

Proposed Operating Criteria:

Status Report

**Status Report of Revisions to the Operating Criteria
Wyoming Water Development Program**

1. The original revisions to the Operating Criteria are dated October 1, 2008.
2. At the public hearing on June 6, 2008, the Director of the Wyoming Water Development Office offered additional revisions to the Operating Criteria. There were no public comments on the original or additional revisions. The second draft of the revisions is dated March 7, 2008.
3. The additional revisions are based, in part, on input received during the 2008 Session of the Wyoming Legislature. The revisions relate to input from city and county officials, revised financial evaluations during Level I and II studies, rural domestic projects, and project financing plans.
4. The original revisions are depicted in **bold, italic and underline**. The additional revisions are depicted in ***bold and italic***.
5. Written comments on the original and additional revisions will be welcomed through May 31, 2008. Written comments should be sent to the Wyoming Water Development Office, 6920 Yellowtail Road, Cheyenne, WY 82002.
6. The Wyoming Water Development Commission and Legislative Select Water Committee will be meeting June 5, 2008 to review public comments and determine if the Operating Criteria should be adopted or revised.

Proposed Operating Criteria:

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Operating Criteria of the Wyoming Water Development Program

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Proposed Operating Criteria:

Operating Criteria
Revised Draft 3/7/08

Operating Criteria of the Wyoming Water Development Program

CHAPTER I. Introduction

A. Purpose of the Operating Criteria

The Wyoming Water Development Commission (WWDC), comprised of ten (10) public members appointed by the Governor, has authority over the Wyoming Water Development Program. The Wyoming Water Development Office (WWDO) administers the program.

The 1975 Legislature passed W.S. 41-2-112(a), which established the purpose of the program:

"The Wyoming water development program is established to foster, promote and encourage the optimal development of the state's human, industrial, mineral, agricultural, water and recreational resources. The program shall provide, through the commission, procedures and policies for the planning, selection, financing, construction, acquisition and operation of projects and facilities for the conservation, storage, distribution and use of water, necessary in the public interest to develop and preserve Wyoming's water and related land resources. The program shall encourage development of water facilities for irrigation, for reduction of flood damage, for abatement of pollution, for preservation and development of fish and wildlife resources [and] for protection and improvement of public lands and shall help make available the waters of this state for all beneficial uses, including but not limited to municipal, domestic, agricultural, industrial, instream flows, hydroelectric power and recreational purposes, conservation of land resources and protection of the health, safety and general welfare of the people of the state of Wyoming."

These criteria provide the WWDC, the WWDO and the public with general standards for evaluating and prioritizing applications for program funding, a general framework for the development of program/project recommendations and the generation of water related information.

In addition, these criteria have been developed to assist the WWDC and WWDO to establish priorities and procedures and to serve as a tool to coordinate with other state and federal programs, which provide funding assistance for water projects. The criteria are not intended to be inflexible or uncompromising rules but rather to provide general guidelines for use in the decision making process.

These criteria respond to the requirements of W.S. 41-2-112(a) that the WWDC adopt procedures and policies and W.S. 41-2-121(b) which requires the WWDC to establish criteria for evaluation and administration of water development programs. The statutes also provide specific program guidance and were considered in the development of these criteria.

B. Changes in the Program Criteria

The criteria may be revised on a periodic basis to insure the Water Development Program is serving Wyoming citizens in a responsible and efficient manner. The WWDC and Director of the WWDO may offer changes in the criteria. Proposed changes in the criteria shall be reviewed during the combined Select Water Committee/WWDC meeting in August. During the August meeting, the proposed changes in criteria may be given a preliminary approval or final disapproval. Those proposed changes that are preliminarily approved shall be reviewed by the public during a public hearing process.

The proposed changes which receive preliminary approval and which have been reviewed by the public shall be considered for final approval during the WWDC's May/June meeting. The WWDC shall also weigh the comments provided by the public to determine whether a proposed change shall be accepted as written, amended or disapproved.

C. Program Statutes

The following statutes are the primary basis for these criteria:

W.S. 41-2-112(b) states:

"In developing financing recommendations under the Wyoming water development program, the commission shall:

- (i) Emphasize multipurpose water projects for maximum benefits and cost allocation;
- (ii) Identify project costs and benefits;
- (iii) Recommend an allocation of project costs, including expenditures of state funds for Level I reconnaissance studies, Level II feasibility studies and Level III development plans, to be reimbursed by project beneficiaries and to be borne by the state;
- (iv) Recommend terms and conditions of financing project costs, maintenance and operation, based on the benefits to be derived by project beneficiaries and their respective ability to pay;

(v) Consider all funds, assets and revenue sources of all project beneficiaries and recommend financing plans which will reimburse expenditures of state funds, except as such expenditures may be allocated to a state benefit, including enhancement of fish and wildlife habitat or recreation;

(vi) Consider state construction and ownership of any project which requires the state to finance un-reimbursed costs in excess of ten percent (10%) of the total project cost and submit recommendations on project costs and potential revenues from sale of water or power from the project;

(vii) Consider any other factors necessary to develop comprehensive financing recommendations."

W.S. 41-2-121 provides more specific guidance:

"(a) The water development commission shall establish criteria for evaluation and administration of water development projects. Criteria shall include but not be limited to the following:

(i) All water development proposals submitted to the legislature shall be reviewed by and accompanied by the recommendation of the water development commission;

(ii) The commission's recommendation shall:

(A) Emphasize projects developing un-appropriated water;

(B) Give preference wherever possible to projects developing new storage capacity;

(C) Consider the potential for development of hydroelectric power in any project through Level II;

(D) Include a summary of the commission's findings under W.S. 41-2-112(b);

(E) Include financing methods subject to the following:

(I) Any water development project may be financed by grants not to exceed seventy-five percent (75%) of the total cost of the project;

(II) Storage projects may be financed by grants for the full cost of the storage capacity but not to exceed public benefits as computed by the commission;

(III) Loans may be made for domestic, agricultural, industrial, recreational or fish and wildlife enhancement purposes;

(IV) The term of a loan shall not exceed fifty years after substantial completion of the project;

(V) Payment of interest and principal on loans may be deferred for not more than five (5) years after substantial completion of the project;

(VI) Loan contracts for project construction shall include provisions to ensure the project shall be operated and maintained during the term of the loan;

(VII) The state may elect to own all or a part of a project and enter into water service repayment contracts with project developers;

(VIII) A project involving a trans-basin diversion shall address the impact of the diversion and recommend measures to mitigate any adverse impact identified in the basin of origin;

(IX) Interest on a loan should provide a reasonable return to the state but shall not be less than four percent (4%) except when the commission recommends a lower interest rate because of public benefits;

(X) Loan contracts for project construction should provide for payment of interest on defaulted payments at a rate of ten percent (10%) per annum;

- (iii) Repealed by Laws 1986, Chapter 109, Section 3.
- (iv) The commission may disqualify from consideration or give lower priority to a project proposed to correct problems identified in a review performed by the department of environmental quality under W.S. 18-5-306(c) where the board of county commissioners

approved a subdivision application notwithstanding the department's recommendation that the application be disapproved.”

D. Program Philosophy

The Wyoming Water Development Program was founded on the philosophy of utilizing a portion of the financial resources the state receives from the development and use of its non-renewable resources, such as coal, oil, and gas, to develop a renewable resource, water. The program provides long-term economic benefits to the State of Wyoming by providing information and water supply projects for the existing and future needs of the State of Wyoming and its citizens. Water availability is a key ingredient for the development of a stable Wyoming economy. The projects also provide short-term economic benefits to the State of Wyoming in the form of jobs and increased material and equipment sales.

Interstate compacts and water related court decrees serve as the primary defense of Wyoming's water entitlements. However, demands downstream of Wyoming are increasing at alarming rates, as are the number of lawsuits, which may interpret the intent of those compacts and decrees. There is resistance from downstream states toward upstream development. Federal laws, rules and regulations are narrowing the window of opportunity to develop water resources. However, water development plans can serve to protect Wyoming's entitlements by documenting the need to develop additional sources of water to meet demands associated with anticipated growth and development. The program's criteria are based on the general philosophy that responsible development and the efficient consumptive beneficial use of water will protect Wyoming's compact and court decreed entitlements.

CHAPTER II. Project Development

A. New Development Program

The New Development Program develops presently unused and/or un-appropriated waters of Wyoming. The program is funded by Water Development Account No. I [W.S. 41-2-124(a)(i)], which has received general fund appropriations and budget reserve account appropriations on occasion, as approved by the legislature; the interest earnings that have accrued to Water Development Account No. I; and a percentage (12.45%) of the revenues which accrue to the state's severance tax distribution account. Legislative approval must be granted prior to allocating funds to a particular purpose or project.

The New Development Program provides an opportunity for sponsors to develop water supplies for anticipated future needs to insure that lack of water supply will not inhibit economic growth. The program encourages water development through state/local partnerships. The sponsor can complete a water supply project with state funding assistance. If a project is developed to meet the needs of the sponsor alone, the sponsor owns the project and its revenues. However, if there is an opportunity to sell water for other purposes, the sponsor and state share in the revenues from the sale in proportion to the grant/loan mix. This partnership is discussed in further detail in subsection D.3.g of Chapter III of these criteria.

In as much as the efficient consumptive use of Wyoming's water resources provides the best assurance that Wyoming's water will remain available for the future, the need for water shall be a key consideration in prioritizing projects and dedicating resources for water development purposes. Projects can be placed in the following **five** categories on the basis of need:

1. Projects developing water for present and **future needs of the project sponsors.**

These projects can be pursued through the study and the preliminary design phases if the project sponsor has a legitimate need for the water and has a desire to pursue the project. These projects can be constructed if the sponsor has the ability and willingness to pay a portion of the development costs and all of the operation, maintenance and replacement costs. **All projects should be designed to accommodate anticipated future demands of the sponsor during the life of the project. Population projections and other related tools should be used to define realistic future needs of the sponsor.**

2. Projects **that could be expanded for purposes and needs beyond those of the project sponsor.**

If there is the opportunity on a particular project to expand its scope to address water supply needs and problems beyond those of the project sponsor, the WWDC shall consider the expansion of the project to address those additional needs and problems on a case-by-case basis. Input from local governments will be considered in these deliberations.

3. Projects capable of developing water for secondary benefits

If there is the opportunity on a particular project to develop water in excess of present and future needs of the sponsor in order to provide secondary benefits, the WWDC shall consider development of the additional supply on a case-by-case basis.

The key factors shall be the availability of water to promote secondary benefits such as flood control, hydropower, recreation and environmental enhancement. Projects in this category may proceed as a sponsored project with the state providing the funds to promote the secondary benefits.

4. Projects developing water for which there is not a presently defined purpose.

Federal regulations make developing water for future, undefined uses difficult. However, opportunities on a particular project to develop water in addition to that needed for present, future, expanded, and secondary purposes should not be summarily dismissed. These opportunities should be identified and considered for future enlargements to the project or pursued if possible and if the development of the water may provide economic benefits in the future. Projects in this category may proceed as sponsored projects with the state providing the funds for the development of the additional water and receiving the revenues generated by future sales of the additional water.

5. Projects which may prove feasible in the future.

One of the primary purposes of river basin plans is to identify water development opportunities as well as define water supply shortages. The plans serve to promote interest from water users who may become interested in a particular project and become project sponsors.

B. Rehabilitation Program

The purpose of the Rehabilitation Program is to provide funding assistance for the improvement of water projects completed and in use for at least fifteen (15) years. The source of revenue for the program is Water Development Account No. II [W.S. 41-2-124(a)(ii)], which receives a percentage (2.10%) of the revenues that accrue to the state's severance tax distribution account and the interest earnings that have accrued to Water Development Account No. II. Legislative approval must be granted prior to allocating funds to a particular purpose or project.

