

## ARTICLE 10. INSTREAM FLOWS

### **§ 41-3-1001. Waters stored for instream flows a beneficial use of water; natural stream flows allowed for instream flows.**

(a) The storage of water in any drainage in Wyoming for the purpose of providing a recreational pool or the release of water for instream flows to establish or maintain new or existing fisheries is a beneficial use of water subject to normal stream loss.

(b) Unappropriated water flowing in any stream or drainage in Wyoming may be appropriated for instream flows to maintain or improve existing fisheries and declared a beneficial use of water on a case by case basis by the state engineer if such use does not impair or diminish the rights of any other appropriator in Wyoming.

(c) Waters used for the purpose of providing instream flows under subsection (a) of this section shall be the minimum flow necessary to establish or maintain fisheries.

(d) Waters used for the purpose of providing instream flows under subsection (b) of this section shall be the minimum flow necessary to maintain or improve existing fisheries.

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

(a) All waters used for the purpose of providing instream flows shall be applied only to that segment of the stream for which they are granted. The stream segment and the determination of a minimum amount of water required for instream flow purposes shall be defined specifically.

(b) After waters allowed for instream flows have passed through the specific stream segment, all rights to those instream flow waters are relinquished, and the water shall be available for reappropriation, diversion and beneficial use.

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

(d) Any person may divert and appropriate, as provided by law, instream flow waters for any beneficial use other than for instream flows at the following places:

(i) Within one (1) mile upstream from any point where the instream flows cross the Wyoming state line;

(ii) Within one (1) mile upstream from any point where the instream flows enter the main stem of the North Platte River;

(iii) Within one (1) mile upstream from any point where the instream flows enter the Big Horn Lake;

(iv) Within one (1) mile upstream from any point where the instream flows enter the Flaming Gorge Reservoir;

(v) Within one (1) mile upstream from any point where the instream flows enter the Palisades Reservoir.

(e) No person other than the state of Wyoming shall own any instream flow water right.

41-3-1003. Game and fish commission; construction of measuring devices; recommendations; permits; fees and costs.

(a) The game and fish commission shall construct any measuring device the state engineer considers necessary for the administration of an instream flow right.

(b) The state game and fish commission may report to the water development commission annually those specific segments of stream which the game and fish commission considers to have the most critical need for instream flows. The game and fish commission shall identify the points on the stream at which the need for instream flows begins and ends, the time of year when the flows are most critical and a detailed description of the minimum amount of water necessary to provide adequate instream flows.

(c) The water development commission shall file applications in the name of the state of Wyoming for permits to appropriate water for instream flows in those segments of stream recommended by the game and fish commission. The state engineer shall not grant any permits to appropriate or store water for instream flows prior to the completion of the study provided by W.S. 41-3-1004 or prior to the hearing required by W.S. 41-3-1006. Fees and costs of the commission associated with permit applications and adjudication of water rights shall be borne by the game and fish commission.

**§ 41-3-1004. Water development commission to determine storage feasibility; report to the game and fish commission and the legislature.**

(a) Immediately after permits have been applied for under W.S. 41-3-1003(c), the water development commission shall determine the feasibility of providing instream flows for the recommended segments of streams from unappropriated direct flows or from existing storage facilities or from new facilities. The feasibility study shall include a determination of water necessary to maintain or improve existing fisheries for water rights under W.S. 41-3-1001(b) or of water necessary to provide fisheries for water rights under W.S. 41-3-1001(a). The feasibility study shall also include the availability of storage sites, the estimated cost of providing any required storage and such other findings and conclusions as the water development commission deems appropriate.

(b) The water development commission shall make a report to the game and fish commission and the legislature outlining their findings.

(c) Repealed by Laws 1987, ch. 50, § 2.

**§ 41-3-1005. Approval of storage project.**

If the water development commission determines that storage of water to provide instream flows is feasible and in the interest of the state of Wyoming, it shall request authority from the legislature to proceed with the design and construction of storage facilities and the storage of sufficient water for such purposes. The costs of the project may be shared with other water users benefiting therefrom, or paid solely from funds appropriated from the water development account, or otherwise as the legislature directs.

**§ 41-3-1006. Appropriation of unappropriated waters for direct instream flows.**

(a) Any application for a permit to appropriate direct flow waters for the purpose of providing instream flows shall be by stream segment, as defined in W.S. 41-3-1002.

(b) If the water development commission, under W.S. 41-3-1004, determines that storage of water for the purpose of providing instream flows is not feasible but that appropriation of direct flow water appears feasible, the state engineer shall act on applications for permits to appropriate water filed under W.S. 41-3-1003(c) in the name of the state of Wyoming.

(c) Subsequent to submission of an application for an instream flow appropriation, the game and fish commission shall conduct relevant studies on the proposal.

(d) The applicant for an instream flow water right shall publish a notice of the application and hearing in a newspaper of general circulation in the area near the proposed reservoir site or stream segment, once each week for at least two (2) consecutive weeks prior to the hearing provided by subsection (e) of this section which notice shall briefly describe the application.

(e) Prior to granting or denying the application, the state engineer shall conduct any studies as are deemed necessary to evaluate the proposed instream flow and the necessary amount of water to maintain existing fisheries and shall hold a public hearing. At the public hearing, the game and fish commission shall present its studies and any other interested parties shall present views on the proposed instream flow appropriation. The state engineer may place a condition on the permit, if one is granted, requiring a review of the continuation of the permit as an instream flow appropriation.

(f) If an application for an instream flow appropriation is approved by the state engineer, it shall be deemed that work has been commenced and completed and beneficial use made thirty (30) days after the date of approval for purposes of W.S. 41-4-506 and proof of appropriation shall not be submitted until three (3) years thereafter.

(g) The state engineer shall not issue an instream flow permit where the instream flow right would be included as a portion of the consumptive share of water allocated to the state of Wyoming under any interstate compact or United States supreme court decree.

(h) The amount of water appropriated for instream flow in each river basin in Wyoming shall not result in more water leaving the state than the amount of water that is allocated by interstate compact or United States supreme court decree for downstream uses outside of Wyoming.

**§ 41-3-1007. Acquisition of existing rights for instream flow purposes.**

(a) The state of Wyoming may acquire any existing water rights in streams of Wyoming by transfer or gift for the purpose of providing instream flows, provided that a change in use of the right acquired shall be in accordance with W.S. 41-3-104. Any right acquired and changed shall be in the name of the state of Wyoming and shall be administered by the state engineer and the board of control, who shall insure that the use of water for instream flows shall not interfere with existing water rights or impair the value of such rights or related property. The game and fish commission shall act as a petitioner in a petition for change in use under this section.

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

**§ 41-3-1008. Regulation of streams.**

(a) The game and fish commission shall report to the water development commission the need to regulate a stream to protect the priority of an instream flow right. The report shall include information establishing present or future damage to the fishery if the stream is not regulated. The commission, on the next working day, shall submit the report to the state engineer and call for stream regulation. The state engineer shall not regulate the stream to protect the instream flow right:

- (i) Unless present or future injury to the fishery has been shown;
- (ii) If the call for regulation is a futile call; or
- (iii) If the call for regulation will impair senior water rights.

**§ 41-3-1009. Statement regarding condemnation and impairment of existing water rights.**

This act [ §§ 41-3-1001 through 41-3-1014 ] does not grant, nor shall it operate or be so construed to grant the power of condemnation to the game and fish department for acquisition of existing water rights for the purpose of providing instream flows, nor shall it operate or be so construed as to impair or diminish the value of or divest existing water rights.

**§ 41-3-1010. Litigation costs.**

If any other appropriator in a drainage where waters are allowed for instream flows proves in district court that his right to use appropriated waters has been impaired or diminished by the allowance for instream flows, the costs of litigation, including reasonable attorney fees, shall be borne by the holder of the instream flow right.

**§ 41-3-1011. Abandonment.**

No right to water for the purposes of providing instream flow may be acquired through the process of abandonment nor shall any beneficiary of instream flow rights granted under this act [ §§ 41-3-1001 through 41-3-1014 ] be qualified under W.S. 41-3-401 and 41-3-402 to file for abandonment.

**§ 41-3-1012. Ingress and egress.**

Nothing in this act [ §§ 41-3-1001 through 41-3-1014 ] shall grant, nor shall it be construed to grant the right of ingress or egress through or upon private property to reach streams where instream flows are maintained, nor shall it operate or be so construed as to grant any right of eminent domain to acquire the right of ingress or egress through private property to any waters so maintained.

**§ 41-3-1013. Condemnation for municipal water purposes.**

Notwithstanding W.S. 1-26-505, a city or town may condemn any portion of a water right authorized and acquired under this act [ §§ 41-3-1001 through 41-3-1014 ] for municipal water purposes in the manner provided by law.

**§ 41-3-1014. Interstate compact and United States supreme court decree.**

Nothing in this act [ §§ 41-3-1001 through 41-3-1014 ] shall be construed to supersede, impair or abrogate the right of the state of Wyoming to fully utilize and appropriate to consumptive beneficial use, those quantities of water allocated to the state of Wyoming by interstate compact or United States Supreme Court decree.