

**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. The state statutes guiding the Wyoming Water Development Program are provided in Attachment II.

B. 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. Lawsuits are being filed by downstream states questioning the intent of those compacts and decrees. 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.

C. Changes in the Program Criteria

The criteria may be revised on a periodic basis to ensure 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 by the WWDC and Legislature's Select Water Committee (SWC). 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.

CHAPTER II. PROGRAMS

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 existing and anticipated future needs to ensure 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 I of Chapter IV of these criteria.

New development 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. 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.

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 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 ensure 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 and use 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. Small Water Project Program

Pursuant to W.S. ~~99-3-703(j)(vii) and 99-3-704(g)(vii)~~99-3-1903(k)(vii) and 99-3-1904(m)(vii), a small water project is a project in which estimated construction or rehabilitation costs, permit procurement, construction engineering and project land procurement are one hundred thirty-five thousand dollars (~~\$100,000.00~~135,000.00) or less and where the maximum financial contribution from the WWDC is ~~twenty~~thirty-five thousand dollars (~~\$25,000.00~~35,000.00) or less.

Projects may include new development or rehabilitation of small reservoirs, pipelines, wells, windmills, springs, wetland developments, solar platforms, and irrigation conveyance facilities. Projects must provide a public benefit through mitigation of water quality impairments, enhancement of threatened or endangered species habitat, the development or enhancement of habitat and water for fish and wildlife, increased recreational opportunities, provide water for maintenance of the integrity and vitality of plant and animal communities, serve as instruments to improve rangeland condition, or make beneficial use of water, as documented in a WWDC Level I watershed study.

E. 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.

F. 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.

1. 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.

2. Watershed 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.

3. 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.

4. 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 legislature has assigned the Water Development Program the following research tasks:

- a. 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.

b. 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.

c. University of Wyoming's Office of Water Programs

The Wyoming Water Development Program provides funding each year to the UW Office of Water Programs to fund non-project water related research. Annually, topics for potential research projects are solicited from Wyoming stakeholders. A Selection Committee, made up of federal and state agency representatives, prioritizes these topics and issues requests for proposals to address these areas of concern. From these requests, proposals are selected based on peer-reviewed selection criteria.

CHAPTER III Applications-New Development and Rehabilitation Programs

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 for Level I studies. 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. If the WWDC is to consider waiving this requirement, a representative of the applicant shall be required to appear before the WWDC to make a formal presentation on the project and to answer questions regarding the application.

B. Applications for Projects New to the Program

Typically, new applications are assigned to Level I status. Level I studies are reconnaissance level 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. Attachment I provides a detailed work plan of Level I studies.

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. I. 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. Applicants that are not public entities 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.

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.

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 twentyfifteen (2015) or more municipal/domestic water taps ~~with individual water meters for each tap~~ or 2,000 or more water righted acres. The WWDC may waive the requirement for water meters if there is no existing water supply system or the sponsor demonstrates that water meters will be installed in the near future.
- e. Sponsors who pass a local capital facilities tax and commit other local tax revenues to a project 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

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. Attachment I provides a detailed work plan for a complex Level II study.

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 must submit an application with a copy of a resolution of the governing body.

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 the 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

Level III work activities include project design, permitting, land acquisition, construction and construction engineering. Attachment I provides a detailed work plan for a complex Level III construction project.

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. A copy of a resolution of support from the governing body must be attached to the application. Application fees are not required.
- c. Applicants for municipal or rural domestic water supply projects must have individual water meters and use, or plan to use, the meters for purposes of billing for water use.
- d. Written verification from any city, county, or special district that is impacted by the project that they understand and accept those impacts.
- e. 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.
- e.f. All applications shall contain a comprehensive financing plan for the project which includes a listing of all funding sources anticipated to be used by the applicant and a schedule showing when these funding sources are expected to become available.

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. Feasibility study requirements include a thorough analysis of the problem, future demand projections, evaluations of practical alternatives including detailed cost estimates, constructability, institutional constraints, operational considerations and financial analyses.
- 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 should be considered and addressed in the development of Level III recommendations include:

- a. Does the project meet the requirements of these criteria?

- b. Is the project affordable given the existing status of the water development account and prior commitments to the account?
- c. Does the project appear to be a good investment for the State of Wyoming considering primary, secondary or indirect project benefits?
- d. Does the project meet the existing and future needs of the sponsor?
- e. Is the project economically feasible for the sponsor after all project costs are considered, including debt retirement and costs of project operation, maintenance and replacement?
- f. The project sponsor must be willing to:
 - i. Establish a revolving fund to pay costs associated with the repair or replacement of project components that may wear out or malfunction within twenty years from the date those components were incorporated into the system.
 - ii. Assume financial responsibility for the project.
 - iii. Assure that the project will be designed and inspected by registered professionals, i.e., licensed engineers and geologists.
 - iv. Repay state grants and loans, including lost interest earning opportunities, if the project is voluntarily abandoned by the sponsor.
- g. 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 sponsors' presentation should address the need for the project, the direct and indirect benefits of the project, and any other pertinent information relative the sponsors' case for project funding.

CHAPTER IV Level III Funding-New Development and Rehabilitation Programs

The Commission shall consider project specific information and sponsor input, when developing its preliminary recommendations for funding of 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. Scheduling

Cash flow considerations are imperative in scheduling the commitment of water development funds for the New Development and Rehabilitation Programs. The annual requests for WWDC funding typically exceed the funding available.

1. Phasing

The WWDC may need to phase construction funding requests to the legislature for projects. Under these circumstances, the total project budget must be included in the phased funding requests to the legislature to document that it is the WWDC's intention to seek additional funding in subsequent sessions.