Rehabilitation projects are typically initiated by an application from a project sponsor. If the application is approved, the project is usually assigned a Level II status and can proceed through construction if it is determined the project is technically and economically feasible. The project sponsor must be willing and capable of financially supporting a portion of the project development costs plus all operation and maintenance costs.

The Rehabilitation Program serves to assist project sponsors in keeping existing water supplies effective and viable, thereby preserving their use for the future. Rehabilitation projects can improve an existing municipal **or rural domestic** water supply system or an agricultural storage facility or conveyance system. The projects serve to insure dam safety, decrease operation, maintenance, and replacement costs and/or provide a more efficient means of using existing water supplies.

C. Dam and Reservoir Program

Proposed new dams with storage capacity of 2,000 acre feet or more and proposed expansions of existing dams of 1,000 acre feet or more qualify for the Dam and Reservoir Program. **The source of revenue for the program is Water Development Account No. III [W.S. 41-2-124(a)(iii)], which has received Water Development Account No. I appropriations and budget reserve account appropriations on occasion, as approved by the legislature; the interest earnings that have accrued to the Water Development Account No. III; and a percentage (0.5%) of the revenues which accrue to the state's severance tax distribution account. Legislative approval must be granted prior to allocating funds to a particular purpose or project.**

Dams and reservoirs typically provide opportunities for many potential uses. While water supply shall be emphasized in the development of reservoir operating plans, recreation, environmental enhancement, flood

control, erosion control and hydropower uses should be explored as secondary purposes.

D. Priorities of Projects

As previously discussed, the statutory guidelines are sufficiently broad to allow the program to address all types of projects involving water. However, in order to establish priorities and to utilize available program funds effectively and efficiently, it is necessary to develop priorities relative to the types of water projects the program should pursue. The following is a list of eligible projects in order of preference:

1. Multipurpose Projects -- For purposes of program implementation, multipurpose projects are hereby defined as projects which serve two or more of the following functions: agriculture, municipal, industrial, rural domestic, recreation, environmental, flood control, erosion control, and hydropower. **Priority will be given to those projects that may practically serve more than one entity or purpose and whose service area encompasses a larger, more regional area.**
2. Storage Projects -- Dams and reservoirs that store water during times of surplus for use later when needed shall be a program priority. **Dams and reservoirs can also serve to re-regulate existing water supplies to meet the demands of the water users in a more efficient and effective manner. Proposed new dams with storage capacity of 2,000 acre feet or more and proposed expansions of existing dams of 1,000 acre feet or more qualify for the Dam and Reservoir Program. Smaller storage projects qualify for funding under the New Development Program. Repairs and improvements to existing storage projects qualify for funding under the Rehabilitation Program.**
3. Supply Projects -- These projects include groundwater wells, alluvial wells, diversion dams, and other structures, which put unappropriated water to beneficial use or supply existing uses.

The priority for supply projects based on purpose are as follows:

Priority 1. Irrigation and municipal projects

Priority 2. Rural domestic projects that are obtaining water from another existing public water supply

Priority 3. Rural domestic projects with independent water supplies and raw water irrigation projects for municipalities and rural domestic districts

4. Supply Systems -- While the above three types of projects make water available at the source, supply systems bring this source water closer to the point of use through pipeline and canal systems. Projects in this category include major water transmission facilities that deliver water to distribution systems that serve individual users or to water treatment facilities. Typically, the transmission systems transport raw/untreated water. However, if the most efficient/economical project configuration dictates the water should be treated prior to transportation, the transmission systems can serve to deliver treated water.

The priority for supply systems based on purpose are as follows:

Priority 1. Irrigation and municipal projects

Priority 2. Rural domestic projects that are obtaining water from another existing public water supply system

Priority 3. Rural domestic projects with independent water supply systems and raw water irrigation systems for municipalities and rural domestic districts

Water treatment facilities are not included in this category and are not eligible for funding with one exception: **Disinfection facilities needed to connect groundwater wells to a supply system are eligible for program funding when it expedites the completion of the project.**

Distribution systems are not included in this category and are not eligible for funding. It is often difficult to determine when pipelines are serving as supply systems or distribution systems. The primary purpose of supply systems is to transport or deliver water from one point to another for later distribution to customers. The primary purpose of distribution systems is to deliver water to individual users. The determination as to which pipelines serve as supply systems and thereby qualify for program funding will be completed during the Level II process.

5. Hydropower Projects -- These projects include retrofitting existing facilities or the construction of new facilities capable of developing

marketable hydropower. W.S. 41-2-121 directs the consideration of hydropower production on any program project through the feasibility phase. However, these types of projects shall not be subsidized with grants. The potential return of the investment is the key consideration in determining whether to pursue hydropower projects.

6. Purchase of Existing Storage -- This type of investment may be made under the program if the storage is uncommitted or ***is not being*** ~~has not historically been~~ used for a specific purpose. Any such purchase shall be project specific. There should be assurances that the investment will lead to the ultimate use of the water. The potential market for the water shall be the key consideration in determining whether the purchase should be pursued. Potential secondary benefits such as recreational or environmental uses shall also be considered.
7. Recreation -- The development of water projects the primary purpose of which is to enhance recreation may be implemented under this program. In addition, the feasibility of providing recreation benefits shall be considered in the operating plan of all new projects.
8. Drinking Water State Revolving Fund -- By enacting W.S. 16-1-302, the Legislature authorized the use of water development account funds ***to provide 50% of the state's matching fund requirements for the federal Drinking Water State Revolving Loan Fund (DWSRF) program.*** The DWSRF program may be used to fund improvements to water treatment systems and to finance measures that address other Safe Drinking Water Act compliance issues. This program is not included in the annual Omnibus Water Bill considered by the Legislature. Water Development Program funds are appropriated automatically by statute to match 10% of the federal capitalization grant.
- 9. *Reimbursement of Temporary or Emergency Funding***

The WWDC may recommend that the legislature reimburse or provide refinancing for projects in which the project sponsors acquired temporary or emergency funding from the State Land and Investment Board (SLIB), if those projects meet these criteria and if the WWDC agreed to recommend refinancing prior to the application for SLIB funding.

In order to further clarify the list defined under program priorities, the following are examples of projects/investments that shall not be **considered for funding** under the program:

1. Refinancing of Previously Completed Improvements -- Refinancing of existing projects that have been financed with non-state resources is not an allowable program expense. Further, refinancing may conflict with goals and objectives of other programs.
2. Wastewater Projects -- Wastewater treatment plants and/or collector systems **shall not be funded under the program.**
3. Environmental Enhancement -- Although the feasibility of providing **or rehabilitating** environmental improvements shall be considered on all program projects, the program does not have the resources to pursue projects that solely serve environmental enhancement purposes.
4. Flood Control -- Projects that deal solely with flood control are essential in many parts of the state. There are active federal funding programs that serve this purpose. Therefore, sponsors are encouraged to seek funding from these alternate sources.
5. **Rehabilitation of** Hydropower Projects -- Existing hydropower facilities should be generating sufficient revenues to perform operation, maintenance, and replacement without state assistance.
6. Erosion Control -- While improvements to natural streams are sometimes necessary to keep existing water supplies viable, these improvements are typically performed through private or federal funding **and should not be funded under the program.**
7. Distribution Systems -- For purposes of program implementation, distribution systems are considered to be those facilities whose primary purpose is to deliver water to individual users. There is alternate financing available for distribution systems through other state and federal programs.
8. Water Treatment Facilities -- Historically, the program has not participated in water treatment facilities **with the exception of disinfection facilities needed to connect groundwater wells to a supply system when it expedites the completion of the project.** While the need for improvements to treatment facilities has been considered in the generation of financing plans for

program projects, the funding for water treatment improvements has been considered the responsibility of the sponsor.

9. Subdivisions – For those subdivisions required to undergo review pursuant to W.S. 18-5-306(c), the WWDC shall disqualify a project proposed to correct problems identified in the review performed by the Department of Environmental Quality where the Board of County Commissioners approved a subdivision application notwithstanding the Department's recommendation that the application be disapproved.

E. Levels of Project Development

The following levels of project development are based on complex new development projects. Some aspects of the studies may not be necessary for some new development projects or rehabilitation projects in which the scope of the project is better defined.

1. Level I Study Description

Level I studies are preliminary analyses and comparison of development alternatives. **However, the designation of a Level I study is also used for master plans, watershed improvement studies and other water planning studies. The following outline relates to project specific Level I studies:**

- a. The typical Level I study shall identify or provide the following:
 - i. Development options;
 - ii. Potential project beneficiaries and the benefits each option could provide;
 - iii. Factors that could impair or prohibit the development of any identified option including legal constraints;
 - iv. An analysis of water rights including identification of conflicting prior rights; and
 - v. Option comparisons based on physical and legal water availability, technical, economic, legal, and environmental considerations.

vi. A review of the sponsor's methods for financing the operation, maintenance, and replacement of the existing water supply.

- b. Level I studies shall be performed in sufficient detail to identify projects or project options, if any, that should be pursued. In evaluating projects that could be advanced to Level II, the following considerations shall be made:
 - i. Whether there is an opportunity to economically develop water or maintain an existing supply for Wyoming's use and benefit;
 - ii. Whether the project may be configured to provide service to a regional service area encompassing more than a single entity;
 - iii. Whether there are viable solutions to resolve technical, legal and environmental problems.

2. Level II, Phase I – Study Description

The typical Level II process consists of two phases, which serve first to address project feasibility and then, if the project is determined feasible, to refine the project to the status necessary for a Level III funding request.

- a. A Level II, Phase I investigation shall provide the following:
 - i. A reasonable quantification of the amount of water that can physically and legally be developed or maintained;
 - ii. A determination of water needs that could be or are being served by the project;
 - iii. A determination of technical feasibility including a safety analysis; and for dam and reservoir projects (including stock ponds), a geotechnical and basin geomorphology analysis;
 - iv. A general configuration depicting preliminary physical characteristics of the project;
 - v. A preliminary project operation plan;

- vi. Cost estimates for construction, consultant services, and operation, maintenance, **and replacement;**
 - vii. Identification of direct and indirect benefits that result from the implementation of the project;
 - viii. Identification of costs and benefits that would result by incorporating recreation, hydropower generation, and flood control functions into the project operation;
 - ix. A definition of economic, legal, environmental, and administrative problems and identification of alternate solutions to those problems;
 - x. Identification of lands that may be affected by the project;
 - xi. An analysis of the project sponsor's ability to pay;
 - xii. A determination of project components that are eligible for WWDC funding and project components that are not eligible; and**
 - xiii. A financing plan identifying changes in the sponsor's water financing methods including water rates or charges, tap fees, sinking funds, and other revenues that should be implemented to fund the project. In addition, the financing plan should address alternate sources of funding for the project including project components that are not eligible for WWDC funding. The financing plan should provide a comparison of alternate sources of funding identifying the costs and schedule associated with achieving such funding. Associated inflation costs caused by the time required to achieve the funding will be considered.**
- b. Once all Level II, Phase I investigations have been completed, the WWDC will evaluate the results and will consider the sponsor's need for the project, interest in the project, and willingness and ability to financially participate in the project to determine if the project should proceed to Level II, Phase II.

3. Level II, Phase II – Study Description

A Level II Phase II investigation shall include the following design and technical services:

- a. Hydrological investigations;
- b. An operating plan that addresses water management during and after construction;
- c. A conceptual design and general configuration of the project;
- d. The identification of state and federal permits and clearances necessary to construct the project;
- e. An environmental analysis, including environmental assessments, etc., of the proposed project's operation and configuration, including:
 - i. The identification of anticipated impacts on or improvement to water quality which may occur as a result of the project, i.e., total dissolved solids or total suspended solids, etc.;
 - ii. An assessment of the longevity of dam and reservoir projects, including stock ponds, with respect to sediment loading and hydrologic events;
 - iii. Identification of the potential to develop wetlands eligible for Wyoming's Wetland Banking Program; and
 - iv. The performance of a cultural resource survey of the general project area, as applicable;
- f. The development of a detailed schedule of the activities necessary to complete the project;
- g. The preparation of an itemized project budget that includes costs for design engineering, permitting, land acquisition, construction, construction engineering, operation, maintenance and replacement, **and a financing plan**; and
- h. The preparation of a socioeconomic analysis of the costs and benefits of the proposed project. This analysis shall include the net present value of the stream of benefits and costs associated with the project. The net present value

shall be calculated using a discount rate based on a real rate of return as opposed to a market or nominal rate of return. Sociological and environmental consequences of the project shall be described where values are difficult to place on either benefits or costs.

