

SENATE FILE NO. SF0028

Water rights-penalties.

Sponsored by: Senator(s) Geis

A BILL

for

1 AN ACT relating to water rights; amending the penalties for
2 violating water laws as specified; and providing for an
3 effective date.

4

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

6

7 **Section 1.** W.S. 41-3-616 is created to read:

8

9 **41-3-616. Penalties for violation of water laws.**

10

11 (a) Unless otherwise provided, any person violating
12 any of the provisions of W.S. 41-3-112, 41-3-208, 41-3-301,
13 41-3-614, 41-3-914, 41-3-919, 41-3-938, 41-4-501, 41-4-504,
14 41-5-107, 41-5-108 or 41-5-110 after receipt of a written
15 notice of violation from the state engineer's office or the
16 board of control is guilty of a misdemeanor punishable by a
17 fine not to exceed one thousand two hundred fifty dollars

1 (\$1,250.00). Each day of noncompliance with the provisions
2 of these sections after receipt of a written notice of
3 violation from the state engineer's office or the board of
4 control shall be deemed a separate violation. The
5 possession, use or presence upon any person's land of water
6 lawfully denied by the water commissioner or other
7 competent authority is prima facie evidence of guilt.

8

9 (b) Failure to comply with a written order issued by
10 the state engineer pursuant to W.S. 41-3-112, 41-3-208,
11 41-3-301, 41-3-318, 41-3-614, 41-3-914, 41-3-919, 41-3-938,
12 41-4-501, 41-5-107, 41-5-108 or 41-5-110, shall be a
13 misdemeanor punishable by a fine not to exceed one thousand
14 two hundred fifty dollars (\$1,250.00), or imprisonment for
15 not more than three (3) months, or both. Each day of
16 noncompliance with the order shall be deemed a separate
17 violation.

18

19 (c) Whenever, after notice and an opportunity to be
20 heard, the state engineer finds the holder of any permit is
21 willfully violating or has willfully violated any provision
22 of a permit or any provision of W.S. 41-3-112, 41-3-208,
23 41-3-301, 41-3-318, 41-3-614, 41-3-914, 41-3-919, 41-3-937,
24 41-3-938, 41-4-501, 41-5-107, 41-5-108 or 41-5-110, or of

1 any order issued pursuant thereto, the state engineer may
2 cancel or suspend the permit or impose conditions on the
3 future use thereof to prevent further violation. An appeal
4 from any decision of the state engineer may be made to the
5 board of control.

6
7 (d) Whenever, after notice and opportunity to be
8 heard, the board of control finds the holder of any
9 certificate of registration or certificate of appropriation
10 is willfully violating or has willfully violated any
11 provision of the certificate or any provisions of W.S.
12 41-3-112, 41-3-208, 41-3-301, 41-3-614, 41-3-914, 41-3-919,
13 41-3-937, 41-3-938, 41-4-501, 41-5-107, 41-5-108 or
14 41-5-110, or of any order issued pursuant thereto, the
15 board of control may cancel or suspend the certificate or
16 impose conditions on the future use thereof to prevent
17 further violation. An appeal from any decision of the
18 board of control may be taken to the district court.

19

20 **Section 2.** W.S. 41-3-112, 41-3-208, 41-3-301(a),
21 41-3-318, 41-3-613, 41-3-614, 41-3-914(b), 41-3-919,
22 41-3-937, 41-3-938, 41-4-501, 41-4-504, 41-5-107,
23 41-5-108(b) and 41-5-110 are amended to read:

24

1 **41-3-112. Right to acquire temporary water rights for**
2 **highway or railroad roadbed construction or repair;**
3 **wrongfully causing diversion to be shut down.**

4
5 It shall be unlawful for any person ~~who to~~ wrongfully
6 ~~causes to be shut down~~ cause a diversion made under a
7 temporary water right required under and by virtue of this
8 act ~~shall, upon conviction thereof, be guilty of a~~
9 ~~misdemeanor and may be fined in an amount not to exceed one~~
10 ~~hundred dollars (\$100.00) for each day for which he shall~~
11 ~~cause such diversion to be wrongfully~~ to be shut down. Any
12 violation of this section shall be punishable pursuant to
13 W.S. 41-3-616.