2. Sponsor's Financing Plan

Sponsors may seek alternative funding to replace all or a portion of the WWDC loan to make the project more affordable. In addition, the sponsors may need to secure alternative funding for project components not eligible for WWDC funding. There are often uncertainties and delays in acquiring loans and, particularly, grants from other funding agencies. The sponsor's ability to complete their financing plans in a timely manner is a consideration in the WWDC's funding decisions. The WWDC may give priority in its Level III funding deliberations to the projects in which the sponsor has a finalized financing plan or there is documented evidence that the financing will be in place within the calendar year in which the Level III project funding is approved by the Legislature.

C. 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 ensure 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.

D. Financial Plan - Grant Loan Mix

1. 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.
2. 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.
3. The WWDC may provide lesser grant amounts for proposed Level III projects that do not qualify for 1 or 2, above.

E. Financial Plan - Terms of the Loans

1. 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.
2. 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.
3. 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.

F. Special Considerations for Subdivisions, ~~or~~ Rural Domestic Projects or Business Parks

1. 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.

2. ~~funding provided by the WWDC.~~ 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

3. Water system improvements to support development of new business parks are typically funded by the developer. WWDC funding may be used to supply water to industrial and business parks when the development is not the primary justification for the water supply project.

G. Sponsor's Inflation Funds

The Wyoming Legislature was granted authority to use appropriations for the New Development and Rehabilitation Programs to provide supplemental funding for sponsors' existing Level III new development construction projects when construction budgets have been rendered insufficient due to inflation and the rapid increase in material costs. The WWDC is authorized to consider and approve supplemental funding to complete existing water development program Level III construction projects any time during the calendar year. The supplemental funding is added in proportion to the grant/loan mix for the project.

H. 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.

I. 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 ensures 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:

1. There shall be no lease, sale, assignment or transfer of ownership ~~of more than 100 acre feet~~ of water ~~per year~~ from municipal and irrigation projects funded by the program without prior written approval of the WWDC.
2. 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.
3. 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.
4. 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.

J. 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.

CHAPTER V. Priorities of Projects-New Development and Rehabilitation Projects

A. Project Priorities

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 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. Irrigation and Municipal Water Supply Projects

These projects include groundwater wells, alluvial wells, diversion dams, and other structures, which put un-appropriated water to beneficial use or supplement existing uses.

4. Irrigation and Municipal Water Supply Systems

While supply projects make water available at the source, supply systems bring this source water closer to the point of use through pipelines 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 whether 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 subsequent 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. Rural Domestic Projects Obtaining Water from Another Existing Public Water Supply

These projects serve to centralize growth around existing service areas which provides for effective and efficient use of available water resources. These projects can lead to regional systems which are more cost efficient than constructing several individual and independent water supply systems.

Presently, the requests for funding from the Wyoming Water Development Program exceeds available financial resources. Construction funding for the following types of projects may not be approved if the funding requirements for the previous five (5) categories have not been met.

6. Rural Domestic Projects with Independent Water Supplies

While connecting to an existing public water supply is often more efficient, there are isolated developments which require independent water supplies and water supply systems. While providing technical assistance for these projects may be appropriate, it may be necessary for the project sponsors to seek alternative funding for project construction.

7. 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. As such, Level I and Level II studies are eligible for funding in the program. ~~However, these types of projects shall not be subsidized with grants.~~

~~The potential return on the investment is the key consideration in determining whether to pursue hydropower projects.~~

The 2011 Legislature provided legislation authorizing the State Land and Investment Board to provide loans for hydropower projects. All applications for such loans must be accompanied by a feasibility study completed by the WWDC. While providing technical assistance for these feasibility studies is appropriate, project sponsors will need to seek construction funding from SLIB and other funding agencies.

8. Purchase of Existing Storage

This type of investment may be made under the program if the storage is uncommitted or is not being 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. Potential secondary benefits such as recreational or environmental uses shall also be considered. There may be situations in which these transactions could be considered storage projects and, therefore, ranked higher under these criteria.

9. Municipal and Rural Domestic Raw Water Projects

These projects propose to develop raw water supplies to irrigate parks and lawns. Typically, raw water projects are pursued to reduce demand on water treatment facilities. It is difficult to justify these investments with limited financial resources.

B. Ineligible Projects and Associated Costs

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 collector systems shall not be funded under the program.
3. Recreation -- Projects with the sole purpose of providing recreation benefits are difficult to pursue under the program given its purpose to promote consumptive use. However, the opportunity to provide recreation benefits should be considered in the operating plan of new storage projects.

4. 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.

5. 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.

6. ~~Rehabilitation of~~ Hydropower Projects -- ~~Existing h~~Hydropower facilities should be generating sufficient revenues to finance operation, maintenance, and replacement without state assistance. As such, the program will not provide Level III funding for permitting, design and construction of hydropower projects.

7. 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.

8. 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.

9. Water Treatment Facilities -- 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. The need for improvements to treatment facilities is considered in the generation of master plans. However, project sponsors are advised that they will need to seek alternate funding for water treatment plants.

10. 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.

11. System Maintenance -- Those project components that the Water Development Office staff considers to be more appropriately constructed as a maintenance improvement.

12. Legal Fees – Legal fees required by the sponsor to review contracts, easements, settle disputes or otherwise advise the Sponsor on legal issues pertaining to the project are the responsibility of the Sponsor.

13. Water Rights – The development of petitions to the Wyoming Board of Control (BOC) to change existing water rights or representing the Sponsor in any BOC matters.

14. Engineering Fees – Engineering fees, including design, inspection and construction contract administration costs in excess of twenty percent (20%) of WWDC approved construction costs.

15. Audits – All costs associated with audits of sponsor operations, revenues and expenditures.

CHAPTER VI. Dam and Reservoir Program

The scope of the Dam and Reservoir Program specifically 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. The WWDC uses its River Basin Plans and Watershed Studies to promote project sponsors for dam and reservoir projects. Use of the storage water upon project completion is a key consideration in the viability of dam and reservoir projects. Therefore, the WWDC is seeking partners that will put the water to use. In order to attract these partners, the WWDC has adopted the following exceptions to the criteria for the New Development and Rehabilitation Programs, specifically for the Dam and Reservoir Program.