4. Input from Local Officials

During the Level II process when it is apparent that the project will be a candidate for Level III funding, the following analyses will be completed:

- (a) implications of the project on water and energy use of the community or general area;***
- (b) implications of the project on the future growth of the community or general area; and***
- (c) the impacts of the project on the operating expenses of any other city, county or special district possessing jurisdiction over a service obligation to the project area.***

Written verification from the impacted city, county, or special district must be submitted documenting that the impacts to them are understood and accepted.

5. Level II, Phase III -- Dam and Reservoir Program only

This phase of development pertains to projects that enlarge existing storage projects by 1,000 acre-feet or greater or for proposed new dam and reservoirs with a capacity of 2,000 acre-feet or greater. Work included under this phase includes final engineering design, reviews required by the National Environmental Policy Act, consultations required by the Endangered Species Act, and acquisition of state and federal permits.

b. Legislative approval, through the omnibus water bill process, is required before initiation of Level II, Phase III activities.

6. Level III Construction

The following activities must be addressed once the Legislature appropriates funds to construct the project:

- a. The project agreement, note and mortgage, which formalize sponsor and WWDC project responsibilities and the financing procedures, shall be the first activity undertaken. Funds cannot be committed for expenditure until these documents are executed.

For those projects where the sponsors wish to pursue construction using their own manpower and equipment, the project agreement shall reflect that funding is only available to pay the cost of invoiced materials. Permit and easement acquisition and retaining labor, equipment and professional services are the obligation of the sponsor.

- b. For projects that are funded through a combination of funding sources, the sponsors shall certify that all funding has been secured and is available for project purposes before construction can commence.
- c. Professional services required for final design, permitting and construction engineering shall be secured pursuant to the requirements of the State Board of Engineers and Surveyors and the Board of Registration for Professional Geologists.

The sponsor may elect to retain the WWDC's Level II consultant. However, if a consultant selection process is implemented, the sponsors will be encouraged to use WWDC consultant selection procedures for Level III services in the absence of statutory or other legally described procedures.

- d. For projects other than storage projects, environmental impact statements or assessments shall be prepared, as required.

For storage projects, environmental review and permitting shall be addressed during the Level II, Phase III Study.

- e. For projects other than storage projects, permit applications shall be prepared to secure all necessary construction permits and approvals.
For storage projects, environmental review and permitting shall be addressed during the Level II, Phase III Study.
- f. For projects other than storage projects, the construction documents, including technical specifications, contract

documents and bidding plans shall be prepared. This work may be performed concurrently with the permitting process if it doesn't adversely impact project feasibility.

For storage projects, final engineering design, the construction documents, including technical specifications, contract documents and bidding plans, shall be prepared during the Level II, Phase III Study. This work may be performed concurrently with the permitting process. The Commission may issue a stop work order for those storage projects where ongoing permit activities indicate that the project may be fatally flawed.

- g. Easements or fee titles necessary to construct the project shall be acquired. The scheduling of this task shall be sequenced to minimize impacts to property owners and to expeditiously construct the project.
- h. Mitigation of project impacts on cultural resources shall be undertaken.
- i. After the above activities are completed, the construction bidding process can be initiated.
- j. Construction of the project and construction administration/inspection shall commence upon the acceptance of the bid and upon the issuance of the notice to proceed.
- k. The date project benefits accrue to the sponsor, for purposes of triggering loan repayment schedules, shall be determined by the Commission.
- l. Once compliance with regulatory permitting conditions has been achieved and reclamation and mitigation activities have been completed, project close-out procedures may be initiated.

F. Sponsored and State Projects

Projects can proceed as sponsored projects or state projects.

1. Sponsored Projects

The project sponsor shall be a public entity that can legally receive state funds, incur debt, generate revenues to repay a state loan,

hold title and grant a minimum of a parity position mortgage on the existing water system and improvements appurtenant to the project or provide other adequate security for the anticipated state construction loan. A project sponsor can be a municipality, irrigation district, joint powers board, or other approved assessment district, which will realize the major direct benefits of the project. The project sponsor must be willing and capable of financially supporting a portion of the project development costs and all operation and maintenance costs. Typically, sponsors request project technical and financial assistance from the WWDC through the application process.

The sponsor may request that a Level I or Level II study be conducted to identify solutions and alternatives for addressing water supply issues or they may request funds for a Level III construction project, if it is determined the project is technically and economically feasible and serves to meet a water supply need or alleviate a water supply problem.

2. State Projects

The typical state project serves to benefit more than one entity and is multipurpose in nature. Another common characteristic of state projects is that each has a difficult permitting or political issue, which must be addressed. These issues may include developing a partnership with the federal government, another state, and/or private industry to encourage project development; resolving endangered species, water quality, or wetland issues; or addressing resistance to the project from downstream states.

The WWDC shall consider investments in state projects on a case-by-case basis. However, it should be recognized that present federal laws and regulations make it difficult to achieve federal clearances for projects in which there is not a clearly defined purpose and need.

Chapter III Funding Procedures

A. Project Sponsor/Public Entity

The project sponsor shall be a public entity that can legally receive state funds, incur debt, generate revenues to repay a state loan, hold title and grant a minimum of a parity position mortgage on the existing water system and improvements appurtenant to the project or provide other adequate security for the anticipated state construction loan.

The WWDC may waive the requirement that the project sponsor be a public entity under the following exceptions:

- 1. The WWDC may accept applications for Level I studies from applicants that are not public entities. This will allow the applicant to know if there is a viable project prior to becoming a public entity. However, the applicant must be a public entity before applying for a Level II study. Under these circumstances, the Level I process will have a two-year duration with the study being completed the first year and the sponsor forming a public entity the second year.**
- 2. The WWDC may accept applications related to the construction of dams and reservoirs from applicants that are not public entities. As the evaluations of the feasibility of new dams are complex, this will allow the applicant to know if the proposed reservoir is feasible prior to becoming a public entity. However, the applicant must be a public entity before applying for Level II, Phase III funding.**

B. Applications for Projects New to the Program

1. Requirements for New Applications

The due date for new project applications and application fees is August 15 of each year. The application must include a description of the project, a listing of available information pertinent to the project, and information describing the financial capabilities of the sponsor. The following must accompany the application:

- a. An application fee of one thousand dollars (\$1,000.00) must be submitted with each application. The application fee shall be deposited into Water Development Account No. 1. Acceptance of the fee does not obligate the Water Development Commission or State of Wyoming to fund a study or provide construction funding for any proposed project or purpose. If the application is denied, then seventy-five percent (75%) of the application fee shall be refunded to the applicant. The authority to require an application fee is provided by W.S. 41-2-118(a)(xii).
- b. A certified original of a resolution passed by the council or governing body of the sponsoring entity shall be provided with an application **unless the applicant qualifies for one of the exceptions provided in Section A. Applicants qualifying for the exceptions shall provide evidence of support for the application by providing letters or petitions from interested water users as a substitute for a resolution.**
- c. ***The following financial information:***
 - i. ***The annual budget for operation, maintenance, and replacement of the water supply system;***
 - ii. ***The existing balance in any emergency funds and sinking funds for the water supply system;***
 - iii. ***Water rates, tap fees, and other revenue sources; and***
 - iv. ***Amount of funding obtained from other revenues for operation, maintenance, and replacement of the water supply system.***
- d. To become eligible for funding, the WWDC shall require sponsor certification related to compliance pursuant to public water system rate requirements as set forth in W.S. 15-7-602, W.S. 16-1-108, and W.S. 41-10-113.

2. Review Requirements for New Applications

Review of new applications shall comply with or address the following:

- a. The WWDO project manager assigned to review the application shall advise the applicant of the timetable for project review and evaluation.
- b. A representative of the WWDO shall inspect the proposed project site.

The acceptance of the project application for incorporation into the program shall be based on the following criteria:

- a. The proposed project must be consistent with the goals and objectives of the Wyoming Water Development Program as outlined in W.S. 41-2-112 and these criteria.
- b. The Water Development Program must be the most appropriate source of funds for project study and construction.
- c. There must not be any apparent economic, legal, environmental or technical problems that would impair or prohibit project development.
- d. The proposed projects must serve twenty (20) or more municipal/domestic water taps with individual water meters for each tap or 2,000 or more **water righted acres**.
- e. Sponsors who pass a local capital facilities tax, commit other local tax revenues to a project or secure funding from non-state sources may receive a priority ranking when compared with projects of a similar nature without such funding sources. While the Water Development Program provides for loans and grants, the willingness and ability of project sponsors to assume responsibility for repayment of project costs shall be a factor in the selection of projects to receive state assistance.

C. Applications for Level II Projects

- 1. Requirements for Applications for Level II Projects
 - a. **Applications seeking Level II status for a project new to the program must comply with the requirements specified in section B.1.**
 - b. The due date for applications for Level II status for projects already in the program, which are seeking funding for an

advanced study level or for construction, is October 1 of each year. **Application fees are not required.** Sponsors of continuing projects may apply by submitting a letter with a copy of a resolution of the governing body attached **unless the applicant qualifies for the exception provided in Section A.2. Applicants qualifying for the exception shall provide evidence of support for the application by providing letters or petitions from interested water users as a substitute for a resolution.**

2. Review Requirements for Level II Status

a. The WWDC may introduce projects into the program at Level II status if the application provides a definition of the project configuration and there is evidence that project will provide a viable water supply or rehabilitate an existing water supply. Often, rehabilitation projects can be introduced into the program at Level II status as the projects are clearly defined.

b. After the Level I studies under the Program are completed, the WWDC shall initiate its review process to determine if the project should proceed to Level II. During its November meeting, the Commission shall review the findings of the Level I report, consider the sponsor's input, and make its preliminary recommendations.

D. Applications for Level III Projects

1. Requirements for Applications for Level III Projects

a. Applications seeking Level III status for a project new to the program must comply with the requirements specified in section B.1.

b. The due date for applications for Level III status for projects already in the program, which are seeking funding for an advanced study level or for construction, is October 1 of each year. **Application fees are not required.** Sponsors of continuing projects may apply by submitting a letter with a copy of a resolution of the governing body attached.

c. Written verification from any city, county, or special district that is impacted by the project that they understand and accept those impacts. See subsection E.4 of Chapter 2.

- d. ***All applications for Level III funding for subdivision or rural domestic projects must be accompanied by a letter or a resolution of support from the effected city council and/or county commission.***

2. Review Requirements for Level III Status

- a. ***The WWDC may introduce projects into the program at Level III status if the project sponsor has completed a feasibility study that meets WWDC requirements.***

- b. After the Level II studies under the Program are completed, the WWDC shall initiate its review process to determine if the project should proceed to Level III. During its November meeting, the Commission shall review the findings of the Level II report, consider the sponsor's input, and make its preliminary recommendations.

Projects shall not progress to Level III construction status unless the sponsor and state are committed to complete the project. Issues that shall be considered and addressed in the development of Level III recommendations include:

- a. Whether the project yields a water supply capable of meeting present needs;
- b. Whether the project will yield a reserve water supply to meet future needs;
- c. Whether the project is affordable given the existing status of the water development account and prior commitments to the account;
- d. Whether the project appears to be a good investment for the State of Wyoming considering primary, secondary or indirect project benefits;
- e. Whether the project is economically feasible for the sponsor after all project costs are considered, including debt retirement and costs of project operation, maintenance **and replacement;**
- f. ***Whether the project sponsors are willing to establish a revolving fund to pay costs associated with the repair or***

replacement of project components that may wear out or malfunction twenty years from the date those components were incorporated into the system.

