

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO. [BILL NUMBER]

Water banking.

Sponsored by: Joint Agriculture, State and Public Lands &
Water Resources Interim Committee

A BILL

for

1 AN ACT relating to water; establishing a Wyoming water banking
2 program as specified; declaring water banking to be a
3 beneficial use of water; providing rulemaking authority;
4 amending related provisions; and providing for an effective
5 date.

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

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9 **Section 1.** W.S. 41-3-1101 and 41-3-1102 are created to
10 read:

11

12

ARTICLE 11

1

2

WATER BANKING

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STAFF COMMENT

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Other states have provided legislative findings related to

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water banking. It may be appropriate to begin the article

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with a section providing legislative findings related to

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water banking and the beneficial use of water.

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41-3-1101. Water banking.

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(a) Water banking in the Green River basin and the

18

Little Snake River basin in Wyoming as provided in this

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article shall be a beneficial use of water. Water may be

20

banked for any beneficial use including use for drought

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contingency planning and use for water compact security to

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help ensure that the state can supply water required under a

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water compact.

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3 STAFF COMMENT

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5 It would be advisable to develop definitions for "drought
6 contingency planning" and "water compact security".

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10 (b) The Wyoming water development commission shall
11 administer a water banking program as provided in this
12 article. The commission shall adopt rules necessary for the
13 water banking program.

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15 (c) In administering the water banking program under
16 this section the commission shall:

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18 (i) Provide a process for a person with a valid
19 water right, including contract rights, to direct some or all
20 of that right to the water bank as provided in W.S. 41-3-1102;

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22 (ii) Provide a process for water users to agree
23 with the commission for a temporary beneficial use of banked
24 water and determine the terms of a water use agreement that
25 provides for the use of banked water. Agreements for the use
26 of banked water under this section may provide for storage of

1 water for drought contingency planning and water compact
2 security as determined by the commission;

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4 (iii) In consultation with the state engineer,
5 determine when and how to accept banked water, where to store
6 banked water and the amount of banked water that is available
7 for water users;

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9 (iv) Facilitate transfers of water between water
10 right holders and water users through the water banking
11 program.

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13 (d) Water banking shall be a temporary water transfer
14 and no person shall acquire any new or enlarged permanent
15 water right through the use of the water banking program.

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17 **41-3-1102. Water bank deposits.**

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19 (a) Any person with a valid water right in the Green
20 River basin or the Little Snake River basin in Wyoming may
21 agree with the water development commission to deposit some
22 or all of that water into the water banking program as
23 provided by W.S. 41-3-1101.

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2 (b) No deposit shall be made under this section until
3 the state engineer determines that the deposit will not cause
4 injury to Wyoming water users. The state engineer may impose
5 conditions on the deposit of water as necessary to prevent
6 potential injury to other water users. The state engineer
7 shall make a determination of historic use for the purpose of
8 determining the amount of water that is applicable to a
9 deposit and historical return flows that shall be maintained.
10 The state engineer may adopt rules necessary for the
11 administration of this subsection.

12

13 (c) No deposit of water into the water banking program
14 under this section shall exceed ten (10) years.

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16 (d) If a person validly deposits water in the water
17 banking program under this section, the portion of the water
18 right that is deposited shall not be subject to any claim for
19 abandonment or any reduction in the historical consumptive
20 use calculation or other value of the deposited water right.

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22 **Section 2.** W.S. 41-2-116(a), 41-3-101, 41-3-103 and
23 41-3-401(a) are amended to read:

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2 **41-2-116. Water rights.**

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4 (a) The director of the Wyoming water development
5 office shall, at the direction of the governor, file
6 applications in the name of the state of Wyoming for permits
7 to appropriate water, to construct dams and other works, as
8 required for the water banking program including for storage
9 of banked water as provided in W.S. 41-3-1101, and to take
10 the steps necessary to acquire, maintain or preserve the
11 priority of any right essential to any project which is or
12 may become a project of the Wyoming water development program,
13 except that nothing in this subsection shall be construed to
14 authorize or empower the director of the Wyoming water
15 development office to acquire water rights through the power
16 of eminent domain.