14
15 **41-3-208. Diverting from owner prohibited.**

16
17 It shall be unlawful for anyone not the owner thereof to
18 divert and take from the natural channel of any interstate
19 stream designated by the certificate required in W.S.
20 41-3-206 flowing within the state of Wyoming, any foreign
21 water or in any manner interfere with the ability of the
22 owner of foreign water to transport the same in the natural
23 stream channel in Wyoming to the point of diversion and to

1 divert the same thereat. Any violation of this section
2 shall be punishable pursuant to W.S. 41-3-616.

3

4 **41-3-301. Application for reservoir construction**
5 **permit; contents; procedure.**

6

7 (a) Any person, corporation, association, or
8 organization, of any nature whatsoever, hereafter intending
9 to store or impound, for beneficial uses, any of the
10 unappropriated waters of the state of Wyoming, shall,
11 before commencing construction of any works for such
12 purpose, or performing any work in connection with said
13 proposed construction, make an application to the state
14 engineer, for a permit to construct a reservoir. The
15 application must set forth the name and post office address
16 of the applicant; the source of the water supply; the
17 nature of the proposed use; the location and description of
18 the proposed work; the time within which it is proposed to
19 begin construction, and the time required for the
20 completion of construction. Maps and plans shall conform
21 with the provisions of W.S. 41-4-510. In case of reservoirs
22 where the storage is for stock purposes only and the
23 capacity does not exceed twenty (20) acre-feet and the
24 height of dam does not exceed twenty (20) feet, the state

1 engineer may issue a permit without the filing of a map on
2 tracing cloth; however the state engineer may require
3 certain information be submitted on special forms to be
4 furnished by him. Any violation of subsection (a) of this
5 section shall be punishable pursuant to W.S. 41-3-616 with
6 the exception that the owner of any unpermitted reservoir
7 with a capacity of twenty (20) acre-feet or less and a dam
8 height of twenty (20) feet or less shall have forty-five
9 (45) days after receipt of the written notice of violation
10 pursuant to W.S. 41-3-616(a), to submit an application for
11 a permit. The application shall meet the requirements of
12 the state engineer's office. Each day of the forty-five
13 (45) days shall not be counted as a separate violation if
14 the application for a reservoir permit is received during
15 this forty-five (45) day period.

16
17 **41-3-318. Penalties, cancellation of permit, for**
18 **failure to comply with W.S. 41-3-308 through 41-3-314.**

19
20 Failure to comply with the provisions of W.S. 41-3-308
21 through 41-3-314 shall subject the permit to cancellation
22 at any time pursuant to W.S. 41-3-616(c). Failure to comply
23 with any valid order issued by the state engineer pursuant
24 to W.S. 41-3-308 through 41-3-314, shall subject the permit

1 holder to ~~a penalty not to exceed five hundred dollars~~
2 ~~(\$500.00) per day for each day the violation continues. The~~
3 ~~state engineer is authorized to cancel any permit wherein~~
4 ~~the provisions of the above sections have not been, or are~~
5 ~~not being, complied with, and the cancellation shall~~
6 ~~operate as a forfeiture of all rights acquired under and by~~
7 ~~virtue of any permit theretofore approved by the state~~
8 ~~engineer. An appeal from any decision of the state~~
9 ~~engineer may be made to the board of control, and from the~~
10 ~~decision of the board of control appeal may be taken to the~~
11 ~~district court~~ penalty pursuant to W.S. 41-3-616(b).

