

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:  
6

7           (A) Consumed in association with the  
8 production of electrical power other than hydropower;  
9

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

8 (b) This act shall be known and may be cited as the  
9 "Voluntary Water Conservation Program Act".  
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 state engineer on a form provided by the state engineer.  
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

1           (g) The state engineer shall not approve any  
2 conservation project application that includes water rights  
3 that are appurtenant to lands within an irrigation district  
4 or conservancy district without the written consent of the  
5 district.

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

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

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

18  
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  
8           (n) The state engineer shall assess a fee not to  
9 exceed fifty dollars (\$50.00) for the review of  
10 conservation project applications under this section. This  
11 fee shall accompany a conservation project application and  
12 shall be retained and deposited whether the application is  
13 approved, refused or withdrawn.

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.

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.

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)