

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO. [BILL NUMBER]

Breach orders due process.

Sponsored by: HDraft Committee

A BILL

for

1 AN ACT relating to water; requiring the state engineer to
2 hold public meetings, provide notice, and allow for a vote
3 before issuing an emergency order to breach a dam or
4 diversion; amending abandonment of water rights as
5 specified; requiring rulemaking; and providing for
6 effective dates.

7

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

9

10 **Section 1.** W.S. 41-3-314(a) and by creating new
11 subsections (d) and (e) and 41-3-401(a) and by creating a
12 new subsection (g) are amended to read:

13

1 *****
 2 *****
 3 STAFF COMMENT
 4 This draft has not completed review at LSO and may require
 5 substantial changes or have unintended consequences.
 6
 7 This draft requires approval by water rights holders or
 8 landowners with a storage right before the state engineer
 9 can issue an emergency order to breach a dam or diversion,
 10 and requires public meetings. As drafted, there are no
 11 exceptions to these requirements. The Committee may wish to
 12 consider adding language that would allow the state
 13 engineer to issue a breach order regardless of any approval
 14 or meeting requirements in the event of an anticipated
 15 catastrophic failure within ten days, or similar language
 16 or timeframe.
 17 *****
 18 *****
 19

20 41-3-314. Alterations or repairs of dams or diversion
 21 systems; emergency repairs or breaching.

22
 23 (a) Subject to subsection (d) of this section, in
 24 case of an emergency where the state engineer or his
 25 authorized representative declares that repairs or
 26 breaching of a dam or diversion system are immediately
 27 necessary to safeguard life and property, the necessary
 28 repairs or breaching shall be started immediately by the
 29 owner or by the state engineer or his representative at the
 30 owner's expense, if the owner fails to do so. The state
 31 engineer and emergency response agencies shall be notified
 32 at once of any changes in the physical conditions of the

1 dam, diversion system, or reservoir which significantly
2 increase the probability of failure of the dam or diversion
3 works or the danger to life or property, proposed emergency
4 repairs or breaching to be instituted by the owner. These
5 reporting requirements shall apply only to cases in which
6 an emergency has been declared pursuant to this subsection.

7
8 (d) Before the state engineer or his authorized
9 representative may issue or physically execute an order
10 requiring a breach under this section the state engineer or
11 his representative shall:

12
13 (i) Determine a range of alternatives to
14 breaching and estimated costs of the alternatives including
15 repair or temporary repair;

16
17 (ii) Hold not less than four (4) public meetings
18 to provide information on the alternatives determined in
19 paragraph (i) of this subsection and allow for public
20 comment. Alternatives shall include information on the:

21
22 (A) Risk of failure;

23

1 (B) Risk of flooding with and without the
2 structure based on known hydrological flow regimes and
3 model flows deemed necessary for accurate assessments;

4
5 (C) Economic impact to water rights holders
6 and the community at large;

7
8 (D) Environmental impact;

9
10 (E) Hydrological impact, including ongoing
11 monitoring for effects on private wells, and identify
12 sources of funds for that purpose;

13
14 (F) Liability associated with any damage or
15 unforeseen circumstances associated with breaching issues
16 under an order by the state engineer.

17
18 (iii) Contact each water right holder or
19 landowner with water storage rights by certified mail
20 providing information on the proposed breach and the
21 upcoming public meetings, including the date, time and
22 location of each meeting.

23

1 (iv) Allow all water rights holders in a
2 reservoir or diversion or land owners with storage rights
3 to vote on the proposed breach action, with each vote being
4 given a weight proportional to the water or storage right
5 held by the person casting the vote. A majority of all
6 outstanding vote shares is required to authorize the
7 issuance of an order to breach.

8
9 **41-3-401. Failure to use water; extension of time;**
10 **initiation by benefitted or injured user; hearing; appeal.**

11
12 (a) Subject to subsection (g) of this section where
13 the holder of an appropriation of water from a surface,
14 underground or reservoir water source fails, either
15 intentionally or unintentionally, to use the water
16 therefrom for the beneficial purposes for which it was
17 appropriated, whether under an adjudicated or unadjudicated
18 right, during any five (5) successive years, he is
19 considered as having abandoned the water right and shall
20 forfeit all water rights and privileges appurtenant
21 thereto. Notwithstanding any provision in this section to
22 the contrary, the holder of an appropriation for the
23 diversion and storage of water in a reservoir, from which

1 water or a portion thereof has not yet been beneficially
2 used for the purposes for which appropriated, may apply to
3 the board of control for an extension of time not to exceed
4 five (5) years, within which to use water therefrom for the
5 beneficial purposes for which it was appropriated. In the
6 application the holder shall demonstrate the exercise of
7 due diligence toward the utilization of the appropriation,
8 and that notwithstanding the exercise of due diligence,
9 reasonable cause exists for nonuse. Reasonable cause
10 includes but is not limited to delay due to court or
11 administrative proceedings, time required in planning,
12 developing, financing and constructing projects for the
13 application of stored water to beneficial use which require
14 in excess of five (5) years to complete, delay due to
15 requirement of state and federal statutes and rules and
16 regulations thereunder and any other causes beyond the
17 control of the holder of the appropriation. Upon receipt of
18 an application for extension, the board of control shall
19 proceed under the provisions of W.S. 16-3-101 through 16-3-
20 115 and may grant an extension of time as it finds proper,
21 not to exceed five (5) years, for the application of the
22 appropriated water to the beneficial use for which it was
23 appropriated. A prior grant of extension of time hereunder

1 does not preclude the holder from applying for additional
2 extensions of time, each not to exceed five (5) years, upon
3 similar application and showing. The granting of an
4 extension of time precludes the commencement of an
5 abandonment action against the appropriation during the
6 period of extension.

7

8 (g) No existing water right shall be subject to
9 abandonment in part or in whole by a restriction or
10 complete loss of water usage placed on it by the state
11 engineer due to necessary repairs or breaching of a dam or
12 diversion, so long as reasonable diligence is being made
13 for repair or replacement.

14

15 **Section 2.** This act shall apply to all orders by the
16 state engineer to breach a dam or diversion issued on and
17 after July 1, 2025.

18

19 **Section 3.** The state engineer shall promulgate any
20 rules necessary to implement this act.

21

22 **Section 4.**

23

1 (a) Except as provided in subsection (b) of this
2 section, this act is effective July 1, 2025.

3

4 (b) Sections 2, 3 and 4 of this act are effective
5 immediately upon completion of all acts necessary for a
6 bill to become law as provided by Article 4, Section 8 of
7 the Wyoming Constitution.

8

9

(END)