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18 **41-3-101. Nature of water rights and beneficial use.**

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20 A water right is a right to use the water of the state, when
21 such use has been acquired by the beneficial application of
22 water under the laws of the state relating thereto, and in
23 conformity with the rules and regulations dependent thereon.

1 Beneficial use shall be the basis, the measure and limit of
2 the right to use water at all times, not exceeding the
3 statutory limit except as provided by W.S. 41-4-317. In
4 addition to any beneficial use specified by law or rule and
5 regulation promulgated pursuant thereto, the use of water for
6 the water banking program as provided in W.S. 41-3-1101 and
7 41-3-1102 or for the purpose of extracting heat therefrom is
8 considered a beneficial use subject to prior rights. Water
9 being always the property of the state, rights to its use
10 shall attach to the land for irrigation, or to such other
11 purposes or object for which acquired in accordance with the
12 beneficial use made for which the right receives public
13 recognition, under the law and the administration provided
14 thereby. Water rights for the direct use of the natural
15 unstored flow of any stream cannot be detached from the lands,
16 place or purpose for which they are acquired, except as
17 provided in W.S. 41-3-102 and 41-3-103, pertaining to a change
18 to preferred use, and except as provided in W.S. 41-4-514.

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20 **41-3-103. Preferred uses; procedure for change of use.**

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22 Where it can be shown to the board of control under the
23 provisions hereof, that a preferred use is to be made, the

1 procedure for a change of such use shall embrace a public
2 notice, an inspection and hearing if necessary by and before
3 the proper division superintendent, a report of such
4 superintendent to the board of control, and an order by said
5 board. If the change of use is approved, just compensation
6 shall be paid and under the direction of the board, proper
7 instruments shall be drawn and recorded. The procedure for a
8 change of use shall not apply to any water right that is used
9 for deposit of water in the water banking program as provided
10 in W.S. 41-3-1102.

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12 **41-3-401. Failure to use water; extension of time;**
13 **initiation by benefitted or injured user; hearing; appeal.**

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15 (a) Where the holder of an appropriation of water from
16 a surface, underground or reservoir water source fails,
17 either intentionally or unintentionally, to use the water
18 therefrom for the beneficial purposes for which it was
19 appropriated, whether under an adjudicated or unadjudicated
20 right, during any five (5) successive years, he is considered
21 as having abandoned the water right and shall forfeit all
22 water rights and privileges appurtenant thereto. This section
23 shall not apply to any water right that is used for deposit

1 of water in the water banking program as provided in W.S.
2 41-3-1102. Notwithstanding any provision in this section to
3 the contrary, the holder of an appropriation for the diversion
4 and storage of water in a reservoir, from which water or a
5 portion thereof has not yet been beneficially used for the
6 purposes for which appropriated, may apply to the board of
7 control for an extension of time not to exceed five (5) years,
8 within which to use water therefrom for the beneficial
9 purposes for which it was appropriated. In the application
10 the holder shall demonstrate the exercise of due diligence
11 toward the utilization of the appropriation, and that
12 notwithstanding the exercise of due diligence, reasonable
13 cause exists for nonuse. Reasonable cause includes but is not
14 limited to delay due to court or administrative proceedings,
15 time required in planning, developing, financing and
16 constructing projects for the application of stored water to
17 beneficial use which require in excess of five (5) years to
18 complete, delay due to requirement of state and federal
19 statutes and rules and regulations thereunder and any other
20 causes beyond the control of the holder of the appropriation.
21 Upon receipt of an application for extension, the board of
22 control shall proceed under the provisions of W.S. 16-3-101
23 through 16-3-115 and may grant an extension of time as it

1 finds proper, not to exceed five (5) years, for the
2 application of the appropriated water to the beneficial use
3 for which it was appropriated. A prior grant of extension of
4 time hereunder does not preclude the holder from applying for
5 additional extensions of time, each not to exceed five (5)
6 years, upon similar application and showing. The granting of
7 an extension of time precludes the commencement of an
8 abandonment action against the appropriation during the
9 period of extension.

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11 **Section 3.** This act is effective July 1, 2019.

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15 **STAFF COMMENT**
16 **A delayed effective date may be advisable to provide time for**
17 **the Commission and the State Engineer to adopt rules for the**
18 **administration of the water banking program.**

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23 (END)