12

13 **41-3-613. Headgates, flumes or measuring devices;**
14 **owners to construct and maintain; failure to comply.**

15

16 The owner or owners of any ditch or canal shall maintain,
17 to the satisfaction of the division superintendent of the
18 division in which the irrigation works are located, a
19 substantial headgate at the point where the water is
20 diverted, which shall be of such construction that it can
21 be locked and kept closed by the water commissioner; and
22 such owners shall construct and maintain, when required by
23 the division superintendent, flumes or other measuring
24 devices at such points along such ditch as may be necessary

1 for the purpose of assisting the water commissioner in
2 determining the amount of water that is to be diverted into
3 said ditch from the stream, or taken from it by the various
4 users. Any and every owner or manager of a reservoir,
5 located across or upon the bed of a natural stream, shall
6 be required to construct and maintain, when required by the
7 division superintendent, a flume or measuring device of a
8 plan to be approved by the state engineer, below such
9 reservoir at a point not to exceed six hundred (600) feet
10 distant therefrom, and a flume or measuring device above
11 such reservoir or each and every stream or source of supply
12 discharging into such reservoir, for the purpose of
13 assisting the water commissioner or superintendent in
14 determining the amount of water to which prior
15 appropriators are entitled and thereafter diverting it for
16 such prior appropriators' use. When it may be necessary,
17 for the protection of other water users, the division
18 superintendent has authority to require flumes to be
19 installed along the line of any ditch. If any such owner or
20 owners of irrigation works shall refuse or neglect to
21 construct and put in such headgates, flumes or measuring
22 devices after ten (10) days notice to do so by division
23 superintendent, it shall be the duty of the water
24 commissioner of the district in which such headgate is

1 located, on order of the division superintendent, to close
2 such ditch to the passage of water, and the same shall not
3 be opened or any water diverted from the source of supply,
4 under the penalties prescribed by ~~law for the opening of~~
5 ~~headgates lawfully closed~~ W.S. 41-3-614, until the
6 requirements of the division superintendent as to such
7 headgate, flumes or measuring device have been complied
8 with, and if any owner, or manager of a reservoir located
9 across the bed of a natural stream shall neglect or refuse
10 to put in such measuring device after ten (10) days notice
11 to do so by the division superintendent, the water
12 commissioner shall open the sluice gate or outlet of such
13 reservoir and the same shall not be closed under penalties
14 ~~of the law for changing or interfering with headgates~~
15 pursuant to W.S. 41-3-614, until the requirements of the
16 division superintendent as to such measuring devices are
17 complied with.

18

19 **41-3-614. Well, headgate or waterbox; prohibited**
20 **acts; penalty for violation.**

21

22 It shall be unlawful for any person who to willfully opens,
23 closes, changes or interferes use or possess water which
24 has been lawfully denied by the water commissioner or other

1 competent authority or to open, close, change or interfere
2 with any well, pump, reservoir outlet valve, dam,
3 diversion, headgate or waterbox without authority, ~~or who~~
4 ~~willfully uses water which has been lawfully denied him by~~
5 ~~the water commissioner or other competent authority, is~~
6 ~~guilty of a misdemeanor and shall be fined not exceeding~~
7 ~~five hundred dollars (\$500.00). The possession or use of~~
8 ~~water lawfully denied by the water commissioner or other~~
9 ~~competent authority is prima facie evidence of guilt~~ Any
10 violation of this section shall be punishable pursuant to
11 W.S. 41-3-616.

12

13 **41-3-914. Adjudication of waters within control area.**

14

15 (b) If any well owner, lessee or user within a
16 control area refuses to adjudicate a well, or supply the
17 necessary information to permit adjudication of any well,
18 the superintendent may tag and lock the pump or well to
19 prevent use of water therefrom. The penalty for interfering
20 with the tag or lock on a well is as provided in W.S.
21 ~~41-3-938~~ 41-3-616. The use of water from a well so tagged
22 and locked is prima facie evidence that the well owner,
23 lessee or user has violated the provisions of this section.

