

**41-1-110. Interference with natural flow of thermal springs; nonthermal water or mineral development.**

Nothing in this act shall be construed to limit any nonthermal water, or mineral development so long as said development does not interfere with the natural flow of the thermal springs covered by this act.

**41-1-111. Interference with natural flow of thermal springs; injunctive relief.**

The state engineer may seek injunctive relief to implement this act.

**41-1-112. Conducting business electronically.**

The state engineer's office may allow its business to be conducted electronically as provided by the Uniform Electronic Transactions Act, W.S. 40-21-118.

CHAPTER 2 - PLANNING AND DEVELOPMENT

ARTICLE 1 - IN GENERAL

**41-2-101. Repealed By Laws 1999, ch. 149, § 1.**

**41-2-102. Repealed By Laws 1999, ch. 149, § 1.**

**41-2-103. Repealed By Laws 1999, ch. 149, § 1.**

**41-2-104. Repealed By Laws 1999, ch. 149, § 1.**

**41-2-105. Repealed By Laws 1999, ch. 149, § 1.**

**41-2-106. Repealed By Laws 1999, ch. 149, § 1.**

**41-2-107. Water resources plans; review; submission to commission.**

The commission shall formulate and from time to time review and revise water and related land resources plans for the state of Wyoming and for appropriate regions and river basins. The plans shall implement the policies stated in the Wyoming constitution and in statutes pertaining to the state's water and related land resources.

**41-2-108. Water resources plans; powers of commission.**

(a) In the formulation of these plans the commission may:

(i) Repealed by Laws 1979, ch. 59, § 5.

(ii) Consult with and receive the views of persons, local groups and organizations representing water users, special interests, industries and the public interest, and acquire data and information relating to water, water use, water conservation, and water quality from government agencies, departments and other sources;

(iii) Coordinate the water resources plans with other government agencies and departments;

(iv) Undertake studies, investigations, surveys and research relevant to the formulation of the water resources plans and enter into contracts and arrangements for the same with any government agency, department, or any person, firm, university, institution, or state or national organization;

(v) Adopt, in whole or in part, studies and reports made by other governmental agencies, state or federal; and

(vi) Perform other related activities or functions as are relevant and appropriate to the formulation of water resources plans.

**41-2-109. Water resources plans; contents.**

(a) The water resources plans shall, to the extent deemed practical:

(i) Identify, describe and inventory the occurrence, amounts, availability and quality of water resources, current uses of water, activities that affect the quality of water, and activities that are dependent on, affected by, or relate to water and uses of water;

(ii) Identify and describe prospective needs and demands for water and opportunities for water development, control, withdrawal, storage, conservation, supply, distribution, drainage and disposal;

(iii) Identify and specify for each plan appropriate state, regional and local goals and objectives for management of water resources, including the obtaining of economic efficiency

and a desirable distribution of income, the protection of the health, safety and welfare of the people, the protection and encouragement of particular industries and activities, the protection and enhancement of the environment and recreation; and

(iv) Evaluate and compare prospective and anticipated uses and projects, including combinations and coordinations thereof, uses of alternative sources of water and alternative uses of water, in terms of goals identified pursuant to paragraph (iii) of this subsection.

**41-2-110. Water resources plans; duties of commission.**

(a) The commission shall:

(i) Publish the water resources plans as they are formulated and adopted and disseminate them to people, industries and government departments and agencies;

(ii) Give advice and assistance if requested to government departments and agencies, furnish to them the appropriate plans, and make available related subsidiary and additional data and information, or data and information related to plans in the process of preparation;

(iii) Recommend action or legislation needed to implement and carry out the plans.

(iv) Repealed by laws 1979, ch. 59, § 5.

**41-2-111. Suits for enforcement of water rights; appeals from decisions of state engineer and state board of control.**

(a) Upon the request of the state engineer, the attorney general shall bring suit in the name of the state of Wyoming, in the proper district court, to enjoin the unlawful appropriation, diversion or use of the waters of the state, or the waste or loss thereof. A showing of injury in such suits shall not be required as a condition to the issuance of any temporary restraining order, preliminary or permanent injunction. If an appeal is taken from the judgment or decree entered by the district court in such suit, it shall be the duty of the supreme court, at the request of one (1) of the parties, to advance the appeal to the head of its docket and give it precedence over all other civil causes in the hearing and determination thereof.

(b) Upon any appeal being taken from the board of control or state engineer to a district court, it shall be the duty of the court, at the request of one (1) of the parties, to advance the appeal to the head of its trial docket and to give the appeal precedence over all civil causes in the hearing and determination thereof. If an appeal is then taken from the judgment or decree of the district court to the supreme court of the state, it shall be the duty of the supreme court, at the request of one (1) of the parties to the appeal, to advance the appeal to the head of its docket and give it precedence over all civil causes in the hearing and determination thereof.

