

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.**

(a) Water rights are hereby defined as follows according to use: preferred uses shall include rights for domestic and transportation purposes, steam power plants, and industrial purposes; existing rights not preferred, may be condemned to supply water for such preferred uses in accordance with the provisions of the law relating to condemnation of property for public and semi-public purposes except as hereinafter provided.

(b) Preferred water uses shall have preference rights in the following order:

(i) Water for drinking purposes for both man and beast;

(ii) Water for municipal purposes;

(iii) Water for the use of steam engines and for general railway use, water for culinary, laundry, bathing, refrigerating (including the manufacture of ice), for steam and hot water heating plants, and steam power plants; and

(iv) Industrial purposes.

(c) The use of water for irrigation shall be superior and preferred to any use where water turbines or impulse water wheels are installed for power purposes; provided, however, that the preferred use of steam power plants and industrial purposes herein granted shall not be construed to give the right of condemnation.

**41-3-103. Preferred uses; procedure for change of use.**

Where it can be shown to the board of control under the provisions hereof, that a preferred use is to be made, the procedure for a change of such use shall embrace a public notice, an inspection and hearing if necessary by and before the proper division superintendent, a report of such superintendent to the board of control, and an order by said board. If the change of use is approved, just compensation shall be paid and under the direction of the board, proper instruments shall be drawn and recorded.

**41-3-104. Procedure to change use or place of use.**

(a) When an owner of a water right wishes to change a water right from its present use to another use, or from the place of use under the existing right to a new place of use, he

shall file a petition requesting permission to make such a change. The petition shall set forth all pertinent facts about the existing use and the proposed change in use, or, where a change in place of use is requested, all pertinent information about the existing place of use and the proposed place of use. The board may require that an advertised public hearing or hearings be held at the petitioner's expense. The petitioner shall provide a transcript of the public hearing to the board. The change in use, or change in place of use, may be allowed, provided that the quantity of water transferred by the granting of the petition shall not exceed the amount of water historically diverted under the existing use, nor exceed the historic rate of diversion under the existing use, nor increase the historic amount consumptively used under the existing use, nor decrease the historic amount of return flow, nor in any manner injure other existing lawful appropriators. The board of control shall consider all facts it believes pertinent to the transfer which may include the following:

(i) The economic loss to the community and the state if the use from which the right is transferred is discontinued;

(ii) The extent to which such economic loss will be offset by the new use;

(iii) Whether other sources of water are available for the new use.

(b) In all cases where the matter of compensation is in dispute, the question of compensation shall be submitted to the proper district court for determination.

**41-3-105. Repealed by Laws 1983, ch. 167, § 2.**

**41-3-106. Procedure to exchange water; delivery of water under exchanges; approval of state engineer; enforcement of exchanges.**

(a) Any appropriator owning a valid water right in and to the use of the ground, surface or reservoir waters of the state, where the source of the appropriation is at times insufficient to fully satisfy such appropriation, or better conservation and utilization of the state's water can be accomplished, or the appropriator can develop appropriable water but cannot economically convey it to its point of use, may petition the state engineer for an order allowing an exchange and the use of stored, direct flow, or ground water from another source. If

such an appropriator arranges by agreement with another appropriator for the delivery and use of either stored, direct flow, or ground water from another source, the exchange agreement shall accompany the petition.

(b) Exchanges may be allowed among any combination of direct flow, storage, and groundwater rights. Petitions for exchanges shall be accompanied by such maps, plans or other information as may be required by the state engineer. The proper filing and recording fees shall accompany the petition.

(c) No exchange shall be allowed until the state engineer has entered an order granting the exchange. Documents drawn in connection with exchanges may be recorded in one (1) or more counties where any part of the land involved is situated. No exchange may be terminated without the issuance of an order approving termination, unless the order allowing the exchange provides for termination on a specified date.

(d) It is the policy of the state to encourage exchanges. The state engineer shall not issue an exchange order if it appears that the proposed exchange would adversely affect other appropriators, or if the proposed exchange would, in the opinion of the state engineer, be too difficult to administer or would be adverse to the public interest. All exchanges are subject to the requirements of beneficial use and equality of water exchanged, and no exchange will be allowed unless a sufficient quantity of makeup water is introduced to replace the water diverted and withdrawn under the exchange. In making the determination of equality and sufficiency of the makeup water introduced, the state engineer may consider relative consumptive uses and transmission losses.

(e) Any water made available to an appropriator by reason of any exchange agreement shall be delivered for the use of the appropriator in accordance with the order allowing the exchange, and its use is without prejudice to, but in enjoyment of, the rights of all appropriators under their original appropriations.

(f) Performances of each exchange shall be enforced by the water administration officials of the state in accordance with the terms and conditions of the order allowing the exchange. The state engineer may adopt such rules and regulations as are necessary to enable him to efficiently administer this section.

(g) The state engineer shall assess a fee not to exceed fifty dollars (\$50.00) for his review, and approval of exchange

petitions. This fee shall accompany an exchange petition and shall be retained and deposited whether the petition or request is approved or denied.

**41-3-107. Submerged lands; petition for change of water rights; conditions; hearing; fees.**

(a) The state board of control may, upon the written petition of the owners of an adjudicated water right, or water rights appurtenant to lands submerged by the construction of reservoirs in the state of Wyoming, issue amended certificates of appropriation of water and change the point of diversion and means of conveyance for such adjudicated appropriations of water for the irrigation of other lands in the state of Wyoming outside of the reservoir basin in lieu of the submerged lands, without loss of priority; provided:

(i) The appropriation shall be from the same source of supply;

(ii) The irrigated acreage shall include not only new land within the state of Wyoming having no original direct flow water right but also lands within the same drainage area having water rights from another source and which have a need for supplemental water, but in no event shall such right and use so changed exceed in amount of water that of the rights which are being changed;

(iii) Such change of water rights be made within five (5) years from the date that construction of the reservoir dam has been completed. If such change is not applied for by the owner or his successors in interest within the five (5) year period such water rights shall become automatically abandoned and the water shall be distributed in order of priority on the stream. Such automatic abandonment shall apply only to lands inundated at and below the high water line of reservoirs. The board of control shall enter an order abandoning the water rights upon a determination that an abandonment has occurred;

(iv) The change can be made only on condition that it does not injuriously affect the rights of other Wyoming appropriators.

(b) After receipt of a petition for such change the state board of control shall cause a public hearing to be held on the petition before the superintendent of the water division in which such appropriation is located, with notice of the hearing

to be advertised in at least one (1) issue of a newspaper having general circulation in the community where the water right involved is located. The petitioner shall pay the cost of publication prior to the time of hearing and shall provide a stenographic record of the proceedings, which shall be transmitted by the division superintendent to the state board of control with his report. A fee not to exceed fifty dollars (\$50.00) for issuance and recording of each amended certificate of appropriation of water shall be collected by the state board of control at the time of filing of the petition and the board shall also require a deposit of sufficient funds to cover the cost of preparing and recording a certified copy of the order of the board granting the petition.

(c) The owners of lands coming under the provisions of this section may sell or convey lands submerged or to be submerged by any such reservoir with provisions in the deed or other conveyance that the water rights appurtenant thereto may be detached and transferred as provided herein.

**41-3-108. Lands taken out of agricultural production or lands taken by eminent domain; retention of priority.**

(a) Where lands are taken out of agricultural production as the necessary result of acquisitions for railroad roadbed construction, highway construction, mining or petroleum extraction operations or industrial site acquisitions or lands taken by proceedings in eminent domain or which have become impracticable to irrigate by reason of any of the foregoing conditions, the owner of an affected water right may transfer the water right to other lands held by the owner. The petition for the change in use, or change in place of use shall be properly filed within five (5) years of the date the land went out of production because of any of the conditions specified herein. Failure to file the petition within five (5) years results in forfeiture of the right except as otherwise provided.

(b) The petition for a change in use, or change in place of use, of a water right under this section shall retain its original date of priority.

(c) For a period of five (5) years after the effective date of this act, any appropriator whose land has been out of production for more than five (5) years may petition the board requesting transfer of the water rights involved. The granting or denial of a petition under these circumstances is within the discretion of the board. The decision of the board may be

appealed to the district court. The board may hold public hearings in connection with a petition being considered pursuant to this section. All costs in conjunction with the hearing shall be borne by the petitioner.

**41-3-109. Construction of W.S. 41-3-107.**

The provisions of this act shall be valid notwithstanding the provisions of W.S. 41-3-101.

**41-3-110. Right to acquire temporary water rights for highway or railroad roadbed construction or repair; application; restrictions; fee.**

(a) Any person shall have the right to acquire by purchase, gift or lease the right to the use of water which may be embraced in any adjudicated or valid unadjudicated water right, or any portion thereof, for a period of not to exceed two (2) years, for highway construction or repair, railroad roadbed construction or repair, drilling and producing operations, or other temporary purposes, on its own behalf or on behalf of its agents, employees or contractors: provided, that if the proposed use is to be for public highway construction or repair under a contract with the state department of transportation, only the state transportation commission shall have the authority to acquire the water; and the state transportation commission shall have the sole and continuing responsibility for the acquisition, including the payment of all fees, royalties and other consideration for the use of and access to water and the right to acquire the rights to use shall not be delegated to a construction contractor or other third party; and further provided, that any temporary transfer shall be allowed only if no other appropriator is injured thereby.

(b) Before any right to such use shall become operative, an application must be made in writing on a form provided or designated by the state engineer, with a copy of any conveyance or agreement provided, and it shall be filed in the office of the state engineer for his ratification and approval. Upon approval by the state engineer, an order authorizing such use and designating the method, place, and period of use may be entered. No loss, abandonment or impairment of such water rights shall occur or attach as a result of such change or use, except as provided by said conveyance or agreement and order of the state engineer, and upon termination of the temporary diversion and use, as stated in the order, any affected right to the use

of water shall automatically be reinvested with all the rights, privileges and uses, and purposes theretofore held and enjoyed.

(c) Only that portion of a water right so acquired which has been consumptively used under the historical use made of the water right, may be diverted by a temporary user. In determining the consumptive use of water rights for the direct use of the natural unstored flow of any stream for irrigation purposes, the return flow from those rights shall be presumed to be fifty percent (50%). In those situations where an assumption of fifty percent (50%) return flow would be significantly in error, the state engineer shall have the prerogative of making a determination of the actual amount of return flow, and the amount of water which can be diverted for the temporary use provided herein shall be adjusted accordingly. The actual historic return flow, or the assumed return flow of fifty percent (50%) will be left in the stream for the use of downstream appropriators. The foregoing formula and procedure for the determination of consumptive use and return flow shall be limited to this section and shall have no application to any other statute of the state of Wyoming. Nothing herein contained shall be treated or construed as changing the prior use of water held by said owner or owners and as provided by the laws of the state of Wyoming.

(d) The state engineer shall assess a fee not to exceed one hundred dollars (\$100.00) for his review and approval of temporary water agreements. This fee shall accompany the agreement application and shall be retained and credited to the general fund whether the agreement or request is approved or denied.

**41-3-111. Right to acquire temporary water rights for highway or railroad roadbed construction or repair; right of owner who cannot satisfy in full his right during time of diversion.**

The owner of any permanent water right, whether prior or subsequent in priority to that temporary right acquired by any person under this act who cannot satisfy in full his right during the time said temporary user is diverting water under its temporary water right shall have the absolute right upon demand being made upon the appropriate state water commissioner to cause such diversion to be shut off until such time as said owner's water right is satisfied, or until it is proven that the shutting down of the diversion has no effect upon owner's right.



**41-3-112. Right to acquire temporary water rights for highway or railroad roadbed construction or repair; wrongfully causing diversion to be shut down.**

It shall be unlawful for any person to wrongfully cause a diversion made under a temporary water right required under and by virtue of this act to be shut down. Any violation of this section shall be punishable pursuant to W.S. 41-3-616.

**41-3-113. Supplemental supply water rights.**

A supplemental supply water right is defined as a permit or certificate of appropriation for the diversion, from a stream, of water from a new source of supply for application to lands for which an appropriation of water from a primary source already exists. Such supplemental supply permits or certificates of appropriation may be allowed by the state engineer or the state board of control under such regulations or conditions as he or it may prescribe. The use and administration of presently existing rights for supplemental supply appropriations or rights for supplemental supply appropriations hereafter acquired shall hereafter be made upon the express condition that the total amount of water to be diverted at any one (1) time both under a primary appropriation of water and a supplemental supply appropriation shall not be in excess of one (1) cubic foot of water per second of time for each seventy (70) acre tract so irrigated, except that when the right to divert water under the provisions of W.S. 41-4-317 through 41-4-324, is permitted the total amount of surplus water to be diverted at any one (1) time both under a primary appropriation of water and a supplemental supply appropriation shall not be in excess of one (1) cubic foot of water per second for each seventy (70) acre tract so irrigated. Nothing herein shall be construed to apply to water stored under a reservoir permit.

**41-3-114. Petition to change point of diversion or means of conveyance.**

(a) Any person entitled to the beneficial use of water, whether under a permit issued by the state engineer or a certificate of appropriation issued by the board of control pursuant to W.S. 41-4-511, who desires to change the point of diversion or means of conveyance, or both, shall file a petition with:

(i) The board of control if the use of the water has been adjudicated under a certificate of appropriation;

(ii) The state engineer in all other cases. The state engineer may consider a petition even if water has not been applied to beneficial use however, any change in point of diversion granted by the state engineer shall be in the vicinity of the original diversion, and provided:

(A) The change shall not alter the original project concept; and

(B) The water shall be diverted from the same source of supply described in the original permit.

(b) Petitions for change in point of diversion shall be in affidavit form and shall set forth the name and address of the petitioner, the name of the ditch, pipeline, or other facility, the stream from which water is appropriated, the date of priority and the amount of the appropriation to be changed, permit number, ownership of appropriation, and the location of the present and the proposed new point of diversion by course and distance from a corner of the public land survey. If for irrigation, petitions shall describe the acreage irrigated in each legal subdivision, the reason for the proposed change, and state whether any other appropriator from the same source will be injured in any way, and whether the consent of all owners of intervening diversions has been obtained. The petition shall be accompanied by satisfactory evidence of ownership of the appropriation to be changed.

(c) If the petition is for a change in point of diversion and means of conveyance for all or a part of an appropriation, it shall include, in addition to the foregoing, the name, permit number and date of priority of the ditch or facility to which it is to be changed, and whether the petitioner is the sole owner of both facilities involved or has the consent of the other owners of both ditches or facilities.

(d) Such petitions shall be accompanied by maps in duplicate, one (1) of which shall be on tracing linen of a size required by the state engineer and state board of control, prepared under certificate of a registered land surveyor, and showing accurately the location of the stream, the location of the ditch or ditches involved, location of any intervening diversions, and if for irrigation, the location of the lands changed or affected by such change.

(e) In event that written consents of owners of appropriations which divert between the old and new points of diversion or the owners of ditches or facilities involved in the proposed change are not secured and attached to the petition, the petition shall be referred to:

(i) The superintendent of the water division in which the change is proposed, if the right is adjudicated; or

(ii) To the state engineer if the right is unadjudicated.

(f) The state engineer or the superintendent shall set a hearing on the petition and give thirty (30) days notice by registered mail of the time and place of the hearing to the petitioner and any owners of appropriations which divert between the old and new points of diversion and any owners or users of ditches or facilities to be affected by the proposed change. The petitioner shall provide the superintendent with a record of the proceedings which shall be transmitted to the state board of control with the superintendent's report. The state board of control or the state engineer may make such other regulations as may be found necessary. No petition shall be granted if the right of other appropriators will be injuriously affected. The attorney general shall represent the state board of control or the state engineer in any appeal.

(g) A decision by the state engineer granting or denying a petition under paragraph (a)(ii) of this section may be appealed to the board of control. An appeal may be taken to the district court pursuant to W.S. 16-3-101 through 16-3-115 from an order of the board of control:

(i) Affirming, modifying or reversing a decision of the state engineer appealed to the board under this subsection; or

(ii) Granting, modifying or denying a petition under paragraph (a)(i) of this section.

**41-3-115. Applications for use of water outside the state.**

(a) The legislature finds, recognizes and declares that the transfer of water outside the boundaries of the state may have a significant impact on the water and other resources of the state. Further, this impact may differ substantially from that caused by uses of the water within the state. Therefore,

all water being the property of the state and part of the natural resources of the state, it shall be controlled and managed by the state for the purposes of protecting, conserving and preserving to the state the maximum permanent beneficial use of the state's waters.

(b) None of the water of the state either surface or underground may be appropriated, stored or diverted for use outside of the state or for use as a medium of transportation of mineral, chemical or other products to another state without the specific prior approval of the legislature. Provided, however, neither approval by the legislature nor compliance with the application procedures under subsections (m) through (r) of this section shall be required for appropriations that will transfer or use outside the state less than one thousand (1,000) acre-feet of water per year unless the applications are part of a collection of related applications or appropriations from the same source of supply for the same or similar use where the total use or transfer outside the state exceeds one thousand (1,000) acre-feet per year in aggregate. The state engineer is authorized to adopt rules and regulations necessary to carry out the provisions of this subsection.

(c) No holder of either a permit to appropriate water or a certificate to appropriate water, nor any applicant for a right to appropriate the unappropriated water of this state, may transfer or use the water so appropriated, certificated or applied for outside the state of Wyoming without prior approval of the legislature of Wyoming.

(d) Repealed by Laws 1985, ch. 4. § 1.

(e) Repealed by Laws 1985, ch. 4. § 1.

(f) Repealed by Laws 1985, ch. 4. § 1.

(g) Repealed by Laws 1985, ch. 4. § 1.

(h) Repealed by Laws 1985, ch. 4. § 1.

(j) Repealed by Laws 1985, ch. 4. § 1.

(k) Repealed by Laws 1985, ch. 4. § 1.