- g. Whether the project sponsors and/or beneficiaries are willing to assume financial responsibility for the project. Whether the project sponsors understand the scope of the project. Whether the project will meet the sponsor's needs. Whether the project sponsors understand they are obligated to assure that the project must be designed and inspected by registered professionals, i.e., licensed engineers and geologists. If the sponsors wish to pursue construction using their own manpower and equipment, whether they understand the funding limits established by the state. Once construction is initiated, whether the project sponsor understands that they cannot voluntarily abandon the project without repaying state grants and loans, including lost interest-earning opportunities.

After the Level II analysis and report have been completed, the Commission shall determine if the project should be elevated to a Level III construction status.

After other funding sources have been considered, the Water Development Program's per tap or per acre investment shall be compared to the sponsor's ability to pay. Project sponsors shall be given the option of making a formal presentation to the WWDC relative to that sponsor's ability and willingness to pay for the project if the Commission determines that the project should not advance due to high repayment costs. The need for the project, the direct and indirect benefits of the project, and any other information the sponsor deems as reasons the project should be advanced or funded, shall be included in the presentation.

3. Level III Funding Considerations

The Commission shall consider project specific information and sponsor input, when developing its preliminary recommendations for Level III projects. If it is determined that the project should proceed to Level III, the following shall also be addressed in the Commission's recommendations:

- a. Project Budget

The project budget shall include costs associated with project permitting, design, land acquisition, construction engineering, and construction.

b. Level I and Level II Study Cost Sharing

The WWDC shall determine if the sponsor should be required to pay a portion of the Level I or Level II study costs incurred to develop the recommended alternative needed to secure funding for Level III construction. Typically, the WWDC is the lead agency in developing Level I and Level II reports. The Commission solely funds the studies to insure the reports are unbiased and performed in such a manner as to determine whether the state should invest in the project. This procedure was also established because the project is better served if the sponsor uses its financial resources to fund its share of the project or to service the debt associated with the construction loan. However, in those exceptional cases where the sponsor assumes the role of lead agency in Level I and Level II studies, it shall share in the costs of those studies. Further, if through the Level II process, a groundwater well is developed that will be used as the water source for a Level III project, the sponsor shall share in the cost of the well.

On dam and reservoir projects, the sponsor shall share in the cost of the Level II, Phase III services unless the WWDC agrees to pay these costs in accordance with subsection e, below.

c. Financial Plan - Loan Grant Mix

i. The maximum grant shall be seventy-five percent (75%) for proposed Level III projects. In order to obtain the maximum grant, the sponsors must demonstrate to the WWDC that the maximum grant is warranted due to severe financial hardship.

ii. The typical grant shall be sixty-seven percent (67%) for proposed Level III projects. In order to obtain the typical grant, the sponsors must demonstrate to the WWDC that they have taken steps or are willing to take steps to make their water supply systems financially self supporting.

iii. The WWDC may provide lesser grant amounts for proposed Level III projects that do not qualify for i or ii, above.

d. Financial Plan - Terms of the Loans

- i. Statutory guidelines establish a minimum rate of four percent (4%) for program loans. The current rate is 4% but may be increased by the Legislature.
- ii. W.S. 41-2-121 specifies the term of the loans cannot exceed fifty (50) years after substantial completion of the project. Further, the term of the loan shall never exceed the economic life of the project. The sponsor's method of loan repayment (water rates, taxes, bonds, etc.) shall also be considered in establishing the term of the loan.
- iii. The statutes allow the WWDC to recommend that the payment of interest and principal be deferred up to five (5) years after substantial completion of the project. **In addition, the WWDC can recommend that the accrual of interest also be deferred during the term of the payment deferral.** These special conditions shall be granted only on a limited basis. The sponsor's method of repayment and the longevity of the sponsor's existence as a legal entity shall be key considerations in determining if this deferment should be granted. In no event can the combined deferment and term of the loan exceed fifty (50) years.

e. Financial Plan – Special Considerations for Dams and Reservoirs

i. The WWDC may recommend a loan/grant mix based on the sponsor's ability to pay a portion of the project costs and all of the operation, maintenance, and replacement costs.

ii. The WWDC may recommend that permitting and design costs be paid by the program thereby reducing the costs applied to the loan/grant mix.

iii. The WWDC may recommend that the program pay for the storage capacity needed to provide water

for environmental mitigation and enhancement thereby reducing the costs applied to the loan/grant mix.

iv. The WWDC may recommend any combination of the above.

f. Financial Plan–Special Considerations for Subdivisions or Rural Domestic Projects:

i. In accordance with the WWDC’s support of the regional concept to solve water supply problems, funding preference will be given to those water supply projects for subdivisions or rural domestic projects that are proposing to connect to another existing public water supply system.

ii. Financing plans for water supply systems for subdivisions or rural domestic projects will ensure that the developer of the subdivision does not receive a “windfall” from project funding provided by the WWDC.

g. State/Local Partnership

The program has a philosophy that water development can be achieved through state/local partnerships. The sponsor can complete a water supply project with state funding assistance. If the sponsor uses all of the water, the project basically belongs to the sponsor. However, if there is the opportunity to sell water for other purposes, the sponsor and state share in the revenues. This insures that a project sponsor will not receive a "windfall" from the sale of water that was made available, in part, from a state grant. Therefore, if the project develops a new water supply, the WWDC shall establish the terms of the program's participation in the future sale of water in the project agreement in the following manner:

i. There shall be no lease, sale, assignment or transfer of ownership of more than 100 acre feet of water per year from municipal or irrigation projects funded by the program without prior written approval of the WWDC.

ii. There shall be no lease, sale, assignment or transfer of ownership of water from rural domestic projects funded by the program without prior written approval of the WWDC.

iii. If the WWDC approves such sales, the program will receive a share of the revenues from the sale commensurate with the percent of the grant used to construct the project.

h. Sale of Projects

There shall be no lease, sale, assignment or transfer of ownership of a project funded by the program until the project loan is paid in full and until prior written approval is obtained from the WWDC. The WWDC will ensure that the project sponsor does not receive a "windfall" from the state's investment in the project.

i. Abandonment of Construction Projects

If the WWDC determines that any project sponsor has, without good cause, abandoned the completion of the project, that sponsor, in addition to being required to repay the loan, shall be obligated to repay the grant funds actually expended plus interest as established by the state auditor in an amount equal to the interest that would have accrued on the expended grant funds. If these payments are deemed by the WWDC to provide a financial hardship on the sponsors, the WWDC may recommend to the legislature that a loan be approved to repay the program. The recommended interest on the loans will be 4% per year and the term will be based on the ability to pay of the sponsor.

E. Recommendation Process

The Water Development Commission uses the following process to generate funding recommendations for legislative consideration.

1. New Applications

The deadline for new project applications is the fifteenth of August. Upon receipt, new applications and supporting documentation are reviewed, and project sites are visited. The WWDC makes preliminary recommendations regarding applications at its November meeting.

2. Existing Projects

Typically, consultant project reports are drafted by the first of October. These reports are reviewed to determine whether the projects warrant advancement in the program.

3. Preliminary Recommendations

At the November WWDC meeting, the WWDO director presents funding recommendations for new applications and existing projects. Project sponsors are given the opportunity to present their requests. The WWDC takes preliminary action on the sponsor's request at this meeting.

4. Public Meetings

If a proposed Level I Reconnaissance Study or Level II Feasibility Study is of particular concern or controversy, the WWDC may solicit public input at a public meeting prior to finalizing its project recommendation.

5. Public Hearings

The Commission holds formal public hearings on all projects that are proposed for Level III Final Design and Construction funding.

6. Coordination with the Governor

The WWDC provides the Governor with its preliminary recommendations and a financial report addressing impacts to the water development accounts. The Governor may provide input throughout the recommendation process.

7. Final Recommendations

The WWDC meets in December or early January to finalize its legislative recommendations on new applications and existing projects. The Commission considers public input received at the meetings and hearings and recommendations from the Governor. Sponsors and interested parties who disagree with the Commission's preliminary recommendation are provided the opportunity to address the Commission with their concerns.

8. Select Water Committee

The Select Water Committee is comprised of 6 senators and 6 representatives. They provide legislative oversight for the program, and review the Commission's recommendations and budgets. Typically, the Select Water Committee serves as sponsor for the Water Development Program legislation.

9. Legislative Process

The legislature must authorize the allocation of funds from the water development accounts to particular projects. This approval is solicited through the Omnibus Water Planning and Construction Bills.

CHAPTER IV. Water Resource Planning

The Wyoming Water Development Commission serves as the water-planning agency for the State of Wyoming. The water development planning function is an important aspect of the Water Development Program. Because the issues facing water development in the West are complex, the scope of the WWDC's planning efforts is not as closely defined as the New Development, Rehabilitation, and Dam and Reservoir Programs. The planning aspects of the Wyoming Water Development Program establish the framework for development strategies and serve to identify and resolve water issues. The source of revenue for the planning function of the program is typically Water Development Account No. 1.

A. River Basin Plans

The program develops basin wide plans for each of the state's major drainage basins. These plans identify water supply problems and development opportunities. The plans serve to promote interest from water users who may become interested in a particular project and become project sponsors. Basin plans shall include the development of a water related database to provide data and information to developers and resource managers.

B. Watershed Improvement Studies

These studies provide a detailed evaluation of an individual watershed. The studies may identify water development and system rehabilitation projects as well as address erosion control, flood control or other non-water development related environmental issues. Watershed improvement studies are an integral part of the Small Water Project Program, which has its own specific criteria. The studies may identify projects that may be eligible for the New Development, Rehabilitation, or Dam and Reservoir Programs.

C. Master Plans

Master plans provide a service to municipalities, districts and other entities to assist in the preparation of planning documents, which serve as a blueprint for future water supply system improvements. Master plans

also serve as a framework for the entities to establish project priorities and to perform the financial planning necessary to meet those priorities.

In addition, master plans assist entities in preparing the reports necessary to achieve federal funding assistance for water development, flood control, erosion control, hydropower, rehabilitation, watershed improvements and other water related projects.

Sound water planning serves to promote the effective and efficient use of available water resources. Master plans provide information to users as to whether the resource can adequately service the existing and anticipated demands for water within a certain area and provide reconnaissance level information regarding costs and scheduling.

D. Federal Funding

Presently, there are federal programs which provide funding assistance for some types of water development projects. However, in order to access these funds, costly feasibility/environmental studies are often needed. If these studies cause a financial burden and if the proposed project alleviates a water development, management, rehabilitation problem, or allows the continued beneficial use of water, the WWDC shall consider participating in the studies. The amount of the WWDC'S financial participation shall be based on the proponent's ability to pay.

E. Research

Water development issues and problems may encompass watersheds, river basins or include the entire state. In order to address these issues, non-project specific research and data collection is necessary. The WWDC has developed a working relationship with state and federal agencies and the University of Wyoming to conduct water related research.

In addition, the legislature has assigned the Water Development Program the following research tasks:

1. Instream Flow

The Wyoming Game and Fish Department (WGFD) selects candidate stream segments for instream flows. The WWDC files water right applications with the State Engineer for permits to appropriate water for instream flows in those segments of stream recommended by the WGFD. Further, W.S. 41-3-1004 assigns the WWDC the responsibility to generate feasibility reports for all instream flow permit applications. The reports are hydrological analyses of water availability in the reach of the stream to

which the applications apply. The analyses also quantify existing water rights above and within the stream segment.

