

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 or helps satisfy Wyoming's interstate compact
21 obligations through interstate agreements or otherwise;

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" also includes the full amount of water:

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

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

14

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

17

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

22

1 (viii) "Upper Colorado River Commission" means
2 the administrative agency created by article VIII of the
3 Upper Colorado River Basin Compact;

4

5 (ix) "This act" means W.S. 41-3-117 through
6 41-3-119.

7

10

11 41-3-118. Conservation project applications and
12 approval; sunset.

13

14 (a) Any person with a right to beneficially use water
15 under a valid water right that diverts water from within
16 Wyoming's portion of the Colorado River basin may apply to
17 the state engineer for approval of a conservation project.

18 Conservation project applications submitted under this
19 section shall be in writing and filed in the office of the
20

21 Conservation project applications may include multiple
22 water rights and multiple appropriators, and shall be
23 accompanied by any information that the state engineer may

1 require. If the applicant is not the owner of the
2 applicable water right, the applicant shall provide written
3 consent from the water right owner.

4

5 (b) The state engineer shall publish notice of each
6 conservation project application filed under subsection (a)
7 of this section on the state engineer's website and shall
8 provide the electronic notice required under this section
9 not less than thirty (30) days before the state engineer
10 issues a decision on the application. The state engineer
11 shall provide electronic notice of each conservation
12 project application to all persons who have requested
13 electronic notice and have provided a valid email address.

14 Additionally, not less than thirty (30) days before the
15 state engineer issues a decision on any conservation
16 project application that proposes to forego the diversion
17 and use of water for irrigation purposes, the applicant
18 shall certify to the state engineer that the applicant made
19 a good faith effort to provide notice of the conservation
20 project by personal contact or regular mail to all owners
21 of land adjacent to conservation project lands and any
22 contiguous lands owned by the applicant. The certification
23 shall include a list that identifies all adjacent

1 landowners that were notified by the applicant. The owners
2 of valid water rights whose water rights may be injured by
3 the proposed conservation project, and any person who may
4 be aggrieved or adversely affected in fact by a
5 conservation project, may provide written comments to the
6 state engineer not more than thirty (30) days following the
7 notice required by this subsection.

8

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

21

22 (d) The state engineer shall not approve a
23 conservation project application if the proposed

1 conservation project will injuriously affect the water
2 rights of other appropriators or if the proposed
3 conservation project will not result in the reduction of
4 historic consumptive use or help satisfy Wyoming's
5 interstate compact obligations through interstate
6 agreements or otherwise. The state engineer may refuse any
7 conservation project application that appears to be
8 detrimental to the public interest or that appears to
9 provide for or aid in the interstate marketing of water.
10 The state engineer may approve a conservation project
11 subject to any conditions or limitations that the state
12 engineer determines are necessary, including any conditions
13 or limitations to mitigate any local water impacts that a
14 conservation project may cause.

15

16 (e) Approved conservation projects shall not cause
17 the involuntary regulation of any other Wyoming water
18 right. However, if an approved conservation project is
19 located on a source of supply that is being regulated by a
20 water commissioner under W.S. 41-3-606, the water
21 commissioner may prevent headgates of all downstream
22 diversions that are subject to the regulation from that
23 source of supply from diverting and using any water

1 conserved by the conservation project during the period of
2 time the source of supply is being regulated.

3

4 (f) The state engineer shall not approve a
5 conservation project application unless the applicant
6 demonstrates a recent history of consumptive use made under
7 the applicant's water right or the conservation project
8 helps satisfy Wyoming's interstate compact obligations
9 through interstate agreement or otherwise. A recent history
10 of consumptive use means consumptive use made under the
11 applicant's water right in not less than three (3) of the
12 five (5) years preceding the application. To determine the
13 historic consumptive use made under a water right, the
14 state engineer may utilize the methods adopted by the Upper
15 Colorado River Commission. For any conservation project
16 where the state engineer determines that alternative
17 methods may be better suited to determine the historic
18 consumptive use, the state engineer shall have the
19 discretion to use those alternative methods. The methods
20 and procedures for determining historic consumptive use
21 under this subsection shall not have application to any
22 other statute of the state of Wyoming.

23

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23

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

8

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19 (ii) Any owner of a valid water right whose
20 water right will be injuriously affected by the state
21 engineer's approval of a conservation project may appeal
22 the action of the state engineer to the board of control
23 not later than thirty (30) days after the notice of

1 approval of the conservation project is posted on the state
2 engineer's website pursuant to subsection (c) of this
3 section;

4

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

12

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

22

1 (m) Conservation project applications or approved
2 conservation projects under this section shall not be
3 considered or construed as applications for use of water
4 outside of the state of Wyoming, or transfers of use of
5 water outside the state of Wyoming, for purposes of W.S.
6 41-3-115.

7

14

15 (o) 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; Fontenelle
19 Reservoir.

20

21 (a) The state engineer and the Wyoming water
22 development office are hereby authorized to pursue the
23 ability to store water conserved under the program in

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

6

7 (b) Conserved water stored in Fontenelle Reservoir
8 under this section shall only be released for one (1) or
9 more of 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 be included in the standard budget request
13 for the state engineer for the 2029-2030 fiscal biennium
14 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.** The state engineer shall promulgate all
14 rules necessary to implement this act.

15

16 **Section 5.** Nothing in this act shall be interpreted
17 or construed to impair or otherwise modify existing
18 agreements or any rights, obligations, claims or defenses
19 of the state of Wyoming under the Colorado River Compact,
20 the Upper Colorado River Basin Compact or any other federal
21 law, state law, administrative rule, regulation or
22 guideline.

23

1 **Section 6.** The state engineer shall file a report
2 with the select water committee on or before October 1,
3 2026 and on or before October 1 of each year thereafter
4 until 2031, detailing the operation of the program
5 implemented under this act. The report under this section
6 shall include recommendations to the committee regarding
7 the continuance of the program and any advantageous or
8 necessary statutory changes.

9

10 **Section 7.** This act is effective immediately upon
11 completion of all acts necessary for a bill to become law
12 as provided in Article 4, Section 8 of the Wyoming
13 Constitution.

14

15

(END)