(m) Applications for the appropriation of water for use out of state shall be submitted to the state engineer. The application shall contain sufficient information to enable the

state engineer to fully analyze the proposed appropriation. Within sixty (60) days of receipt of the application, the state engineer shall determine if the application is complete and acceptable. If the application is unacceptable, the state engineer shall notify the applicant as to what is needed so an acceptable application may be submitted.

(n) Upon determination that the application is acceptable, the state engineer shall cause to be made, at the applicant's expense, a comprehensive review of the application. The state engineer shall have no more than one hundred twenty (120) days to complete this review.

(o) Upon completion of the state engineer's review, the state engineer shall issue a preliminary analysis of the application. The analysis shall address the factors set forth in subsection (r) of this section, contain a summary of the application and any other information the state engineer deems relevant. The preliminary opinion, or a reasonable summary, shall be published, at the applicant's expense, for three (3) consecutive weeks in a newspaper of general circulation in the county where the proposed appropriation of water is located. At the conclusion of the publication period, the state engineer shall hold a public hearing, at the applicant's expense, in the county where the proposed appropriation is located.

(p) In rendering a final opinion, the state engineer shall consider all comments received at the public hearing and those received in writing within twenty (20) days of the public hearing.

(q) The state engineer shall render a final opinion and submit it to the legislature within one hundred twenty (120) days of the public hearing. The final opinion shall address all factors set forth in subsection (r) of this section and shall contain a recommendation that the legislature grant or deny the proposed out-of-state use.

(r) The legislature shall consider the proposed appropriation following receipt of the state engineer's opinion and recommendation. Notwithstanding subsections (d) through (k) of this section, legislative consent for the proposed appropriation of water for use out of the state shall be based upon consideration of the factors necessary to assure meeting the state's interests in conserving and preserving its water resources for the maximum beneficial use. Factors to be considered by the legislature shall include the following:

(i) The amount of water proposed to be appropriated and the proposed uses;

(ii) The amount of water available for appropriation from the proposed source, and the natural characteristics of the source;

(iii) The economic, social, environmental and other benefits to be derived by the state from the proposed appropriation;

(iv) The benefits to the state by the use of the water within the state that will be foregone by the proposed appropriation;

(v) The benefits presently and prospectively derived from the return flow of water in intrastate use which will be eliminated by the proposed out-of-state use;

(vi) The injury to existing water rights of other appropriators that may result from the proposed use;

(vii) Whether the use formulated and carried out promotes or enhances the purposes and policies of the state's water development plans and water resources policy, and that the use will not unreasonably interfere with other planned uses or developments for which a permit has been or may be issued;

(viii) Whether the proposed use will significantly impair the state's interest and ability to preserve and conserve sufficient quantities of water for reasonably foreseeable consumptive uses and other beneficial uses recognized by law to include but not limited to domestic, livestock, agricultural, municipal and industrial purposes;

(ix) Whether the proposed use will adversely affect the quantity or quality of water available for domestic or municipal use;

(x) Whether, to the greatest extent possible, the correlation between surface water and groundwater has been determined, to avoid possible harmful effects of the proposed use on the supply of either.

(s) Nothing in this section shall be construed to interfere with compacts, court decrees and treaty obligations.

## ARTICLE 2 - RIGHTS TO FOREIGN WATERS

### **41-3-201. Definition.**

All that part and amount of the waters of an interstate stream which, unless prevented by artificial barrier, will enter the state of Wyoming from another state while flowing in a natural stream channel, and which have been, or may hereafter be, determined by final decree of the supreme court of the United States not to be available for diversion and application to beneficial use within the state of Wyoming, or other waters originating outside of the state of Wyoming, and which neither the state of Wyoming nor any Wyoming appropriator could divert and use as against another state or appropriators therein, the rights to which through purchase, exchange or negotiation are acquired by anyone for beneficial use in the state of Wyoming, and which are conveyed, imported or permitted to flow into the state of Wyoming through the channel of any natural stream, or otherwise, are, for the purposes of this act, hereby defined as "foreign water".

### **41-3-202. Right to acquire.**

Anyone may lawfully acquire by purchase or through other negotiations entered into with the owner of a water right in another state or with such other state or with both such owner and state, the right to bring into Wyoming for beneficial use all or any portion of the stream flow of foreign water, as herein defined, arising without the boundaries of the state of Wyoming and flowing into this state.

### **41-3-203. Transportation in interstate channels.**

The owner of the right of beneficial use of any foreign water acquired for beneficial use within the state of Wyoming may transport the same in the natural channel of any interstate stream from the state boundary line to the point in the state of Wyoming where the owner of such water desires to divert and take same from said natural stream channel, and shall have the right to divert and take from said natural stream channel, the full quantity of the foreign water which the owner thereof shall have caused to be delivered into the channel of such natural stream at the state boundary line, less that quantity of foreign water only representing loss in the transportation thereof from the state boundary line to the point of diversion in the state of Wyoming.

**41-3-204. Duty to supervise delivery; expense.**

It is hereby made the duty of the Wyoming state engineer, water division superintendents, water commissioners and deputy water commissioners, to supervise the delivery of such foreign water from the state boundary line where it enters the state of Wyoming in a natural stream channel, to the point of diversion in Wyoming; any additional expense of this supervision shall be borne by the owners of such foreign water as decided by the water officials of the state of Wyoming.

**41-3-205. Rights of owner; priority of claims; subject to appropriation and diversion.**

The owner of foreign water is hereby declared to have the exclusive right of beneficial use of such foreign water either for immediate application to beneficial use or by impounding the same in a reservoir for future application to beneficial use, as against any claim or right to appropriate any water belonging to the state of Wyoming, and against the right of any Wyoming appropriator to divert water from said interstate stream for beneficial use in Wyoming. All foreign water conveyed or allowed to flow into the state of Wyoming is hereby declared not to be subject to appropriation in Wyoming and not to be subject to diversion under any Wyoming appropriation notwithstanding the same shall flow in the channel of any natural stream within this state and notwithstanding the same may be commingled with the waters in such stream channel owned by the state of Wyoming or by appropriators under the laws of Wyoming.

**41-3-206. Rights of owner; recording of claim.**

The owner of any foreign water conveyed or allowed to flow into the state of Wyoming from without the boundaries of this state shall file in the office of the secretary of the Wyoming state board of control, within the period of one (1) month before the first conveyance or flowage of such foreign water into the state of Wyoming, a certificate in writing, signed by the owner of such foreign water, specifying the former owner or owners of such foreign water, the amount thereof so acquired, the natural stream channel to be used in the state of Wyoming as a conduit for the delivery of such foreign water to the point of diversion in the state of Wyoming and also designating the point of diversion of such foreign water in the state of Wyoming.

**41-3-207. Rights of owner; right to divert and use.**



The owners of foreign water may divert and use in priority order, all available water in said stream channel to which such owner may be lawfully entitled under any Wyoming appropriation to the same extent and under the same conditions as if such owner had not acquired any such foreign water.

**41-3-208. Diverting from owner prohibited.**

It shall be unlawful for anyone not the owner thereof to divert and take from the natural channel of any interstate stream designated by the certificate required in W.S. 41-3-206 flowing within the state of Wyoming, any foreign water or in any manner interfere with the ability of the owner of foreign water to transport the same in the natural stream channel in Wyoming to the point of diversion and to divert the same thereat. Any violation of this section shall be punishable pursuant to W.S. 41-3-616.

**41-3-209. Change of point of diversion; power to petition generally.**

Any person, association or corporation having heretofore acquired a right from an adjoining state to the beneficial use of the water of any stream, entering the state of Wyoming and where the point of diversion of the appropriation is located in the adjoining state and the ditch irrigates land within the state of Wyoming, and who desires to change the point of diversion from said stream from within the adjoining state to a point within the state of Wyoming, shall petition therefor to the state board of control.

**41-3-210. Change of point of diversion; contents of petition.**

All petitions for such change of point of diversion shall be made to the state board of control setting forth the acreage in each legal subdivision of land irrigated, with the total acreage, together with a map, showing the location of the stream, the ditch, the old and new points of diversion, the new point of diversion in Wyoming to be tied to the nearest corner of the public land survey; the nature and extent of the irrigation works, their size, capacity, and length, and a certified copy of the proceedings had before the proper board, officer, or court, which has authority in the adjoining state to adjudicate water rights; amount of water adjudicated, the land for which the same was adjudicated; the date of priority, the

date of adjudication, showing the existence of a valid water right, and that the same is in full force and effect.

**41-3-211. Change of point of diversion; endorsement and recording of petition.**

Upon receipt of the petition by the board of control, it shall be the duty of the president of said board to make an endorsement thereon of the date of its receipt, and to properly record receipt of the petition.

**41-3-212. Change of point of diversion; hearing.**

It shall be the duty of the board of control at its next regular meeting following the receipt of such petition to examine same and ascertain if it sets forth all the facts required by W.S. 41-3-210, and the validity of the water right granted by the adjoining state. Upon it being made to appear to the satisfaction of the board of control that the requirements of law and the regulations of the board have been complied with and that the petitioner is entitled to make the proposed changes, the said petition shall be referred to the division superintendent of the proper water division for a public hearing to be held not later than one hundred and twenty (120) days, following the date so referred. The said superintendent shall, by order, require all persons interested to appear on said certain day to show cause why the petition should not be granted. The said order shall be published for four (4) consecutive weeks in a newspaper having general circulation in the county where the proposed change of point of diversion is located; provided, that the consent of all owners of intervening diversions be secured, or that those not secured shall be notified by registered mail at least thirty (30) days prior to the hearing date. Any party who may claim injury on account of said proposed change of point of diversion shall have the right to appear before the superintendent at the public hearing as ordered, and present evidence in support of said claim. The evidence of such hearing shall be confined to the subjects enumerated in the notice for hearing. Upon completion of the taking of testimony in such hearing, it shall be the duty of the division superintendent to transmit same to the office of the board of control together with a written report setting forth the procedure followed and the results accomplished. At the next regular meeting, the board shall consider the evidence transmitted and enter a proper order either granting or denying the petition.

**41-3-213. Change of point of diversion; rights of applicant upon approval; certificate of appropriation.**

The approval of the petition shall grant to the applicant the same right in all respects as existed under the laws of the adjoining state as to land to be irrigated, amount of water, and date of priority, as fully as though the water right had originally been acquired from the state of Wyoming. No direct flow appropriation shall be recognized under this act for an amount of water in excess of the statutory limit of one (1) cubic foot per second for each seventy (70) acres of land irrigated. The board of control shall issue a certificate of appropriation to applicants under this act, and the fee for issuing it shall not exceed fifty dollars (\$50.00).

**41-3-214. Change of point of diversion; fees and costs.**

The applicant shall pay the statutory fee for a stenographer to take the testimony at each hearing, and provide for a stenographic record of the proceedings, and in addition the administrative costs of the hearing official and the necessary recording fee to record the order issued by the board, as hereinabove provided, in the office of the county clerk of the county in which the change of point of diversion is situated.

**41-3-215. Change of point of diversion; appeal from adverse decision.**

Any applicant or person interested, feeling himself aggrieved by the decision of the board of control may appeal from said decision to the district court in the county in which said point of diversion is proposed to be located in the same manner and by the same procedure as set forth in W.S. 41-4-517, or amendments thereto.

ARTICLE 3 - RESERVOIRS

**41-3-301. Application for reservoir construction permit; contents; procedure.**

(a) Any person, corporation, association, or organization, of any nature whatsoever, hereafter intending to store or impound, for beneficial uses, any of the unappropriated waters of the state of Wyoming, shall, before commencing construction of any works for such purpose, or performing any work in connection with said proposed construction, make an application to the state engineer, for a permit to construct a reservoir.

The application must set forth the name and post office address of the applicant; the source of the water supply; the nature of the proposed use; the location and description of the proposed work; the time within which it is proposed to begin construction, and the time required for the completion of construction. Maps and plans shall conform with the provisions of W.S. 41-4-510. In case of reservoirs where the storage is for stock purposes only and the capacity does not exceed twenty (20) acre-feet and the height of dam does not exceed twenty (20) feet, the state engineer may issue a permit without the filing of a map; however the state engineer may require certain information be submitted on special forms to be furnished or designated by him. Any violation of subsection (a) of this section shall be punishable pursuant to W.S. 41-3-616 with the exception that the owner of any unpermitted reservoir with a capacity of twenty (20) acre-feet or less and a dam height of twenty (20) feet or less shall have forty-five (45) days after receipt of the written notice of violation pursuant to W.S. 41-3-616(a), to submit an application for a permit. The application shall meet the requirements of the state engineer's office. Each day of the forty-five (45) days shall not be counted as a separate violation if the application for a reservoir permit is received during this forty-five (45) day period.

(b) For reservoir permits issued in conjunction with the national pollutant discharge elimination system (NPDES) for mining operations, the state engineer shall promptly review the application and advise the applicant in writing if it is complete, within thirty (30) days. If the application is complete, or is resubmitted to the satisfaction of the state engineer, it shall be approved or denied within forty-five (45) days of this determination:

(i) For the purpose of this subsection "complete" means that the application contains all the essential and necessary elements and is acceptable for further review for substance and compliance with the provisions of this chapter.

**41-3-302. Application for construction permit; conditions; secondary permit; certificate of appropriation.**

All applications under this article shall be subject to the provisions of W.S. 41-4-502 through 41-4-510, 41-4-517 and 41-3-615, which set forth the duties and authority of the state engineer and provide for the protection of the rights of applicants; provided that an enumeration of any lands proposed

to be irrigated under this article shall not be required in the primary permit, provided, further, that any party or parties desiring to appropriate such stored water to particular lands may file with the state engineer an application for permit to be known herein as the secondary permit, in compliance with the provisions of W.S. 41-4-501 through 41-4-510 and 41-4-517. In the event secondary permit may be desired, said application shall refer to such reservoir for a supply of water and the state engineer shall not approve of said application and issue secondary permit until the applicant thereunder shall show to such state engineer by documentary evidence that he has entered into an agreement with the owners of the reservoir for a permanent and sufficient interest in said reservoir to impound enough water for the purposes set forth in said application. When beneficial use has been completed and perfected under the said secondary permit the division superintendent shall take the proof of the water user under such permit and the final certificate of appropriations shall refer to both the ditch described in the secondary permit and the reservoir described in the primary permit.

**41-3-303. Use of stored water.**

The use of water stored under the provisions of this chapter may be acquired under such terms as shall be agreed upon by and between the parties in interest. Lands entitled to the use of water in any reservoir may use the water stored therein, and to which they are entitled, at such times and in such amounts as the water users may elect, provided that a beneficial use of water is made at all times.

**41-3-304. Use of bed of stream.**

Whenever the owner, manager or lessee of a reservoir, constructed under the provisions of this act, shall desire the use of the bed of the stream, or other water course, for the purpose of carrying stored or impounded water from the reservoir to the consumer, or shall desire the use of any ditch to carry, convey or transmit any of the stored or impounded water for the benefit of any person having the right to have the reservoir water carried, conveyed or transmitted through the ditch under the laws of this state, he shall, in writing notify the water commissioner of the district in which the stored or impounded water is to be used, giving the date when it is proposed to discharge water from the reservoir, its volume in acre feet and the names of all persons and ditches entitled to its use, and other matters as may be necessary to properly distribute the

water. It shall then be the duty of the water commissioner to so adjust the headgates of all ditches of ditch companies or appropriators from the stream or water course, and the division boxes of individual consumers of water, not entitled to the use of the stored water, as will enable those having the right to secure the volume of water to which they are entitled. The commissioner shall not in any other manner interfere with the headgates or division boxes, except as otherwise provided by law. The water commissioner shall keep a true and just account of the time spent by him in the discharge of his duties as defined in this section, and it shall be the duty of the water commissioner or division superintendent to present a bill of one-half (1/2) the expense so incurred to the reservoir owner, manager or lessee, and if the owner, manager, or lessee shall neglect for three (3) days, after the presentation of the bills of costs, to pay the costs, the costs shall be made a charge upon the reservoir and shall be collected as delinquent taxes until the complete payment of the bill of costs has been made. Costs recovered under this section shall be paid into the general fund.

**41-3-305. Direct flow storage.**

The holder or owner of an adjudicated water right to the direct use of the natural unstored flow of any surface stream of the state may store such direct flow so long as no other Wyoming appropriator or user is injured or affected thereby. Prior to the commencement of the storage of water under a direct flow water right, the appropriator shall submit a request for such storage in writing to the state engineer and shall obtain the approval of the state board of control. The state board of control may permit storage at any time so long as there is no interference with existing water rights or uses. The state engineer is authorized and empowered to prescribe such rules and regulations as may be necessary or desirable to enable him to effectively administer the provisions of this section.

**41-3-306. Instream stock use.**

In the administration of water rights on any stream and in the consideration of any applications for permits, the state engineer may require that water be provided to meet reasonable demands for instream stock use.

**41-3-307. Alterations or repairs of dams or diversion systems; definitions.**

(a) As used in this act unless the context otherwise requires:

(i) "Alterations" or "repairs" means only such alterations or repairs as may directly affect the safety of the dam or diversion system, as determined by the state engineer or his designated representative;

(ii) "Appurtenant works" include, but are not limited to, such structures as spillways, either in the dam or separate therefrom, the reservoir and its rim, low level outlet works, and water conduits such as tunnels, pipelines or penstocks, either through the dam or its abutments;

(iii) "Dam" means any artificial barrier, including appurtenant works, used to impound or divert water and which is or will be greater than twenty (20) feet in height or with an impounding capacity of fifty (50) acre-feet or greater. "Dam" shall not include artificial barriers including appurtenant works:

(A) Six (6) feet in height or less, regardless of storage capacity; or

(B) Which impound less than fifteen (15) acre-feet, regardless of height.

