

**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

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 refusal or approval of an
7 application for a conservation project in accordance with
8 this section shall be endorsed thereon, and a record made
9 of such endorsement in the state engineer's office. The
10 application so endorsed shall be returned to the applicant
11 by regular mail. Approved applications shall also be posted
12 to the state engineer's website.

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

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

4
5 (i) Any applicant who is aggrieved by the
6 endorsement made by the state engineer upon his application
7 may appeal the action of the state engineer to the board of
8 control within thirty (30) days after service by regular
9 mail of the notice of rejection of the application;

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
20 (iii) Pursuant to an appeal under paragraph (i)
21 or (ii) of this subsection, the board of control shall
22 appoint a hearing officer and conduct a contested case
23 hearing in accordance with its rules and regulations and

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)