

ORIGINAL SENATE  
FILE NO. 0028

ENROLLED ACT NO. 49, SENATE

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING  
2005 GENERAL SESSION

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

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

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

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

(a) Unless otherwise provided, any person violating any of the provisions of W.S. 41-3-112, 41-3-208, 41-3-301, 41-3-614, 41-3-914, 41-3-919, 41-3-938, 41-4-501, 41-4-504, 41-5-107, 41-5-108 or 41-5-110 after receipt of a written notice of violation from the state engineer's office or the board of control is guilty of a misdemeanor punishable by a fine not to exceed one thousand two hundred fifty dollars (\$1,250.00). Each day of noncompliance with the provisions of these sections after receipt of a written notice of violation from the state engineer's office or the board of control shall be deemed a separate violation. The possession, use or presence upon any person's land of water lawfully denied by the water commissioner or other competent authority is prima facie evidence of guilt.

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

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(c) Whenever, after notice and an opportunity to be heard, the state engineer finds the holder of any permit is willfully violating or has willfully violated any provision of a permit or any provision of W.S. 41-3-112, 41-3-208, 41-3-301, 41-3-318, 41-3-614, 41-3-914, 41-3-919, 41-3-937, 41-3-938, 41-4-501, 41-5-107, 41-5-108 or 41-5-110, or of any order issued pursuant thereto, the state engineer may cancel or suspend the permit or impose conditions on the future use thereof to prevent further violation. An appeal from any decision of the state engineer may be made to the board of control.

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

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

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

It shall be unlawful for any person who to wrongfully causes to be shut down cause a diversion made under a

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temporary water right required under and by virtue of this act ~~shall, upon conviction thereof, be guilty of a misdemeanor and may be fined in an amount not to exceed one hundred dollars (\$100.00) for each day for which he shall cause such diversion to be wrongfully to be~~ shut down. Any violation of this section shall be punishable pursuant to W.S. 41-3-616.

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

It shall be unlawful for anyone not the owner thereof to divert and take from the natural channel of any interstate stream designated by the certificate required in W.S. 41-3-206 flowing within the state of Wyoming, any foreign water or in any manner interfere with the ability of the owner of foreign water to transport the same in the natural stream channel in Wyoming to the point of diversion and to divert the same thereat. Any violation of this section shall be punishable pursuant to W.S. 41-3-616.

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

(a) Any person, corporation, association, or organization, of any nature whatsoever, hereafter intending to store or impound, for beneficial uses, any of the unappropriated waters of the state of Wyoming, shall, before commencing construction of any works for such purpose, or performing any work in connection with said proposed construction, make an application to the state engineer, for a permit to construct a reservoir. The application must set forth the name and post office address of the applicant; the source of the water supply; the nature of the proposed use; the location and description of the proposed work; the time within which it is proposed to begin construction, and the time required for the

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completion of construction. Maps and plans shall conform with the provisions of W.S. 41-4-510. In case of reservoirs where the storage is for stock purposes only and the capacity does not exceed twenty (20) acre-feet and the height of dam does not exceed twenty (20) feet, the state engineer may issue a permit without the filing of a map on tracing cloth; however the state engineer may require certain information be submitted on special forms to be furnished by him. Any violation of subsection (a) of this section shall be punishable pursuant to W.S. 41-3-616 with the exception that the owner of any unpermitted reservoir with a capacity of twenty (20) acre-feet or less and a dam height of twenty (20) feet or less shall have forty-five (45) days after receipt of the written notice of violation pursuant to W.S. 41-3-616(a), to submit an application for a permit. The application shall meet the requirements of the state engineer's office. Each day of the forty-five (45) days shall not be counted as a separate violation if the application for a reservoir permit is received during this forty-five (45) day period.

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

Failure to comply with the provisions of W.S. 41-3-308 through 41-3-314 shall subject the permit to cancellation at any time pursuant to W.S. 41-3-616(c). Failure to comply with any valid order issued by the state engineer pursuant to W.S. 41-3-308 through 41-3-314, shall subject the permit holder to ~~a penalty not to exceed five hundred dollars (\$500.00) per day for each day the violation continues. The state engineer is authorized to cancel any permit wherein the provisions of the above sections have not been, or are not being, complied with, and the cancellation shall operate as a forfeiture of all rights acquired under and by virtue of any permit theretofore approved by the state~~

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~~engineer. An appeal from any decision of the state engineer may be made to the board of control, and from the decision of the board of control appeal may be taken to the district court~~ penalty pursuant to W.S. 41-3-616(b).

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

The owner or owners of any ditch or canal shall maintain, to the satisfaction of the division superintendent of the division in which the irrigation works are located, a substantial headgate at the point where the water is diverted, which shall be of such construction that it can be locked and kept closed by the water commissioner; and such owners shall construct and maintain, when required by the division superintendent, flumes or other measuring devices at such points along such ditch as may be necessary for the purpose of assisting the water commissioner in determining the amount of water that is to be diverted into said ditch from the stream, or taken from it by the various users. Any and every owner or manager of a reservoir, located across or upon the bed of a natural stream, shall be required to construct and maintain, when required by the division superintendent, a flume or measuring device of a plan to be approved by the state engineer, below such reservoir at a point not to exceed six hundred (600) feet distant therefrom, and a flume or measuring device above such reservoir or each and every stream or source of supply discharging into such reservoir, for the purpose of assisting the water commissioner or superintendent in determining the amount of water to which prior appropriators are entitled and thereafter diverting it for such prior appropriators' use. When it may be necessary, for the protection of other water users, the division superintendent has authority to require flumes to be installed along the line of any ditch. If any such owner or