(iv) "Days" used in establishing deadlines means calendar days, including Sundays and holidays;

(v) "Diversion system" means any channel diversion, headgate or diversion structure with a carrying capacity in excess of fifty (50) cubic feet of water per second of time;

(vi) "Emergency" means any threat to life or property caused by the condition of any dam, reservoir or diversion system, or by present or imminent floods which threaten the safety or structural integrity of any dam or diversion system;

(vii) "Emergency response agency" means any agency which the dam owner may be required to notify in case of an emergency, such as sheriff's office, highway patrol or local emergency coordinator;

(viii) "Enlargement" means any change in or addition to an existing dam or reservoir which raises or may raise the water storage elevation of the water impounded by the dam;

(ix) "Inspection" means visual or mechanical checks, measures, borings and any other methods necessary for determination of the adequacy of construction techniques, conformity of work with approved plans and specifications, and the safety and operating performance of a dam or diversion system and appurtenant works;

(x) "Owner" includes any of the following who own, control, operate, maintain, manage or propose to construct a dam or reservoir:

(A) The state and its departments, institutions, agencies and political subdivisions;

(B) Every municipal or quasi-municipal corporation;

(C) Every public utility;

(D) Every district;

(E) Every person;

(F) The federal government and its departments, institutions, agencies and political subdivisions;

(G) The duly authorized agents, lessees or trustees of any of the foregoing; and

(H) Receivers or trustees appointed by any court for any of the foregoing.

(xi) "Person" means any person, firm, association, organization, partnership, business trust, corporation or company;

(xii) "Reservoir" means any basin which contains or will contain impounded water;

(xiii) "This act" means W.S. 41-3-307 through 41-3-317.

**41-3-308. Alterations or repairs of dams or diversion systems; plans and specifications; duties of state engineer.**



(a) Plans and specifications of any proposed construction, enlargement, major repair, alteration or removal of a dam or diversion system shall be prepared by or under the direction of a registered professional engineer licensed to practice in the state of Wyoming and experienced in dam design and construction, and shall be submitted to the state engineer for approval. It is unlawful to commence construction, enlargement, major repair, alteration or removal until the plans and specifications have been approved by the state engineer. At the request of the state engineer, the professional engineer responsible for the plans and specifications shall carry out any revisions of the plans and specifications or provide such additional information as is necessary to justify or clarify the design.

(b) A copy of all plans and specifications submitted under this section shall be kept on file in the state engineer's office.

(c) In the event that a proposed dam or diversion system is related to a facility which requires an industrial siting permit pursuant to W.S. 35-12-106:

(i) The plans and specifications of the proposed dam or diversion system shall be submitted to the state engineer at the same time that the application for an industrial siting permit is submitted to the industrial siting administration [industrial siting council] pursuant to W.S. 35-12-108;

(ii) The state engineer shall approve or reject the plans and specifications of the proposed dam or diversion system prior to the public hearing conducted pursuant to W.S. 35-12-110(f)(i);

(iii) The approval or rejection of the plans and specifications of the proposed dam or diversion system shall be binding on the industrial siting council for the purposes of issuing an industrial siting permit.

(d) The state engineer shall provide for the regulation and supervision of all dams, diversion systems and reservoirs by the state to the extent required to protect the public safety and property. The state engineer is authorized and directed to promulgate regulations and standards for the design, construction, enlargement, alteration, abandonment, maintenance, monitoring, operation, repair and removal of dams, reservoirs, and diversion systems as are necessary and proper to carry out the purposes of this act. The state engineer may waive any or

all of the requirements of this act in instances where the dam or diversion system is located in a remote area where there is no threat to the public safety or property.

**41-3-309. Alterations or repairs of dams or diversion systems; inspections performed and reports submitted to state engineer by professional engineer.**

(a) A registered professional engineer licensed to practice in the state of Wyoming shall be in charge of and responsible for the construction, enlargement, major repair, alteration or removal of any dam or diversion system.

(b) The engineer in charge shall provide for inspections at such intervals as deemed necessary to insure conformity with the approved plans and specifications, either by himself or by a person qualified to perform the inspections and for whose work the engineer stands personally responsible.

(c) All information obtained from, during or as the result of such inspection shall be made part of a report, certified to by the engineer in charge, which shall be submitted to the state engineer at such time or times as may be set by the state engineer.

(d) All reports submitted under this section shall be filed in the state engineer's office.

**41-3-310. Alterations or repairs of dams or diversion systems; inspections by state engineer or assistant engineer; cost.**

(a) If the state engineer believes that inspections carried out under W.S. 41-3-309 are inadequate or that additional inspections are necessary, the state engineer may inspect personally or appoint an assistant engineer to inspect the construction, enlargement, repair, alteration or removal of any dam or diversion system. If after any inspection the state engineer or his representative finds that amendments, modifications or changes are necessary in order to insure the security and integrity of the work and structure, the protection of property or the public safety, the state engineer may order the owner or owners of the dam or diversion system to revise the plans and specifications, or order work stopped. It is unlawful to proceed with or continue the work until any revisions have been approved by the state engineer.

(b) Any inspections required by this section shall be made at state expense, provided the assistant engineer performing such inspections is an employee of the state of Wyoming.

(c) If the assistant engineer is not a regular employee of the state of Wyoming, inspections shall be made at the expense of the owner. The owner shall be furnished with an estimate of the cost prior to performance of any inspections, but the state engineer is not precluded from collecting any or all additional costs which result from performance of the inspections. Costs to be paid by the owner shall include, but are not limited to, all work or tests as are necessary to fully provide any information and data required by the state engineer or his appointed representative. If the owner refuses or neglects to turn over the funds within thirty (30) days, after the presentation of the bill of costs, the costs shall constitute a lien upon the works or other properties of the owner or owners and may be collected by appropriate action in any court of competent jurisdiction. In order to have a valid, enforceable lien under this section, a lien statement sworn to before a notarial officer shall be filed by the claimant with the county clerk of the county in which the property is located. The county clerk shall file the statement and index by date, name of claimant and property owner, and by legal description. The lien statement shall contain the following:

(i) The name and address of the governing body seeking to enforce the lien;

(ii) The name and address of the person against whose property the lien is filed; and

(iii) The legal description of the property to which the lien attaches.

(d) All funds paid by the owner to the state engineer shall be deposited in the state engineer's holding account from which account the costs incurred as a result of any inspections or other work deemed necessary under this section shall be paid. Any funds not so expended shall be returned to the person or persons advancing the funds.

**41-3-311. Alterations or repairs of dams or diversion systems; periodic inspections.**

(a) Any dam subject to the terms of this act shall be inspected at least once every ten (10) years or as often as

deemed necessary based on the hazards of the dam to insure the continued protection of public safety and property.

(b) Inspections referred to in subsection (a) of this section shall be performed by the state engineer or his appointed representative who shall have right of entry upon private or government lands and is authorized to inspect the owner's technical data and other documentation as may be necessary to perform these inspections. All information obtained as a result of the inspections shall be filed in the state engineer's office.

(c) Inspections required under this section shall be made at state expense except as provided in W.S. 41-3-312 when a dam, reservoir or diversion system is found to be unsafe by the state engineer.

(d) If inspections performed under this section disclose defects in the works which in the judgment of the state engineer or his authorized agent constitute a threat to life or property, the state engineer may, without incurring any liability, order the draining of any reservoir involved, or the limitation or cessation of its use or the use of any defective works until such time as the owner of the reservoir or other works returns the works to a safe condition as approved by the state engineer.

**41-3-312. Alterations or repairs of dams or diversion systems; inspections at other than regular times; cost; unsafe structures.**

(a) The state engineer may, or upon written request from any person or persons residing on or owning land near any dam, reservoir or diversion system shall, order an inspection of those works at any time other than the time set for regular inspections as provided for in W.S. 41-3-311(a). Before ordering an inspection, the state engineer may require any person or persons requesting the inspection to deposit a sum of money sufficient to pay the expenses of the inspection into the state engineer's holding account. If after the inspection the dam, reservoir or diversion system is determined to be in a safe and usable condition, the state engineer may cause the whole or part of the expenses of the inspection to be paid out of the state engineer's holding account. Any excess funds shall be returned to the person or persons advancing the funds.

(b) If the dam, reservoir or diversion system is found to be defective, any funds deposited by the person or persons

requesting the inspection shall be returned and the state engineer may require the person or persons owning the dam, reservoir or diversion system in question to pay the whole or any part of the expenses of inspection. If the state engineer requires a payment, he shall present a bill of costs to the owner or owners, and if the owner or owners refuse or neglect to pay the costs within thirty (30) days after the presentation of the bill of costs, the costs shall constitute a lien upon the works or other properties of the owner or owners and may be collected by appropriate action in any court of competent jurisdiction. If the inspection discloses defects in the works which in the judgment of the state engineer or his authorized agent constitute a threat to life or property, the state engineer may, without incurring any liability, order the draining of any reservoir involved, or the limitation or cessation of its use or the use of any defective works until such time as the owner of the reservoir or other works returns the works to a safe condition as approved by the state engineer. The lien shall be filed as provided by W.S. 41-3-310(c).

**41-3-313. Alterations or repairs of dams or diversion systems; outlets; maintenance; draining by breaching.**

(a) All dams and reservoirs hereafter constructed, with or without a controlled inlet, shall contain an outlet controlled by a headgate or other control works. The headgate or control works shall be maintained in an operable condition at all times and in a manner that water impounded by or within a dam or reservoir may be evacuated or maintained at any water level which may be required by the state engineer.

(b) All dams constructed prior to the effective date of this act which have no outlet or means for lowering the reservoir water level in an expeditious manner, may be drained by breaching at the owner's expense when the public safety so requires.

(c) The state engineer and anyone working under his direction and control shall not be held liable for any damages or loss of water resulting from the draining or imposed restrictions as to the use of a reservoir, dam or diversion system.

(d) If within thirty (30) days after presentation of an itemized statement the owner fails to reimburse the state engineer for expenses incurred under this section, any unpaid

balance of such expense shall automatically constitute a lien upon lands or other properties of the owner.

**41-3-314. Alterations or repairs of dams or diversion systems; emergency repairs or breaching.**

(a) In case of an emergency where the state engineer or his authorized representative declares that repairs or breaching of a dam or diversion system are immediately necessary to safeguard life and property, the necessary repairs or breaching shall be started immediately by the owner or by the state engineer or his representative at the owner's expense, if the owner fails to do so. The state engineer and emergency response agencies shall be notified at once of any changes in the physical conditions of the dam, diversion system, or reservoir which significantly increase the probability of failure of the dam or diversion works or the danger to life or property, proposed emergency repairs or breaching to be instituted by the owner. These reporting requirements shall apply only to cases in which an emergency has been declared pursuant to this subsection.

(b) If emergency repairs have been made and the emergency situation has passed, the owner shall commence all repairs necessary to return the dam or diversion system to a safe and usable condition, as provided in W.S. 41-3-308 through 41-3-310.

(c) All costs incurred by the state engineer during an emergency shall be payable by the owner or owners on receipt of the bill of costs from the state engineer. Costs not paid within thirty (30) days after presentation of the bill shall constitute a lien upon the dam or diversion system or other properties of the owner or owners and may be collected by appropriate action in any court of competent jurisdiction. The lien shall be filed as provided by W.S. 41-3-310(c).

**41-3-315. Alterations or repairs of dams or diversion systems; enforcement of provisions.**

For any reservoir the state engineer may enforce any sections of this act in such manner and by such means as may be necessary to insure the safety of the public and protection of property.

**41-3-316. Alterations or repairs of dams or diversion systems; actions brought against state, state engineer or employees prohibited.**

(a) No action shall be brought against the state or the state engineer or any of his agents or employees for the recovery of damages caused by the partial or total failure of any dam, reservoir or diversion system or damages caused by virtue of the operation of any dam, reservoir or diversion system upon the ground that such defendants are liable by virtue of any of the following:

(i) The approval of the dam, reservoir or diversion system or approval of flood handling plans during construction;

(ii) The issuance or enforcement of orders relative to maintenance or operation of any dam or reservoir;

(iii) Control and regulation of any dam, reservoir or diversion system;

(iv) Measures taken to protect against failure during an emergency; or

(v) Failure to take an action required by the provisions of this act.

**41-3-317. Alterations or repairs of dams or diversion systems; liability of owners.**

Nothing in this act shall be construed to relieve an owner or owners of any reservoir, dam or diversion system of any legal duties, obligations or liabilities incident to their ownership or operation of or any damages resulting from the leakage or overflow of water or for floods resulting from the failure or rupture of the fill or structure for such works.

**41-3-318. Penalties, cancellation of permit, for failure to comply with W.S. 41-3-308 through 41-3-314.**

Failure to comply with the provisions of W.S. 41-3-308 through 41-3-314 shall subject the permit to cancellation at any time pursuant to W.S. 41-3-616(c). Failure to comply with any valid order issued by the state engineer pursuant to W.S. 41-3-308 through 41-3-314, shall subject the permit holder to penalty pursuant to W.S. 41-3-616(b).

**41-3-319. Owners of ditches and reservoirs; general rights.**

Each owner of a share or shares of the capital stock in an incorporated ditch company existing for the purpose of distributing water through such company's ditch to the owners of such stock, shall have the right to carry, convey and transmit reservoir water, supplementing other water rights he may possess, through the ditch of such ditch company in which he may have such stock, to the full extent of the carrying capacity represented by such stock, but no greater. Each partner in a partnership ditch owned or used for a like purpose, shall have the right to carry, convey and transmit reservoir water, supplementing other water rights he may possess, through such partnership ditch, to the full extent of the carrying capacity represented by his interest, as a partner, in such ditch, but no greater. Every such person carrying, conveying and transmitting water through such ditch, or having the same done for his benefit, shall pay all expenses incurred by reason of all extra labor in cleaning such ditch, change of division boxes, and other additional expenses made necessary by reason of carrying such reservoir water through any such ditch. The right herein granted to any person, shall also extend to the owner, manager or lessee of a reservoir, who desires to use any such ditch to carry, convey or transmit water through such ditch for the benefit of any such person to whom the right herein mentioned has been granted as aforesaid.

**41-3-320. Owners of ditches and reservoirs; sale or lease of impounded water.**

Except as otherwise provided by deed or other written instruments of the owner or owners of the right to impound water in any reservoir, such reservoir owner or owners shall, after the completion of the works in connection with such reservoir, be held to be the owner of the right to impound the water, and the right to sell or lease a portion or all his right to the impounded waters; provided, that the sale of any portion of the capacity of any reservoir shall carry with it an interest in the reservoir and works appurtenant thereto of such proportion as the portion sold bears to the total capacity of the reservoir; and provided, further, that the water stored in any reservoir cannot be used outside the boundaries of the state of Wyoming without special permit from the state engineer; and provided, further, that the state engineer may deny any use of water from any reservoir that would be detrimental to the public interest.

**41-3-321. Owners of ditches and reservoirs; priority of right to store or impound.**



The priority of right to store or impound water under this act shall date from the filing of the application in the state engineer's office.

**41-3-322. Owner's report of persons entitled to use water; superintendent's report of use of water.**

The owner of each reservoir shall annually, in writing, before or during the irrigating season and before the releasing of the water from the reservoir, deliver to the water commissioner having jurisdiction over such reservoir a list or lists of parties entitled to use water from such reservoir during the irrigating season of such year, and also a list as near as may be of the lands proposed to be irrigated, and shall immediately notify such water commissioner of any changes in such list or lists. The superintendent of the water division in which such reservoir is situated shall annually on or before the first day of December in each year make a written report to the state engineer of the state, enumerating in detail the person or persons who during the irrigating season immediately preceding use any part of such reservoir water, and shall also enumerate therein the lands upon or uses for which said water was applied during such irrigating season so that the state engineer may be kept at all times advised as to whether or not such water has been applied to beneficial uses.

**41-3-323. Deeds for water rights; attaching of rights to land; sale, lease, transfer or use.**

The reservoir water and rights acquired under reservoir permits and adjudications shall not attach to any particular lands except by deed, or other sufficient instrument conveying such water or water rights, executed by the owner or owners of such reservoir, and such water and water rights, except when attached to particular lands as aforesaid, may be sold, leased, transferred and used in such manner and upon such lands as the owner of such rights or partial rights may desire, provided, that such water must be used for beneficial purposes.

**41-3-324. Deeds and leases for water rights; execution and recording.**

All deeds for reservoir water and water rights and all leases of the same for periods of three (3) years or more shall be executed and acknowledged as deeds are executed, and shall be recorded in the office of the county clerk of the county in which the reservoir is situated and also filed in the office of

the state engineer. All leases of such water and water rights for a period less than three (3) years shall be in writing and filed in the office of the state engineer.

**41-3-325. Excess stored water to be furnished applicants; preferences; rates.**

The owner or owners of a reservoir impounding a greater quantity of water than the owner or owners thereof necessarily use for irrigation and other beneficial purposes in connection with their own lands shall, when application is made to them for that purpose, furnish such surplus water at reasonable rates to the owners of lands lying under and capable of being irrigated from such reservoir for the purpose of irrigating and rendering the same productive, and maintaining their productiveness, and in case of refusal so to do, the owner or owners of such reservoir may be compelled by proper proceedings to furnish such water on such reasonable terms as to the court may seem meet and proper. The water user who may have used any water from such reservoir for any particular year shall have the preference as to the use of the same water for the next ensuing year. The state engineer, the water commissioner of the particular district and the water superintendent having jurisdiction over the region of any reservoir, shall together constitute a board of special commissioners, and shall have power, when application is made to them by either party interested, to establish reasonable maximum rates to be charged for the use of water from any reservoir, whether furnished by individuals or a corporation. The establishment of such rate shall be made only after notice given and public hearing had, at which hearing the applicants may produce witnesses and evidence, and such witnesses must be sworn and may be cross-examined. No commissioner shall sit upon such board and determine such rate who is employed by one (1) of the applicants or if the relationship of debtor or creditor exists between him and one (1) of the applicants. Nothing contained in this section shall be construed to deny the right to store water for use for more than one (1) year.

