

House of Intro
 To Com No. _____
 Stand Report Do ___ Amd ___ Not ___
 Com Whole Do ___ Amd ___ Not ___
 2nd Reading Amd ___
 3rd Reading Amd ___ Pass ___ Fail ___

Second House
 To Com No. _____
 Stand Report Do ___ Amd ___ Not ___
 Com Whole Do ___ Amd ___ Not ___
 2nd Reading Amd ___
 3rd Reading Amd ___ Pass ___ Fail ___

1984

STATE OF WYOMING

84LSO-0032.01

HOUSE BILL NO. 0034

Instream flow.

Sponsored by: Representative(s) EDWARDS

A BILL

for

1 AN ACT to create W.S. 41-3-1001 through 41-3-1013 relating
 2 to water for instream flow purposes; declaring storage of
 3 water for recreation or instream flows or use of water for
 4 instream flows to be a beneficial use; providing for iden-
 5 tification of areas of critical need; providing for study
 6 of feasibility of supplying instream flows from existing
 7 or new storage facilities; authorizing construction of
 8 measuring devices; requiring a report and recommendations
 9 to the legislature; authorizing delegation of authority;
 10 providing for direct flow appropriations if water storage
 11 is not feasible; providing for acquisition of existing

1 rights; providing limitations on appropriations for
2 instream flow purposes; and providing for an effective
3 date.

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

5 Section 1. W.S. 41-3-1001 through 41-3-1013 are cre-
6 ated to read:

7 ARTICLE 10

8 INSTREAM FLOWS

9 41-3-1001. Waters stored for instream flows a bene-
10 ficial use of water; natural stream flows allowed for
11 instream flows.

12 (a) The storage of water in any drainage in Wyoming
13 for the purpose of providing a recreation pool or the
14 release of water for instream flows is a beneficial use of
15 water subject to normal stream loss.

16 (b) Unappropriated water flowing in any stream or
17 drainage in Wyoming may be appropriated for instream flows
18 and declared a beneficial use of water on a case by case
19 basis by the state engineer under this act, if such use
20 does not impair or diminish the rights of any other appro-
21 priator in Wyoming.

1 (c) Waters used for the purpose of providing
2 instream flows shall be in amounts reasonably necessary to
3 protect fisheries.

4 41-3-1002. Instream flows to be by stream segment;
5 waters for instream flows not to be sold, transferred or
6 otherwise conveyed; ownership restricted.

7 (a) All waters used for the purpose of providing
8 instream flows shall be applied only to that segment of
9 the stream for which they are granted. The stream segment
10 and the determination of a reasonable and necessary amount
11 of water required for instream flow purposes shall be de-
12 fined specifically.

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

18 (c) No waters appropriated for the purpose of pro-
19 viding instream flows in specified stream segments shall
20 be sold, transferred or otherwise conveyed to any other
21 purpose without the express approval of the legislature.

1 (d) Any person may divert and appropriate as pro-
2 vided by law instream flow waters for any beneficial use
3 at the following places:

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

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

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

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

15 (v) Within one (1) mile upstream from any
16 point where the instream flows enter the Palisades Reser-
17 voir.

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

20 41-3-1003. Game and fish commission; construction of
21 measuring devices; recommendations; permits.

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

4 (b) The state game and fish commission may report to
5 the water development commission annually those specific
6 segments of stream which the game and fish commission con-
7 siderers to have the most critical need for instream flows.
8 The game and fish commission shall identify the points on
9 the stream at which the need for instream flows begins and
10 ends, the time of year when the flows are most critical
11 and a detailed description of the amount of water neces-
12 sary to provide adequate instream flows.

13 (c) The department of economic planning and develop-
14 ment shall file applications in the name of the state of
15 Wyoming for permits to appropriate water for instream
16 flows in those segments of stream recommended by the game
17 and fish commission. The state engineer shall not grant
18 any permits to appropriate or store water for instream
19 flows prior to the completion of the study provided by
20 W.S. 41-3-1004 or prior to the hearing required by W.S.
21 41-3-1006.

22 41-3-1004. Water development commission to determine

1 storage feasibility; report to the game and fish commis-
2 sion and the legislature; delegation of authority.

3 (a) Immediately after permits have been applied for
4 under W.S. 41-3-1003(b), the water development commission
5 shall determine the feasibility of providing instream
6 flows for the recommended segments of streams from unap-
7 propriated direct flows or from existing storage facili-
8 ties or from new facilities. The feasibility study shall
9 include the availability of storage sites, the estimated
10 cost of providing any required storage and such other
11 findings and conclusions as the water development commis-
12 sion deems appropriate.

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

16 (c) The water development commission may delegate
17 its authority under W.S. 41-3-1003 through 41-3-1006 to
18 the department of economic planning and development for
19 particular stream segments.

20 41-3-1005. Approval of storage project. If the water
21 development commission determines that storage of water to
22 provide instream flows is feasible and in the interest of

1 the state of Wyoming, it shall request authority from the
2 legislature to proceed with the design and construction
3 of storage facilities and the storage of sufficient water
4 for such purposes. The costs of the project may be shared
5 with other water users benefiting therefrom, or paid
6 solely from funds appropriated from the water development
7 account, or otherwise as the legislature directs.

8 41-3-1006. Appropriation of unappropriated waters
9 for direct instream flows.

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

13 (b) If the water development commission, under W.S.
14 41-3-1004, determines that storage of water for the pur-
15 pose of providing instream flows is not feasible but that
16 appropriation of direct flow water appears feasible, the
17 state engineer shall act on applications for permits to
18 appropriate water filed under W.S. 41-3-1003(b) in the
19 name of the state of Wyoming.

20 (c) Subsequent to submission of an application for
21 an instream flow appropriation, the game and fish commis-
22 sion shall conduct relevant studies on the proposal.

1 (d) Prior to granting or denying the application the
2 state engineer shall conduct any studies as are deemed
3 necessary to evaluate the proposed instream flow and the
4 necessary amount of water to protect fisheries and fisher-
5 ies habitat and shall hold a public hearing. At the
6 public hearing, the game and fish commission shall present
7 its studies and any other interested parties shall present
8 views on the proposed instream flow appropriation. The
9 state engineer may place a condition on the permit, if one
10 is granted, requiring a review of the continuation of the
11 permit as an instream flow appropriation.

12 (e) If an application for an instream flow appropri-
13 ation is approved by the state engineer, it shall be
14 deemed that work has been commenced and completed and ben-
15 efiticial use made thirty (30) days after the date of ap-
16 proval for purposes of W.S. 41-4-506 and proof of appro-
17 priation shall not be submitted until three (3) years
18 thereafter.

19 41-3-1007. Acquisition of existing rights for
20 instream flow purposes.

21 (a) The state of Wyoming may acquire any existing
22 water rights in streams of Wyoming by transfer or gift for

1 the purpose of providing instream flows, provided that a
2 change in use of the right acquired shall be in accordance
3 with W.S. 41-3-104. Any right acquired and changed shall
4 be in the name of the state of Wyoming and shall be admin-
5 istered by the state engineer and the board of control,
6 who shall insure that the use of water for instream flows
7 shall not interfere with existing water rights or impair
8 the value of such rights or related property. The game
9 and fish commission shall act as a petitioner in a peti-
10 tion for change in use under this section.

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

14 41-3-1008. Statement regarding condemnation and
15 impairment of existing water rights. This act does not
16 grant, nor shall it operate or be so construed to grant
17 the power of condemnation to the game and fish department
18 for acquisition of existing water rights for the purpose
19 of providing instream flows, nor shall it operate or be so
20 construed as to impair or diminish the value of or divest
21 existing water rights.

22 41-3-1009. Litigation costs. If any other appropria-
23 tor in a drainage where waters are allowed for instream

1 flows proves in district court that his right to use ap-
2 propriated waters has been impaired or diminished by the
3 allowance for instream flows, the costs of litigation,
4 including reasonable attorney fees, shall be borne by the
5 holder of the instream flow right.

6 41-3-1010. Abandonment. No beneficiary of instream
7 flow rights granted under this act is qualified under W.S.
8 41-3-401 and 41-3-402 to file for abandonment.

9 41-3-1011. Ingress and egress. Nothing in this act
10 shall grant, nor shall it be construed to grant the right
11 of ingress or egress through or upon private property to
12 reach streams where instream flows are maintained, nor
13 shall it operate or be so construed as to grant any right
14 of eminent domain to any waters so maintained.

15 41-3-1012. Condemnation. Notwithstanding W.S.
16 1-26-505, a city or town may condemn any portion of water
17 right authorized and acquired under this act for municipal
18 water purposes in the manner provided by law.

19 41-3-1013. Interstate compact and United States
20 supreme court decree. Nothing in this act shall be con-
21 strued to supersede, impair or abrogate the right of the
22 state of Wyoming to fully utilize and appropriate to con-

1 sumptive beneficial use, those quantities of water allo-
2 cated to the state of Wyoming by interstate compact or
3 United States supreme court decree.

4 Section 2. This act is effective June 5, 1984.

5 (END)

FISCAL NOTE

Anticipated REVENUE to:	Fiscal Year 19	Fiscal Year 19
TOTAL ESTIMATED REVENUE		
Anticipated COST to:	Fiscal Year 19	Fiscal Year 19
See Discussion.		
TOTAL ESTIMATED COST		

1. According to a DEPAD spokesman, it is estimated that this legislation would have no significant fiscal or personnel impact during FY 1985. During FY 1986, it was estimated the impact could range from insignificant, if no construction is initiated, to perhaps one technical position and pay, a \$40,000 impact if construction is initiated and authority is delegated to DEPAD.
2. According to a Game and Fish spokesman, it is estimated the fiscal impact would be approximately \$4,000 per stream segment for FY 1985, and a corresponding sum for FY 1986 after normal inflation factors were added in. It was noted this estimate does not include administrative expenses.
3. According to a spokesman from the State Engineer's Office, the proposed legislation would require \$35,000 for office and field administration in FY 1985 and \$45,000 in FY 1986 assuming the requested stream segments are in areas of minimal impact. It was noted "the unquantifiable factor is in the area of field administration and is associated with the question as to whether or not the counties will escalate their cost sharing in salaries for Water Commissioners. In the event that the counties do not increase their level of participation, the FY 85 amount would increase to \$55,000 and \$65,000 in FY 86."