As the water-planning agency, the WWDC also reviews instream flow requests to determine whether they may conflict with future water development opportunities.

2. Groundwater Grant Program

W.S. 41-2-119 authorizes the Water Development Commission to grant funds to cities, towns, and special districts for exploration programs to evaluate the potential use of underground water for municipal and rural domestic purposes. Authorized entities are eligible to receive up to \$400,000 in grant funds and are required to provide 25% of the total project costs in local matching funds. The primary purpose of the program is to inventory the available groundwater resources in the state. The program also serves to assist communities in the development of efficient water supplies. Unlike other projects within the Water Development Program, funding for projects that meet the criteria of the Groundwater Grant Program can be allocated directly by the WWDC without project specific legislation.

Proposed Operating Criteria:

Operating Criteria

Draft 10/1/07

The proposed revised criteria is offered for public comment. There will be a public hearing held on the criteria at 1:00 p.m. on Thursday, March 6, 2008 at the Wyoming Water Development Office, 6920 Yellowtail Road, Cheyenne, Wyoming 82002. Written comments will be welcomed at this address through May 31, 2008.

The Legislature's Select Water Committee and the Wyoming Water Development Commission will be meeting on June 5, 2008 to review public comments and determine if the proposed criteria should be adopted.

Operating Criteria of the Wyoming Water Development Program

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Operating Criteria of the Wyoming Water Development Program

CHAPTER I. Introduction

A. Purpose of the Operating Criteria

The Wyoming Water Development Commission (WWDC), comprised of ten (10) public members appointed by the Governor, has authority over the Wyoming Water Development Program. The Wyoming Water Development Office (WWDO) administers the program.

The 1975 Legislature passed W.S. 41-2-112(a), which established the purpose of the program:

"The Wyoming water development program is established to foster, promote and encourage the optimal development of the state's human, industrial, mineral, agricultural, water and recreational resources. The program shall provide, through the commission, procedures and policies for the planning, selection, financing, construction, acquisition and operation of projects and facilities for the conservation, storage, distribution and use of water, necessary in the public interest to develop and preserve Wyoming's water and related land resources. The program shall encourage development of water facilities for irrigation, for reduction of flood damage, for abatement of pollution, for preservation and development of fish and wildlife resources [and] for protection and improvement of public lands and shall help make available the waters of this state for all beneficial uses, including but not limited to municipal, domestic, agricultural, industrial, instream flows, hydroelectric power and recreational purposes, conservation of land resources and protection of the health, safety and general welfare of the people of the state of Wyoming."

These criteria provide the WWDC, the WWDO and the public with general standards for evaluating and prioritizing applications for program funding, a general framework for the development of program/project recommendations and the generation of water related information.

In addition, these criteria have been developed to assist the WWDC and WWDO to establish priorities and procedures and to serve as a tool to coordinate with other state and federal programs, which provide funding assistance for water projects. The criteria are not intended to be inflexible or uncompromising rules but rather to provide general guidelines for use in the decision making process.

These criteria respond to the requirements of W.S. 41-2-112(a) that the WWDC adopt procedures and policies and W.S. 41-2-121(b) which requires the WWDC to establish criteria for evaluation and administration of water development programs. The statutes also provide specific program guidance and were considered in the development of these criteria.

B. Changes in the Program Criteria

The criteria may be revised on a periodic basis to insure the Water Development Program is serving Wyoming citizens in a responsible and efficient manner. The WWDC and Director of the WWDO may offer changes in the criteria. Proposed changes in the criteria shall be reviewed during the combined Select Water Committee/WWDC meeting in August. During the August meeting, the proposed changes in criteria may be given a preliminary approval or final disapproval. Those proposed changes that are preliminarily approved shall be reviewed by the public during a public hearing process.

The proposed changes which receive preliminary approval and which have been reviewed by the public shall be considered for final approval during the WWDC's May/June meeting. The WWDC shall also weigh the comments provided by the public to determine whether a proposed change shall be accepted as written, amended or disapproved.

C. Program Statutes

The following statutes are the primary basis for these criteria:

W.S. 41-2-112(b) states:

"In developing financing recommendations under the Wyoming water development program, the commission shall:

- (i) Emphasize multipurpose water projects for maximum benefits and cost allocation;
- (ii) Identify project costs and benefits;
- (iii) Recommend an allocation of project costs, including expenditures of state funds for Level I reconnaissance studies, Level II feasibility studies and Level III development plans, to be reimbursed by project beneficiaries and to be borne by the state;
- (iv) Recommend terms and conditions of financing project costs, maintenance and operation, based on the benefits to be derived by project beneficiaries and their respective ability to pay;

(v) Consider all funds, assets and revenue sources of all project beneficiaries and recommend financing plans which will reimburse expenditures of state funds, except as such expenditures may be allocated to a state benefit, including enhancement of fish and wildlife habitat or recreation;

(vi) Consider state construction and ownership of any project which requires the state to finance un-reimbursed costs in excess of ten percent (10%) of the total project cost and submit recommendations on project costs and potential revenues from sale of water or power from the project;

(vii) Consider any other factors necessary to develop comprehensive financing recommendations."

W.S. 41-2-121 provides more specific guidance:

"(a) The water development commission shall establish criteria for evaluation and administration of water development projects. Criteria shall include but not be limited to the following:

(i) All water development proposals submitted to the legislature shall be reviewed by and accompanied by the recommendation of the water development commission;

(ii) The commission's recommendation shall:

(A) Emphasize projects developing un-appropriated water;

(B) Give preference wherever possible to projects developing new storage capacity;

(C) Consider the potential for development of hydroelectric power in any project through Level II;

(D) Include a summary of the commission's findings under W.S. 41-2-112(b);

(E) Include financing methods subject to the following:

(I) Any water development project may be financed by grants not to exceed seventy-five percent (75%) of the total cost of the project;

(II) Storage projects may be financed by grants for the full cost of the storage capacity but not to exceed public benefits as computed by the commission;

(III) Loans may be made for domestic, agricultural, industrial, recreational or fish and wildlife enhancement purposes;

(IV) The term of a loan shall not exceed fifty years after substantial completion of the project;

(V) Payment of interest and principal on loans may be deferred for not more than five (5) years after substantial completion of the project;

(VI) Loan contracts for project construction shall include provisions to ensure the project shall be operated and maintained during the term of the loan;

(VII) The state may elect to own all or a part of a project and enter into water service repayment contracts with project developers;

(VIII) A project involving a trans-basin diversion shall address the impact of the diversion and recommend measures to mitigate any adverse impact identified in the basin of origin;

(IX) Interest on a loan should provide a reasonable return to the state but shall not be less than four percent (4%) except when the commission recommends a lower interest rate because of public benefits;

(X) Loan contracts for project construction should provide for payment of interest on defaulted payments at a rate of ten percent (10%) per annum;

- (iii) Repealed by Laws 1986, Chapter 109, Section 3.
- (iv) The commission may disqualify from consideration or give lower priority to a project proposed to correct problems identified in a review performed by the department of environmental quality under W.S. 18-5-306(c) where the board of county commissioners

approved a subdivision application notwithstanding the department's recommendation that the application be disapproved.”

D. Program Philosophy

The Wyoming Water Development Program was founded on the philosophy of utilizing a portion of the financial resources the state receives from the development and use of its non-renewable resources, such as coal, oil, and gas, to develop a renewable resource, water. The program provides long-term economic benefits to the State of Wyoming by providing information and water supply projects for the existing and future needs of the State of Wyoming and its citizens. Water availability is a key ingredient for the development of a stable Wyoming economy. The projects also provide short-term economic benefits to the State of Wyoming in the form of jobs and increased material and equipment sales.

Interstate compacts and water related court decrees serve as the primary defense of Wyoming's water entitlements. However, demands downstream of Wyoming are increasing at alarming rates, as are the number of lawsuits, which may interpret the intent of those compacts and decrees. There is resistance from downstream states toward upstream development. Federal laws, rules and regulations are narrowing the window of opportunity to develop water resources. However, water development plans can serve to protect Wyoming's entitlements by documenting the need to develop additional sources of water to meet demands associated with anticipated growth and development. The program's criteria are based on the general philosophy that responsible development and the efficient consumptive beneficial use of water will protect Wyoming's compact and court decreed entitlements.

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CHAPTER II. Project Development

A. New Development Program

The New Development Program develops presently unused and/or un-appropriated waters of Wyoming. The program is funded by Water Development Account No. I [W.S. 41-2-124(a)(i)], which has received general fund appropriations and budget reserve account appropriations on occasion, as approved by the legislature; the interest earnings that have accrued to Water Development Account No. I; and a percentage (12.45%) of the revenues which accrue to the state's severance tax distribution account. Legislative approval must be granted prior to allocating funds to a particular purpose or project.

The New Development Program provides an opportunity for sponsors to develop water supplies for anticipated future needs to insure that lack of water supply will not inhibit economic growth. The program encourages water development through state/local partnerships. The sponsor can complete a water supply project with state funding assistance. If a project is developed to meet the needs of the sponsor alone, the sponsor owns the project and its revenues. However, if there is an opportunity to sell water for other purposes, the sponsor and state share in the revenues from the sale in proportion to the grant/loan mix. This partnership is discussed in further detail in subsection D.3.g of Chapter III of these criteria.

In as much as the efficient consumptive use of Wyoming's water resources provides the best assurance that Wyoming's water will remain available for the future, the need for water shall be a key consideration in prioritizing projects and dedicating resources for water development purposes. Projects can be placed in the following **five** categories on the basis of need:

1. Projects developing water for present and **future needs of the project sponsors.**

These projects can be pursued through the study and the preliminary design phases if the project sponsor has a legitimate need for the water and has a desire to pursue the project. These projects can be constructed if the sponsor has the ability and willingness to pay a portion of the development costs and all of the operation, maintenance and replacement costs. **All projects should be designed to accommodate anticipated future demands of the sponsor during the life of the project. Population projections and other related tools should be used to define realistic future needs of the sponsor.**

2. Projects **that could be expanded for purposes and needs beyond those of the project sponsor.**

County commissioners for the county in which the project is located and city officials in the project area shall be consulted concerning the potential growth and development opportunities from the project **during the Level II process.**

If county or city officials wish to expand a particular project, the WWDC will entertain such requests in its Level III funding deliberations. If there are multiple beneficiaries, the entities shall be encouraged to form a joint powers board to serve as a project sponsor. **If the development of a joint powers board does not occur or if the WWDC deems that an expansion of a particular project beyond the present and future needs of the sponsor would be appropriate, the WWDC may recommend to the legislature that the state pay the cost of the expansion as an investment.**

3. Projects capable of developing water for secondary benefits

If there is the opportunity on a particular project to develop water in excess of present and future needs of the sponsor in order to provide secondary benefits, the WWDC shall consider development of the additional supply on a case-by-case basis.

The key factors shall be the availability of water to promote secondary benefits such as flood control, hydropower, recreation and environmental enhancement. Projects in this category may proceed as a sponsored project with the state providing the funds to promote the secondary benefits.

4. Projects developing water for which there is not a presently defined purpose.

Federal regulations make developing water for future, undefined uses difficult. However, opportunities on a particular project to develop water in addition to that needed for present, future, expanded, and secondary purposes should not be summarily dismissed. These opportunities should be identified and considered for future enlargements to the project or pursued if possible and if the development of the water may provide economic benefits in the future. Projects in this category may proceed as sponsored projects with the state providing the funds for the development of the additional water and receiving the revenues generated by future sales of the additional water.

5. Projects which may prove feasible in the future.

One of the primary purposes of river basin plans is to identify water development opportunities as well as define water supply shortages. The plans serve to promote interest from water users who may become interested in a particular project and become project sponsors.