**41-3-326. Applicability of ownership provisions.**

The provisions of this act shall apply to reservoirs heretofore lawfully constructed as well as to all reservoirs hereafter lawfully constructed.

**41-3-327. Carey Act lands.**

This act shall not apply to Carey Act lands or reservoirs for their irrigation, nor to any water right or rights to the use of waters of natural streams of this state, initiated from such streams and used through any such reservoir. All acts and parts of acts in conflict herewith, excepting such as relate to Carey Act lands, are hereby repealed.

**41-3-328. Witnesses' fees and mileage.**

Every witness who shall attend before the court, or the judge thereof in vacation, or before the person appointed to take testimony in causes relating to water rights, under subpoena, by request of any party, shall be entitled to the same fees and mileage as witnesses in civil cases in the district court, and shall be paid by the party requiring the testimony.

**41-3-329. Change in point of diversion.**

(a) The storage of water by means of a reservoir is a diversion, and the point of diversion is the point defined in the permit where the longitudinal axis of the dam crosses the center of the streambed.

(b) A change in point of diversion of a reservoir may be granted pursuant to W.S. 41-3-114 by the state engineer if the water right is unadjudicated, or by the state board of control if the water right has been adjudicated. No petition shall be granted if the rights of other appropriators shall be injuriously affected thereby or if the change is not within the original project concept. In deciding whether to grant or deny a proposed change in point of diversion of a reservoir within the original project concept, the state engineer or the board of control shall consider:

(i) The distance between the old point of diversion and the new point of diversion;

(ii) The water administration problems which may be created by granting the change in the point of diversion;

(iii) The effect of the petition upon Wyoming's entitlement to water under compacts, court decrees and treaties;

(iv) The rights of other appropriators; and

(v) The safety aspects of the new point of diversion.

ARTICLE 4 - ABANDONMENT OF WATER RIGHTS

**41-3-401. Failure to use water; extension of time; initiation by benefitted or injured user; hearing; appeal.**

(a) Where the holder of an appropriation of water from a surface, underground or reservoir water source fails, either intentionally or unintentionally, to use the water therefrom for the beneficial purposes for which it was appropriated, whether under an adjudicated or unadjudicated right, during any five (5) successive years, he is considered as having abandoned the water right and shall forfeit all water rights and privileges appurtenant thereto. Notwithstanding any provision in this section to the contrary, the holder of an appropriation for the diversion and storage of water in a reservoir, from which water or a portion thereof has not yet been beneficially used for the purposes for which appropriated, may apply to the board of control for an extension of time not to exceed five (5) years, within which to use water therefrom for the beneficial purposes for which it was appropriated. In the application the holder shall demonstrate the exercise of due diligence toward the utilization of the appropriation, and that notwithstanding the exercise of due diligence, reasonable cause exists for nonuse. Reasonable cause includes but is not limited to delay due to court or administrative proceedings, time required in planning, developing, financing and constructing projects for the application of stored water to beneficial use which require in excess of five (5) years to complete, delay due to requirement of state and federal statutes and rules and regulations thereunder and any other causes beyond the control of the holder of the appropriation. Upon receipt of an application for extension, the board of control shall proceed under the provisions of W.S. 16-3-101 through 16-3-115 and may grant an extension of time as it finds proper, not to exceed five (5) years, for the application of the appropriated water to the beneficial use for which it was appropriated. A prior grant of extension of time hereunder does not preclude the holder from applying for additional extensions of time, each not to exceed five (5) years, upon similar application and showing. The granting of an extension of time precludes the commencement of an abandonment action against the appropriation during the period of extension.

(b) When any water user who might be benefitted by a declaration of abandonment of existing water rights or who might be injured by the reactivation of the water right, desires to bring about a legal declaration of abandonment, he shall present

his case in writing to the state board of control. The board has exclusive original jurisdiction in water right abandonment proceedings. The board shall, if the facts so justify, refer the matter to the superintendent of the water division where the abandonment is claimed to have occurred for public hearing. The total absence of water to divert during an irrigation season precludes the inclusion of any such period of nonuse resulting therefrom in the computation of the successive five (5) year period under this section. The following persons have standing to petition the state board of control to declare the abandonment of existing water rights under this section:

(i) Any person who has a valid adjudicated water right or is the holder of a valid permit from the same source of supply which is equal to or junior in date of priority to the right for which abandonment is sought; or

(ii) The holder of a valid water right entitled to surplus water under W.S. 41-4-318 through 41-4-324, petitioning to abandon a water right from the same source of supply if the right sought to be abandoned has a priority date of March 1, 1945, or earlier.

(c) The superintendent shall notify the holders of water rights sought to be abandoned by certified mail that a hearing will be held. The hearing shall be conducted pursuant to all applicable provisions of the Wyoming Administrative Procedure Act. All notices shall advise interested parties of the time, place and purpose of the hearing. Parties initiating abandonment actions are designated as contestants. Water right holders or other persons with interests in the rights allegedly abandoned are designated as contestees. In any case where notice by certified mail cannot be accomplished an advertisement published once a week for three (3) consecutive weeks in a newspaper of general circulation in the county in which the abandonment is alleged to have occurred, naming the parties in the case and setting forth the time, place and purpose of the hearing is sufficient. Cost of advertising shall be paid by the contestant.

(d) A transcript shall be made of the hearing and delivered to the superintendent. The contestant shall provide and pay for the costs of the record. At the conclusion of the hearing the transcript, all other evidence and the report of the superintendent shall be transmitted to the board by the superintendent. At its next meeting the board shall vote to declare the right in question abandoned, either wholly or partially, or to decline to do so.

(e) The board shall enter an order reflecting its action on the abandonment hearing, and shall, within sixty (60) days, send a certified copy of the declaration to each contestant and contestee. Appeals may be taken as provided by law.

(f) An appropriation for irrigation use is not subject to partial abandonment for failure of the appropriator to irrigate part of the lands described in his permit or certificate of appropriation during the successive five (5) year period if:

(i) Facilities to divert the water and to apply it to beneficial use upon the lands which were not irrigated existed in usable form during the period of nonuse; and

(ii) There was not a sufficient supply of water available, because of regulation for prior water rights or because shortage of supply resulted in insufficient water to satisfy the appropriation in full, to irrigate the lands for which abandonment is sought provided that a diligent effort was made to use the supply which was available.

**41-3-402. Initiation by state engineer; hearing; appeal.**

(a) When any appropriator has failed, intentionally or unintentionally, to use any portion of surface, underground or reservoir water appropriated by him, whether under an adjudicated or unadjudicated right, for a period of five (5) successive years, the state engineer may initiate forfeiture proceedings against the appropriator with the state board of control, to determine the validity of the unused right. The state engineer shall designate the area to be affected by the proceedings, not to contain in area more than one (1) water division. The total absence of water to divert during an irrigation season precludes the inclusion of any period of nonuse resulting therefrom in the computation of the successive five (5) year period. The secretary of the board shall refer the matter for a hearing to the superintendent of the water division where the forfeiture is alleged to have occurred. This section does not apply to any reservoir for which an extension has been granted during the period of extension under W.S. 41-3-401(a).

(b) The superintendent shall send notices, by certified mail, of the time, place, and purpose of the hearing to all owners of lands covered by the appropriations involved in the forfeiture proceeding. Such persons shall be joined as parties to the forfeiture proceedings as contestees. The state shall be

designated as contestant. In a case where notice by certified mail cannot be accomplished, an advertisement published once a week for three (3) consecutive weeks in a newspaper of general circulation in the county in which the forfeiture is alleged to have occurred, naming the parties in the case and setting forth the time, place, and purpose of the hearing, and a general description of the water rights whose status is under consideration, shall answer the requirements of notice. Notice by certified mail shall first be attempted before notice by advertisement is employed. Advertisement costs shall be paid by the state engineer. In addition, whenever it appears necessary for full and proper notice, the superintendent may post a notice of the hearing in a conspicuous place on the land or at the place where the water rights are attached or utilized, or on the point of diversion.

(c) Any use of a contested water right, easement, privilege, or portion thereof, by the water user, his lessees, agents, transferees or assignees on or after the date of the notice shall be inadmissible as evidence of beneficial use in all hearings or appeals arising out of the alleged forfeiture.

(d) A transcript shall be made of the hearing. The record shall be delivered to the superintendent. The state engineer shall provide and pay for the costs of such record. At the conclusion of the hearing, the transcript, all other evidence, and the report of the superintendent shall be transmitted to the board of control by the superintendent. At its next meeting, the board shall vote by secret written ballot to declare the right in question forfeited or to decline to do so. Any forfeiture requires three (3) affirmative votes by the board.

(e) Whenever the state engineer has initiated forfeiture proceedings, he shall not participate as a voting member of the board of control in any determination of whether any water right, easement, or privilege is to be forfeited, all other laws to the contrary notwithstanding.

(f) Such proceedings shall not be initiated by the state engineer after the use of a water right, easement or privilege has occurred.

(g) Any time within two (2) years after the date the board has entered an order forfeiting a water right, any person who can demonstrate to the satisfaction of the board by written petition, proof, or affidavits, that he was an owner, lessee or beneficiary of the forfeited right, that he had no actual or

constructive notice of the forfeiture hearings, and that he has been damaged thereby, may require the board to reopen the case for a determination of whether such right shall remain forfeited or be reactivated without loss of priority.

(h) Whenever the board has declared any water right forfeited, it shall send a certified copy of the declaration to each contestee within sixty (60) days. Such party may within thirty (30) days after the date of mailing, appeal to the district court of the district wherein the hearing was originally held or in the district court of Laramie county.

(j) Nothing in this section shall be construed to allow the state engineer to initiate forfeiture proceedings against water rights which are being put to beneficial use, wholly or in part.

#### ARTICLE 5 - WATER DIVISIONS AND SUPERINTENDENTS

##### **41-3-501. Water divisions defined.**

(a) The state of Wyoming is hereby divided into four (4) water divisions, as follows:

(i) Water Division No. 1 shall consist of all lands within this state, drained by the North Platte River, and the tributaries of the North Platte River and the South Platte River, Snake River, (a tributary of Green River) and its tributaries, and Running Water Creek and its tributaries;

(ii) Water Division No. 2 shall consist of all lands within this state, drained by the tributaries of the Yellowstone and Missouri Rivers north of the water shed of the North Platte River and Running Water Creek, and east of the summit of the Big Horn Mountains;

(iii) Water Division No. 3 shall consist of all lands within this state drained by the Big Horn River and its tributaries, and by Clark's Fork and its tributaries;

(iv) Water Division No. 4 shall consist of all lands within this state drained by the Green, Bear and Snake Rivers, and the tributaries thereof; except Snake River, (a tributary of Green River), and its tributaries.

**41-3-502. Superintendents; appointment; removal; number; qualifications; examination.**



There shall be one (1) superintendent for each division, who shall be appointed by the governor and who shall be a resident of the water division for which he is appointed. The governor may remove any superintendent as provided in W.S. 9-1-202. The state engineer shall from time to time conduct examinations for candidates for the position of division superintendents, and a list of those who qualify shall be filed with the governor and the governor, from that list, shall appoint division superintendents for the various divisions as vacancies occur. No candidate is eligible for appointment as division superintendent unless he is qualified by training and experience. The examination shall consist of questions relative to the irrigation laws and their administration, the measurement of flowing water, evaporation, seepage, drainage and the hydrographic features of the water division in which the candidate seeks appointment.

**41-3-503. Superintendents; duties generally.**

Said division superintendent shall have general control over the water commissioners of the several districts within his division. He shall, under the general supervision of the state engineer, execute the laws relative to the distribution of water in accordance with the rights of priority of appropriation, and perform such other functions as may be assigned to him by the state engineer. It shall be the duty of said division superintendent to regulate and control the storage and use of water under all rights of appropriation which have been adjudicated by the board of control or by the courts, and to regulate and control the storage and use of water under all permits approved by the state engineer, whether the rights acquired thereunder have been adjudicated or not.

**41-3-504. Superintendents; powers generally.**

Said division superintendent shall have authority to order, in writing, the construction of suitable ditches to carry the return waters from any ditch or lands to the main stream or proper waste way; he shall have the authority, and it shall be his duty, to close or cause to be closed the headgate of any person, persons or corporation so ordered, until such time as said order is complied with; he shall have authority to instruct the water commissioners in his division to brand, number or mark the headgate of any and all canals, ditches, laterals and reservoir outlets in such manner that the owner or owners of said canals, ditches, laterals or reservoir outlets may be

readily determined; he shall, in the distribution of water, be governed by the provisions of law relating to water rights, but for the better discharge of his duties, he shall have authority to make such other regulations to secure the equal and fair distribution of water in accordance with the rights of priority of appropriation as may, in his judgment, be needed in his division; provided, such regulations shall not be in violation of the laws of the state, but shall be merely supplementary to and necessary to enforce the provisions of the general laws and amendments thereto.

**41-3-505. Superintendents; compensation and traveling expenses; full time devoted to duties.**

Each division superintendent of a water division shall receive an annual salary as determined by the human resources division of the department of administration and information, payable in monthly installments in full compensation for all his services, and shall, in addition thereto, be paid his actual traveling expenses when called away from home in the performance of his duties. Such superintendents shall devote their full time to the performance of their duties as division water superintendents. Their salaries and expenses shall be paid by the state on vouchers approved by the state engineer as president of the state board of control.

**41-3-506. Superintendents; appeal from order or regulations.**

Any person, ditch company, or ditch owner, who may deem himself injured or discriminated against by any such order or regulations of such division superintendent, shall have the right to appeal from the same to the state engineer, by filing with the state engineer a copy of the order or regulations complained of, and a statement of the manner in which the same injuriously affects the petitioner's interest. The state engineer shall, after due notice, hear whatever testimony may be brought forward by the petitioner, either orally or by affidavit and, through the division superintendent, shall have power to suspend, amend or confirm the order complained of.

ARTICLE 6 - WATER DISTRICTS AND COMMISSIONERS

**41-3-601. Division of state into districts.**

The board of control shall divide the state into water districts, said water districts to be so constituted as to

secure the best protection to the claimants for water and the most economical supervision on the part of the state; in laying out such districts each stream system of practicable administrative scope shall be included within a single district.

**41-3-602. Commissioners; appointment; term; removal; filling of vacancies; hydrographers.**

(a) The governor shall appoint a water commissioner for each water district, if needed, who shall be selected from persons recommended by the superintendent of the water division in which the water district is situated with the advice of the board of county commissioners of the county or counties, lying wholly or partly within the water district. The water commissioner shall be an employee of the state engineer. Each commissioner shall hold his office until his successor is appointed and shall have qualified, and the governor shall, by like selection and appointment, fill all vacancies which shall occur in the office of water commissioners, and may, at any time, remove any water commissioner as provided in W.S. 9-1-202.

(b) The governor may appoint a water commissioner to more than one (1) district on recommendation of the division superintendent and the county commissioners of the interested county or counties.

(c) Also, where the legislature has appropriated state funds for payment of full time water commissioners, the governor may appoint water commissioners to be known as hydrographer water commissioners for one (1) or more water districts on recommendation of the state engineer and the superintendent of the water division in which any such district is located. The governor may remove any commissioner appointed under this subsection as provided in W.S. 9-1-202.

**41-3-603. Commissioners; general powers and duties; appeals from decisions.**

(a) The water commissioner shall, as near as may be practicable, divide, regulate and control the use of the water of all streams, springs, lakes or other sources of water within his district as will prevent the waste of water or its use in excess of the volume to which the appropriator is lawfully entitled. The water commissioner has the authority to require the filling of any reservoir whenever practical and whenever water is available for storage from the stream from which the appropriation is established.

(b) Any person who may be injured by the action or inaction of the water commissioner has the right to appeal to the division superintendent and, from his decision, the person aggrieved may appeal to the state engineer. From the decision of the state engineer, an appeal may be taken to the district court of the county where the ditch or ditches, reservoir, well or wells over which the controversy arises are situated.

**41-3-604. Commissioners; additional powers and duties; defense by county attorney.**

It shall be the duty of the said water commissioner to divide the water of the natural stream or streams of his district among the several ditches and reservoirs taking water therefrom, according to the prior right of each, respectively, in whole or in part, and to shut and fasten, or cause to be shut and fastened, the headgates of ditches and shall regulate or cause to be regulated the controlling works of reservoirs, in times of scarcity of water, as may be necessary by reason of the priorities of right existing from said streams of his district. Such water commissioner shall have authority to regulate the distribution of water among the various users under any partnership or incorporated ditch or any ditch owned by joint owners not incorporated and not in a partnership, or partnership or incorporated reservoir or reservoir owned by joint owners not incorporated or not included in a partnership, where rights have been adjudicated, in accordance with existing decrees. Whenever, in the pursuance of his duties, the water commissioner regulates a headgate to a ditch or the controlling works of reservoirs, it shall be his duty to attach to such headgate or controlling works a written notice, properly dated and signed, setting forth the fact that such headgate or controlling works has been properly regulated and is wholly under his control and such notice shall be a legal notice to all parties interested in the division and distribution of the water of such ditch or reservoir. It shall be the duty of the county attorney to appear and defend the division superintendent or any water commissioner who shall be made a defendant in any case which may arise in the pursuance of the official duties of any such officer within the county of such county attorney.

**41-3-605. Commissioners; power to arrest; procedure following arrests.**

The water commissioners or their assistants, within their districts shall have power to arrest any person or persons

offending, and turn them over to the sheriff of the proper county, and immediately upon delivering the person so arrested into the custody of the sheriff, it shall be the duty of the water commissioner making the arrest, to immediately in writing and upon oath, make complaint before the court of proper jurisdiction against the person arrested.

**41-3-606. Commissioners; performance of duties; requests for regulation.**

Each water commissioner shall perform his duties under the general direction and supervision of the superintendent of his water division. Any holder of a Wyoming water right may request that the source of supply for his water rights be regulated by a water commissioner as authorized by law and in accordance with established priorities. Requests for regulation shall be in writing submitted to a water commissioner or water superintendent.

**41-3-607. Commissioners; salaries and expenses.**

Water commissioners shall be paid a salary recommended by the state engineer and the division superintendent and approved by the governor. Water commissioners shall be paid by the state according to the procedures established by the human resources division of the department of administration and information. Funding for water commissioner salaries and expenses shall be provided by the state.

**41-3-608. Commissioners; reports.**

(a) All water commissioners, when on duty, shall make reports whenever called upon to do so, by the division superintendent of their division. Said reports shall contain the following information:

(i) The amount of water actually coming into the district to supply ditches, canals and reservoirs;

(ii) Whether such supply is on the increase or decrease;

(iii) What ditches, canals and reservoirs are at that time without their proper supply; and

(iv) Such other and further information as the division superintendent of that division may require.

**41-3-609. Commissioners; disqualification for personal interest or prejudice.**

Whenever an affidavit is filed with the state engineer by a water user stating that the water commissioner of a district has a personal interest or prejudice in the use of water from a stream and that the person making the affidavit believes that because of the commissioner's interest or prejudice he cannot obtain a fair and just division of water, the state engineer may designate a water commissioner from another district as substitute commissioner.

**41-3-610. Commissioners; authority and duties of substitute.**

The substitute commissioner shall thereby be invested with the authority and duties possessed by the disqualified commissioner as to the portion of the stream in which the conflict of interest or prejudice is involved, subject to the same rights of appeal as are provided in other cases.

**41-3-611. Commissioners; assistants.**

Subject to legislative appropriation, a division superintendent may, in cases of emergency, employ suitable assistants to aid a water commissioner in the discharge of his duties. Assistants shall take the same oath as the water commissioner, shall obey his instructions, and each shall be compensated in an amount approved by the superintendent. The term of service of assistant commissioners may be terminated at any time by the water commissioner or the division superintendent, and shall in no event continue after the emergency has ceased to exist.

**41-3-612. Rotation among water users; approval of commissioner.**

(a) To bring about a more economical use of the available water supply, it is lawful for water users owning lands to which are attached water rights, to rotate in the use of supply to which they may be collectively entitled, or a single water user, having lands to which water rights of a different priority attach, may in like manner rotate in use, provided that all water rights subject to rotation are in priority. Rotation of water will be allowed only if it can be accomplished without injury to other appropriators.

(b) Prior to the commencement of any rotation in the use of water pursuant to this section, the owner or owners of the water rights to be rotated shall file a notice of intention to rotate with the appropriate water commissioner, on the form provided for that purpose by the commissioner, and shall obtain the water commissioner's written approval which shall be endorsed on the form.

(c) Performance of the rotation shall be enforced by the water commissioner in accordance with the terms and conditions included in the form signed and approved by the water commissioner. The state engineer may adopt such rules and regulations as are necessary for him to efficiently administer this section.

**41-3-613. Headgates, flumes or measuring devices; owners to construct and maintain; failure to comply.**

The owner or owners of any ditch or canal shall maintain, to the satisfaction of the division superintendent of the division in which the irrigation works are located, a substantial headgate at the point where the water is diverted, which shall be of such construction that it can be locked and kept closed by the water commissioner; and such owners shall construct and maintain, when required by the division superintendent, flumes or other measuring devices at such points along such ditch as may be necessary for the purpose of assisting the water commissioner in determining the amount of water that is to be diverted into said ditch from the stream, or taken from it by the various users. Any and every owner or manager of a reservoir, located across or upon the bed of a natural stream, shall be required to construct and maintain, when required by the division superintendent, a flume or measuring device of a plan to be approved by the state engineer, below such reservoir at a point not to exceed six hundred (600) feet distant therefrom, and a flume or measuring device above such reservoir or each and every stream or source of supply discharging into such reservoir, for the purpose of assisting the water commissioner or superintendent in determining the amount of water to which prior appropriators are entitled and thereafter diverting it for such prior appropriators' use. When it may be necessary, for the protection of other water users, the division superintendent has authority to require flumes to be installed along the line of any ditch. If any such owner or owners of irrigation works shall refuse or neglect to construct and put in such headgates, flumes or measuring devices after ten (10) days notice to do so by division superintendent, it shall be the duty of the water

commissioner of the district in which such headgate is located, on order of the division superintendent, to close such ditch to the passage of water, and the same shall not be opened or any water diverted from the source of supply, under the penalties prescribed by W.S. 41-3-614, until the requirements of the division superintendent as to such headgate, flumes or measuring device have been complied with, and if any owner, or manager of a reservoir located across the bed of a natural stream shall neglect or refuse to put in such measuring device after ten (10) days notice to do so by the division superintendent, the water commissioner shall open the sluice gate or outlet of such reservoir and the same shall not be closed under penalties pursuant to W.S. 41-3-614, until the requirements of the division superintendent as to such measuring devices are complied with.

**41-3-614. Well, headgate or waterbox; prohibited acts; penalty for violation.**

It shall be unlawful for any person to willfully use or possess water which has been lawfully denied by the water commissioner or other competent authority or to open, close, change or interfere with any well, pump, reservoir outlet valve, dam, diversion, headgate or waterbox without authority. Any violation of this section shall be punishable pursuant to W.S. 41-3-616.

**41-3-615. Approval of diversion dam plans.**

Plans for any diversion dam across the channel of a running stream, above five (5) feet in height, or of any other diversion dam intended to retain water above ten (10) feet in height, shall be submitted to the state engineer for his approval, and it shall be unlawful to construct such diversion dam until the said plans have been approved.

**41-3-616. Penalties for violation of water laws.**

(a) Unless otherwise provided, any person violating any of the provisions of W.S. 41-3-112, 41-3-208, 41-3-301, 41-3-614, 41-3-914, 41-3-919, 41-3-938, 41-4-501, 41-4-504, 41-5-107, 41-5-108 or 41-5-110 after receipt of a written notice of violation from the state engineer's office or the board of control is guilty of a misdemeanor punishable by a fine not to exceed one thousand two hundred fifty dollars (\$1,250.00). Each day of noncompliance with the provisions of these sections after receipt of a written notice of violation from the state



engineer's office or the board of control shall be deemed a separate violation. The possession, use or presence upon any person's land of water lawfully denied by the water commissioner or other competent authority is prima facie evidence of guilt.

(b) Failure to comply with a written order issued by the state engineer pursuant to W.S. 41-3-112, 41-3-208, 41-3-301, 41-3-318, 41-3-614, 41-3-914, 41-3-919, 41-3-938, 41-4-501, 41-5-107, 41-5-108 or 41-5-110, shall be a misdemeanor punishable by a fine not to exceed one thousand two hundred fifty dollars (\$1,250.00), or imprisonment for not more than three (3) months, or both. Each day of noncompliance with the order shall be deemed a separate violation.

(c) Whenever, after notice and an opportunity to be heard, the state engineer finds the holder of any permit is willfully violating or has willfully violated any provision of a permit or any provision of W.S. 41-3-112, 41-3-208, 41-3-301, 41-3-318, 41-3-614, 41-3-914, 41-3-919, 41-3-937, 41-3-938, 41-4-501, 41-5-107, 41-5-108 or 41-5-110, or of any order issued pursuant thereto, the state engineer may cancel or suspend the permit or impose conditions on the future use thereof to prevent further violation. An appeal from any decision of the state engineer may be made to the board of control.

(d) Whenever, after notice and opportunity to be heard, the board of control finds the holder of any certificate of registration or certificate of appropriation is willfully violating or has willfully violated any provision of the certificate or any provisions of W.S. 41-3-112, 41-3-208, 41-3-301, 41-3-614, 41-3-914, 41-3-919, 41-3-937, 41-3-938, 41-4-501, 41-5-107, 41-5-108 or 41-5-110, or of any order issued pursuant thereto, the board of control may cancel or suspend the certificate or impose conditions on the future use thereof to prevent further violation. An appeal from any decision of the board of control may be taken to the district court.

## ARTICLE 7 - WATER CONSERVANCY DISTRICTS

### **41-3-701. Purpose.**

(a) It is hereby declared that to provide for the conservation of the water resources of the state of Wyoming and for the greatest beneficial use of water within this state, the organization of water conservancy districts and the construction of works as herein defined by such districts are a public use and will:

(i) Be essentially for the public benefit and advantage of the people of the state of Wyoming;

(ii) Indirectly benefit all industries of the state;

(iii) Indirectly benefit the state of Wyoming in the increase of its taxable property valuation;

(iv) Directly benefit municipalities by providing adequate supplies of water for domestic use;

(v) Directly benefit lands to be irrigated or drained from works to be constructed;

(vi) Directly benefit lands now under irrigation by stabilizing the flow of water in streams and by increasing flow and return flow of water to such streams;

(vii) Promote the comfort, safety and welfare of the people of the state of Wyoming, and it is therefore declared to be the policy of the state of Wyoming:

(A) To control, make use of and apply to beneficial use all unappropriated waters in this state to a direct and supplemental use of such waters for domestic, transportation, industrial, manufacturing, irrigation, power, recreation and other beneficial uses;

(B) To obtain from water in Wyoming the highest duty for domestic uses and irrigation of lands in Wyoming within the terms of interstate compacts;

(C) To cooperate with the United States under the federal reclamation laws or other federal laws now existing, or hereafter enacted, and agencies of the state of Wyoming for the construction and financing of works in the state of Wyoming as herein defined and for the operation and maintenance thereof;

(D) To promote the greater prosperity and general welfare of the people of the state of Wyoming by encouraging the organization of water conservancy districts as provided in this act.

**41-3-702. Short title; definitions.**

(a) This act may be known and cited as "Water Conservancy Act"; the districts created hereunder may be termed "water conservancy districts"; and the bonds which may be issued hereunder may be called "water conservancy bonds", and such designation may be engraved or printed on their face. Wherever the term "publication" is used in this act and no manner specified therefor, it shall be taken to mean once a week for three (3) consecutive weeks in at least one (1) newspaper of general circulation in each county wherein such publication is to be made. It shall not be necessary that publication be made on the same day of the week in each of the three (3) weeks, but not less than fourteen (14) days (excluding the day of the first publication), shall intervene between the first publication and the last publication, and the publication shall be complete on the date of the last publication.

(b) Whenever the term "person" is used in this act, and not otherwise specified, it shall be taken to mean a person, firm, co-partnership, association or corporation, other than a county, town, city, city and county, or other political subdivision. Similarly, the words "public corporation" shall be taken to mean counties, city and counties, towns, cities, school districts, irrigation districts, water districts, part districts, subdistricts, and all governmental agencies, clothed with the power of levying or providing for the levy of general or special taxes or special assessments.

(c) Whenever the word "board" is used in this act and not otherwise specified, it shall be taken to mean the board of directors of the district.

(d) Whenever the term "works" is used in this act, it shall unless otherwise specified, be held to mean dams, storage reservoirs, compensatory and replacement reservoirs, canals, conduits, pipelines, drains, tunnels, power plants and any and all works, facilities, improvements and property necessary or convenient for the supplying of water for domestic, transportation, industrial, manufacturing, irrigation, power, recreation and other beneficial uses.

(e) Whenever the term "court" is used in this act, and not otherwise specified, it shall be taken to mean the district court of that judicial district of the state of Wyoming wherein the petition for the organization of a water conservancy district shall be filed.

(f) Whenever the term "property" is used in this act, it shall unless otherwise specified, be held to mean real estate and personal property.

(g) Whenever the term "land" or "real estate" is used in this act, it shall unless otherwise specified, be held to mean real estate as the words "real estate" are defined by the laws of the state of Wyoming, and shall embrace all railroads, tramroads, highways, electrical roads, street and interurban railroads, roads, streets, and street improvements, telephone, telegraph, and transmission lines, gas, sewer and water systems, water rights, pipelines and rights-of-way of public service corporations, and all other real property whether held for public or private use.

(h) Whenever the term "land" or "property" is used in this act with reference to benefit, appraisals, assessments, or taxes, public corporations shall as political entities, according to benefits received, be considered as included in such reference in the same manner as "land" or "property".

**41-3-703. Effect of improper notice of judicial proceeding.**

In any and every case where a notice is provided for in this act, if the court finds for any reason that due notice was not given, the court shall not thereby lose jurisdiction, and the proceeding in question shall not thereby be void or be abated, but the court shall in that case order due notice to be given, and shall continue the hearing until such time as notice shall be properly given, and thereupon shall proceed as though notice had been properly given in the first instance.

**41-3-704. Hearings on validity of districts.**

All cases in which there may arise a question of the validity of the organization of a water conservancy district, or a question of the validity of any proceeding under this act shall be advanced as a matter of immediate public interest and concern, and heard at the earliest practicable moment. The courts shall be open at all times for the purposes of this act.

**41-3-705. Liberal construction.**

This act being necessary to secure and preserve the public health, safety, convenience and welfare, and for the security of

public and private property, it shall be liberally construed to effect the purposes of this act.

**41-3-720. Power of district court.**

The district court sitting in and for any county in this state, or any judge thereof in vacation is hereby vested with jurisdiction, power and authority when the conditions stated in W.S. 41-3-721 are found to exist, to establish water conservancy districts which may be entirely within or partly within and partly without the judicial district in which said court is located, for conserving, developing and stabilizing supplies of water for domestic, transportation, industrial, manufacturing, irrigation, power, recreation, and other beneficial uses as herein provided.

**41-3-721. Petition for creation; conditions affecting inclusion of city or city and county.**

(a) Before any water conservancy district shall be established under this act, a petition shall be filed in the office of the clerk of the court vested with jurisdiction, in a county in which all or part of the lands embraced in such proposed water conservancy district are situated, signed by not fewer than twenty-five percent (25%) of the owners or entrymen on having not less than twenty-five percent (25%) of the irrigated lands or lands susceptible of irrigation under the works proposed for construction, to be included in the district, but not embraced within the incorporated limits of a city or town; and each tract (or tracts), of land shall be listed opposite the name of the signer, each such tract (or tracts), together with the improvements thereon, to have an assessed valuation of not less than one hundred dollars (\$100.00); and be also signed by not fewer than five percent (5%) of the owners owning not less than five percent (5%) of nonirrigated land and/or lands embraced in the incorporated limits of a city or town, all situated in the proposed district; and each tract (or tracts) of land shall be listed opposite the name of the signer, each such tract (or tracts), together with improvements thereon, to have an assessed valuation of not less than one hundred dollars (\$100.00).

(b) In the event a petitioner shall sign such petition both as owner of irrigated or irrigable and nonirrigated land or lands situated within a municipality, his name shall be counted only as an owner of irrigated or irrigable lands. A signing

petitioner shall not be permitted, after filing a petition, to withdraw his name therefrom.

(c) No city, or city and county, of the first class as now, or hereafter defined, by the laws of the state of Wyoming, shall be included within such district unless by and with the written consent of the chief executive officer of such city, or city and county, with the approval of the legislative body of such municipality, and such consent may specify that the rate of taxation on the assessed valuation of property within said city, or city and county, under W.S. 41-3-771 shall not exceed a maximum rate which may be less than the rates set out in W.S. 41-3-771, and in such case the district shall not have power to levy assessment on the property in said city, or city and county, at a greater rate than that specified in said consent.

(d) The petition shall set forth:

(i) The proposed name of said district;

(ii) That property within the proposed district will be benefited by the accomplishment of the purposes enumerated in W.S. 41-3-720;

(iii) A general description of the purpose of the contemplated improvement, and of the territory to be included in the proposed district. Said description need not be given by metes and bounds or by legal subdivision, but it shall be sufficient to enable a property owner to ascertain whether his property is within the territory proposed to be organized as a district. Said territory need not be contiguous, provided it is so situated that the organization of a single district of the territory described is calculated to promote one (1) or more of the purposes enumerated in W.S. 41-3-720;

(iv) The assessed value of all irrigated land within the boundaries of the proposed district;

(v) A general designation of divisions of the district and the number of directors of the district proposed for each subdivision;

(vi) Said petition shall pray for the organization of the district by the name proposed.

(e) No petition with the requisite signatures shall be declared null and void on account of alleged defects, but the

court may at any time permit the petition to be amended to conform to the facts by correcting any errors in the description of the territory, or in any other particular. However, similar petitions or duplicate copies of the same petition for the organization of the same district may be filed and shall together be regarded as one (1) petition. All such petitions filed prior to the hearing on the first petition filed, shall be considered by the court the same as though filed with the first petition placed on file.

(f) In determining whether the requisite number of landowners have signed the petition, the court shall be governed by the names as they appear upon the assessment records which shall be prima facie evidence of such ownership.

**41-3-722. Bond for expenses of proceedings.**

At the time of filing the petition or at any time subsequent thereto, and prior to the time of hearing on said petition a bond shall be filed, with security approved by the court, sufficient to pay all expenses connected with the proceedings in case the organization of the district be not effected. If at any time during the proceeding the court shall be satisfied that the bond first executed is insufficient in amount, it may require the execution of an additional bond within a time to be fixed to be not less than ten (10) days distant and upon failure of the petitioners to execute the same, the petition shall be dismissed.

**41-3-723. Hearing procedure generally.**

(a) Immediately after the filing of such petition, the court wherein such petition is filed or a judge thereof in vacation, shall by order fix a place and time, not less than sixty (60) days nor more than ninety (90) days after the petition is filed, for hearing thereon and thereupon the clerk of said court shall cause notice by publication to be made of the pendency of the petition and of the time and place of hearing thereon; the clerk of said court shall also forthwith cause a copy of said notice to be mailed by U.S. registered mail to the board of county commissioners of each of the several counties having territory within the proposed district. At the same time, and in the same manner, the clerk of said court aforesaid shall forward to the state engineer, at his office in the capital, a copy of the notice of hearing, and a certified copy of such petition.

(b) The district court in and for the county in which the petition for the organization of a water conservancy district has been filed, shall thereafter for all purposes of this act, except as hereinafter otherwise provided, maintain and have original and exclusive jurisdiction, coextensive with the boundaries of said water conservancy district, and of land and other property proposed to be included in said district or affected by said district without regard to the usual limits of its jurisdiction.

(c) The state engineer, in his official capacity, upon the filing of the petition for the organization of a water conservancy district, shall become an interested party in all court proceedings thereafter involving the validity, or invalidity, of such petition, and he shall have the right to participate as a party in all such proceedings either in person, by counsel, or both. Not later than ten (10) days prior to the date fixed by the court for the hearing on the pending petition, the state engineer shall file a formal answer in the proceedings, with copies of his answer to the attorneys representing the sponsors of the petition, in which said answer the state engineer shall indicate his approval, or disapproval, of said petition, or any part or parts thereof. If the state engineer disapproves the petition or any part or parts thereof, he shall set forth in detail in his answer his reasons for the disapproval. No replication, or other pleading, by the sponsors of the petition, to the answer of the state engineer, shall be permitted; but such sponsors at the hearing on the petition will be permitted to offer whatever material testimony or evidence they desire to present to the court with respect to the answer of the state engineer. The district judge who has jurisdiction over the proceedings may, in his discretion, request, or subpoena, the state engineer to appear as a witness in support of the answer filed by the state engineer.

(d) No judge of such court wherein such petition is filed shall be disqualified to perform any duty imposed by this act by reason of ownership of property within any water conservancy district or proposed water conservancy district, or by reason of ownership of any property that may be benefited, taxed or assessed therein.

**41-3-724. Protesting creation.**

(a) At any time after the filing of a petition for the organization of a conservancy district, and not less than thirty (30) days prior to the time fixed by the order of court for the



hearing upon said petition, and not thereafter, a petition may be filed in the office of the clerk of the court wherein the proceeding for the creation of said district is pending, signed by not fewer than twenty percent (20%) of the owners of or entrymen on the irrigated lands, or lands susceptible of irrigation under the works proposed for construction, to be included in said proposed district, but not embraced within the incorporated limits of a city or town, who have not signed the petition for creating such district, and each tract (or tracts), of land shall be listed opposite the name of the signer, each such tract (or tracts), together with the improvements thereon, to have an assessed valuation of not less than one hundred dollars (\$100.00) and also signed by not fewer than five percent (5%) of owners of nonirrigated lands and/or lands embraced in the incorporated limits of a city or town, all situated in the proposed district who have not signed the petition for creating such district, and each tract (or tracts) of land shall be listed opposite the name of the signer, each such tract (or tracts), together with improvements thereon, to have an assessed valuation of not less than one hundred dollars (\$100.00), protesting the creating of said district. The signers of said protesting petition shall state therein the land owned by each, and shall also state the value thereof as shown by the last preceding assessment.

(b) In the event a petitioner shall sign such petition both as owner of irrigated or irrigable and nonirrigated land or lands situated within a municipality his name shall be counted only as an owner of irrigated or irrigable lands.

(c) Upon the filing of such protesting petition, it shall be the duty of the clerk of the court forthwith to make as many certified copies thereof, including the signatures thereto, as there are counties in which any part of said proposed district extends, and forthwith to place in the hands of the county assessor of each of such counties one (1) of said certified copies; and likewise, one (1) of said certified copies shall be forwarded promptly to the state engineer at his office in Cheyenne, Wyoming. Thereupon it shall be the duty of each of such county assessors to determine from the assessment records of his county in his hands, and to certify to the said district court under his official seal, prior to the day fixed for the hearing as aforesaid, the total assessed valuation of the several tracts of land listed in the protest, situated in said proposed district within his county. Upon the day set for the hearing upon the original petition, if it shall appear to the court from such certificate, or certificates, and from such

other evidence as may be adduced by any party in interest, that said protesting petition is not signed by the requisite number of owners of lands and of the requisite value as herein set forth, the court shall thereupon dismiss said protesting petition and shall proceed with the original hearing as in this section provided.

(d) If the court shall find from the evidence that said protesting petition is signed by the requisite number of owners of lands, and of the requisite values, the court shall forthwith dismiss the original petition praying for the creation of the district. The finding of the court upon the question of such total valuation, the genuineness of the signatures, and all matters of law and fact incident to such determination shall be final and conclusive on all parties in interest whether appearing or not.

(e) Any owner, whether individual or corporate, of real property in said proposed district not having individually signed a petition for the organization of a conservancy district, and desiring to object to the organization and incorporation of said district, may, on or before the date set for the cause to be heard, file objection to the organization and incorporation of the district.

(f) Such objection shall be limited to a denial of the statements in the petition and shall be heard by the court as an advanced case without unnecessary delay.

(g) Upon the said hearing, if it shall appear that a petition for the organization of a water conservancy district has been signed and presented, as hereinabove provided, in conformity with this act and that the allegations of the petition are true, and that no protesting petition has been filed, or if filed has been dismissed as hereinabove provided, and the state engineer has not objected to the petition or any part thereof, or his objections have not been sustained, the court shall, by order duly entered of record, adjudicate all questions of jurisdiction, declare the district organized and give it a corporate name, by which in all proceedings it shall thereafter be known, and thereupon the district shall be a political subdivision of the state of Wyoming and a body corporate with all the powers of a public or municipal corporation.

(h) In such decree the court shall designate the place where the office or principal place of business of the district

shall be located, which shall be within the corporate limits of the district, and which may be changed by order of court from time to time. The regular meetings of the board shall be held at such office or place of business, but for cause may be adjourned to any convenient place. The official records and files of the district shall be kept at the office so established.

(j) If the court finds that no petition has been signed and presented in conformity with this act, or that the material facts are not as set forth in the petition filed, it shall dismiss said proceedings and adjudge the costs against the signers of the petition in such proportion as it shall deem just and equitable. No appeal or writ of error shall lie from an order dismissing the said proceeding; but nothing herein shall be construed to prevent the filing of a subsequent petition or petitions for similar improvements or for a similar water conservancy district, and the right so to renew such proceeding is hereby expressly granted and authorized.

(k) If an order be entered establishing the district, such order shall be deemed final and no appeal or writ of error shall lie therefrom, and the entry of such order shall finally and conclusively establish the regular organization of said district against all persons except the state of Wyoming, in an action in the nature of a writ of quo warranto, commenced by the attorney general within three (3) months after said decree declaring such district organized as herein provided, and not otherwise. The organization of said district shall not be directly nor collaterally questioned in any suit, action or proceeding except as herein expressly authorized.

**41-3-725. Filing of decree and copies of findings.**

Within thirty (30) days after the said district has been declared a corporation by the court, the clerk of the court shall transmit to the secretary of state, to the state engineer, and to the county clerk and recorder in each of the counties having lands in said district, copies of the findings and the decree of the court incorporating said district. The same shall be filed in the office of the secretary of state in the same manner as articles of incorporation are now required to be filed under the general laws concerning corporations, and copies shall also be filed in the office of the county clerk and recorder of each county in which a part of the district may be, where they shall become permanent records; and the clerk and recorder in each county, and the secretary of state, shall receive for

filing said copies such fees as now are or hereafter may be provided by law for like services in similar cases.

**41-3-726. Procedure for organizing subdistricts.**

Subdistricts may be organized upon the petition of the owner of real property, within or partly within and partly without the district, which petition shall fulfill the same requirements concerning the subdistricts as the petition outlined in W.S. 41-3-721 is required to fulfill, concerning the organization of the main district and shall be filed with the clerk of the court, and shall be accompanied by a bond as provided for in W.S. 41-3-722. All proceedings relating to the organization of such subdistricts shall conform in all things to the provision of this act relating to the organization of districts; provided, that not more than a majority of the owners of lands, having one-half or more of the aggregate assessed value of the lands in the proposed subdistrict, shall be required to sign the petition for the creation of a subdistrict, and not more than twenty-five percent (25%) of the owners of lands in the proposed subdistrict shall be required to sign the protesting petition against the creation of such subdistrict. Whenever the court shall by its order duly entered of record, declare the [or] decree such subdistricts to be organized, the clerk of said court shall thereupon give notice of such order to the directors of the district who shall thereupon act also as directors of the subdistrict. Thereafter, the proceedings in reference to the subdistrict shall in all matters conform to the provision of this act except that in the appraisal of benefits for the purpose of such subdistricts, in the issuance of bonds, in levying of assessments and in all other matters affecting only the subdistrict, the provisions of this act shall apply to the subdistrict as though it were an independent district, and it shall not in these things be amalgamated with the main district. The said petition for organization of a subdistrict shall also contain a statement of the amount or quantity of water for which said subdistrict desires to acquire the perpetual use and the amount of money that said subdistrict is willing to pay therefor, and the court shall, prior to the entry of its decree organizing any territory into a subdistrict obtain the verified consent of the board to furnish such perpetual use of water for the purposes therein specified to such subdistrict at a price and upon the terms mentioned in the petition, then the court shall be authorized to enter its decree of organization of such subdistrict.

**41-3-740. Appointment and qualifications; number; term; election of successors; vacancies; bond.**

(a) Within thirty (30) days after entering the decree incorporating said district, the court shall appoint a board of directors of the district consisting of not less than five (5) or more than nine (9) persons who are residents of the county or counties in which the water conservancy district is situated, all of whom shall be owners of real property in said district. The terms of office of said directors shall be staggered over a five (5) year period, but not more than two (2) of such directors may be appointed for a full five (5) year term.

(b) At the expiration of their respective terms of office as fixed by the court, their successors in office shall be elected in the manner provided for the election of irrigation district commissioners in W.S. 41-7-103, 41-7-104 and 41-7-316 through 41-7-318, as amended, or as may be amended by the legislature of Wyoming hereafter, except that they shall be elected for a term of five (5) years. The court shall fill all vacancies which may occur at any time on said board, but such court appointees shall only serve until the next succeeding regular election for board members. Each director shall hold office during the term for which he is appointed or elected, and until his successor is duly appointed or elected, and has qualified; and shall furnish a corporate surety bond at the expense of the district; in amount and form fixed and approved by the court, conditioned for the faithful performance of his duties as such director.

**41-3-741. Oath; election of officers; seal; records; compensation and expenses.**

(a) Each director, before entering upon his official duties, shall take and subscribe to an oath before an officer authorized to administer oaths, that he will support the constitution of the United States and the state of Wyoming and will honestly, faithfully and impartially perform the duties of his office and that he will not be interested directly or indirectly in any contract let by said district, which said oath shall be filed in the office of the clerk of said court in the original case.

(b) Upon taking the oath, the board shall choose one (1) of their number chairman of the board and president of the district, and shall elect some suitable person secretary of the board and of the district, who may or may not be a member of the

board. Such board shall adopt a seal and shall keep in a well-bound book a record of all of its proceedings, minutes of all meetings, certificates, contracts, bonds given by employees and all corporate acts which shall be open to inspection of all owners of property within the district, as well as to all other interested parties.

(c) Each member of the board shall receive as compensation for his service such sum as shall be ordered by the court, not in excess of the sum of six hundred dollars (\$600.00) per annum, payable monthly, and necessary traveling expenses actually expended while engaged in the performance of his duties.

**41-3-742. Powers generally.**

(a) The board shall have power on behalf of said districts:

(i) To have perpetual succession;

(ii) To take by appropriation, grant, purchase, bequest, devise or lease, and to hold and enjoy water, water works, water rights and sources of water supply; and any and all real and personal property of any kind within or without the district necessary or convenient to the full exercise of its powers; and to sell, lease, encumber, alien or otherwise, dispose of water, water works, water rights and sources of water supply for use within the district, and any and all real and personal property of any kind within or without the district; also to acquire, construct or operate, control and use any and all works, facilities and means necessary or convenient to the exercise of its power, both within and without the district for the purpose of providing for the use of such water within the district and to do and perform any and all things necessary or convenient to the full exercise of the power herein granted. Title to all rights and property acquired by any water conservancy district organized under this act shall immediately and by operation of law vest in such district in its corporate name; such property shall be held for the uses and purposes of the district, and shall be exempt from all state, county, municipal, school, and other taxes imposed by any taxing authority of the state of Wyoming;

(iii) To have and to exercise the power of eminent domain and in the manner provided by law for the condemnation of private property for public use to take any property necessary to the exercise of the powers herein granted;

(iv) To construct and maintain works and establish and maintain facilities across or along any public street or highway, and in, upon, or over any vacant state lands which lands are now, or may become, the property of the state of Wyoming and to construct works and establish and maintain facilities across any stream of water or water course; providing, however, that the district shall promptly restore any such street or highway to its former state of usefulness as nearly as may be, and shall not use the same in such manner as to completely or unnecessarily impair the usefulness thereof. The grant of the right to use such vacant lands shall be effective upon the filing by such district with the state board of land commissioners of an application showing the boundaries, extent and locations of the lands, rights-of-way, or easements desired for such purposes. If the land, rights-of-way or easements for which application shall be made is for the construction of any aqueduct, ditch, pipeline, conduit, drains, tunnel, or other works for the conveyance of water, or for roads, or for poles or towers, and wires for the conveyance of electrical energy or for telephonic or telegraphic communication no compensation shall be charged the district therefor, unless in the opinion of the state board of land commissioners the construction of such works will render the remainder of the legal subdivision through which such works are to be constructed valueless or unsaleable, in which event the district shall pay for the lands to be taken and for such portion of any legal subdivision which in the opinion of the board is rendered valueless or unsaleable, at the rate of ten dollars (\$10.00) per acre. If the lands for which application is made are for the purposes other than the construction of roads or works for the conveyance of water, or electricity or telephonic or telegraphic communication, such district shall pay to the state for such lands at the rate of ten dollars (\$10.00) per acre. Upon filing such application, accompanied by map or plat showing the location or proposed location of such works and/or facilities, the fee title to so much of such state lands as shall be necessary or convenient to enable such district efficiently and without interference to construct, maintain and operate its works and to establish, maintain and operate its facilities, shall be conveyed to said district by patent. If an easement for right-of-way only over such lands be sought by the district, such easement or right-of-way shall be evidenced by permit or grant executed by or on behalf of the state board of land commissioners. The state board of land commissioners may reserve easements and/or rights-of-way, in the public, across any lands in such patents, grants or permits described for streets, roads

and highways theretofore established according to law. Before any such patent, grant or permit shall be executed, any compensation due to the state under the provisions hereof, must be paid. No fee shall be exacted from the district for any patent, permit or grant so issued or for any service rendered hereunder. In the use of streets, the district shall be subject to the reasonable rules and regulations of the county, city or town where such streets lie, concerning excavation and the refilling of excavation, the relaying of pavements and the protection of the public during periods of construction; provided, that the district shall not be required to pay any license or permit fees, or file any bonds. The district may be required to pay reasonable inspection fees;

(v) To contract with the government of the United States or any agency thereof or with an agency of the state of Wyoming for the construction, preservation, operation and maintenance of water supply works, drains, pipelines, tunnels, reservoirs, regulating basins, diversion canals and works, dams, power plants and all necessary works incidental thereto, including supply canals, farm laterals, and distribution and drainage systems of all kinds, and to acquire perpetual rights to the use of water from such works, to sell and dispose of perpetual rights to the use of water from such works to persons and corporations, public and private;

(vi) To list in separate ownership the lands within the district which are susceptible of irrigation from district sources and to make an allotment of water to all such lands, which allotment of water shall not exceed the maximum amount of water that the board determines could be beneficially used on such lands; to levy assessments as hereinafter provided, against the lands within the district to which water is allotted on the basis of the value per acre-foot of water allotted to said lands within the district; provided, that the board may divide the district into units and fix a different value per acre-foot of water in the respective units, with due regard to land classification, and in such case shall assess the lands within each unit upon the same basis of value per acre-foot of water allotted to land within such unit;

(vii) To fix rates at which water not allotted to lands as hereinbefore provided shall be sold, leased or otherwise disposed of; provided, however, that rates shall be equitable although not necessarily equal or uniform, for like classes of service throughout the district;



(viii) To enter into contracts, employ and retain personal services and employ laborers; to create, establish and maintain such offices and positions as shall be necessary and convenient for the transaction of the business of the district; and to elect, appoint and employ such officers, attorneys, agents and employees therefor as shall be found by the board to be necessary and convenient;

(ix) To adopt plans and specifications for the works for which the district was organized, which plans and specifications may at any time be changed or modified by the board. Such plans shall include maps, profiles, and such other data and descriptions as may be necessary to set forth the location and character of the works, and a copy thereof shall be kept in the office of the district and open to public inspection;

(x) To appropriate and otherwise acquire water and water rights within or without the state; to develop, store and transport water; to subscribe for, purchase and acquire stock in canal companies, water companies and water users' associations; to provide, sell, lease, and deliver water for municipal, domestic, transportation, industrial, manufacturing, irrigation, power, recreation, and any and all other beneficial uses and to derive revenue and benefits therefrom; to fix the terms and rates therefor; and to make and adopt plans for and to acquire, construct, operate and maintain irrigation, and water distribution and drainage systems, dams, reservoirs, canals, conduits, pipelines, tunnels, power plants and any and all works, facilities, improvements and property necessary or convenient therefor, and in the doing of all of said things to obligate itself and execute and perform such obligations according to the tenor thereof; provided, however, the sale, leasing and delivery of water for irrigation, domestic, and transportation purposes as hereinbefore provided shall only be made for use within the district;

(xi) (A) To invest any surplus money in the district treasury, including such money as may be in any sinking fund established for the purpose of providing for the payment of the principal or interest of any contract, or bonded, or other indebtedness or for any other purpose, not required for the immediate necessities of the district in its own bonds, or in treasury notes or bonds of the United States, or of this state, and such investment may be made by direct purchase of any issue of such bonds or treasury notes, or part thereof, at the original sale of the same, or by the subsequent purchase of such

bonds or treasury notes. Any bonds or treasury notes thus purchased and held may, from time to time be sold and the proceeds reinvested in bonds or treasury notes as above provided. Sales of any bonds or treasury notes thus purchased and held shall, from time to time, be made in season so that the proceeds may be applied to the purposes for which the money with which the bonds or treasury notes were originally purchased were placed in the treasury of the district;

(B) The functions and duties authorized by subdivision (xi)(A) of this section shall be performed under such rules and regulations as shall be prescribed by the board.

