application submitted under this section and any written comments that are received under this section and shall approve only those conservation project applications that are in compliance with the requirements of this section and the state engineer's regulations. The refusal or approval of an application for a conservation project in accordance with this section shall be endorsed thereon, and a record made of such endorsement in the state engineer's office. The application so endorsed shall be returned to the applicant by regular mail. Approved applications shall also be posted to the state engineer's website.

(e) The state engineer shall not approve a conservation project application if the proposed conservation project will injuriously affect the water rights of other appropriators and will not:

(i) Result in the reduction of historic consumptive use; or

(ii) Help satisfy Wyoming's interstate compact obligations through interstate agreements or under a valid court order entered by a court of competent jurisdiction.

(f) The state engineer may refuse any conservation project application that appears to be detrimental to the public interest or that appears to provide for or aid in the interstate marketing of water. The state engineer may approve a conservation project subject to any conditions or limitations that the state engineer determines are necessary, including any conditions or limitations to mitigate any local water impacts that a conservation project may cause.

ENROLLED ACT NO. 62, SENATE

SIXTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2026 BUDGET SESSION

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

(h) The state engineer shall not approve a conservation project application unless the applicant demonstrates a recent history of consumptive use made under the applicant's water right or the conservation project helps satisfy Wyoming's interstate compact obligations through interstate agreement or otherwise. A recent history of consumptive use means consumptive use made under the applicant's water right in not less than three (3) of the five (5) years preceding the application. To determine the historic consumptive use made under a water right, the state engineer may utilize the methods adopted by the Upper Colorado River Commission. For any conservation project where the state engineer determines that alternative methods may be better suited to determine the historic consumptive use, including methods to estimate consumptive use incident to the diversion, impounding and conveyance of water, the state engineer shall have the discretion to use those alternative methods. The methods and procedures for determining historic consumptive use under this subsection shall not have application to any other statute of the state of Wyoming.

(j) The state engineer shall not approve any conservation project application, without the written

ENROLLED ACT NO. 62, SENATE

SIXTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2026 BUDGET SESSION

consent of the district, that includes water rights that are appurtenant to lands within:

- (i) An irrigation district;
- (ii) A conservancy district; or
- (iii) A watershed improvement district.

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

(m) No loss, abandonment or impairment of any water rights involved in an approved conservation project shall occur or attach as a result of the conservation project. Upon termination of the conservation project, the water right holder's rights, privileges, uses and purposes held under the original appropriation shall be automatically reinvested.

ENROLLED ACT NO. 62, SENATE

SIXTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2026 BUDGET SESSION

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

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

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

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

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

ENROLLED ACT NO. 62, SENATE

SIXTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2026 BUDGET SESSION

conservation project is posted on the state engineer's website pursuant to subsection (d) of this section.

(o) Conservation project applications or approved conservation projects under this section shall not be considered or construed as applications for use of water outside of the state of Wyoming, or transfers of use of water outside the state of Wyoming, for purposes of W.S. 41-3-115.

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

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

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

41-3-119. Storage of conserved water.

(a) The state engineer and the Wyoming water development office are hereby authorized to pursue the ability to store water conserved under the program in Fontenelle Reservoir. The state engineer and Wyoming water development office are further authorized, in a manner consistent with contracts entered into with the United States Bureau of Reclamation, to store or facilitate the storage of conserved water in Fontenelle Reservoir.

ENROLLED ACT NO. 62, SENATE

SIXTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2026 BUDGET SESSION

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

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

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

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

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

Section 2.

(a) The state engineer is authorized two (2) additional full-time equivalent positions for the period beginning with the effective date of this act and ending June 30, 2028 to implement the requirements of this act. It is the intent of the legislature that these two (2) full-time positions be included in the standard budget

ENROLLED ACT NO. 62, SENATE

SIXTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2026 BUDGET SESSION

request for the state engineer for the 2029-2030 fiscal biennium and thereafter.

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

Section 3. The legislature finds that, since 2000, the Colorado River basin has experienced a prolonged period of unusually low water flow conditions and drought, which is considered the worst drought in the past one thousand two hundred (1,200) years. Under federal law and practice, the secretary of the interior must consult with the Colorado River basin states and such state representatives as each governor may designate regarding Colorado River system operations. In order to help inform that federal law and practice, and to foster interstate comity, the voluntary conservation program authorized by section 1 of this act is intended to help support Wyoming's involvement in a broader Upper Colorado River basin program should one be approved by the representative designated by Wyoming's governor and the Upper Colorado River Commission. This act is also intended to help Wyoming water users manage severe and prolonged drought conditions and any associated water

ENROLLED ACT NO. 62, SENATE

SIXTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2026 BUDGET SESSION

use reductions and impacts in Wyoming's portion of the Colorado River basin.

Section 4.

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

(i) Not later than ninety (90) days after the effective date of this act, cause to be published in at least three (3) newspapers published within Wyoming's portion of the Colorado river basin one (1) time each week for three (3) consecutive weeks a notice of the Voluntary Water Conservation Program Act and how water right owners and other interested persons may obtain program information;

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

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

ENROLLED ACT NO. 62, SENATE

SIXTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2026 BUDGET SESSION

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

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

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

ORIGINAL SENATE
FILE NO. SF0084

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ENROLLED ACT NO. 62, SENATE

SIXTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2026 BUDGET SESSION

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

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk