

**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 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

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

3

4           **41-3-117. Definitions; short title.**

5

6           (a) As used in this act:

7

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

13

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

17

18           (iii) "Colorado River Compact" means the  
19 document signed on November 24, 1922, by representatives  
20 from the states of Arizona, California, Colorado, Nevada,  
21 New Mexico, Utah, and Wyoming, and codified at W.S. 41-12-  
22 301;

23

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 voluntary 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 "Voluntary 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

13

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

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

7

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

18

19 (f) The state engineer shall not approve a  
20 conservation project application unless the applicant  
21 demonstrates a recent history of consumptive use made under  
22 the applicant's water right or the conservation project  
23 helps satisfy Wyoming's interstate compact obligations

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

15

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

21

22 (h) For any conservation project that proposes to  
23 temporarily forego the diversion and use of the direct

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

15

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

23

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10

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

19

1 the Wyoming Administrative Procedure Act. The decision of  
2 the board of control shall be subject to judicial review  
3 under W.S. 16-3-114;

4

5 (iv) Any person not entitled to an appeal under  
6 paragraphs (i) or (ii) of this subsection and who is  
7 aggrieved or adversely affected in fact by the state  
8 engineer's approval of a conservation project may seek  
9 judicial review of the state engineer's action pursuant to  
10 W.S. 16-3-114. Judicial review shall be sought within  
11 thirty (30) days after the notice of approval of the  
12 conservation project is posted on the state engineer's  
13 website pursuant to subsection (c) of this section.

14

15 (m) Conservation project applications or approved  
16 conservation projects under this section shall not be  
17 considered or construed as applications for use of water  
18 outside of the state of Wyoming, or transfers of use of  
19 water outside the state of Wyoming, for purposes of W.S.  
20 41-3-115.

21

22 (n) The state engineer shall assess a fee not to  
23 exceed fifty dollars (\$50.00) for the review of

1 conservation project applications under this section. This  
2 fee shall accompany a conservation project application and  
3 shall be retained and deposited whether the application is  
4 approved, refused or withdrawn.

5

6 (o) No new conservation project shall be authorized  
7 under this section on or after July 1, 2032.

8

9 **41-3-119. Storage of conserved water; Fontenelle**  
10 **Reservoir.**

11

12 (a) The state engineer and the Wyoming water  
13 development office are hereby authorized to pursue the  
14 ability to store water conserved under the program in  
15 Fontenelle Reservoir. The state engineer and Wyoming water  
16 development office are further authorized, in a manner  
17 consistent with contracts entered into with the United  
18 States Bureau of Reclamation, to store or facilitate the  
19 storage of conserved water in Fontenelle Reservoir.

20

21 (b) Conserved water stored in Fontenelle Reservoir  
22 under this section shall only be released for one (1) or  
23 more of the following purposes:

1

2 (i) Beneficial consumptive use within the state  
3 of Wyoming through direct delivery or exchange;

4

5 (ii) Mitigating the impacts of curtailment or  
6 involuntary water use regulation on Wyoming water right  
7 holders;

8

9 (iii) Helping to satisfy any portion of  
10 Wyoming's interstate compact obligations through interstate  
11 agreements or otherwise, including participating in an  
12 Upper Colorado River basin program.

13

14 (c) The state engineer is hereby authorized to  
15 investigate other reservoirs located within Wyoming's  
16 portion of the Colorado River basin and assess their  
17 suitability for the storage of water conserved under the  
18 program. For any reservoir found to be suitable for the  
19 storage of water conserved under the program the state  
20 engineer is further authorized, in a manner consistent with  
21 contracts entered into with the reservoir owner, to store  
22 or facilitate the storage of conserved water in such  
23 reservoir.

1

2       **Section 2.**

3

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

12

13       (b) There is appropriated five hundred ten thousand  
14 dollars (\$510,000.00) from the general fund to the state  
15 engineer for purposes of funding the positions authorized  
16 in subsection (a) of this section and any other expenses  
17 necessary to implement this act. This appropriation shall  
18 be for the period beginning within the effective date of  
19 this act and ending June 30, 2028. This appropriation shall  
20 not be transferred or expended for any other purpose and  
21 any unexpended, unobligated funds remaining from this  
22 appropriation shall revert as provided by law on June 30,  
23 2028. It is the intent of the legislature that this

1 appropriation be included in the standard budget request  
2 for the state engineer for the 2029-2030 fiscal biennium  
3 and thereafter.

4

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

1

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

4

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

11

12          **Section 6.** The state engineer shall file a report  
13        with the select water committee on or before October 1,  
14        2026 and on or before October 1 of each year thereafter  
15        until 2031, detailing the operation of the program  
16        implemented under this act. The report under this section  
17        shall include recommendations to the committee regarding  
18        the continuance of the program and any advantageous or  
19        necessary statutory changes.

20

21          **Section 7.** This act is effective immediately upon  
22        completion of all acts necessary for a bill to become law

1 as provided in Article 4, Section 8 of the Wyoming  
2 Constitution.

3

4 (END)