B. Rehabilitation Program

The purpose of the Rehabilitation Program is to provide funding assistance for the improvement of water projects completed and in use for at least fifteen (15) years. The source of revenue for the program is Water Development Account No. II [W.S. 41-2-124(a)(ii)], which receives a percentage (2.10%) of the revenues that accrue to the state's severance tax distribution account and the interest earnings that have accrued to Water Development Account No. II. Legislative approval must be granted prior to allocating funds to a particular purpose or project.

Rehabilitation projects are typically initiated by an application from a project sponsor. If the application is approved, the project is usually assigned a Level II status and can proceed through construction if it is determined the project is technically and economically feasible. The project sponsor must be willing and capable of financially supporting a portion of the project development costs plus all operation and maintenance costs.

The Rehabilitation Program serves to assist project sponsors in keeping existing water supplies effective and viable, thereby preserving their use for the future. Rehabilitation projects can improve an existing municipal **or rural domestic** water supply system or an agricultural storage facility or conveyance system. The projects serve to insure dam safety, decrease operation, maintenance, and replacement costs and/or provide a more efficient means of using existing water supplies.

C. Dam and Reservoir Program

Proposed new dams with storage capacity of 2,000 acre feet or more and proposed expansions of existing dams of 1,000 acre feet or more qualify for the Dam and Reservoir Program. **The source of revenue for the program is Water Development Account No. III [W.S. 41-2-124(a)(iii)], which has received Water Development Account No. I appropriations and budget reserve account appropriations on occasion, as approved by the legislature; the interest earnings that have accrued to the Water Development Account No. III; and a percentage (0.5%) of**

the revenues which accrue to the state's severance tax distribution account. Legislative approval must be granted prior to allocating funds to a particular purpose or project.

Dams and reservoirs typically provide opportunities for many potential uses. While water supply shall be emphasized in the development of reservoir operating plans, recreation, environmental enhancement, flood control, erosion control and hydropower uses should be explored as secondary purposes.

D. Priorities of Projects

As previously discussed, the statutory guidelines are sufficiently broad to allow the program to address all types of projects involving water. However, in order to establish priorities and to utilize available program funds effectively and efficiently, it is necessary to develop priorities relative to the types of water projects the program should pursue. The following is a list of eligible projects in order of preference:

1. Multipurpose Projects -- For purposes of program implementation, multipurpose projects are hereby defined as projects which serve two or more of the following functions: agriculture, municipal, industrial, rural domestic, recreation, environmental, flood control, erosion control, and hydropower. **Priority will be given to those projects that may practically serve more than one entity or purpose and whose service area encompasses a larger, more regional area.**
2. Storage Projects -- Dams and reservoirs that store water during times of surplus for use later when needed shall be a program priority. **Dams and reservoirs can also serve to re-regulate existing water supplies to meet the demands of the water users in a more efficient and effective manner. Proposed new dams with storage capacity of 2,000 acre feet or more and proposed expansions of existing dams of 1,000 acre feet or more qualify for the Dam and Reservoir Program. Smaller storage projects qualify for funding under the New Development Program. Repairs and improvements to existing storage projects qualify for funding under the Rehabilitation Program.**
3. Supply Projects -- These projects include groundwater wells, alluvial wells, diversion dams, and other structures, which put un-appropriated water to beneficial use or supply existing uses.

4. Supply Systems -- While the above three types of projects make water available at the source, supply systems bring this source water closer to the point of use through pipeline and canal systems. Projects in this category include major water transmission facilities that deliver water to distribution systems that serve individual users or to water treatment facilities. Typically, the transmission systems transport raw/untreated water. However, if the most efficient/economical project configuration dictates the water should be treated prior to transportation, the transmission systems can serve to deliver treated water.

Water treatment facilities are not included in this category and are not eligible for funding with one exception: **Disinfection facilities needed to connect groundwater wells to a supply system are eligible for program funding when it expedites the completion of the project.**

Distribution systems are not included in this category and are not eligible for funding. It is often difficult to determine when pipelines are serving as supply systems or distribution systems. The primary purpose of supply systems is to transport or deliver water from one point to another for later distribution to customers. The primary purpose of distribution systems is to deliver water to individual users. The determination as to which pipelines serve as supply systems and thereby qualify for program funding will be completed during the Level II process.

5. Hydropower Projects -- These projects include retrofitting existing facilities or the construction of new facilities capable of developing marketable hydropower. W.S. 41-2-121 directs the consideration of hydropower production on any program project through the feasibility phase. However, these types of projects shall not be subsidized with grants. The potential return of the investment is the key consideration in determining whether to pursue hydropower projects.
6. Purchase of Existing Storage -- This type of investment may be made under the program if the storage is uncommitted or **is not being** ~~has not historically been~~ used for a specific purpose. Any such purchase shall be project specific. There should be assurances that the investment will lead to the ultimate use of the water. The potential market for the water shall be the key consideration in determining whether the purchase should be pursued. Potential secondary

benefits such as recreational or environmental uses shall also be considered.

7. Recreation -- The development of water projects the primary purpose of which is to enhance recreation may be implemented under this program. In addition, the feasibility of providing recreation benefits shall be considered in the operating plan of all new projects.
8. Drinking Water State Revolving Fund -- By enacting W.S. 16-1-302, the Legislature authorized the use of water development account funds **to provide 50% of the state's matching fund requirements for the federal Drinking Water State Revolving Loan Fund (DWSRF) program.** The DWSRF program may be used to fund improvements to water treatment systems and to finance measures that address other Safe Drinking Water Act compliance issues. This program is not included in the annual Omnibus Water Bill considered by the Legislature. Water Development Program funds are appropriated automatically by statute to match 10% of the federal capitalization grant.

9. Reimbursement of Temporary or Emergency Funding

The WWDC may recommend that the legislature reimburse or provide refinancing for projects in which the project sponsors acquired temporary or emergency funding from the State Land and Investment Board (SLIB), if those projects meet these criteria and if the WWDC agreed to recommend refinancing prior to the application for SLIB funding.

In order to further clarify the list defined under program priorities, the following are examples of projects/investments that shall not be **considered for funding** under the program:

1. Refinancing of Previously Completed Improvements -- Refinancing of existing projects that have been financed with non-state resources is not an allowable program expense. Further, refinancing may conflict with goals and objectives of other programs.
2. Wastewater Projects -- Wastewater treatment plants and/or collector systems **shall not be funded under the program.**
3. Environmental Enhancement -- Although the feasibility of providing **or rehabilitating** environmental improvements shall be considered

on all program projects, the program does not have the resources to pursue projects that solely serve environmental enhancement purposes.

4. Flood Control -- Projects that deal solely with flood control are essential in many parts of the state. There are active federal funding programs that serve this purpose. Therefore, sponsors are encouraged to seek funding from these alternate sources.
5. **Rehabilitation of** Hydropower Projects -- Existing hydropower facilities should be generating sufficient revenues to perform operation, maintenance, and replacement without state assistance.
6. Erosion Control -- While improvements to natural streams are sometimes necessary to keep existing water supplies viable, these improvements are typically performed through private or federal funding **and should not be funded under the program.**
7. Distribution Systems -- For purposes of program implementation, distribution systems are considered to be those facilities whose primary purpose is to deliver water to individual users. There is alternate financing available for distribution systems through other state and federal programs.
8. Water Treatment Facilities -- Historically, the program has not participated in water treatment facilities **with the exception of disinfection facilities needed to connect groundwater wells to a supply system when it expedites the completion of the project.** While the need for improvements to treatment facilities has been considered in the generation of financing plans for program projects, the funding for water treatment improvements has been considered the responsibility of the sponsor.
9. Subdivisions – For those subdivisions required to undergo review pursuant to W.S. 18-5-306(c), the WWDC shall disqualify a project proposed to correct problems identified in the review performed by the Department of Environmental Quality where the Board of County Commissioners approved a subdivision application notwithstanding the Department's recommendation that the application be disapproved.

E. Levels of Project Development

The following levels of project development are based on complex new development projects. Some aspects of the studies may not be

necessary for some new development projects or rehabilitation projects in which the scope of the project is better defined.

1. Level I Study Description

Level I studies are preliminary analyses and comparison of development alternatives. **However, the designation of a Level I study is also used for master plans, watershed improvement studies and other water planning studies. The following outline relates to project specific Level I studies:**

- a. The typical Level I study shall identify or provide the following:
 - i. Development options;
 - ii. Potential project beneficiaries and the benefits each option could provide;
 - iii. Factors that could impair or prohibit the development of any identified option including legal constraints;
 - iv. An analysis of water rights including identification of conflicting prior rights; and
 - v. Option comparisons based on physical and legal water availability, technical, economic, legal, and environmental considerations.
- b. Level I studies shall be performed in sufficient detail to identify projects or project options, if any, that should be pursued. In evaluating projects that could be advanced to Level II, the following considerations shall be made:
 - i. Whether there is an opportunity to economically develop water or maintain an existing supply for Wyoming's use and benefit;
 - ii. Whether the project may be configured to provide service to a regional service area encompassing more than a single entity;
 - iii. Whether there are viable solutions to resolve technical, legal and environmental problems.

2. Level II, Phase I – Study Description

The typical Level II process consists of two phases, which serve first to address project feasibility and then, if the project is determined feasible, to refine the project to the status necessary for a Level III funding request.

- a. A Level II, Phase I investigation shall provide the following:
 - i. A reasonable quantification of the amount of water that can physically and legally be developed or maintained;
 - ii. A determination of water needs that could be or are being served by the project;
 - iii. A determination of technical feasibility including a safety analysis; and for dam and reservoir projects (including stock ponds), a geotechnical and basin geomorphology analysis;
 - iv. A general configuration depicting preliminary physical characteristics of the project;
 - v. A preliminary project operation plan;
 - vi. Cost estimates for construction, consultant services, and operation, maintenance, **and replacement. Replacement costs are associated with the replacement of project components that may wear out or malfunction during the economic life of the project;**
 - vii. Identification of direct and indirect benefits that result from the implementation of the project;
 - viii. Identification of costs and benefits that would result by incorporating recreation, hydropower generation, and flood control functions into the project operation;

- ix. A definition of economic, legal, environmental, and administrative problems and identification of alternate solutions to those problems;
- x. Identification of lands that may be affected by the project;
- xi. An analysis of the project sponsor's ability to pay;

xii. A determination of project components that are eligible for WWDC funding and project components that are not eligible; and

xiii. A financing plan identifying alternate sources of funding for the project including project components that are not eligible for WWDC funding. The financing plan should provide a comparison of alternate sources of funding identifying the costs and schedule associated with achieving such funding. Associated inflation costs caused by the time required to achieve the funding will be considered.

- b. Once all Level II, Phase I investigations have been completed, the WWDC will evaluate the results and will consider the sponsor's need for the project, interest in the project, and willingness and ability to financially participate in the project to determine if the project should proceed to Level II, Phase II.

3. Level II, Phase II – Study Description

A Level II Phase II investigation shall include the following design and technical services:

- a. Hydrological investigations;
- b. An operating plan that addresses water management during and after construction;
- c. A conceptual design and general configuration of the project;
- d. The identification of state and federal permits and clearances necessary to construct the project;

- e. An environmental analysis, including environmental assessments, etc., of the proposed project's operation and configuration, including:
 - i. The identification of anticipated impacts on or improvement to water quality which may occur as a result of the project, i.e., total dissolved solids or total suspended solids, etc.;
 - ii. An assessment of the longevity of dam and reservoir projects, including stock ponds, with respect to sediment loading and hydrologic events;
 - iii. Identification of the potential to develop wetlands eligible for Wyoming's Wetland Banking Program; and
 - iv. The performance of a cultural resource survey of the general project area, as applicable;
- f. The development of a detailed schedule of the activities necessary to complete the project;
- g. The preparation of an itemized project budget that includes costs for design engineering, permitting, land acquisition, construction, construction engineering, operation, maintenance and replacement, **and an updated financing plan**; and
- h. The preparation of a socioeconomic analysis of the costs and benefits of the proposed project. This analysis shall include the net present value of the stream of benefits and costs associated with the project. The net present value shall be calculated using a discount rate based on a real rate of return as opposed to a market or nominal rate of return. Sociological and environmental consequences of the project shall be described where values are difficult to place on either benefits or costs.