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owners of irrigation works shall refuse or neglect to construct and put in such headgates, flumes or measuring devices after ten (10) days notice to do so by division superintendent, it shall be the duty of the water commissioner of the district in which such headgate is located, on order of the division superintendent, to close such ditch to the passage of water, and the same shall not be opened or any water diverted from the source of supply, under the penalties prescribed by ~~law for the opening of headgates lawfully closed~~ W.S. 41-3-614, until the requirements of the division superintendent as to such headgate, flumes or measuring device have been complied with, and if any owner, or manager of a reservoir located across the bed of a natural stream shall neglect or refuse to put in such measuring device after ten (10) days notice to do so by the division superintendent, the water commissioner shall open the sluice gate or outlet of such reservoir and the same shall not be closed under penalties ~~of the law for changing or interfering with headgates pursuant to W.S. 41-3-614~~, until the requirements of the division superintendent as to such measuring devices are complied with.

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

~~It shall be unlawful for any person who to willfully opens, closes, changes or interferes use or possess water which has been lawfully denied by the water commissioner or other competent authority or to open, close, change or interfere with any well, pump, reservoir outlet valve, dam, diversion, headgate or waterbox without authority, or who willfully uses water which has been lawfully denied him by the water commissioner or other competent authority, is guilty of a misdemeanor and shall be fined not exceeding five hundred dollars (\$500.00). The possession or use of~~

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~~water lawfully denied by the water commissioner or other competent authority is prima facie evidence of guilt~~ Any violation of this section shall be punishable pursuant to W.S. 41-3-616.

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

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

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

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

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

Whenever, after notice to and opportunity to be heard, ~~by such holder,~~ the state engineer finds that the holder of any permit is ~~wilfully~~ willfully violating or has ~~wilfully~~ willfully violated any provision of such permit or any

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provision of this act or of any order issued pursuant to this act, the state engineer may cancel or suspend such permit or impose conditions on the future use thereof to prevent such violation, pursuant to W.S. 41-3-616(c). Whenever, after notice to and opportunity to be heard, ~~by such holder,~~ the board of control finds that the holder of any certificate of registration or certificate of appropriation is ~~wilfully~~ willfully violating or has ~~wilfully~~ willfully violated any provision of such certificate or any provision of this act or of any order issued pursuant to this act, the board of control may cancel or suspend such certificate or impose conditions on the future use thereof to prevent such violation, pursuant to W.S. 41-3-616(d).

**41-3-938. Penalty.**

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

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

Any person, association or corporation hereafter intending to acquire the right to the beneficial use of the public water of the state of Wyoming shall, before commencing the construction, enlargement or extension of any ditch, canal or other distributing works, or performing any work in connection with said construction, or proposed appropriation, make an application to the state engineer for a permit to make such appropriation. Such application must set forth the name and post-office address of the applicant, the source of the water supply, the nature of



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the proposed use, the location and description of the proposed ditch, canal or other work, the time within which it is proposed to begin construction, the time required for completion of construction and the time required for the complete application of the water to the proposed use. Any person who shall ~~wilfully~~ willfully divert or use water to the detriment of others without compliance with law shall be deemed guilty of a misdemeanor, ~~and on conviction thereof, shall be fined in a sum not exceeding one hundred dollars (\$100.00), or by imprisonment in the county jail for a term not exceeding six (6) months, or by both such fine and imprisonment; and the possession or use of water, except when a right of use is acquired in accordance with law, shall be prima facie evidence of the guilt of the person using it~~ punishable pursuant to W.S. 41-3-616.

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

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

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

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

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

(b) Anyone violating any of the provisions of this section, shall, ~~on conviction, be fined in any sum not exceeding one hundred dollars (\$100.00), or imprisoned in the county jail not exceeding three (3) months, or by both such fine and imprisonment~~ be subject to penalty pursuant to W.S. 41-3-616.

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

It shall be unlawful for any person ~~or persons who shall knowingly and wilfully cut, dig or break down, or open any gate, bank, embankment or side of any ditch, canal or~~

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~~reservoir, flume, tunnel or feeder in which such person or persons may be joint owners, or~~ without authority, to willfully interfere with or damage any dam, diversion structure or means of conveyance whether jointly owned by the person, on the property or in the lawful possession of another, ~~or in the lawful possession of another or others,~~ and used for the purpose of irrigation, milling, manufacturing, mining or domestic purposes, with intent ~~maliciously~~ to injure any person, ~~association or corporation,~~ or for his ~~or her~~ own gain, ~~unlawfully, with the intention of stealing, taking or causing to run or pour out of such canal or reservoir, feeder or flume, any water for his or her own profit, benefit or advantage,~~ to the injury of any other person, ~~persons, association or corporation~~ lawfully in entitled to the use of such water, or of such ditch, canal, tunnel, feeder or flume, he, she, it or they, so offending shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding one hundred dollars (\$100.00), and may be imprisoned in the county jail not exceeding six (6) months, or both, in the discretion of the court diversion structure or means of conveyance. Any violation of this section shall be punishable pursuant to W.S. 41-3-616.

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

(END)

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Governor

TIME APPROVED: \_\_\_\_\_

DATE APPROVED: \_\_\_\_\_

I hereby certify that this act originated in the Senate.

\_\_\_\_\_  
Chief Clerk