A. Applications

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.

Applicants shall provide evidence of support for the application by providing letters or petitions from interested water users as a substitute for a resolution.

B. Level II-Phase III

In addition~~a~~ to the traditional two-phased evaluations completed at Level II status, the Level II process for dams and reservoirs includes a third phase. Work that would normally be completed under the Level III construction process for the New Development and Rehabilitation Programs can be completed under Level II-Phase III for dam projects. 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. Level II-Phase III may be warranted as the federal permitting process for dams and reservoirs is very complex and could ultimately impact the feasibility of the project. If the Level II-Phase III process is successful and the sponsor decides to proceed to Level III-Construction, 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 C.2 below. Legislative approval, through the omnibus water bill process, is required before initiation of Level II, Phase III activities.

C. Financial Plan – Special Considerations for Dams and Reservoirs

1. 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.
2. The WWDC may recommend that permitting and design costs be paid by the program thereby reducing the costs applied to the loan/grant mix.
3. 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.
4. The WWDC may recommend any combination of the above.
5. 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 deferral should be granted. In no event can the combined deferral and term of the loan exceed fifty (50) years.

CHAPTER VII. 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 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 the 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.

ATTACHMENT I

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.

A. 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:

1. The typical Level I study shall identify or provide the following:
 - a. Development options;
 - b. Potential project beneficiaries and the benefits each option could provide;
 - c. Factors that could impair or prohibit the development of any identified option including legal constraints;
 - d. An analysis of water rights including identification of conflicting prior rights; and
 - e. Option comparisons based on physical and legal water availability, technical, economic, legal, and environmental considerations.
 - f. A review of the sponsor's methods for financing the operation, maintenance, and replacement of the existing water supply.
2. 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:
 - a. Whether there is an opportunity to economically develop water or maintain an existing supply for Wyoming's use and benefit;
 - b. Whether the project may be configured to provide service to a regional service area encompassing more than a single entity;
 - c. Whether there are viable solutions to resolve technical, legal and environmental problems.

B. 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.

1. A Level II, Phase I investigation shall provide the following:
 - a. A reasonable quantification of the amount of water that can physically and legally be developed or maintained;
 - b. A determination of water needs that could be or are being served by the project;
 - c. A determination of technical feasibility including a safety analysis; and for dam and reservoir projects (including stock ponds), a geotechnical and basin geomorphology analysis;
 - d. A general configuration depicting preliminary physical characteristics of the project;
 - e. A preliminary project operation plan;
 - f. Cost estimates for construction, consultant services, and operation, maintenance, and replacement;
 - g. Identification of direct and indirect benefits that result from the implementation of the project;
 - h. Identification of costs and benefits that would result by incorporating recreation, hydropower generation, and flood control functions into the project operation;
 - i. A definition of economic, legal, environmental, and administrative problems and identification of alternate solutions to those problems;
 - k. Identification of lands that may be affected by the project;
 - l. An analysis of the project sponsor's ability to pay;
 - m. A determination of project components that are eligible for WWDC funding and project components that are not eligible; and
 - n. 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.

C. Level II, Phase II – Study Description

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

1. Hydrological investigations;
2. An operating plan that addresses water management during and after construction;
3. A conceptual design and general configuration of the project;
4. The identification of state and federal permits and clearances necessary to construct the project;
5. An environmental analysis, including environmental assessments, etc., of the proposed project's operation and configuration, including:
 - a. 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.;
 - b. An assessment of the longevity of dam and reservoir projects, including stock ponds, with respect to sediment loading and hydrologic events;
 - c. Identification of the potential to develop wetlands eligible for Wyoming's Wetland Banking Program; and
 - d. The performance of a cultural resource survey of the general project area, as applicable;

6. The development of a detailed schedule of the activities necessary to complete the project;
7. 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
8. 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.
9. 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.

10. 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.

D. Level III Construction

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

1. 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.

2. 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.
3. 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.

If the sponsor wishes and if approved by the director, the sponsor may retain the firm that completed the project specific Level I or Level II study for the project under contract with the program. This option is only available if it meets the requirements and procedures of the sponsor and if the firm is a resident Wyoming firm.

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

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

5. 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 may be addressed during the Level II, Phase III Study.

6. 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.

7. 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.
8. Mitigation of project impacts on cultural resources shall be undertaken.
9. After the above activities are completed, the construction bidding process can be initiated.
10. 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.
11. The date project benefits accrue to the sponsor, for purposes of triggering loan repayment schedules, shall be determined by the Commission.
12. Once compliance with regulatory permitting conditions has been achieved and reclamation and mitigation activities have been completed, project close-out procedures may be initiated.

**Attachment II
Program Statutes
Title 41**

41-2-112. Wyoming water development program.

(a) 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.

(b) In developing financing recommendations under the Wyoming water development program, the commission shall:

(i) Emphasize multi-purpose 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 and Level II feasibility studies, 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 unreimbursed 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.

41-2-113. Definitions.

(a) As used in W.S. 41-1-106 through 41-1-108 and 41-2-107 through 41-2-118:

(i) "Project" means any dam, reservoir, canal, ditch, well or well field, hydroelectric power plant, regulatory work and all works and facilities necessary for the supply and utilization of water for beneficial uses, including the improvement of any feature, facility, function or portion of a project;

(ii) "Construct" means to construct, to acquire by legal means, to contribute or loan funds for the construction of and to finance the construction or acquisition of a project;

(iii) "Commission" means the Wyoming water development commission created by W.S. 41-2-117.

41-2-114. Development of water projects; rehabilitation of water projects.