4. Input from Local Officials

During the Level II process when it is apparent that the project will be a candidate for Level III funding, the following input will be solicited from local officials by the project sponsors:

- a. County commissioners for the county in which the project is located shall be requested to supply projections for the potential growth and development**

opportunities from the project, and any county planning initiatives that might affect or be affected by the project.

b. City councils shall be requested to supply projections for the potential growth and development opportunities from projects located within a municipality's comprehensive planning area and any city planning initiatives that might affect or be affected by the project.

5. Level II, Phase III -- Dam and Reservoir Program only

a. This phase of development pertains to projects that enlarge existing storage projects by 1,000 acre-feet or greater or for proposed new dam and reservoirs with a capacity of 2,000 acre-feet or greater. Work included under this phase includes final engineering design, reviews required by the National Environmental Policy Act, consultations required by the Endangered Species Act, and acquisition of state and federal permits.

b. Legislative approval, through the omnibus water bill process, is required before initiation of Level II, Phase III activities.

6. Level III Construction

The following activities must be addressed once the Legislature appropriates funds to construct the project:

a. The project agreement, note and mortgage, which formalize sponsor and WWDC project responsibilities and the financing procedures, shall be the first activity undertaken. Funds cannot be committed for expenditure until these documents are executed.

For those projects where the sponsors wish to pursue construction using their own manpower and equipment, the project agreement shall reflect that funding is only available to pay the cost of invoiced materials. Permit and easement acquisition and retaining labor, equipment and professional services are the obligation of the sponsor.

b. For projects that are funded through a combination of funding sources, the sponsors shall certify that all funding has been secured and is available for project purposes before construction can commence.

- c. Professional services required for final design, permitting and construction engineering shall be secured pursuant to the requirements of the State Board of Engineers and Surveyors and the Board of Registration for Professional Geologists.

The sponsor may elect to retain the WWDC's Level II consultant. However, if a consultant selection process is implemented, the sponsors will be encouraged to use WWDC consultant selection procedures for Level III services in the absence of statutory or other legally described procedures.

- d. For projects other than storage projects, environmental impact statements or assessments shall be prepared, as required.

For storage projects, environmental review and permitting shall be addressed during the Level II, Phase III Study.

- e. For projects other than storage projects, permit applications shall be prepared to secure all necessary construction permits and approvals.

For storage projects, environmental review and permitting shall be addressed during the Level II, Phase III Study.

- f. For projects other than storage projects, the construction documents, including technical specifications, contract documents and bidding plans shall be prepared. This work may be performed concurrently with the permitting process if it doesn't adversely impact project feasibility.

For storage projects, final engineering design, the construction documents, including technical specifications, contract documents and bidding plans, shall be prepared during the Level II, Phase III Study. This work may be performed concurrently with the permitting process. The Commission may issue a stop work order for those storage projects where ongoing permit activities indicate that the project may be fatally flawed.

- g. Easements or fee titles necessary to construct the project shall be acquired. The scheduling of this task shall be sequenced to minimize impacts to property owners and to expeditiously construct the project.

- h. Mitigation of project impacts on cultural resources shall be undertaken.
- i. After the above activities are completed, the construction bidding process can be initiated.
- j. Construction of the project and construction administration/inspection shall commence upon the acceptance of the bid and upon the issuance of the notice to proceed.
- k. The date project benefits accrue to the sponsor, for purposes of triggering loan repayment schedules, shall be determined by the Commission.
- l. Once compliance with regulatory permitting conditions has been achieved and reclamation and mitigation activities have been completed, project close-out procedures may be initiated.

F. Sponsored and State Projects

Projects can proceed as sponsored projects or state projects.

1. Sponsored Projects

The project sponsor shall be a public entity that can legally receive state funds, incur debt, generate revenues to repay a state loan, hold title and grant a minimum of a parity position mortgage on the existing water system and improvements appurtenant to the project or provide other adequate security for the anticipated state construction loan. A project sponsor can be a municipality, irrigation district, **joint powers board**, or other approved assessment district, which will realize the major direct benefits of the project. The project sponsor must be willing and capable of financially supporting a portion of the project development costs and all operation and maintenance costs. Typically, sponsors request project technical and financial assistance from the WWDC through the application process.

The sponsor may request that a Level I or Level II study be conducted to identify solutions and alternatives for addressing water supply issues or they may request funds for a Level III construction project, if it is determined the project is technically and

economically feasible and serves to meet a water supply need or alleviate a water supply problem.

2. State Projects

The typical state project serves to benefit more than one entity and is multipurpose in nature. Another common characteristic of state projects is that each has a difficult permitting or political issue, which must be addressed. These issues may include developing a partnership with the federal government, another state, and/or private industry to encourage project development; resolving endangered species, water quality, or wetland issues; or addressing resistance to the project from downstream states.

The WWDC shall consider investments in state projects on a case-by-case basis. However, it should be recognized that present federal laws and regulations make it difficult to achieve federal clearances for projects in which there is not a clearly defined purpose and need.

Chapter III Funding Procedures

A. Project Sponsor/Public Entity

The project sponsor shall be a public entity that can legally receive state funds, incur debt, generate revenues to repay a state loan, hold title and grant a minimum of a parity position mortgage on the existing water system and improvements appurtenant to the project or provide other adequate security for the anticipated state construction loan.

The WWDC may waive the requirement that the project sponsor be a public entity under the following exceptions:

- 1. The WWDC may accept applications for Level I studies from applicants that are not public entities. This will allow the applicant to know if there is a viable project prior to becoming a public entity. However, the applicant must be a public entity before applying for a Level II study. Under these circumstances, the Level I process will have a two-year duration with the study being completed the first year and the sponsor forming a public entity the second year.**
- 2. The WWDC may accept applications related to the construction of dams and reservoirs from applicants that are not public entities. As the evaluations of the feasibility of new dams are complex, this will allow the applicant to know if the proposed reservoir is feasible prior to becoming a public entity. However, the applicant must be a public entity before applying for Level II, Phase III funding.**

B. Applications for Projects New to the Program

1. Requirements for New Applications

The due date for new project applications and application fees is August 15 of each year. The application must include a description of the project,

a listing of available information pertinent to the project, and information describing the financial capabilities of the sponsor. The following must accompany the application:

- a. An application fee of one thousand dollars (\$1,000.00) must be submitted with each application. The application fee shall be deposited into Water Development Account No. 1. Acceptance of the fee does not obligate the Water Development Commission or State of Wyoming to fund a study or provide construction funding for any proposed project or purpose. If the application is denied, then seventy-five percent (75%) of the application fee shall be refunded to the applicant. The authority to require an application fee is provided by W.S. 41-2-118(a)(xii).
- b. A certified original of a resolution passed by the council or governing body of the sponsoring entity shall be provided with an application **unless the applicant qualifies for one of the exceptions provided in Section A. Applicants qualifying for the exceptions shall provide evidence of support for the application by providing letters or petitions from interested water users as a substitute for a resolution.**
- c. A ten-year history of the water rates or assessments of the sponsoring entity shall be provided.**
- d. There shall be a comparison of the project area median household income to the state median household income as reported by the U.S. Bureau of Census and Department of Housing and Urban Development (HUD) and a comparison of the median household utility rate to the state average utility rate. This information shall be used in the ability and willingness to pay analysis and to assist in the determination of whether there is justification for the Commission to recommend a deviation from the loan/grant mix set forth in Chapter III, Paragraph D.3.c. or the interest rate set forth in Chapter III, Paragraph D.3.d. below.
- e. Sponsoring entities seeking funding for water supplies for subdivisions shall submit documentation on how their proposed water project fits within the water master plan or comprehensive planning study of the city or county where the subdivision is located.**

- f. To become eligible for funding, the WWDC shall require sponsor certification related to compliance pursuant to public water system rate requirements as set forth in W.S. 15-7-602, W.S. 16-1-108, and W.S. 41-10-113.

2. Review Requirements for New Applications

Review of new applications shall comply with or address the following:

- a. The WWDO project manager assigned to review the application shall advise the applicant of the timetable for project review and evaluation.
- b. A representative of the WWDO shall inspect the proposed project site.

The acceptance of the project application for incorporation into the program shall be based on the following criteria:

- a. The proposed project must be consistent with the goals and objectives of the Wyoming Water Development Program as outlined in W.S. 41-2-112 and these criteria.
- b. The Water Development Program must be the most appropriate source of funds for project study and construction.
- c. There must not be any apparent economic, legal, environmental or technical problems that would impair or prohibit project development.
- d. The proposed projects must serve twenty (20) or more municipal/domestic water taps with individual water meters for each tap or 2,000 or more **water righted acres**.
- e. Sponsors who pass a local capital facilities tax, commit other local tax revenues to a project or secure funding from non-state sources may receive a priority ranking when compared with projects of a similar nature without such funding sources. While the Water Development Program provides for loans and grants, the willingness and ability of project sponsors to assume responsibility for repayment of project costs shall be a factor in the selection of projects to receive state assistance.

C. Applications for Level II Projects

1. Requirements for Applications for Level II Projects
 - a. **Applications seeking Level II status for a project new to the program must comply with the requirements specified in section B.1.**
 - b. The due date for applications for Level II status for projects already in the program, which are seeking funding for an advanced study level or for construction, is October 1 of each year. **Application fees are not required.** Sponsors of continuing projects may apply by submitting a letter with a copy of a resolution of the governing body attached **unless the applicant qualifies for the exception provided in Section A.2. Applicants qualifying for the exception shall provide evidence of support for the application by providing letters or petitions from interested water users as a substitute for a resolution.**
2. Review Requirements for Level II Status
 - a. **The WWDC may introduce projects into the program at Level II status if the application provides a definition of the project configuration and there is evidence that project will provide a viable water supply or rehabilitate an existing water supply. Often, rehabilitation projects can be introduced into the program at Level II status as the projects are clearly defined.**
 - b. After the Level I studies under the Program are completed, the WWDC shall initiate its review process to determine if the project should proceed to Level II. During its November meeting, the Commission shall review the findings of the Level I report, consider the sponsor's input, and make its preliminary recommendations.

D. Applications for Level III Projects

1. Requirements for Applications for Level III Projects
 - a. **Applications seeking Level III status for a project new to the program must comply with the requirements specified in section B.1.**

- b. The due date for applications for Level III status for projects already in the program, which are seeking funding for an advanced study level or for construction, is October 1 of each year. **Application fees are not required.** Sponsors of continuing projects may apply by submitting a letter with a copy of a resolution of the governing body attached.

2. Review Requirements for Level III Status

a. The WWDC may introduce projects into the program at Level III status if the project sponsor has completed a feasibility study that meets WWDC requirements.

- b. After the Level II studies under the Program are completed, the WWDC shall initiate its review process to determine if the project should proceed to Level III. During its November meeting, the Commission shall review the findings of the Level II report, consider the sponsor's input, and make its preliminary recommendations.

Projects shall not progress to Level III construction status unless the sponsor and state are committed to complete the project. Issues that shall be considered and addressed in the development of Level III recommendations include:

- a. Whether the project yields a water supply capable of meeting present needs;
- b. Whether the project will yield a reserve water supply to meet future needs;
- c. Whether the project is affordable given the existing status of the water development account and prior commitments to the account;
- d. Whether the project appears to be a good investment for the State of Wyoming considering primary, secondary or indirect project benefits;
- e. Whether the project is economically feasible for the sponsor after all project costs are considered, including debt

retirement and costs of project operation, maintenance **and replacement;**

- f. **Whether the project sponsors are willing to establish a fund to pay costs associated with the repair or replacement of project components that may wear out or malfunction during the economic life of the project; and**
- g. Whether the project sponsors and/or beneficiaries are willing to assume financial responsibility for the project. Whether the project sponsors understand the scope of the project. Whether the project will meet the sponsor's needs. Whether the project sponsors understand they are obligated to assure that the project must be designed and inspected by registered professionals, i.e., licensed engineers and geologists. If the sponsors wish to pursue construction using their own manpower and equipment, whether they understand the funding limits established by the state. Once construction is initiated, whether the project sponsor understands that they cannot voluntarily abandon the project without repaying state grants and loans, including lost interest-earning opportunities.

