

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO.

Voluntary water conservation program.

Sponsored by: Select Water Committee

A BILL

for

1 AN ACT relating to water; establishing a pilot water
2 conservation program; providing an application and approval
3 process for the program; providing an appeal process;
4 authorizing the storage and release of water conserved
5 under the program; establishing a sunset date; providing
6 legislative findings; requiring a report; requiring
7 rulemaking; authorizing positions; providing an
8 appropriation; and providing for an effective date.

9

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

11

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

1

2 **41-3-117. Definitions; short title.**

3

4 (a) As used in this act:

5

6 (i) "Conservation project" means a voluntary
7 project approved by the state engineer that reduces
8 consumptive use within Wyoming's portion of the Colorado
9 River basin or helps satisfy Wyoming's interstate compact
10 obligations through interstate agreements or otherwise;

11

12 (ii) "Colorado River basin" shall have the same
13 meaning as defined in the Colorado River Compact and in the
14 Upper Colorado River Basin Compact;

15

16 (iii) "Colorado River Compact" means the
17 document signed on November 24, 1922, by representatives
18 from the states of Arizona, California, Colorado, Nevada,
19 New Mexico, Utah, and Wyoming, and codified at W.S. 41-12-
20 301;

21

1 (iv) "Colorado River system" shall have the same
2 meaning as defined in the Colorado River Compact and the
3 Upper Colorado River Basin Compact;

4
5 (v) "Consumptive use" means the depletion of
6 water for domestic and agricultural beneficial uses as
7 those terms are defined and referred to in the Colorado
8 River Compact and the Upper Colorado River Basin Compact.
9 "Consumptive use" also includes the full amount of water:

10

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

13

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

18

19 (vi) "Program" means the pilot water
20 conservation program authorized pursuant to this act;

21

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

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

3

4 (viii) "Upper Colorado River Commission" means
5 the administrative agency created by article VIII of the
6 Upper Colorado River Basin Compact;

7

8 (ix) "This act" means W.S. 41-3-117 through 41-
9 3-119.

10

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

13

14 **41-3-118. Conservation project applications and**
15 **approval; sunset.**

16

17 (a) Any person with a right to beneficially use water
18 under a valid water right that diverts water from within
19 Wyoming's portion of the Colorado River basin may apply to
20 the state engineer for approval of a conservation project.
21 Conservation project applications submitted under this
22 section shall be in writing and filed in the office of the
23 state engineer on a form provided by the state engineer.

1 Conservation project applications may include multiple
2 water rights and multiple appropriators, and shall be
3 accompanied by any information that the state engineer may
4 require. If the applicant is not the owner of the
5 applicable water right, the applicant shall provide written
6 consent from the water right owner.

7

8 (b) The state engineer shall publish notice of each
9 conservation project application filed under subsection (a)
10 of this section on the state engineer's website and shall
11 provide the electronic notice required under this section
12 not less than thirty (30) days before the state engineer
13 issues a decision on the application. The state engineer
14 shall provide electronic notice of each conservation
15 project application to all persons who have requested
16 electronic notice and have provided a valid email address.
17 The owners of valid water rights whose water rights may be
18 injured by the proposed conservation project, and any
19 person who may be aggrieved or adversely affected in fact
20 by a conservation project, may provide written comments to
21 the state engineer not more than thirty (30) days following
22 the notice required by this subsection.

23

1 (c) The state engineer shall review each application
2 submitted under this section and any written comments that
3 are received under this section and shall approve only
4 those conservation project applications that are in
5 compliance with the requirements of this section and the
6 state engineer's regulations. The rejection or approval of
7 an application for a conservation project in accordance
8 with this section shall be noted on the application and a
9 record of the rejection or approval shall be retained in
10 the state engineer's office. The application, along with
11 the rejection or approval of the application, shall be
12 returned to the applicant by regular mail. Approved
13 applications shall also be posted to the state engineer's
14 website.

15

16 (d) The state engineer shall not approve a
17 conservation project application if the proposed
18 conservation project will injuriously affect the water
19 rights of other appropriators or if the proposed
20 conservation project will not result in the reduction of
21 historic consumptive use or help satisfy Wyoming's
22 interstate compact obligations through interstate
23 agreements or otherwise. The state engineer may reject any

1 conservation project application that appears to be
2 detrimental to the public interest or that appears to
3 provide for or aid in the interstate marketing of water.
4 The state engineer may approve a conservation project
5 subject to any conditions or limitations that the state
6 engineer determines are necessary, including any conditions
7 or limitations necessary to mitigate any local water
8 impacts that a conservation project may cause.

9

10 (e) Approved conservation projects shall not cause
11 the involuntary regulation of any other Wyoming water
12 right. However, if an approved conservation project is
13 located on a source of supply that is being regulated by a
14 water commissioner under W.S. 41-3-606, the water
15 commissioner may adjust the headgates of all downstream
16 diversions that are subject to the regulation from that
17 source of supply to prevent the diversion and use of any
18 water conserved by the conservation project during the
19 period of time the source of supply is being regulated.

20

21 (f) The state engineer shall not approve a
22 conservation project application unless the applicant
23 demonstrates a recent history of consumptive use made under

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

17

18 (g) The state engineer shall not approve any
19 conservation project application that includes water rights
20 that are appurtenant to lands within an irrigation district
21 or conservancy district without the written consent of the
22 district.

23

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

17

18 (j) No loss, abandonment or impairment of any water
19 rights involved in an approved conservation project shall
20 occur or attach as a result of the conservation project.
21 Upon termination of the conservation project, the water
22 right holder's rights, privileges, uses and purposes held

1 under the original appropriation shall be automatically
2 reinvested.

3

4 (k) Any appeal of the state engineer's rejection or
5 approval of a conservation project application shall be
6 made in the following manner:

7

8 (i) Any applicant who is aggrieved by the
9 rejection of his application under this section may appeal
10 the action of the state engineer to the board of control
11 not later than thirty (30) days after service by regular
12 mail of the notice of rejection of the application;

13

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

21

22 *****
23 *****

24

STAFF COMMENT

1 It may be advisable to change the language above from a
2 person "whose water right is injuriously affected" to a
3 person "whose water right is or may be injuriously
4 affected" or similar language as there may not be any
5 actual injury within 30 days of approval of the project.

6 *****
7 *****
8 *****
9 *****

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

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

27

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, rejected 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 and the Wyoming water
2 development office are hereby authorized to investigate
3 other reservoirs located within Wyoming's portion of the
4 Colorado River basin and assess their suitability for the
5 storage of water conserved under the program.

6

7 **Section 2.**

8

9 (a) The state engineer is authorized two (2)
10 additional full-time equivalent positions for the period
11 beginning with the effective date of this act and ending
12 June 30, 2028 to implement the requirements of this act. It
13 is the intent of the legislature that these two (2) full-
14 time positions be included in the standard budget request
15 for the state engineer for the 2029-2030 fiscal biennium
16 and thereafter.

17

18 (b) There is appropriated five hundred ten thousand
19 dollars (\$510,000.00) from the general fund to the state
20 engineer for purposes of funding the positions authorized
21 in subsection (a) of this section and any other expenses
22 necessary to implement this act. This appropriation shall
23 be for the period beginning within the effective date of

1 this act and ending June 30, 2028. This appropriation shall
2 not be transferred or expended for any other purpose and
3 any unexpended, unobligated funds remaining from this
4 appropriation shall revert as provided by law on June 30,
5 2028. It is the intent of the legislature that this
6 appropriation be included in the standard budget request
7 for the state engineer for the 2029-2030 fiscal biennium
8 and thereafter.

9

10 **Section 3.** The legislature finds that, since 2000,
11 the Colorado River basin has experienced a prolonged period
12 of unusually low water flow conditions and drought, which
13 is considered the worst drought in the past one thousand
14 two hundred (1,200) years. Under federal law and practice,
15 the secretary of the interior must consult with the
16 Colorado River basin states and such state representatives
17 as each governor may designate regarding Colorado River
18 system operations. In order to help inform that federal law
19 and practice, and to foster interstate comity, the pilot
20 conservation program authorized by section 1 of this act is
21 intended to help support Wyoming's involvement in a broader
22 Upper Colorado River basin program should one be approved
23 by the representative designated by Wyoming's governor and

1 the Upper Colorado River Commission. This act is also
2 intended to help Wyoming water users manage severe and
3 prolonged drought conditions and any associated water use
4 reductions and impacts in Wyoming's portion of the Colorado
5 River basin.

6

7 **Section 4.** The state engineer shall promulgate all
8 rules necessary to implement this act.

9

10 **Section 5.** Nothing in this act shall be interpreted or
11 construed to impair or otherwise modify existing agreements
12 or any rights, obligations, claims or defenses of the state
13 of Wyoming under the Colorado River Compact, the Upper
14 Colorado River Basin Compact or any other federal law,
15 state law, administrative rule, regulation or guideline.

16

17 **Section 6.** The state engineer shall file a report
18 with the select water committee on or before October 1,
19 2031, detailing the operation of the program implemented
20 under this act. The report shall include recommendations to
21 the committee regarding the continuance of the program and
22 any advantageous or necessary statutory changes.

23

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

5

6

(END)