**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 seventy-five percent (75%) of the 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;

(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;

(xv) With the approval of the governor, have the authority to enter into contracts and agreements with the United States of America or its duly authorized representative agency to accept federal funds through grants or matching funds or from other sources for project costs pertaining to the utilization of Wyoming's water resources; and

(xvi) Have authority to promulgate rules to delegate administrative duties to the Wyoming water development office to facilitate the effective operation of the commission.

(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 eight million eight hundred thousand dollars (\$8,800,000.00) 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.

(e) Prior to authorizing a water development project, the commission shall require each project sponsor to demonstrate that the entity has the authority to adequately assess fees or collect funds to cover operation and maintenance expenses related to the water development project. Any entity that does not have the authority or ability to collect sufficient funds for the operation and maintenance of the project may be required by the commission to establish an operations and maintenance account as provided in this section. The commission shall develop criteria related to the establishment of an operations and maintenance account which shall include:

(i) An operations and maintenance account shall only be required for project sponsors that have taken out a loan for any portion of the project expense and shall not be required after the loan has been repaid;

(ii) The funds required in any operations and maintenance account shall not exceed ten percent (10%) of the project cost.

**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.

ARTICLE 2 - PROJECTS

**41-2-201. Renumbered as 99-99-201 by Laws 2009, Ch. 168, § 401.**

**41-2-202. Renumbered as 99-99-202 by Laws 2009, Ch. 168, § 401.**

**41-2-203. Renumbered as 99-99-203 by Laws 2009, Ch. 168, § 401.**

**41-2-204. Renumbered as 99-99-204 by Laws 2009, Ch. 168, § 401.**

**41-2-205. Renumbered as 99-99-205 by Laws 2009, Ch. 168, § 401.**

**41-2-206. Renumbered as 99-99-206 by Laws 2009, Ch. 168, § 401.**

**41-2-207. Repealed by Laws 1986, ch. 113, § 14; Renumbered as 99-99-207 by Laws 2009, Ch. 168, § 401.**

41-2-208. Renumbered as 99-99-208 by Laws 2009, Ch. 168, §  
401.

41-2-209. Renumbered as 99-99-209 by Laws 2009, Ch. 168, §  
401.

41-2-210. Renumbered as 99-99-210 by Laws 2009, Ch. 168, §  
401.

41-2-211. Renumbered as 99-99-211 by Laws 2009, Ch. 168, §  
401.

41-2-212. Repealed by Laws 1982, ch. 60, § 16; Renumbered  
as 99-99-212 by Laws 2009, Ch. 168, § 401.

41-2-213. Repealed by Laws 1982, ch. 60, § 16; Renumbered  
as 99-99-213 by Laws 2009, Ch. 168, § 401.

41-2-214. Repealed by Laws 1982, ch. 60, § 16; Renumbered  
as 99-99-214 by Laws 2009, Ch. 168, § 401.

41-2-215. Repealed by Laws 1982, ch. 60, § 16; Renumbered  
as 99-99-215 by Laws 2009, Ch. 168, § 401.

41-2-216. Renumbered as 99-99-216 by Laws 2009, Ch. 168, §  
401.

41-2-217. Renumbered as 99-99-217 by Laws 2009, Ch. 168, §  
401.

41-2-218. Renumbered as 99-99-218 by Laws 2009, Ch. 168, §  
401.

41-2-219. Renumbered as 99-99-219 by Laws 2009, Ch. 168, §  
401.

41-2-220. Renumbered as 99-99-220 by Laws 2009, Ch. 168, §  
401.

41-2-221. Renumbered as 99-99-221 by Laws 2009, Ch. 168, §  
401.

41-2-222. Renumbered as 99-99-222 by Laws 2009, Ch. 168, §  
401.

ARTICLE 3 - LITTLE BIGHORN RIVER

41-2-301. Renumbered as 99-99-301 by Laws 2009, Ch. 168, §  
401.

ARTICLE 4 - SPLIT ROCK FORMATION

41-2-401. Renumbered as 99-99-401 by Laws 2009, Ch. 168, §  
401.

ARTICLE 5 - PARK RESERVOIR DAM

41-2-501. Renumbered as 99-99-501 by Laws 2009, Ch. 168, §  
401.

41-2-502. Renumbered as 99-99-502 by Laws 2009, Ch. 168, §  
401.

41-2-503. Renumbered as 99-99-503 by Laws 2009, Ch. 168, §  
401.