(a) The commission shall, on the basis of the state water plan or as otherwise directed by the legislature and after consultation with and advice from state agencies and officials, other appropriate agencies and officials, the joint business council of the Eastern Shoshone and Northern Arapaho Indian tribes, the business council of the Eastern Shoshone Indian tribe, the business council of the Northern Arapaho Indian tribe and members of the public, identify and select potential projects to be studied for inclusion in the Wyoming water development program pursuant to the following schedule:

(i) Level I reconnaissance studies shall, to the extent possible:

(A) Describe the project;

(B) Identify the need for the project including supplies and demands for the water;

(C) In cooperation with the state engineer, assess the status of water rights, including existing conflicts and recommendations for resolution of the conflicts and other potential obstacles;

(D) Assess and describe federal permits required for construction;

(E) Assess environmental considerations and constraints, including recreational use of the water in storage;

(F) Identify legal constraints to development;

(G) Identify alternate sources of supply including both surface water and groundwater;

(H) Summarize public testimony received at meetings held by the commission in the basin of origin; and

(J) Contain the commission's recommendation to the legislature whether to terminate further consideration of the proposed project or to continue the project at its current level of study, or to proceed with further activity under paragraph (a)(ii), (iii) or (iv) of this section.

(ii) Level II feasibility studies shall to the extent possible:

(A) Include a detailed analysis of factors relevant to development, operation and maintenance;

(B) Identify major problems and opportunities concerning development and the environmental, recreational, social and economic effects of development;

(C) Identify the desired sequence of events, including commencement of state and federal permitting activities and acquisition of land;

(D) Summarize testimony received at public hearings held by the commission in the basin of origin;

(E) Include test drilling for groundwater projects;

(F) Contain final concept design and cost estimates;

(G) Include the project financing plan;

(H) Identify the interests in land and water rights to be acquired and the means and costs of acquisition. An "interest in land" may include the fee simple title or any other interest in land less than a fee simple; and

(J) Include draft legislation describing in detail the construction, operation and financing of the proposed project, including reimbursement of predevelopment costs from the beneficiaries of the project.

(iii) Repealed by Laws 1988, ch. 79, § 11.

(iv) Level III construction and operation plans shall proceed as authorized and approved by the legislature under the immediate direction and control of the commission. Preference in the marketing of hydroelectric power from any such project shall be given to utilities serving Wyoming municipalities and to rural electric cooperatives where

economical and permissible under federal law. Pursuant to legislative authorization for water development projects and prior to completion of Level III construction the commission may:

(A) Design, construct, acquire or purchase water development projects for the conservation, storage, distribution and use of water or any feature, facility, function or portion of a project;

(B) Contract for the performance of any power under subparagraph (A) of this paragraph, and consult with or employ experts and professional persons;

(C) Acquire by purchase, lease, appropriation, gift, exchange or eminent domain, necessary land, easements and other property for construction, operation and maintenance of water projects and accept gifts, grants and contributions of money from any source;

(D) Acquire by purchase, lease, appropriation, development, gift or exchange necessary water rights for construction, operation and maintenance of water projects and accept gifts, grants and contributions of money from any source;

(E) Contract for the sale, lease or delivery of water, water rights, water storage or hydroelectric power, and fix charges, rates, rents, fees and tolls;

(F) Contract with, contribute to or receive contributions from any legal subdivision of the state, special district, the joint business council of the Eastern Shoshone and Northern Arapaho Indian tribes, the business council of the Eastern Shoshone Indian tribe, the business council of the Northern Arapaho Indian tribe, private corporation or person for the construction, operation, management and maintenance of any project or any interest in any facility or function of a project.

(v) After completion of Level III construction, the commission:

(A) Shall be responsible for the operation and maintenance of state owned facilities constructed under the direction and control of the commission;

(B) Shall manage contracts and agreements entered into by the commission pursuant to paragraph (iv) of this subsection;

(C) May contract for the sale, lease or delivery of water, water rights, water storage or hydroelectric power and fix charges, rates, rents, fees and tolls for any project constructed pursuant to paragraph (iv) of this subsection not in conflict with contracts and agreements entered into by the commission;

(D) May contract with, contribute to or receive contributions from any legal subdivision of the state, special district, the joint business council of the Eastern

Shoshone and Northern Arapaho Indian tribes, the business council of the Eastern Shoshone Indian tribe, the business council of the Northern Arapaho Indian tribe, private corporation or person for the operation, management and maintenance of any project or any interest in any facility or function of a project.

(b) State agencies shall cooperate fully with the commission in the preparation of the studies. In the execution of these activities, the commission shall:

(i) Receive and acquire data relating to water, water use and water quality from any source as it relates to the project;

(ii) Repealed by Laws 1979, ch. 59, § 5.

(iii) Hold public hearings within the basin of origin water division where the proposed project will be wholly or partly constructed, consult with and receive the views of private persons, local groups, associations and organizations representing water users, industries and the public interest;

(iv) Coordinate the feasibility studies with the plans of other government agencies and departments;

(v) Undertake studies, investigations, surveys and research relevant to the completion of the study and enter into contracts and arrangements for its completion with any government agency, department or any person, firm, university, institution or state or national organization;

(vi) Undertake studies, investigations, surveys and research relevant to outright purchase by the state of Wyoming of water interests from the federal government;

(vii) Perform any other related activities or functions relevant and appropriate to the completion of the feasibility study; and

(viii) Maximize the use of all existing information, data, reports and other materials, and no funds shall be expended to duplicate existing information, data, reports and other materials.

(c) Repealed by Laws 1982, ch. 59, § 2.

(d) The commission may suspend the expenditure of time or funds on a project at any level of activity, if it is established that it would be in the public interest. The commission shall report the reason for any suspension of activity to the legislature.

(e) Any person seeking financial assistance from the water development account to rehabilitate an existing water project shall submit that request to the commission. The commission shall:

(i) Review and develop plans and recommendations for the project as provided in this section.

(ii) Repealed by Laws 1986, ch. 109, § 3.

(f) The commission shall make a recommendation to the legislature for disposition of projects it retains under subsection (e) of this section.

41-2-115. Report; authorization; assignment.

