

## HOUSE BILL NO. HB0084

Water management flexibility.

Sponsored by: Representative(s) Berger, Gingery, Illoway,  
Jorgensen, Throne and Warren and Senator(s)  
Burns, Schiffer and Vasey

A BILL

for

1 AN ACT relating to water; providing for temporary water  
2 rights as specified; providing procedures; imposing a fee;  
3 and providing for an effective date.

4

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

6

7 **Section 1.** W.S. 41-3-116 is created to read:

8

9 **41-3-116. Right to acquire temporary water rights for**  
10 **in-channel use; application; restrictions; fee.**

11

12 (a) In addition to the provisions of W.S. 41-3-1001  
13 through 41-3-1014 for instream flow for fisheries, any  
14 person may acquire by purchase, gift or lease the right to  
15 the use of water which may be embraced in any adjudicated  
16 or valid unadjudicated water right, or any portion thereof,

1 for a period not to exceed two (2) years for in-channel  
2 use. As used in this section, "in-channel use" means the  
3 temporary use achieved by either leaving the natural flows  
4 of a natural watercourse undiverted or introducing  
5 previously stored water into a natural watercourse for a  
6 beneficial use pursuant to this section. Any temporary  
7 transfer under this section shall be allowed only if no  
8 other appropriator is injured thereby.

9

10 (b) Before any right to any temporary use under this  
11 section shall become operative, an application shall be  
12 made in writing on a form provided or designated by the  
13 state engineer, with a copy of any conveyance or agreement  
14 provided. The application shall be filed in the office of  
15 the state engineer for his consideration and approval or  
16 denial. Upon approval by the state engineer, an order  
17 authorizing the use and designating the method, place and  
18 period of use may be entered. Upon termination of the  
19 temporary diversion and use, as stated in the order, any  
20 affected right to the use of water shall automatically be  
21 reinstated with all the rights, privileges and uses, and  
22 purposes theretofore held and enjoyed.

23

1           (c) Any period of use of any portion of a water right  
2 temporarily transferred under this section for in-channel  
3 use shall be tolled for purposes of determining  
4 abandonment or forfeiture of that water right pursuant to  
5 W.S. 41-3-401 and 41-3-402.

6

7           (d) A person may temporarily acquire and use only  
8 that portion of a water right of a natural unstored flow  
9 water right which has been consumptively used in the past.  
10 For temporary uses that involve transferring stored water  
11 from a consumptive to in-channel purpose, reductions in the  
12 use to account for conveyance losses may be required by the  
13 state engineer.

14

15           (e) In determining the consumptive use of water  
16 rights for the direct use of the natural unstored flow of  
17 any stream for irrigation purposes, the return flow from  
18 those rights shall be presumed to be fifty percent (50%).  
19 In situations where an assumption of fifty percent (50%)  
20 return flow would be significantly in error, the state  
21 engineer may make a determination of the actual amount of  
22 return flow and the amount of water which is available to  
23 be used, and adjust the return flow accordingly. The  
24 historic return flow or the assumed return flow of fifty

1 percent (50%) shall be left in the stream for use by other  
2 appropriators. The foregoing formula and procedure for the  
3 determination of consumptive use and return flow shall be  
4 limited to this section and shall have no application to  
5 any other statute of the state of Wyoming. Nothing in this  
6 subsection or subsection (d) of this section shall be  
7 treated or construed as changing the prior use of the  
8 transferred water.

9

10 (f) The state engineer shall not grant a temporary  
11 change of use application for in-channel use where the  
12 undiverted natural flows would be included as a portion of  
13 the consumptive share of water allocated to the state of  
14 Wyoming under any interstate compact or court decree. The  
15 amount of water appropriated for in-channel use in each  
16 river basin in Wyoming shall not result in more water  
17 leaving the state than the amount of water that is  
18 allocated by interstate compact or court decree for  
19 downstream uses outside Wyoming.

20

21 (g) Any change of use authorized under this section  
22 may be suspended at any time upon a determination by the  
23 superintendent of the water division within which the  
24 change of use occurs that the temporary change produces

1 unanticipated injury to other water users. Any such  
2 suspension shall be subject to timely review by the state  
3 engineer. The provisions of W.S. 41-3-111 shall not apply  
4 to temporary use applications for in-channel use pursuant  
5 to this section.

6

7 (h) The state engineer shall assess a nonrefundable  
8 fee not to exceed one hundred dollars (\$100.00) for  
9 application or renewal thereof pursuant to this section.  
10 The fee shall accompany the application and shall be  
11 credited to the general fund whether the application is  
12 approved or denied.

13

14 (j) Any request for regulation to benefit a temporary  
15 in-channel use acquired under this section shall be made in  
16 writing in accordance with the provisions of W.S. 41-3-606.

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18 (k) Notice for any measuring device necessary to  
19 monitor or regulate a temporary in-channel use acquired  
20 under this section shall be required under the provisions  
21 of W.S. 41-3-613. The party acquiring a temporary in-  
22 channel use, as designated on the state engineer's order  
23 approving the temporary use, shall be responsible for  
24 providing and installing any measuring device needed for

1 regulation or monitoring of stream flow as determined by  
2 the state engineer or superintendent of the water division  
3 within which the use is located. Any measuring device or  
4 adjustable and lockable headgate, if needed on any  
5 diversion within the affected stream reach for proper  
6 regulation of the temporary in-channel use, shall be the  
7 responsibility of the owner of the diversion.

8

9 **Section 2.** This act is effective July 1, 2007.

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(END)