(xii) To refund bonded indebtedness incurred by the district under and pursuant to such rules and regulations as shall be prescribed by the board;

(xiii) To borrow money and incur indebtedness and to issue bonds or other evidence of such indebtedness;

(xiv) To adopt bylaws not in conflict with the constitution and laws of the state for carrying on the business, objects and affairs of the board and of the district.

**41-3-743. Duties of secretary and chief engineer; other employees.**

The secretary shall be custodian of the records of the district and of its corporate seal, and shall assist the board in such particulars as it may direct in the performance of its duties. The secretary shall attest, under the corporate seal of the district, all certified copies of the official records and files of the district that may be required of him by this act, or by any person ordering the same and paying the reasonable cost of transcription, and any portion of the record, so certified and attested shall prima facie import verity. The secretary shall serve also as treasurer of the district, unless a treasurer is otherwise provided for by the board. The board may also employ a chief engineer, who may be an individual, copartnership or corporation; an attorney, and such other engineers, attorneys and other agents and assistants as may needful; and may provide for their compensation which, with all other necessary expenditures, shall be taken as a part of the cost of maintenance of the improvement. The chief engineer shall be superintendent of all the works and improvements, and shall make a full report to the board each year, or oftener if required by the board, and may make such suggestions and recommendations to

the board as he may deem proper. The secretary and treasurer and such other agents or employees of the district as the court may direct, shall furnish corporate surety bonds, at the expense of the district, in amount and form fixed and approved by the court, conditioned upon the faithful performance of their respective duties.

**41-3-744. Quorum.**

A majority of the directors shall constitute a quorum and a concurrence of a majority of those in attendance, in any matter, within their duties, shall be sufficient for its determination, except as otherwise herein provided.

**41-3-745. Acquisition of rights-of-way.**

Whenever, pursuant to this act, the electors of a water conservancy district shall have authorized a contract with the United States for construction and acquisition of works and water rights, which contract shall have obligated the district to acquire rights-of-way therefor to be conveyed by the district to the United States upon reimbursement by the United States, then the district, without further election and through its board of directors, shall have power to do all acts for acquiring such rights-of-way, including borrowing of and paying interest upon, such sums of money as shall be required to make deposits fixed by the court for the possession and to pay awards on condemnation of said rights-of-way as well as amounts up to the appraised values of the particular rights-of-way as shall have been fixed by the appraisers for the United States in each instance of negotiated purchases, notwithstanding the sum borrowed shall be greater than the ordinary annual incomes and revenues of the district.

**41-3-746. Contracts for use of water; power of board to sell or lease water; securing of payments generally.**

The board may sell, lease or otherwise dispose of the use of water by term contracts or by contracts for the perpetual use of such water to persons, public corporations, mutual ditch companies, water users' associations and other private corporations for irrigation or commercial use as shall be provided by contracts, in writing, authorized and entered into by the board; and the board shall require that security be given to secure the payments to be made under such contract or contracts.

**41-3-747. Contracts for use of water; means of owners meeting annual installment payments.**

(a) To meet the annual installments as provided in contracts for the use of water:

(i) A water users' association may bind itself to levy an annual assessment on the use of water and to secure same by liens on land and water rights or in such manner as may be provided by law;

(ii) Mutual ditch or irrigation company may bind itself by mortgage upon its irrigation works and system and/or to levy annual assessments upon its stockholders; and

(iii) Any person or corporation landowner may create a mortgage lien upon lands and/or give other security satisfactory to the board; and all such contracts shall provide for forfeiture of the use of water for nonpayment of assessments and/or installments in the same manner and procedure as provided by statute for forfeiture of stock in a mutual ditch company.

**41-3-748. Surplus funds.**

Whenever a contract of indebtedness has been created by the district, it shall be lawful for the board to make the annual levy of taxes and special assessments in such amount as will create a surplus of funds to meet the annual installments of indebtedness and/or the payment of bonds and interest, and the necessary maintenance and operating charges, and the board shall cause such surplus funds to be placed in a sinking fund which may be used for the payments of contingencies, defaults and delinquencies, and to pay the future annual installments of indebtedness on contract and/or bonds and interest.

**41-3-749. Use and distribution of water generally.**

(a) The board shall have the following powers concerning the management, control, delivery, use and distribution of water by the district, to wit:

(i) To make and enforce all reasonable rules and regulations for the management, control, delivery, use and distribution of water;

(ii) To withhold the delivery of water upon which there are any defaults or delinquencies of payment;

(iii) To provide for and declare forfeitures of rights to the use of water upon default or failure to comply with any order, contract or agreement for the purchase, lease or use of water and to resell, lease or otherwise dispose of water upon which forfeiture has been declared;

(iv) To allocate and reallocate the use of water to lands within the district;

(v) To provide for and grant the right, upon terms, to transfer water from lands to which water has been allocated to other lands within the district and to discharged liens from lands to which the same was theretofore attached and to create liens, as provided in this act, upon lands to which the use of such water is transferred.

**41-3-750. Allotment of water to landowner under disability.**

Where the landowner in a water conservancy district, organized under this act is under disability by reason of infancy, insanity or otherwise, or lands are held under administration, executorship, guardianship, conservatorship, trusteeship, receivership or other similar proceeding, the administrator, executor, guardian, conservator, trustee, receiver or other like officer shall be considered the "landowner" for all purposes within the terms of this act, and when authorized by the court having jurisdiction of the estate or lands, such administrator, executor, guardian, conservator, trustee, receiver or other like officer may petition for an allotment of water, in such quantity as determined by such court, as will, together with the present supply of water for irrigation purposes make an adequate supply for the irrigation of such lands; or in the event such administrator, executor, guardian, conservator, trustee, receiver or other like officer has heretofore petitioned for a supply of water for irrigation of lands so held as aforesaid, the court having jurisdiction of the estate or lands, may ratify or confirm the petition for such quantity of water as it may determine will make an adequate supply for the irrigation of such lands, and such petition so made and authorized or ratified and confirmed as aforesaid shall have the same effect and be binding upon all parties interested in such lands to the same extent as though made by a "landowner" while not under disability.

**41-3-751. District boundary changes.**

The boundaries of any district organized under the provision of this act may be changed in the manner herein prescribed, but the change of boundaries of the district shall not impair or affect its organization or its rights in or to property, or any of its rights or privileges whatsoever; nor shall it affect or impair or discharge any contract, obligation, lien or charge for or upon which it might be liable or chargeable had such change of boundaries not been made. The owners of lands may file with the board a petition, in writing, praying that such lands be included in the district. The petition shall describe the tracts or body of land owned by the petitioners, and such petition shall be deemed to give assent of the petitioners to the inclusion in said district of the lands described in the petition, and such petition must be acknowledged in the same manner that conveyances of land are required to be acknowledged. The secretary of the board shall cause notice of filing of such petition to be given and published in the county in which the lands are situated, which notice shall state the filing of such petition, names of petitioners, descriptions of lands mentioned and the prayer of said petitioners; giving notice to all persons interested to appear at the office of the board at the time named in said notice and show cause in writing, if any they have, why the petition should not be granted. The board shall at the time and place mentioned or at such time or times at which the hearing may be adjourned, proceed to hear the petition and all objections thereto, presented, in writing, by any person showing cause why said petition should not be granted. The failure of any person interested to show cause, in writing, shall be deemed and held and taken as an assent on his part to the inclusion of such lands in the district as prayed for in the petition. If the petition be granted, the board shall make an order to that effect and file same with the clerk of the court and upon order of the court said lands shall be included in the district.

**41-3-752. Petition for exclusion of lands.**

The owner or owners in fee of any lands constituting a portion of the district may file with the board a petition praying that such lands be excluded and taken from said district. Petitions shall describe the lands which the petitioners desire to have excluded. Such petition must be acknowledged in the same manner and form as required in case of a conveyance of land and be accompanied by a deposit of money sufficient to pay all costs of the exclusion proceedings. The secretary of the board shall cause a notice of filing of such petition to be published in the

county in which said lands, or the major portion thereof, are located. The notice shall state the filing of such petition, the names of petitioners, descriptions of lands mentioned in said petition, and the prayer of said petitioners; and it shall notify all persons interested to appear at the office of said board at the time named in said notice, showing cause in writing, if any they have, why said petition should not be granted. The board at the time named in said notice, or at the time or times at which the hearing of said petition may be adjourned, shall proceed to hear the petition and all objections thereto, presented, in writing, by any person showing cause as aforesaid, why the prayer of the petition should not be granted. The filing of such petition shall be deemed and taken as an assent by each and all such petitioners to the exclusion from the district of the lands mentioned in the petition, or any part thereof. The board, if they deem it not for the best interests of the district that the lands mentioned in the petition, or portion thereof, shall be excluded from the district, shall order that said petition be denied, but if they deem it for the best interest of the district that the lands mentioned in the petition, or some portion thereof, be excluded from the district, and if there are no outstanding bonds of the district, then the board may order the lands mentioned in the petition or some portion thereof, to be excluded from the district. Provided, further, that in case a contract has been made between the district and the United States or any agency thereof, no change shall be made in the boundaries of the district unless the secretary of the interior shall assent thereto in writing and such assent be filed with the board. Upon such assent, any lands excluded from the district shall upon order of the court be discharged from all liens in favor of the United States under the contract with the United States or under bonds deposited with its agents. Upon allowance of such petition, the board shall file a certified copy of the order of the board making such change with the clerk of the court and upon order of the court said lands shall be excluded from the district.

**41-3-753. Bonds; authority of board to issue; purpose; terms; execution; tax exemptions.**

To pay for construction, operation and maintenance of the works and expenses preliminary and incidental thereto, the board is hereby authorized to enter into contract with the United States or an agency thereof, providing for payment in installments or to issue negotiable bonds of the district. If bonds are authorized, the same shall bear interest payable semiannually and shall be due and payable not less than ten (10) nor more

than fifty (50) years from their dates. The form, terms and provisions of bonds, provisions for their payment and conditions for their retirement and calling, not inconsistent with law, shall be vested and determined by the board and they shall be issued as hereinafter provided in payment of the works, equipment, expenses and interest during the period of construction. Bonds shall be executed in the name of and on behalf of the district and signed by the president of the board with the seal of the district affixed thereto and attested by the secretary of the board. Bonds shall be in denominations as the board determines and shall be payable to the bearer and may be registered in the office of the county treasurer of the county wherein the organization of the district has been effected, with the interest coupons payable to bearer, which shall bear the facsimile signature of the president of the board. The bonds are exempt from all state, county, municipal, school and other taxes imposed by any taxing authority of the state of Wyoming and shall not be sold at less than par and accrued interest.

**41-3-754. Bonds; election prior to issuance generally.**

Whenever the board incorporated under this act shall by resolution adopted by a majority of the said board, determine that the interests of said district and the public interest or necessity demand the acquisition, construction or completion of any source of water supply, water works, or other improvements, or facility, or the making of any contract with the United States or other persons or corporation, to carry out the objects or purposes of said district, wherein the indebtedness or obligation shall be created, to satisfy which shall require a greater expenditure than the ordinary annual income and revenue of the district shall permit, said board shall order the submission of the proposition of insuring the obligation or bonded or other indebtedness for the purposes set forth in said resolution, to the qualified electors of the district as shall have paid a tax on property in the district in the year preceding the election, at an election held for that purpose. Any election held for the purpose of submitting any proposition or propositions of incurring the obligation or indebtedness shall be held at an election as permitted for bond elections by the Political Subdivision Bond Election Law, W.S. 22-21-101 through 22-21-112. The declaration of public interest or necessity herein required and the provision for the holding of the election may be included within one (1) and the same resolution, which resolution, in addition to the declaration of public interest or necessity shall recite the objects and



purposes for which the indebtedness is proposed to be incurred, the estimated cost of the works or improvements, as the case may be, the amount of principal of the indebtedness to be incurred therefor, and the maximum rate of interest to be paid on the indebtedness. The resolution shall also recite the date upon which the election shall be held and the manner of holding the same and the method of voting for or against the incurring of the proposed indebtedness. The resolution shall also fix the compensation to be paid the officers of the election and shall designate the precincts and polling places and shall appoint for each polling place, the officers of the election, which officers shall be registered electors and shall consist of three (3) judges, one (1) of whom shall act as clerk, who shall constitute a board of election for each polling place. The description of precincts may be made by reference to any order or orders of the board of county commissioners of the county or counties in which the district or any part thereof is situated or by reference to any previous order, or resolution of the board or by detailed description of the precincts. Precincts established by the boards of the various counties may be consolidated for special elections held hereunder. In the event any election under this section shall be called to be held concurrently with any other election or shall be consolidated therewith, the resolution calling the election hereunder need not designate precincts or polling places or the names of officers of election, but shall contain reference to the act or order calling the other election and fixing the precincts and polling places and appointing election officers.

**41-3-755. Bonds; election prior to issuance; publication of resolution.**

The resolution provided in W.S. 41-3-754 shall be published once a week for two (2) consecutive weeks, the last publication of which shall be at least ten (10) days prior to the date set for said election, in a newspaper of general circulation printed and published within the district, and no other or further notice of such election or publication of the names of election officers or of the precincts or polling places need be given or made.

**41-3-756. Bonds; election prior to issuance; conduct of election; canvassing of returns; declaration of results.**

The respective election boards shall conduct the election in their respective precincts in the manner prescribed by law for the holding of general elections, and shall make their returns to the secretary of the district. At any regular or special

meeting of the board held not earlier than five (5) days following the date of such election, the returns thereof, shall be canvassed and the results thereof declared. In the event that any election held hereunder shall be consolidated with any primary or general election, the returns thereof shall be made and canvassed at the time and in the manner provided by law for the canvass of the returns of such primary or general election. It shall be the duty of such canvassing body or bodies to promptly certify and transmit to the board a statement of the results of the vote upon the proposition submitted thereunder. Upon receipt of such certificate, it shall be the duty of the board to tabulate and declare the results of the election held thereunder.

**41-3-757. Bonds; election prior to issuance; approval.**

In the event that it shall appear from said returns that a majority of said qualified electors of the district who shall have voted on any proposition submitted hereunder at such election voted in favor of such proposition, the district shall thereupon be authorized to incur such indebtedness or obligations, enter into such contract, and/or issue and sell such bonds of the district, all for the purpose or purposes and object or objects provided for in the proposition submitted hereunder, and the resolution therefor, and in the amount so provided and at a rate of interest not exceeding the rate of interest recited in such resolution. Submission of the proposition of incurring such obligation or bonded or other indebtedness at such an election shall not prevent or prohibit submission of the same or other propositions at subsequent election or elections called for such purpose.

**41-3-758. Judicial examination and determination of board's powers.**

The board may, in its discretion, at any time file a petition in the court, praying a judicial examination and determination of any power conferred hereby or by any amendment hereto or of any tax or assessment levied or of any act, proceeding or contract of the district, whether or not said contract shall have been executed, including proposed contracts for the acquisition, construction, maintenance and/or operation of works for the district. Such petition shall set forth the facts whereon the validity of such power, assessment, act, proceeding or contract is founded and shall be verified by the president of the board. Notice of the filing of said petition shall be given by the clerk of the court, under the seal thereof, stating in brief

outline the contents of the petition and showing where a full copy of any contract or contracts, therein mentioned, may be examined. Said notice shall be served by publication in at least five (5) consecutive issues of a weekly newspaper of general circulation published in the county in which the principal office of the district is located, and by posting the same in the office of the district at least thirty (30) days prior to the date fixed in said notice for the hearing on said petition. Any owner of property in the district or person interested in the contract or proposed contract may appear and demur to or answer said petition at any time prior to the date fixed for said hearing or within such further time as may be allowed by the court; and the petition shall be taken as confessed by all persons who fail so to appear. The said petition and notice shall be sufficient to give the court jurisdiction and upon hearing, the court shall examine into and determine all matters and things affecting the question submitted, shall make such findings, with reference thereto, and render such judgment and decree thereon as the case warrants. Costs may be divided or apportioned among the contesting parties in the discretion of the trial court. Review of the judgment of the court may be had as in other similar cases, except that such review must be applied for within thirty (30) days after the time of the rendition of such judgment, or within such additional time as may be allowed by the court within thirty (30) days. The Code of Civil Procedure shall govern in matters of pleading and practice where not otherwise specified herein. The court shall disregard any error, irregularity or omission which does not affect the substantial rights of the parties.

**41-3-770. Methods of levying and collecting; classifications generally.**

(a) In addition to the other means of providing revenue for such districts as herein provided, the board shall have power and authority to levy and collect taxes and special assessments for maintaining and operating such works and paying the obligations and indebtedness of the district by any one (1) or more of the methods or combinations thereof, classified as follows:

(i) Class A.-To levy and collect taxes upon all property within the district as hereinafter provided;

(ii) Class B.-To levy and collect assessments for special benefits accruing to property within municipalities for which use of water is allotted as hereinafter provided;

(iii) Class C.-To levy and collect assessments for special benefits accruing to lands within irrigation districts for which use of water is allotted as hereinafter provided;

(iv) Class D.-To levy and collect assessments for special benefits accruing to lands for which use of water is allotted as hereinafter provided.