(a) In preparation of the final concept design under W.S. 41-2-114(a)(ii), the commission shall after giving public notice hold a public hearing within the affected water division. Any interested person, association or state or federal agency may appear and participate as a party. Following the hearing, the commission shall make public a report of their findings relative to whether the project is in the public interest, stipulating if the proposed project functions and services can be served by any person, association or corporation engaged in private enterprise, or if private enterprise has refused to provide the functions and services identified as being required by the proposed project. The commission shall then proceed as set forth in subsections (b) and (c) of this section. Nothing in this section shall be construed to interfere with the duties of the state engineer or the state board of control.

(b) The commission shall within ninety (90) days following the public hearings transmit its findings and recommendations to the governor and legislature pursuant to W.S. 41-2-114(a). Within thirty (30) days following receipt of the findings and recommendations of the commission, the governor shall submit separate recommendations concerning the projects to the legislature. If the recommendations of the governor differ from those of the commission, the governor shall state the reasons for nonconcurrence with the recommendations of the commission.

(c) If the commission finds that a project is desirable and in the public interest, and that some other governmental agency, public district or private corporation or association is desirous and capable of constructing, operating and maintaining the project and accomplishing the public interest to be served thereby, the commission, with the approval of the governor and the legislature, shall transfer or assign the project and any property or rights connected therewith to the agency, district, corporation or association upon agreed terms for reimbursement of the expense of predevelopment costs, payment for property and assurances of construction, operation and maintenance.

41-2-116. Water rights.

(a) The director of the Wyoming water development office shall, at the direction of the governor, file applications in the name of the state of Wyoming for permits to appropriate water, to construct dams and other works, and to take the steps necessary

to acquire, maintain or preserve the priority of any right essential to any project which is or may become a project of the Wyoming water development program, except that nothing in this subsection shall be construed to authorize or empower the director of the Wyoming water development office to acquire water rights through the power of eminent domain.

(b) All laws of the state relating to the appropriation and use of water shall apply to any projects of the Wyoming water development program.

41-2-117. Wyoming water development commission; membership; removal; terms.

(a) The Wyoming water development commission is created to consist of ten (10) members. The membership shall include:

(i) Nine (9) persons, two (2) shall be residents appointed from each water division of the state as defined in W.S. 41-3-501, at least one (1) will be a person having an adjudicated water right. One (1) resident of Wyoming shall be appointed at large and one (1) shall be an enrolled member of the Arapahoe or Shoshone Indian tribes who is resident on the Wind River Indian Reservation:

(A) They shall be appointed by the governor, after consultation with the superintendent of each water division and approval of the senate, and may be removed by the governor as provided in W.S. 9-1-202;

(B) Not more than five (5) members shall be of the same political party;

(C) Appointments are for a term of four (4) years;

(D) Five (5) of the first appointees shall serve two (2) year terms and four (4) appointees shall serve four (4) year terms;

(E) No person shall be appointed for more than two (2) consecutive terms;

(F) If any member ceases to reside in or is absent from the division from which appointed for a continuous period of six (6) months or more, the governor shall declare his office vacant and shall appoint a successor from the same division for the unexpired term;

(G) The governor shall fill a vacancy for an unexpired term in a like manner to subparagraph (F) of this paragraph;

(H) The commission shall annually select one (1) of its members as chairman and one (1) of its members as secretary;

(J) To serve as consultants without vote the following are designated:

(I) The state engineer or his designee;

(II) The chief executive officer of the Wyoming business council or other person designated by the council; and

(III) A person with interest, training and expertise in water resource matters from the University of Wyoming or the Wyoming Water Resource Research Institute, appointed by the president of the university with the approval of the board of trustees.

(b) Members from the four (4) water divisions, the at-large member and the tribal member shall be voting members of the commission. Six (6) members constitute a quorum for the transaction of commission business.

(c) All grant and loan programs over which the commission has authority shall be administered by the Wyoming water development office.

41-2-118. Powers, duties, salaries and expenses of commission.

(a) The commission shall:

(i) Repealed by Laws 1992, ch. 42, § 4.

(ii) Have authority to contract for legal counsel upon approval of the governor to assist in matters related to water resource development as directed by the commission. By request of the commission and upon approval of the governor, the legal counsel shall be entitled to use monies appropriated for legal matters relating to water development. Legal counsel shall consult with the commission, director of the Wyoming water development office, state engineer and attorney general on a regular basis;

(iii) Submit an annual report of its activities, expenses, recommendations and other items to the governor and the joint agriculture, state and public lands and water resources interim committee by December 31;

(iv) Meet quarterly and as necessary and as the governor may direct;

(v) Biennially on or after March 1 elect a chairman from the nine (9) persons;

(vi) Establish and adjust priorities for water development projects;

(vii) Adopt rules and regulations to implement the provisions of W.S. 41-1-106 through 41-1-108 and 41-2-107 through 41-2-118, including establishment of qualifications for the administrator;

(viii) Perform other duties as directed by law;

(ix) As nearly as possible represent and assist all interests advocating water development and conservation in the state;

(x) Have the duty and the authority to conduct studies, develop plans, and recommend legislation which may be enacted for the purpose of securing full utilization of the waters of the state of Wyoming, giving priority to projects for utilization of waters not now being beneficially used in Wyoming;

(xi) Repealed by Laws 1992, ch. 42, § 4.

(xii) Establish an application fee not to exceed one thousand dollars (\$1,000.00) which shall be paid by potential project beneficiaries prior to commission consideration of a project for inclusion in the water development program. Application fees shall be deposited into water development account I;

(xiii) Represent or advocate the state's interests in negotiations and construction of water projects assigned by the legislature or the governor; and

(xiv) Have authority to temporarily defer the principal amount due on debt service payments for money loaned to an irrigation district, watershed improvement district, conservation district or a conservancy district for construction of water development projects whenever the governor has declared that a drought emergency exists within the affected district's service area. The district shall be eligible for the temporary deferral of the principal amount due, provided the interest payments on the remaining principal amount are paid and current. The commission shall amend the amortization schedule to reflect the length of time from the date the affected district seeks the temporary deferral to the date the governor declares the emergency drought condition no longer exists.

