

SENATE FILE NO. SF0078

Temporary instream flows.

Sponsored by: Senator(s) Case

A BILL

for

1 AN ACT relating to instream flows; providing for  
2 acquisition of temporary instream flows; and providing for  
3 an effective date.

4

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

6

7 **Section 1.** W.S. 41-3-110 by creating a new subsection  
8 (b), by amending and renumbering (b) as (c) and by  
9 renumbering (c) and (d) as (d) and (e), 41-3-1002(c) and  
10 41-3-1007 are amended to read:

11

12 **41-3-110. Right to acquire temporary water rights for**  
13 **highway or railroad roadbed construction or repair; right**  
14 **to acquire temporary water rights for instream flows;**  
15 **application; restrictions; fee.**

16

1       (b) The state shall have the right to acquire by  
2 purchase, gift or lease the right to the use of water which  
3 may be embraced in any adjudicated or valid unadjudicated  
4 water right, or any portion thereof, for a period of not to  
5 exceed two (2) years, for instream flow purposes, on its  
6 own behalf, provided:

7  
8           (i) Only the state shall have the authority to  
9 acquire the water pursuant to W.S. 41-3-1007(a)(ii); and

10  
11           (ii) Any temporary transfer shall be allowed  
12 only:

13  
14           (A) Downstream to the next nonparticipating  
15 landowner's headgate;

16  
17           (B) If no other appropriator is injured  
18 thereby; and

19  
20           (C) The water to be transferred has been  
21 used within the past five (5) years according to the terms  
22 of the current permit.

23

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

18

19       ~~(e)~~(d) Only that portion of a water right so acquired  
20 which has been consumptively used under the historical use  
21 made of the water right, may be diverted by a temporary  
22 user. In determining the consumptive use of water rights  
23 for the direct use of the natural unstored flow of any  
24 stream for irrigation purposes, the return flow from those

1 rights shall be presumed to be fifty percent (50%). In  
2 those situations where an assumption of fifty percent (50%)  
3 return flow would be significantly in error, the state  
4 engineer shall have the prerogative of making a  
5 determination of the actual amount of return flow, and the  
6 amount of water which can be diverted for the temporary use  
7 provided herein shall be adjusted accordingly. The actual  
8 historic return flow, or the assumed return flow of fifty  
9 percent (50%) will be left in the stream for the use of  
10 downstream appropriators. The foregoing formula and  
11 procedure for the determination of consumptive use and  
12 return flow shall be limited to this section and shall have  
13 no application to any other statute of the state of  
14 Wyoming. Nothing herein contained shall be treated or  
15 construed as changing the prior use of water held by said  
16 owner or owners and as provided by the laws of the state of  
17 Wyoming.

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19 ~~(d)~~(e) The state engineer shall assess a fee not to  
20 exceed one hundred dollars (\$100.00) for his review and  
21 approval of temporary water agreements. This fee shall  
22 accompany the agreement application and shall be retained  
23 and credited to the general fund whether the agreement or  
24 request is approved or denied.

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2           41-3-1002. Instream flows to be by stream segment;  
3 waters for permanent instream flows may be sold,  
4 transferred or otherwise conveyed under certain  
5 restrictions; ownership restricted.

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7           (c) Storage water appropriated for the purpose of  
8 providing instream flows in specified stream segments or  
9 existing water rights which are permanently converted to  
10 instream flow under provisions of W.S. ~~41-3-1007~~  
11 41-3-1007(a)(i) of this act may later be sold, transferred  
12 or otherwise conveyed to any other purpose pursuant to the  
13 requirements of W.S. 41-3-104, except that the board of  
14 control shall require that an advertised public hearing be  
15 held.

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17           41-3-1007. Acquisition of existing rights for  
18 instream flow purposes.

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20           (a) The state of Wyoming may:

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22           (i) Permanently acquire any existing water  
23 rights in streams of Wyoming by transfer or gift for the  
24 purpose of providing instream flows, provided that a change

1 in use of the right acquired shall be in accordance with  
2 W.S. 41-3-104;~~;~~

3

4 (ii) Temporarily acquire any existing water  
5 rights in streams of Wyoming by purchase, gift or lease for  
6 the purpose of providing instream flows, provided that a  
7 change in use of the right acquired shall be in accordance  
8 with W.S. 41-3-110.

9

10 (b) Any right acquired and changed shall be in the  
11 name of the state of Wyoming and shall be administered by  
12 the state engineer and the board of control, who shall  
13 insure that the use of water for instream flows shall not  
14 interfere with existing water rights or impair the value of  
15 such rights or related property. The game and fish  
16 commission shall act as a petitioner in a petition for  
17 change in use under this section.

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19 ~~(b)~~ (c) Any such water rights acquired and changed  
20 shall be limited to a specified stream segment by the board  
21 of control with priority date intact.

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1           **Section 2.** This act is effective July 1, 2011.

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(END)