After the Level II analysis and report have been completed, the Commission shall determine if the project should be elevated to a Level III construction status.

After other funding sources have been considered, the Water Development Program's per tap or per acre investment shall be compared to the sponsor's ability to pay. Project sponsors shall be given the option of making a formal presentation to the WWDC relative to that sponsor's ability and willingness to pay for the project if the Commission determines that the project should not advance due to high repayment costs. The need for the project, the direct and indirect benefits of the project, and any other information the sponsor deems as reasons the project should be advanced or funded, shall be included in the presentation.

3. Level III Funding Considerations

The Commission shall consider project specific information and sponsor input, when developing its preliminary recommendations for Level III projects. If it is determined that the project should proceed to Level III, the following shall also be addressed in the Commission's recommendations:

a. Project Budget

The project budget shall include costs associated with project permitting, design, land acquisition, construction engineering, and construction.

b. Level I and Level II Study Cost Sharing

The WWDC shall determine if the sponsor should be required to pay a portion of the Level I or Level II study costs incurred to develop the recommended alternative needed to secure funding for Level III construction. Typically, the WWDC is the lead agency in developing Level I and Level II reports. The Commission solely funds the studies to insure the reports are unbiased and performed in such a manner as to determine whether the state should invest in the project. This procedure was also established because the project is better served if the sponsor uses its financial resources to fund its share of the project or to service the debt associated with the construction loan. However, in those exceptional cases where the sponsor assumes the role of lead agency in Level I and Level II studies, it shall share in the costs of those studies. Further, if through the Level II process, a groundwater well is developed that will be used as the water source for a Level III project, the sponsor shall share in the cost of the well.

On dam and reservoir projects, the sponsor shall share in the cost of the Level II, Phase III services unless the WWDC agrees to pay these costs in accordance with subsection e, below.

c. Financial Plan - Loan Grant Mix

The WWDC'S preliminary grant recommendation shall be not more than sixty-seven percent (67%) for proposed Level III projects. **However, the WWDC may recommend a loan/grant mix based on the sponsor's ability to pay a portion of the project costs and all of the operation, maintenance, and replacement costs.**

d. Financial Plan - Terms of the Loans

- i. Statutory guidelines establish a minimum rate of four percent (4%) for program loans. The current rate is 4% but may be increased by the Legislature.
- ii. W.S. 41-2-121 specifies the term of the loans cannot exceed fifty (50) years after substantial completion of the project. Further, the term of the loan shall never exceed the economic life of the project. The sponsor's method of loan repayment (water rates, taxes, bonds, etc.) shall also be considered in establishing the term of the loan.
- iii. The statutes allow the WWDC to recommend that the payment of interest and principal be deferred up to five (5) years after substantial completion of the project. **In addition, the WWDC can recommend that the accrual of interest also be deferred during the term of the payment deferral.** These special conditions shall be granted only on a limited basis. The sponsor's method of repayment and the longevity of the sponsor's existence as a legal entity shall be key considerations in determining if this deferment should be granted. In no event can the combined deferment and term of the loan exceed fifty (50) years.

e. Financial Plan – Special Considerations for Dams and Reservoirs

- i. The WWDC may recommend a loan/grant mix based on the sponsor's ability to pay a portion of the project costs and all of the operation, maintenance, and replacement costs.**
- ii. The WWDC may recommend that permitting and design costs be paid by the program thereby reducing the costs applied to the loan/grant mix.**
- iii. The WWDC may recommend that the program pay for the storage capacity needed to provide water for environmental mitigation and enhancement thereby reducing the costs applied to the loan/grant mix.**
- iv. The WWDC may recommend any combination of the above.**

f. Financial Plan–Special Considerations for Subdivisions:

i. In accordance with the WWDC’s support of the regional concept to solve water supply problems, funding preference will be given to those water supply projects for subdivisions that are proposing to connect to existing water supply systems.

ii. Financing plans for water supply systems for subdivisions will ensure that the developer of the subdivision does not receive a “windfall” from project funding provided by the WWDC.

g. State/Local Partnership

The program has a philosophy that water development can be achieved through state/local partnerships. The sponsor can complete a water supply project with state funding assistance. If the sponsor uses all of the water, the project basically belongs to the sponsor. However, if there is the opportunity to sell water for other purposes, the sponsor and state share in the revenues. This insures that a project sponsor will not receive a "windfall" from the sale of water that was made available, in part, from a state grant. Therefore, if the project develops a new water supply, the WWDC shall establish the terms of the program's participation in the future sale of water in the project agreement in the following manner:

i. There shall be no lease, sale, assignment or transfer of ownership of more than 100 acre feet of water per year from municipal or irrigation projects funded by the program without prior written approval of the WWDC.

ii. There shall be no lease, sale, assignment or transfer of ownership of water from rural domestic projects funded by the program without prior written approval of the WWDC.

iii. If the WWDC approves such sales, the program will receive a share of the revenues from the sale commensurate with the percent of the grant used to construct the project.

h. Sale of Projects

There shall be no lease, sale, assignment or transfer of ownership of a project funded by the program until the project loan is paid in full and until prior written approval is obtained from the WWDC. The WWDC will ensure that the project sponsor does not receive a "windfall" from the state's investment in the project.

i. Abandonment of Construction Projects

If the WWDC determines that any project sponsor has, without good cause, abandoned the completion of the project, that sponsor, in addition to being required to repay the loan, shall be obligated to repay the grant funds actually expended plus interest as established by the state auditor in an amount equal to the interest that would have accrued on the expended grant funds. If these payments are deemed by the WWDC to provide a financial hardship on the sponsors, the WWDC may recommend to the legislature that a loan be approved to repay the program. The recommended interest on the loans will be 4% per year and the term will be based on the ability to pay of the sponsor.

E. Recommendation Process

The Water Development Commission uses the following process to generate funding recommendations for legislative consideration.

1. New Applications

The deadline for new project applications is the fifteenth of August. Upon receipt, new applications and supporting documentation are reviewed, and project sites are visited. The WWDC makes preliminary recommendations regarding applications at its November meeting.

2. Existing Projects

Typically, consultant project reports are drafted by the first of October. These reports are reviewed to determine whether the projects warrant advancement in the program.

3. Preliminary Recommendations

At the November WWDC meeting, the WWDO director presents funding recommendations for new applications and existing projects. Project sponsors are given the opportunity to present their requests. The WWDC takes preliminary action on the sponsor's request at this meeting.

4. Public Meetings

If a proposed Level I Reconnaissance Study or Level II Feasibility Study is of particular concern or controversy, the WWDC may solicit public input at a public meeting prior to finalizing its project recommendation.

5. Public Hearings

The Commission holds formal public hearings on all projects that are proposed for Level III Final Design and Construction funding.

6. Coordination with the Governor

The WWDC provides the Governor with its preliminary recommendations and a financial report addressing impacts to the water development accounts. The Governor may provide input throughout the recommendation process.

7. Final Recommendations

The WWDC meets in December or early January to finalize its legislative recommendations on new applications and existing projects. The Commission considers public input received at the meetings and hearings and recommendations from the Governor. Sponsors and interested parties who disagree with the Commission's preliminary recommendation are provided the opportunity to address the Commission with their concerns.

8. Select Water Committee

The Select Water Committee is comprised of 6 senators and 6 representatives. They provide legislative oversight for the program, and review the Commission's recommendations and budgets. Typically, the Select Water Committee serves as sponsor for the Water Development Program legislation.

9. Legislative Process

The legislature must authorize the allocation of funds from the water development accounts to particular projects. This approval is solicited through the Omnibus Water Planning and Construction Bills.

CHAPTER IV. Water Resource Planning

The Wyoming Water Development Commission serves as the water-planning agency for the State of Wyoming. The water development planning function is an important aspect of the Water Development Program. Because the issues facing water development in the West are complex, the scope of the WWDC's planning efforts is not as closely defined as the New Development, Rehabilitation, and Dam and Reservoir Programs. The planning aspects of the Wyoming Water Development Program establish the framework for development strategies and serve to identify and resolve water issues. The source of revenue for the planning function of the program is typically Water Development Account No. 1.

A. River Basin Plans

The program develops basin wide plans for each of the state's major drainage basins. These plans identify water supply problems and development opportunities. The plans serve to promote interest from water users who may become interested in a particular project and become project sponsors. Basin plans shall include the development of a water related database to provide data and information to developers and resource managers.

B. Watershed Improvement Studies

These studies provide a detailed evaluation of an individual watershed. The studies may identify water development and system rehabilitation projects as well as address erosion control, flood control or other non-water development related environmental issues. Watershed improvement studies are an integral part of the Small Water Project Program, which has its own specific criteria. The

studies may identify projects that may be eligible for the New Development, Rehabilitation, or Dam and Reservoir Programs.

C. Master Plans

Master plans provide a service to municipalities, districts and other entities to assist in the preparation of planning documents, which serve as a blueprint for future water supply system improvements. Master plans also serve as a framework for the entities to establish project priorities and to perform the financial planning necessary to meet those priorities.

In addition, master plans assist entities in preparing the reports necessary to achieve federal funding assistance for water development, flood control, erosion control, hydropower, rehabilitation, watershed improvements and other water related projects.

Sound water planning serves to promote the effective and efficient use of available water resources. Master plans provide information to users as to whether the resource can adequately service the existing and anticipated demands for water within a certain area and provide reconnaissance level information regarding costs and scheduling.

D. Federal Funding

Presently, there are federal programs which provide funding assistance for some types of water development projects. However, in order to access these funds, costly feasibility/environmental studies are often needed. If these studies cause a financial burden and if the proposed project alleviates a water development, management, rehabilitation problem, or allows the continued beneficial use of water, the WWDC shall consider participating in the studies. The amount of the WWDC'S financial participation shall be based on the proponent's ability to pay.

E. Research

Water development issues and problems may encompass watersheds, river basins or include the entire state. In order to address these issues, non-project specific research and data collection is necessary. The WWDC has developed a working relationship with state and federal agencies and the University of Wyoming to conduct water related research.

In addition, the legislature has assigned the Water Development Program the following research tasks:

1. Instream Flow

The Wyoming Game and Fish Department (WGFD) selects candidate stream segments for instream flows. The WWDC files water right applications with the State Engineer for permits to appropriate water for instream flows in those segments of stream recommended by the WGFD. Further, W.S. 41-3-1004 assigns the WWDC the responsibility to generate feasibility reports for all instream flow permit applications. The reports are hydrological analyses of water availability in the reach of the stream to which the applications apply. The analyses also quantify existing water rights above and within the stream segment.

As the water-planning agency, the WWDC also reviews instream flow requests to determine whether they may conflict with future water development opportunities.

2. Groundwater Grant Program

W.S. 41-2-119 authorizes the Water Development Commission to grant funds to cities, towns, and special districts for exploration programs to evaluate the potential use of underground water for municipal and rural domestic purposes. Authorized entities are eligible to receive up to \$400,000 in grant funds and are required to provide 25% of the total project costs in local matching funds. The primary purpose of the program is to inventory the available groundwater resources in the state. The program also serves to assist communities in the development of efficient water supplies. Unlike other projects within the Water Development Program, funding for projects that meet the criteria of the Groundwater Grant Program can be allocated directly by the WWDC without project specific legislation.