(b) Commission members shall receive a salary of one hundred twenty-five dollars (\$125.00) per day and actual and necessary traveling expenses while away from home while engaged in the performance of commission duties.

41-2-119. Groundwater studies.

(a) The Wyoming water development commission may grant not to exceed six million dollars (\$6,000,000.00) to incorporated cities and towns, water and sewer districts and improvement and service districts in Wyoming for exploration for and feasibility studies of the use of underground water for municipal and rural domestic purposes, not to exceed four hundred thousand dollars (\$400,000.00) for any one (1) exploration or study. The grants shall be made from revenues from water development account I and those revenues are hereby so appropriated. Any city or town, water and sewer district or service and improvement district receiving a grant pursuant to this section shall provide at least twenty-five percent (25%) of the cost of the exploration or study from its own funds. The commission shall adopt rules and regulations governing application procedures for the grants.

(b) The commission may expend from the funds appropriated under subsection (a) of this section for exploration and for feasibility studies of the use of underground water for municipal and rural domestic purposes subject to the following conditions:

(i) The exploration or study shall be conducted in conjunction with an incorporated city or town, water and sewer district or service and improvement district in Wyoming under an agreement;

(ii) Not more than four hundred thousand dollars (\$400,000.00) in state funds shall be expended for any one (1) exploration or study under this subsection;

(iii) The incorporated city or town, water and sewer district or service and improvement district shall provide at least twenty-five percent (25%) of the cost of the exploration or study from funds other than under this subsection;

(iv) The incorporated city or town, water and sewer district, or improvement and service district shall apply for participation in this program under procedures established by rules and regulations adopted by the commission.

41-2-120. Approval of loans, construction or water contracts and agreements.

All loans, construction or water contracts and agreements to which the state is a party, entered into pursuant to this act or W.S. 41-2-114, shall be submitted to the select [water] committee for thirty (30) days for its review and recommendation and approved and executed by the governor and the head of the agency, commission or board.

41-2-121. Criteria for water development projects; disclosure of personal interests by commission.

(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 unappropriated 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, municipal, agricultural, industrial, recreational or fish and wildlife enhancement purposes;

(IV) The term of a loan shall not exceed fifty (50) years after substantial completion of a 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 [that] 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 transbasin 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 shall provide for payment of interest on defaulted payments at a rate of ten percent (10%) per annum.

(iii) Repealed by Laws 1986, ch. 109, § 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.

(b) Any member of the commission who has a personal or private interest in any matter proposed or pending before the commission shall publicly disclose this fact to the commission and shall not vote thereon.

(c) Within sixty (60) days after the effective date of this subsection or within sixty (60) days following appointment and annually on or before January 1, each member of the commission shall file written disclosures relative to all interests held by the member or the member's spouse, including interests in partnerships and corporations, with the secretary of state, of:

(i) Any water rights, permits or applications held, whether for direct flow, reservoirs or underground water;

(ii) Any interests in engineering or construction firms which engage in designing or constructing water projects.

(d) The promulgation of operating procedures and program criteria by the commission under this section and decisions of the commission relating to the recommendation, prioritization or disqualification of projects are specifically exempt from all provisions of the Wyoming Administrative Procedure Act including provisions for judicial review under W.S. 16-3-114 and 16-3-115.

41-2-122. Protection and rights of landowner.

(a) The Wyoming water development commission shall include in the planning process at Level I notification to a landowner whose lands may be flooded or otherwise physically affected, as determined by the administrator. The commission shall include in the planning process at Level II consultation with any landowner whose land may be flooded or otherwise physically affected by a proposed water project and shall include a report on the proposed mitigation of landowner impacts as jointly identified by the commission and the landowner.

(b) The Wyoming water development commission shall consult with and supply copies of reports and studies to any landowner whose land will be flooded or physically affected by any proposed water development project. The commission and any employees or other persons under the control of the commission shall mitigate any damages and disruption of the landowner's operations during the study phase including prevention of public nuisances and shall enter on private property only in the manner provided by W.S. 1-26-506 and shall also be subject to W.S. 1-26-507 and 1-26-508.

(c) In proceeding with Level III, construction and operation plans, the commission shall follow the requirements of the Wyoming Eminent Domain Act, shall negotiate in good faith with affected landowners and, in addition, shall attempt to mitigate damages which may occur from the impacts enumerated in subsection (a) of this section.

41-2-123. Project studies generally; hearings; reimbursement of costs; source of funding; use of unobligated funds; recommendations to legislature.

(a) The commission, after public notice, is authorized to conduct public workshops and public hearings in the affected regions on projects which have been approved for study by the legislature pursuant to W.S. 41-2-114.

(b) For each project authorized for Level I or Level II study by the legislature, the commission shall make a recommendation on the following alternatives:

- (i) Proceed with next level of activity;
- (ii) Continue study at the presently authorized level of activity; or
- (iii) Terminate consideration of the project.

(c) Funds appropriated by the legislature for Level I reconnaissance studies and Level II feasibility studies may be included in the costs to be reimbursed by project beneficiaries as provided by W.S. 41-2-112(b)(ii), unless otherwise specifically provided by the legislature.

(d) For projects completed and in use prior to 1970, the funding for Level I and Level II activities shall come from those within water development account II unless otherwise specifically provided by the legislature.

(e) The water development commission may commence and contract for a Level II feasibility study of a project using unobligated funds authorized by law for a Level I reconnaissance study of the project if:

- (i) The Level I study is substantially complete;
- (ii) The due date for the Level I study report established by the legislature has not occurred;
- (iii) The commission finds the Level II study to be in the best interest of the state;
- (iv) The select water committee created under W.S. 28-11-101 reviews the commission request to proceed with the Level II study.

