

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO. [BILL NUMBER]

Temporary water use agreements amendments.

Sponsored by: Select Water Committee

A BILL

for

1 AN ACT relating to water; amending temporary water rights
2 as specified; and providing for an effective date.

3

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

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6 *****
7 *****

8 **STAFF COMMENT**

9 **For the Committee's reference, this version of the bill**
10 **draft contains the entirety of the statutes amended, and**
11 **includes changes made to the section title. In any final**
12 **version, consistent with LSO drafting conventions, any**
13 **subsection that has no changes will be removed along with**
14 **the stricken and underlined alterations noted in the**
15 **section title.**

16 *****
17 *****

18

19 **Section 1.** W.S. 41-3-110(a) is amended to read:

1

2 **41-3-110. Right to acquire temporary water rights**~~for~~
3 ~~highway or railroad roadbed construction or repair;~~
4 ~~application; restrictions; fee.~~

5

6 (a) Any person shall have the right to acquire by
7 purchase, gift or lease the right to the use of water which
8 may be embraced in any adjudicated or valid unadjudicated
9 water right, or any portion thereof, for a period of not to
10 exceed ~~two (2)~~ five (5) years, for temporary beneficial
11 purposes. ~~highway construction or repair, railroad roadbed~~
12 ~~construction or repair, drilling and producing operations,~~
13 ~~or other temporary purposes, on its own behalf or on behalf~~
14 ~~of its agents, employees or contractors: provided, that if~~
15 ~~the proposed use is to be for public highway construction~~
16 ~~or repair under a contract with the state department of~~
17 ~~transportation, only the state transportation commission~~
18 ~~shall have the authority to acquire the water; and the~~
19 ~~state transportation commission shall have the sole and~~
20 ~~continuing responsibility for the acquisition, including~~
21 ~~the payment of all fees, royalties and other consideration~~
22 ~~for the use of and access to water and the right to acquire~~
23 ~~the rights to use shall not be delegated to a construction~~

1 ~~contractor or other third party; and further provided, that~~
2 Any temporary transfer shall be allowed only if no other
3 appropriator is injured thereby. Upon request the state
4 engineer, in his discretion, may renew a temporary transfer
5 for successive periods not to exceed five (5) years each.
6

7 (b) Before any right to such use shall become
8 operative, an application must be made in writing on a form
9 provided or designated by the state engineer, with a copy
10 of any conveyance or agreement provided, and it shall be
11 filed in the office of the state engineer for his
12 ratification and approval. Upon approval by the state
13 engineer, an order authorizing such use and designating the
14 method, place, and period of use may be entered. No loss,
15 abandonment or impairment of such water rights shall occur
16 or attach as a result of such change or use, except as
17 provided by said conveyance or agreement and order of the
18 state engineer, and upon termination of the temporary
19 diversion and use, as stated in the order, any affected
20 right to the use of water shall automatically be reinvested
21 with all the rights, privileges and uses, and purposes
22 theretofore held and enjoyed.

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1 (c) Only that portion of a water right so acquired
2 which has been consumptively used under the historical use
3 made of the water right, may be diverted by a temporary
4 user. In determining the consumptive use of water rights
5 for the direct use of the natural unstored flow of any
6 stream for irrigation purposes, the return flow from those
7 rights shall be presumed to be fifty percent (50%). In
8 those situations where an assumption of fifty percent (50%)
9 return flow would be significantly in error, the state
10 engineer shall have the prerogative of making a
11 determination of the actual amount of return flow, and the
12 amount of water which can be diverted for the temporary use
13 provided herein shall be adjusted accordingly. The actual
14 historic return flow, or the assumed return flow of fifty
15 percent (50%) will be left in the stream for the use of
16 downstream appropriators. The foregoing formula and
17 procedure for the determination of consumptive use and
18 return flow shall be limited to this section and shall have
19 no application to any other statute of the state of
20 Wyoming. Nothing herein contained shall be treated or
21 construed as changing the prior use of water held by said
22 owner or owners and as provided by the laws of the state of
23 Wyoming.

1

2 (d) The state engineer shall assess a fee not to
3 exceed one hundred dollars (\$100.00) for his review and
4 approval of temporary water agreements. This fee shall
5 accompany the agreement application and shall be retained
6 and credited to the general fund whether the agreement or
7 request is approved or denied.

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9 **41-3-111. Right to acquire temporary water rights**~~for~~
10 ~~highway or railroad roadbed construction or repair~~; right
11 of owner who cannot satisfy in full his right during time
12 of diversion.

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14 The owner of any permanent water right,~~whether prior or~~
15 ~~subsequent~~ which is senior in priority to that temporary
16 right acquired by any person under this act who cannot
17 satisfy~~in full his~~ the senior right in full during the
18 time said temporary user is diverting water under its
19 temporary water right shall have the absolute right upon
20 demand being made upon the appropriate state water
21 commissioner to cause such diversion to be shut off until
22 such time as said owner's water right is satisfied, or

1 until it is proven that the shutting down of the diversion
2 has no effect upon owner's right.

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4 **41-3-112. Right to acquire temporary water rights**~~for~~
5 ~~highway or railroad roadbed construction or repair;~~
6 **wrongfully causing diversion to be shut down.**

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8 It shall be unlawful for any person to wrongfully cause a
9 diversion made under a temporary water right required under
10 and by virtue of this act to be shut down. Any violation
11 of this section shall be punishable pursuant to W.S. 41-3-
12 616.

13

14 **Section 2.** This act is effective July 1, 2024.

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16

(END)