41-2-504. Renumbered as 99-99-504 by Laws 2009, Ch. 168, §  
401.

41-2-505. Renumbered as 99-99-505 by Laws 2009, Ch. 168, §  
401.

41-2-506. Renumbered as 99-99-506 by Laws 2009, Ch. 168, §  
401.

ARTICLE 6 - GREEN RIVER

41-2-601. Renumbered as 99-99-601 by Laws 2009, Ch. 168, §  
401.

ARTICLE 7 - TOWN OF SOUTH SUPERIOR

41-2-701. Renumbered as 99-99-701 by Laws 2009, Ch. 168, §  
401.

ARTICLE 8 - RESERVED

ARTICLE 9 - LITTLE BIGHORN RIVER

41-2-901. Repealed by Laws 1988, ch. 79, § 11.

ARTICLE 10 - DEBT SERVICE ACCOUNTS

**41-2-1001. Renumbered as 99-99-1001 by Laws 2009, Ch. 168, § 401.**

ARTICLE 11 - WIND RIVER INDIAN RESERVATION

**41-2-1101. Renumbered as 99-99-1101 by Laws 2009, Ch. 168, § 401.**

ARTICLE 12 - LITTLE SNAKE RIVER

**41-2-1201. Renumbered as 99-99-1201 by Laws 2009, Ch. 168, § 401.**

ARTICLE 13 - TRANSFER OF WATER

**41-2-1301. Transfer of water authorized; conditions.**

(a) Pursuant to W.S. 41-3-115, the United States Bureau of Reclamation and the Wyoming water development office are hereby authorized to transfer a maximum of thirty-three thousand four hundred ninety-three (33,493) acre feet of storage water per year from the environmental account in the Pathfinder Modification Project within Pathfinder reservoir to the Wyoming-Nebraska state line for the purpose of providing regulatory certainty under the Endangered Species Act for the use of Wyoming water in the Platte River basin.

(b) Pursuant to W.S. 41-3-115, and the Wyoming water development office is hereby authorized to transfer a maximum of nine thousand six hundred (9,600) acre feet of storage water per year from the Wyoming account in the Pathfinder Modification Project within Pathfinder reservoir to the Wyoming-Nebraska state line through annual temporary water use agreements with the Platte River Recovery Implementation Program in any year the storage water in the Wyoming account is not needed by the state of Wyoming as a municipal water supply or a replacement water supply to meet the state of Wyoming's obligations in the Nebraska v. Wyoming settlement agreement and the Platte River Recovery Implementation Program.

(c) The authorizations granted under subsections (a) and (b) of this section shall terminate if the state of Wyoming withdraws from the Platte River Recovery Implementation Program or any successor programs approved by the governor.

(d) If the director of the Wyoming water development office determines that Wyoming water users are not receiving the

regulatory certainty under the endangered species act as provided for in the Platte River recovery implementation program, he shall submit a report to the select water committee outlining the inadequacy of the regulatory certainty.

(e) If the state engineer determines that the transfers authorized under subsections (a) and (b) of this section cause injury to Wyoming water users beyond those identified in the final opinion and recommendations provided to the legislature pursuant to W.S. 41-3-115(q), then the state engineer shall report the injury to the select water committee.

(f) Any revenue generated through the annual temporary water use agreements for storage water from the Wyoming account shall be deposited in the account created by W.S. 41-2-1001(a) (iv).

### CHAPTER 3 - WATER RIGHTS; ADMINISTRATION AND CONTROL

#### ARTICLE 1 - GENERALLY

##### **41-3-101. Nature of water rights and beneficial use.**

A water right is a right to use the water of the state, when such use has been acquired by the beneficial application of water under the laws of the state relating thereto, and in conformity with the rules and regulations dependent thereon. Beneficial use shall be the basis, the measure and limit of the right to use water at all times, not exceeding the statutory limit except as provided by W.S. 41-4-317. In addition to any beneficial use specified by law or rule and regulation promulgated pursuant thereto, the use of water for the purpose of extracting heat therefrom is considered a beneficial use subject to prior rights. Water being always the property of the state, rights to its use shall attach to the land for irrigation, or to such other purposes or object for which acquired in accordance with the beneficial use made for which the right receives public recognition, under the law and the administration provided thereby. Water rights for the direct use of the natural unstored flow of any stream cannot be detached from the lands, place or purpose for which they are acquired, except as provided in W.S. 41-3-102 and 41-3-103, pertaining to a change to preferred use, and except as provided in W.S. 41-4-514.

##### **41-3-102. Preferred uses; defined; order of preference.**