(f) All recommendations, including proposed legislation, from the water development commission to the legislature required by law regarding specific water projects shall be presented to the select water committee created by W.S. 28-11-101 not later than fifteen (15) days prior to commencement of the legislature to which the reports are due. The committee shall review and make recommendations to the legislature regarding commission recommendations and proposed legislation.

41-2-124. Accounts created; unexpended balance.

(a) The following accounts are created:

(i) Water development account I into which shall be deposited revenues pursuant to law;

(ii) Water development account II into which shall be deposited revenues pursuant to law;

(iii) Water development account III into which shall be deposited revenues pursuant to law.

(b) Any unexpended balance in water development accounts I, II and III as defined by subsection (a) of this section shall be invested by the state treasurer and the interest earned shall be credited to the account.

(c) The state treasurer shall transfer such sums of money from water development accounts I and II created by subsection (a) of this section to the state drinking water revolving loan account created by W.S. 16-1-302 to provide not to exceed one-half (1/2) of the twenty percent (20%) state matching funds for each federal capitalization grant to the drinking water state revolving fund program account. The transferred funds shall be proportioned between water development accounts I and II as directed by the water development commission.

(d) No new dam with storage capacity of less than two thousand (2,000) acre-feet of water or expansion of a dam with a storage capacity of less than one thousand (1,000) acre-feet of water shall be funded with funds from water development account III. Without the approval of the legislature, funds deposited into water development account III shall not be diverted from that account, other than for the purpose of financing projects related to dam construction or expansion.

(e) There is transferred to the water development account III created by paragraph (a)(iii) of this section effective July 1, 2005:

(i) Fifty-four million seventy thousand dollars (\$54,070,000.00) from water development account I reserved for the Green River/Wind River project development fund established in W.S. 99-3-604. The transfer of money into water development account III shall not eliminate recognition of the water storage potential in the Green River/Wind River basins;

(ii) Ten million dollars (\$10,000,000.00) from the budget reserve account.

41-2-125. Office of water programs created; duties; annual report.

(a) There is created the office of water programs within the office of research at the University of Wyoming. The office of water programs shall:

(i) Work directly with the director of the Wyoming water development office to identify research needs of state and federal agencies regarding Wyoming's water resources, including funding under the National Institutes of Water Resources (NIWR);

(ii) Serve as a point of coordination for and to encourage research activities by the University of Wyoming to address the research needs identified in paragraph (i) of this subsection;

(iii) In conjunction with the Wyoming water development office, submit a report annually prior to each legislative session to the select water committee and the Wyoming water development commission on the activities of the office.

Title 99 General Provisions

99-3-101. Definitions.

(a) As used in this chapter:

(i) "Commission" means the Wyoming water development commission;

(ii) "Sponsor" means the municipality, conservancy district, irrigation district, water district, improvement and service district, water and sewer district, watershed improvement district or joint powers board that will receive funding for one (1) or more of the projects identified in this chapter;

(iii) "Water development account I" means the account created by W.S. 41-2-124(a)(i);

(iv) "Water development account II" means the account created by W.S. 41-2-124(a)(ii);

(v) "Water development account III" means the account created by W.S. 41-2-124(a)(iii). (Laws 1998, ch. 38, 1; 2006, ch. 105, 2.)

99-3-102. General authorization.

(a) The commission shall contract with each sponsor identified in this chapter for the design, construction and operation of the project in a manner consistent with this chapter and to administer the contract on behalf of the state of Wyoming.

(b) Upon execution of the contract outlined in subsection (a) of this section, the sponsor may design, construct and operate the project in a manner consistent with the terms and conditions outlined in the contract. (Laws 1998, ch. 38, 1.)

99-3-103. General conditions for Level III construction projects-new development.

(a) Except as otherwise specifically provided, each Level III new development construction project identified in this chapter shall be subject to the following general conditions:

(i) Each sponsor shall offer security for the project loan as deemed adequate and acceptable to the attorney general;

(ii) The commission shall establish repayment schedules for project loans in accordance with the conditions prescribed in this section;

(iii) Each sponsor shall establish a sinking fund for repair and maintenance of the project as deemed appropriate by the commission;

(iv) Each sponsor shall supervise design and construction of the project and submit all requests for payment to the commission for approval;

(v) A sponsor shall not make construction funding commitments until after the commission has reviewed and approved construction budgets and construction plans;

(vi) The commission shall make payments directly to the sponsor;

(vii) The sponsor shall be responsible for operation and maintenance of the project;

(viii) The sponsor is responsible for all project expenditures in excess of the total project appropriation;

(ix) If the commission determines that any sponsor has, without good cause, abandoned completion of the project, that sponsor, in addition to being required to repay the loan, shall be obligated to immediately repay the full amount of all 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 in the water development account from the date of expenditure;

(x) Principal and interest payments made in repayment of loans shall be deposited in water development account I;

(xi) There shall be no lease, sale, assignment or transfer of ownership of water from the project for purposes other than the designated project purpose without prior written approval of the commission and the state engineer or board of control. If such a transaction is approved, the revenues generated by the lease, sale, assignment or transfer of ownership of water from the project shall be utilized to retire principal on the project loan. After that loan is paid in full, the sponsor shall receive a proportionate share of the revenues generated by the lease, sale, assignment or transfer of ownership of water from the project equal to the percentage of the project loan and the state of Wyoming shall receive a proportionate share of the revenues generated by the lease,

sale, assignment or transfer of ownership of water from the project equal to the percentage of the project grant;

(xii) There shall be no lease, sale, assignment or transfer of ownership of any project until the project loan is paid in full, and until prior written approval is obtained from the commission. If these conditions are met, the sponsor shall receive a proportionate share of the revenues generated by the lease, sale, assignment or transfer of ownership of the project equal to the percentage of the project loan and the state of Wyoming shall receive a proportionate share of the revenues generated by the lease, sale, assignment or transfer of ownership of the project equal to the percentage of the project grant. Before the sponsor may lease, sell, assign or transfer ownership of the project, the state of Wyoming shall be given a one (1) year first right of refusal option to purchase the sponsor's interest in the project for an amount equal to the principal, interest, maintenance and replacement costs incurred by the sponsor at the date the option is exercised;

(xiii) After the project loan is paid in full, the sponsor may purchase the position of the state of Wyoming, as described in paragraphs (xi) and (xii) of this subsection, for the amount of the project grant plus the interest that would have accrued on the grant amount in the water development account from the date the project was substantially completed as defined by the commission. The interest that would have accrued on the grant amount shall be established by the state auditor;

(xiv) Any revenues generated by the state from the lease, sale, assignment or transfer of ownership of any project or project water shall be deposited in water development account I. (Laws 1998, ch. 38, 1.)