24

1 **41-3-919. Prohibited acts; penalty for violation.**

2

3 Any person who withdraws underground water or who fails to
4 stop or reduce the flow of underground water in violation
5 of any order of the state engineer made pursuant to this
6 act, or any person who does not have a permit, certificate
7 or vested right to appropriate underground water who shall
8 withdraw underground water from any well other than a well
9 for stock or domestic purposes as defined in W.S. 41-3-907,
10 is guilty of a misdemeanor and upon conviction shall be
11 punished under W.S. ~~41-3-614~~ 41-3-616.

12

13 **41-3-937. Cancellation or suspension of permits or**
14 **certificates.**

15

16 Whenever, after notice to and opportunity to be heard, ~~by~~
17 ~~such holder,~~ the state engineer finds that the holder of
18 any permit is ~~wilfully~~ willfully violating or has ~~wilfully~~
19 willfully violated any provision of such permit or any
20 provision of this act or of any order issued pursuant to
21 this act, the state engineer may cancel or suspend such
22 permit or impose conditions on the future use thereof to
23 prevent such violation, pursuant to W.S. 41-3-616(c).

24 Whenever, after notice to and opportunity to be heard, ~~by~~

1 ~~such holder,~~ the board of control finds that the holder of
2 any certificate of registration or certificate of
3 appropriation is ~~wilfully~~ willfully violating or has
4 ~~wilfully~~ willfully violated any provision of such
5 certificate or any provision of this act or of any order
6 issued pursuant to this act, the board of control may
7 cancel or suspend such certificate or impose conditions on
8 the future use thereof to prevent such violation, pursuant
9 to W.S. 41-3-616(d).

10
11 **41-3-938. Penalty.**

12
13 Any person who drills, digs or constructs any works for the
14 securing of underground water without having obtained a
15 permit is guilty of a misdemeanor and upon conviction shall
16 be punished under W.S. ~~41-3-614~~ 41-3-616.

17
18 **41-4-501. Permit required prior to construction of**
19 **ditches, canals or other distributing works; contents of**
20 **application; unlawful diversion or use of water prohibited.**

21
22 Any person, association or corporation hereafter intending
23 to acquire the right to the beneficial use of the public
24 water of the state of Wyoming shall, before commencing the

1 construction, enlargement or extension of any ditch, canal
2 or other distributing works, or performing any work in
3 connection with said construction, or proposed
4 appropriation, make an application to the state engineer
5 for a permit to make such appropriation. Such application
6 must set forth the name and post-office address of the
7 applicant, the source of the water supply, the nature of
8 the proposed use, the location and description of the
9 proposed ditch, canal or other work, the time within which
10 it is proposed to begin construction, the time required for
11 completion of construction and the time required for the
12 complete application of the water to the proposed use. Any
13 person who shall ~~wilfully~~ willfully divert or use water to
14 the detriment of others without compliance with law shall
15 be deemed guilty of a misdemeanor, ~~and on conviction~~
16 ~~thereof, shall be fined in a sum not exceeding one hundred~~
17 ~~dollars (\$100.00), or by imprisonment in the county jail~~
18 ~~for a term not exceeding six (6) months, or by both such~~
19 ~~fine and imprisonment; and the possession or use of water,~~
20 ~~except when a right of use is acquired in accordance with~~
21 ~~law, shall be prima facie evidence of the guilt of the~~
22 ~~person using it~~ punishable pursuant to W.S. 41-3-616.

23

1 **41-4-504. Endorsement by state engineer; return to**
2 **applicant; effect of approval or rejection.**

3

4 The refusal or approval of an application shall be endorsed
5 thereon and a record made of such endorsement in the state
6 engineer's office. The application so endorsed shall be
7 returned to the applicant. If approved, the applicant shall
8 be authorized, on receipt thereof, to proceed with the
9 construction of the necessary works, and to take all steps
10 required to apply the water to a beneficial use, and to
11 perfect the proposed appropriation. If the application is
12 refused, the applicant shall take no steps toward the
13 prosecution of the proposed work, or the diversion and use
14 of the public water so long as such refusal shall continue
15 in force. Any violation of this section, unless exempt
16 under W.S. 41-3-301, shall be punishable pursuant to W.S.
17 41-3-616(a).