99-3-104. General conditions for Level III construction projects; rehabilitation.

(a) Except as otherwise specifically provided, each Level III rehabilitation construction project identified in this chapter shall be subject to the following general conditions:

(i) Each sponsor shall offer security for the project loan as deemed adequate and acceptable to the attorney general;

(ii) The commission shall establish repayment schedules for project loans in accordance with the conditions prescribed in this section;

(iii) Each sponsor shall establish a sinking fund for repair and maintenance of the project as deemed appropriate by the commission;

(iv) Each sponsor shall supervise design and construction of the project and submit all requests for payment to the commission for approval;

(v) Sponsors shall not make construction funding commitments until after the commission has reviewed and approved construction budgets and construction plans;

- (vi) The commission shall make payments directly to the sponsor;
- (vii) The sponsor shall be responsible for operation and maintenance of the project;
- (viii) The sponsor is responsible for all project expenditures in excess of the total project appropriation;
- (ix) If the commission determines that any sponsor has, without good cause, abandoned completion of the project, that sponsor, in addition to being required to repay the loan, shall be obligated to immediately repay the full amount of all 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 in the water development account from the date of expenditure;
- (x) Principal and interest payments made in repayment of loans shall be deposited in water development account II. (Laws 1998, ch. 38, 1.)

99-3-105. Assignment of statute numbers.

(a) To facilitate the drafting and amendment of water project legislation, the legislative service office may assign statute numbers and headings to previously enacted session laws, provided:

(i) The statute numbers and headings are for reference and identification only and do not constitute any part of the substantive law and shall not alter the meaning of the previously enacted session laws;

(ii) In amending or repealing any session law assigned a number under this section, it is sufficient to identify the law by designating the assigned number without reference to the original chapter and section of the session law enactment, or amendment thereof;

(iii) A disposition table identifying the session laws renumbered under this section shall be maintained on file in the legislative service office;

(iv) Session laws numbered under this section need not be codified as part of the regularly published Wyoming statutes. (Laws 1998, ch. 38, 1.)

99-3-106. General conditions for Level III construction projects-dams and reservoirs.

(a) Except as otherwise specifically provided, each Level III dam and reservoir construction project identified in this chapter shall be subject to the following general conditions:

(i) Each sponsor shall offer security for the project loan as deemed adequate and acceptable to the attorney general;

- (ii) The commission shall establish repayment schedules for project loans in accordance with the conditions prescribed in this section;
- (iii) Each sponsor shall establish a sinking fund for repair and maintenance of the project as deemed appropriate by the commission;
- (iv) Each sponsor shall supervise design and construction of the project and submit all requests for payment to the commission for approval;
- (v) A sponsor shall not make construction funding commitments until after the commission has reviewed and approved construction budgets and construction plans;
- (vi) The commission shall make payments directly to the sponsor;
- (vii) The sponsor shall be responsible for operation and maintenance of the project;
- (viii) The sponsor is responsible for all project expenditures in excess of the total project appropriation;
- (ix) If the commission determines that any sponsor has, without good cause, abandoned completion of the project, that sponsor, in addition to being required to repay the loan, shall be obligated to immediately repay the full amount of all 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 in the water development account from the date of expenditure;
- (x) Principal and interest payments made in repayment of loans shall be deposited in water development account III;
- (xi) There shall be no lease, sale, assignment or transfer of ownership of water from the project for purposes other than the designated project purpose without prior written approval of the commission and the state engineer or board of control. If such a transaction is approved, the revenues generated by the lease, sale, assignment or transfer of ownership of water from the project shall be utilized to retire principal on the project loan. After that loan is paid in full, the sponsor shall receive a proportionate share of the revenues generated by the lease, sale, assignment or transfer of ownership of water from the project equal to the percentage of the project loan and the state of Wyoming shall receive a proportionate share of the revenues generated by the lease, sale, assignment or transfer of ownership of water from the project equal to the percentage of the project grant;
- (xii) There shall be no lease, sale, assignment or transfer of ownership of any project until the project loan is paid in full, and until prior written approval is obtained from the commission. If these conditions are met, the sponsor shall receive a proportionate share of the revenues generated by the lease, sale, assignment or transfer of ownership of the project equal to the percentage of the project loan and the state of Wyoming shall receive

a proportionate share of the revenues generated by the lease, sale, assignment or transfer of ownership of the project equal to the percentage of the project grant. Before the sponsor may lease, sell, assign or transfer ownership of the project, the state of Wyoming shall be given a one (1) year first right of refusal option to purchase the sponsor's interest in the project for an amount equal to the principal, interest, maintenance and replacement costs incurred by the sponsor at the date the option is exercised;

(xiii) After the project loan is paid in full, the sponsor may purchase the position of the state of Wyoming, as described in paragraphs (xi) and (xii) of this subsection, for the amount of the project grant plus the interest that would have accrued on the grant amount in the water development account from the date the project was substantially completed as defined by the commission. The interest that would have accrued on the grant amount shall be established by the state auditor;

(xiv) Any revenues generated by the state from the lease, sale, assignment or transfer of ownership of any project or project water shall be deposited in water development account III. (Laws 2006, ch. 105, 1.)