18

19 **41-5-107. Removal or destruction of bridges or**
20 **flumes.**

21

22 Whenever any person, persons or corporation shall remove or
23 destroy any bridge or flume which crosses any ditch, canal
24 or other irrigation works, when said flume or bridge is in

1 good condition a legal right for such crossing having been
2 acquired, said person, persons or corporations must replace
3 said bridge or flume, in as good condition as before
4 removal. If said bridge or flume is removed by the owner or
5 owners of the said ditch, canal or irrigation works; it
6 shall be the duty of the water commissioner to keep the
7 controlling works of the said ditch, canal or irrigation
8 works closed until the said bridge or flume is properly
9 replaced. ~~If~~ It shall be unlawful for any other person ~~or~~
10 ~~persons shall to~~ remove or destroy any such bridge or
11 flumes. ~~they shall be deemed guilty of a misdemeanor and~~
12 ~~shall be subject to a fine of not more than one hundred~~
13 ~~dollars (\$100.00) or imprisonment in the county jail for~~
14 ~~not more than ninety (90) days, or both such fine and~~
15 ~~imprisonment~~ Any violation of this section shall be
16 punishable pursuant to W.S. 41-3-616.

17

18 **41-5-108. Driving or floating logs, timber or lumber**
19 **on streams.**

20

21 (b) Anyone violating any of the provisions of this
22 section, shall, ~~on conviction, be fined in any sum not~~
23 ~~exceeding one hundred dollars (\$100.00), or imprisoned in~~
24 ~~the county jail not exceeding three (3) months, or by both~~

1 ~~such fine and imprisonment~~ be subject to penalty pursuant
2 to W.S. 41-3-616.

3
4 **41-5-110. Prohibited acts; penalty for violation.**

5
6 It shall be unlawful for any person ~~or persons who shall~~
7 ~~knowingly and wilfully cut, dig or break down, or open any~~
8 ~~gate, bank, embankment or side of any ditch, canal or~~
9 ~~reservoir, flume, tunnel or feeder in which such person or~~
10 ~~persons may be joint owners, or~~ without authority, to
11 willfully interfere with or damage any dam, diversion
12 structure or means of conveyance whether jointly owned by
13 the person, on the property or in the lawful possession of
14 another, ~~or in the lawful possession of another or others,~~
15 ~~and used for the purpose of irrigation, milling,~~
16 ~~manufacturing, mining or domestic purposes,~~ with intent
17 ~~maliciously~~ to injure any person, ~~association or~~
18 ~~corporation,~~ or for his ~~or her~~ own gain, ~~unlawfully, with~~
19 ~~the intention of stealing, taking or causing to run or pour~~
20 ~~out of such canal or reservoir, feeder or flume, any water~~
21 ~~for his or her own profit, benefit or advantage,~~ to the
22 injury of any other person, ~~persons, association or~~
23 ~~corporation~~ lawfully in entitled to the use of such water,
24 ~~or of such ditch, canal, tunnel, feeder or flume, he, she,~~

1 ~~it or they, so offending shall be deemed guilty of a~~
2 ~~misdemeanor, and on conviction thereof shall be fined in~~
3 ~~any sum not exceeding one hundred dollars (\$100.00), and~~
4 ~~may be imprisoned in the county jail not exceeding six (6)~~
5 ~~months, or both, in the discretion of the court~~ diversion
6 structure or means of conveyance. Any violation of this
7 section shall be punishable pursuant to W.S. 41-3-616.

8

9 **Section 3.** This act is effective July 1, 2005.

10

11

(END)