**41-3-771. Methods of levying and collecting; class A.**

To levy and collect taxes under class A as provided in W.S. 41-3-770, the board shall, in each year, determine the amount of money necessary to be raised by taxation, taking into consideration other sources of revenue of the district, and shall fix a rate of levy which when levied upon every dollar of assessed valuation of property within the district, and with other revenues will raise the amount required by the district, to supply funds for paying expenses of organization, for surveys and plans, paying the costs of construction, operating and maintaining the works of the district; provided, however, that said rate shall not exceed one-half (1/2) mill on the dollar, prior to the delivery of water from the works, and thereafter not to exceed one (1) mill on the dollar, of assessed valuation of the property within the district, except in the event of accruing defaults and/or deficiencies where an additional levy may be made as provided in W.S. 41-3-775. The board shall on or before the third Monday of July of each year, certify to the board of county commissioners of each county within the district or having a portion of its territory in the district, the rate so fixed with direction that at the time and in the manner required by law for levying of taxes for county purposes, such board of county commissioners shall levy such tax upon the assessed valuation of all property within the district, in addition to such other taxes as may be levied by such board of county commissioners, at the rate so fixed and determined; provided, however, that said assessment and tax levied under the provisions of this act shall not be construed as being a part of the general county mill levy.

**41-3-772. Methods of levying and collecting; class B.**

(a) To levy and collect special assessments under class B as provided in W.S. 41-3-770, the board shall make an allotment of water to each petitioning municipality in the district in the manner as hereinafter provided, in such quantity as will in the judgment of the board, when added to the then present supply of

water of such municipality, make an adequate supply for such municipality, and shall fix and determine the rate or rates per acre-foot, and terms at and upon which such water shall be sold, leased, or otherwise disposed of, for use by such municipalities; provided, however, that such rates shall be equitable although not necessarily equal or uniform for like classes of services throughout the district. In the event any city, city and county, or town shall desire to purchase, lease or otherwise obtain the beneficial use of waters of the district for domestic or irrigation purposes, the legislative body of such municipality shall by ordinance authorize and direct its mayor and clerk to petition the board for an allotment of water, upon terms prescribed by the board, which petition shall contain inter alia, the following:

- (i) Name of municipality;
- (ii) Quantity of water to be purchased or otherwise acquired;
- (iii) Price per acre-foot to be paid;
- (iv) Whether payments are to be in cash or annual installments;
- (v) Agreement by the municipality to make payments for the beneficial use of such water together with annual maintenance and operating charges and to be bound by the provisions of this act and the rules and regulations of the board.

(b) The secretary of the board shall cause notice of the filing of such petition to be given and published once each week for two (2) successive weeks, in a newspaper published in the county in which said municipality is situated, which notice shall state the filing of such petition and giving notice to all persons interested to appear at the office of the board, at a time named in said notice and show cause, in writing, if any they have, why the petition should not be granted.

(c) The board at the time and place mentioned in said notice or at such time or times at which the hearing of said petition may adjourn, shall proceed to hear the petition and objections thereto, presented, in writing, by any person showing cause as aforesaid why said petition should not be granted. The failure of any person interested to show cause in writing, as aforesaid, shall be deemed and taken as an assent on his part to

the granting of said petition. The board may at its discretion, accept or reject the said petition, but if it deems it for the best interest of the district that said petition be granted, shall enter an order granting the said petition and from and after such order the said municipality shall be deemed to have purchased, leased, or otherwise acquired the beneficial use of water as set forth in said order. If said petition is granted, the board shall, in each year, determine the amount of money necessary to be raised by taxation from property within such municipality to pay the annual installments and a fair proportionate amount of estimated operating and maintenance charges for the next succeeding year as provided in the order granting said petition, and prepare a statement showing the tax rate to be applied to all property in such municipality, which rate shall be the rate fixed by resolution of the board modified to the extent necessary to produce from each such municipality only the amount of money apportioned thereto in said resolution, less any amount paid or undertaken to be paid by such municipality in cash or as credited thereto by payments from the general funds of such municipality. Upon receipt by the board of county commissioners of each county, wherein such municipality is located, of a certified copy of such resolution showing the tax rate to be applied to all property in each municipality and showing the municipalities and the property which is exempt therefrom, if any, it shall be the duty of the county officers to levy and collect such tax in addition to such other tax as may be levied by such board of county commissioners at the rate so fixed and determined.

**41-3-773. Methods of levying and collecting; class C.**

(a) To levy and collect special assessments upon lands under class C as provided in W.S. 41-3-770, the board shall make an allotment of water to each of the petitioning irrigation districts within the district in the manner as hereinafter provided in such quantity as will in the judgment of the board, when added to the present supply of water of such irrigation district, make an adequate supply of water for such irrigation district, and shall fix and determine the rate or rates per acre-foot and terms at and upon which water shall be sold, leased, or otherwise disposed of to such irrigation district; provided, however, that such rates shall be equitable although not necessarily equal or uniform for like classes of services throughout the district. In the event any irrigation district shall desire to purchase, lease or otherwise obtain the beneficial use of waters of the district, the board of such irrigation district shall by resolution authorize and direct its

president and secretary to petition the board for an allotment of water, upon terms prescribed by the board, which petition shall contain inter alia, the following:

- (i) Name of irrigation district;
- (ii) Quantity of water to be purchased or otherwise acquired;
- (iii) Price per acre-foot to be paid;
- (iv) Whether payments are to be made in cash or annual installments;
- (v) Agreement by such irrigation district to make payments for the beneficial use of such water, together with annual maintenance and operating charges, and to be bound by the provision of this act and the rules and regulations of the board.

(b) The secretary of the board shall cause notice of the filing of such petition to be given and published, which notice shall state the filing of such petition and giving notice to all persons interested to appear at the office of the board at a time named in said notice and show cause in writing, if any they have, why the petition should not be granted. The board at the time and place mentioned in said notice, or at such times at which the hearing of said petition may be adjourned, shall proceed to hear the petition and objections thereto, presented, in writing, by any person showing cause as aforesaid why said petition should not be granted. The failure of any person interested to show cause, in writing, as aforesaid, shall be deemed and taken as an assent on his part to the granting of said petition. The board may, at its discretion, accept or reject the said petition, but if it deems it for the best interest of the district that said petition shall be granted, shall enter an order to that effect granting the said petition and from and after such order, the irrigation district and/or persons therein shall be deemed to have purchased, leased, or otherwise acquired the beneficial use of water as set forth in said order. If said petition is granted, the board shall, in each year, determine the amount of money necessary to be raised by special assessment on lands within such irrigation district and shall certify to the board of county commissioners of the county in which the lands of such irrigation district are located the amount of the assessment, plus a fair proportionate amount of the estimated operating and maintenance charges for

the next succeeding year on each tract of land on or before the third Monday in July of each year. Thereupon the county commissioners shall certify to and deliver said assessment roll to the county assessor of such county and such county assessor shall extend the amount of such special assessment, plus said operating and maintenance charges, on the tax roll as a special assessment against the lands upon which said special assessment is made. If a subdistrict or subdistricts are organized as herein provided, assessments of special benefits shall be made, spread on the tax rolls and collected in the same manner provided in the case of irrigation districts. A district may elect to establish the special assessment, operating and maintenance amount and due date after the third Monday of July and on or before the third Monday of October, provided the district shall be responsible for the billing and collection of special assessments, operating and maintenance charges.

**41-3-774. Method of levying and collecting; class D.**

(a) To levy and collect special assessments upon lands under class D as provided in W.S. 41-3-770, the board shall make an allotment of water to petitioning owners of lands in the district, upon which water can be beneficially used in the manner as hereinafter provided, in such amount as will, in the judgment of the board, together with the present supply of water for irrigation purposes on such lands, make an adequate water supply for irrigation of such lands, and shall fix and determine the rate or rates per acre-foot and the terms at and upon which water shall be sold, leased or otherwise disposed of, for use on said lands. In the event that any person or private corporation shall elect to purchase, lease or otherwise obtain the beneficial use of waters of the district for irrigation of lands, such person or corporation shall petition the board for an allotment of water upon terms prescribed by the board, which petition shall contain inter alia, the following:

- (i) Name of applicant;
- (ii) Quantity of water to be purchased or otherwise acquired;
- (iii) Description of lands upon which the water will be used and attached;
- (iv) Price per acre-foot to be paid;



(v) Whether payment will be made in cash or annual installments;

(vi) Agreement that the annual installments and the charges for maintenance and operating shall become a tax lien upon the lands for which such water is petitioned and allotted and to be bound by the provision of this act and the rules and regulations of the board.

(b) The board may, in its discretion, accept or reject the said petition, but if it deems it for the best interests of the district that said petition be granted, shall enter an order granting the said petition and from and after such order, the said petitioner shall have deemed to have agreed to the purchase, lease or other means of acquiring the beneficial use of water under the terms set forth in said petition and order. Such order shall provide for payment on the basis of rate per acre-foot of water allotted to said lands within the district, providing that the board may divide the district into units and fix a different rate per acre-foot of water in the respective units and provided, further, that such rates shall be equitable although not necessarily equal or uniform for like classes of services through the district.

(c) The secretary of the board shall cause notice of the filing of such petition to be given and published, which notice shall state the filing of such petition and giving notice to all persons interested to appear at the office of the board at a time named in said notice and show cause in writing, if any they have, why the petition should not be granted. The board at the time and place mentioned in said notice, or at such time or times at which the hearing on said petition may be adjourned, shall proceed to hear the petition and objections thereto, presented, in writing, by any person showing cause as aforesaid, why said petition should not be granted. The failure of any person interested to show cause, in writing, as aforesaid, shall be deemed and taken as an assent on his part to the granting of said petition. The board may, at its discretion, accept or reject the said petition, but if it deems it for the best interest of the district that said petition shall be granted, shall enter an order to that effect granting said petition, and from and after such order the petitioner and/or persons interested therein, shall be deemed to have purchased, leased or otherwise acquired the beneficial use of water as set forth in said order. If such petition is granted, the board shall cause a certified copy of the order granting said petition to be recorded in the county in which said lands are located and

thereafter, the annual installments and annual operating and maintenance charges shall be a perpetual tax lien upon such lands. The board shall on or before the third Monday in July of each year, certify to the board of county commissioners of the county within the district in which such lands are located the amount of the annual installments, plus a fair proportionate amount of the estimated operating and maintenance charges apportioned to said lands for the next succeeding year. Thereupon, the county commissioners shall certify to and deliver said assessment roll to the county assessor of such county and such county assessor shall extend the amount so certified on the tax roll as a flat special assessment against the lands for which such water is petitioned and allowed.

**41-3-775. Considerations affecting annual levies and assessments; deficiencies; additional assessments.**

The board in making the annual assessments and levies as herein provided, shall take into account the maturing indebtedness for the ensuing year as provided in its contracts and/or the maturing of bonds and interest on all bonds, and deficiencies and defaults of prior years, and shall make ample provision for the payment thereof. In case the proceeds of such levies and assessments made under the provisions of this act, together with other revenues of the district, are not sufficient to punctually pay the annual installments on its contracts and/or bonds, and interest thereon and to pay defaults and deficiencies, then the board shall make such additional levies of taxes and/or assessments as may be necessary for such purposes and notwithstanding any limitations by contract, order, tax lien, or otherwise, such taxes and assessments shall be made to continue until the indebtedness of the district shall be fully paid; provided, however, that the amount of such additional levies of taxes under class A as provided in W.S. 41-3-770, shall not in any one (1) year exceed an amount that would be raised by a levy of one-half (1/2) mill against the assessed value of such property as fixed for general tax purposes; provided, that such levies for defaults and deficiencies shall not at any time be so made as to impose upon class A as herein provided, payments in excess of twenty-five percent (25%) of the anticipated revenue from all sources to be raised for the specific purpose of payment of existing defaults and deficiencies; and provided further, that in making such additional levies and/or assessments, the board shall take into account all sources of revenue and equitably distribute the burden of such defaults and deficiencies according to the uses and benefits as provided in this act.

#### **41-3-776. Objections to assessments.**

(a) Prior to the third Monday in July of each year in which assessments are made, the board shall appoint a time and place or places where it will meet within the district for the purposes of hearing objections to assessments and prior notice of such hearing shall be given by publication in two (2) issues a week apart, in some newspaper of general circulation published in each county; provided that if there is any county in the district in which there is no newspaper published, then such notice shall be published in an adjoining county. Said notice shall notify the owners of property in the district that in the secretary's office may be found and examined a description of the property so assessed, the amount of the assessment thereon fixed by the board, and the time and place or places fixed by the board for the hearing of objections to such assessments. It shall not be necessary for said notice to contain separate descriptions of the lots or tracts of real estate, but it shall be sufficient if the notice shall contain such descriptions as will inform the owner whether or not his real estate is covered by such descriptions, and to inform the owners where can be found of record the amount of assessments. If in the opinion of any person whose property is assessed, his property has been assessed too high, or has been erroneously or illegally assessed, he may at any time before the date of such hearing, file written objections to such assessments, stating the grounds of such objections, which statement shall be verified by the affidavit of said person or his agent. In such hearing the board shall hear such evidence and arguments as may be offered concerning the correctness or legality of such assessment and may modify or amend the same. Any owner of property desiring to appeal from the findings of the board as to assessment shall, within thirty (30) days from the finding of the board, file with the clerk of the court a written notice making demand for trial by the court. The appellant at the same time shall file a bond with good and sufficient security to be approved by the clerk of said court in the sum not exceeding two hundred dollars (\$200.00) to the effect that if the finding of the court be not more favorable to the appellant than the finding of the board, the appellant will pay the cost of the appeal. The appellant shall state definitely from what part of the order the appeal is taken. In case more than one (1) appeal is taken, the court may upon its showing that the same may be consolidated without injury to the interests of any one, consolidate and try the same together.

(b) The court shall not disturb the findings of the board unless the findings of the board in any case are manifestly disproportionate to the assessments imposed upon other property in the district created under this act. The trial shall be to the court and the matter shall take precedence before the court and shall be taken up as promptly as may be after the appeal is filed. If no appeal is taken from the findings of the board within the time prescribed in this section, or after the finding of the court in case an appeal is taken from the findings of the board, then the assessment shall be final and conclusive evidence that said assessments have been made in proportion to the benefits conferred upon the property in said district by reason of the improvements to be constructed under the provisions of this act and such assessments shall constitute a perpetual lien upon such property so assessed until paid.

**41-3-777. Duties of city and county taxing officials.**

It shall be the duty of the officer or body having authority to levy taxes within each county, city and county, or town, to levy the taxes and special assessments as provided in this act and it shall be the duty of all county, or city and county officials, charged with the duty of collecting taxes, to collect such taxes and special assessments in the time, form and manner and with like interest and penalties as county or city and county taxes are collected and when collected to pay the same to the district, ordering its levy and/or collection, and the payment of such collections shall be made through the secretary of the district and paid into the depository thereof to the credit of the district. All taxes and assessments made under this act together with all interest thereon and penalties for default in payment thereof, and all costs in collection of the same, shall, until paid, constitute a perpetual lien on a parity with the tax lien of general, state, county, city, town or school taxes and no sale of such property to enforce any general, state, county, city, town or school tax or other liens shall extinguish the perpetual lien of such taxes and assessments.

**41-3-778. Exemptions.**

All property of whatever kind and nature owned by the state and by towns, cities, school districts, drainage districts, irrigation districts, park districts, water districts, or any other governmental agency or agencies within the said district, shall be exempt from assessment and levy by the board as provided in this act for the purposes herein contained.

**41-3-779. Nonpayment.**

If the taxes and/or assessments levied are not paid as herein provided, then the real property shall be sold at the regular tax sale for the payment of such taxes and assessments, interest and penalties, in the manner provided by the statutes of the state of Wyoming for selling property for nonpayment of general taxes. If there are no bids at said tax sale for the property so offered under class A and class B, said property shall be struck off to the county, and the county shall account to the district in the same manner as provided by law for accounting for school, town and city taxes. And if there are no bids for the property so offered under class C and class D, said property shall be struck off to the district and the tax certificate shall be issued in the name of the district and the board shall have the same power with reference to sale of said tax certificate, as now vested in county commissioners and county treasurer when property is struck off to the counties.

ARTICLE 8 - FLOOD CONTROL DISTRICTS

**41-3-801. Petition for establishment; notice of election; qualifications of voters; conduct of election.**

A flood control district may be established under the procedures for petitioning, hearing and election of special districts, and subsequent elections shall be held, as set forth in the Special District Elections Act of 1994. The petition and notice of publication shall describe by metes and bounds, following as nearly as possible established school district boundaries, the lands to be included in said district.

**41-3-802. Election of board of directors; number; term; quorum; bond; powers and duties generally; election of officers.**

(a) If the formation of the district is approved the board of county commissioners shall enter a finding to that effect upon its records after which the district shall be considered to be established and shall be empowered through its governing board of directors to acquire personal property and equipment for control purposes by gift, devise, bequest, donation, or purchase and to enter into contracts for the acquisition by purchase or lease, or otherwise, of personal property and equipment; to convey, lease and otherwise dispose of its property for flood control purposes and to establish sinking funds for the replacement of worn out or obsolete equipment; and upon the vote of a majority of the voters of the district voting

at an election held as provided by W.S. 22-21-101 through 22-21-112, the district shall be empowered to issue bonds for the purpose of purchasing equipment and supplies and for the operational expense of the district.

(b) A district established under this act shall acquire and hold property in the name of "... Flood Control District of ... County", state of Wyoming, and the name and a record thereof shall be entered upon the board of county commissioners' records of said county of the establishment of said district, such name to be selected by the board of directors of the district, and said district as established shall have power to sue and be sued by such name.

(c) The election of officers shall be held at the same time as the election for formation of the district. At the election a board of six (6) directors shall be elected by written ballot, who shall serve without compensation to govern the affairs of the district until the first subsequent director election pursuant to W.S. 22-29-112. At that election two (2) members of the board shall be elected for one (1) year, two (2) for two (2) years, and two (2) for three (3) years, so that each succeeding year the term of two (2) members will expire and two (2) members will be elected for a three (3) year term. Each year the board shall elect one (1) of its members secretary-treasurer. Before the secretary-treasurer enters on the discharge of his duties, he shall execute to the state of Wyoming, a bond with an approved corporate surety or three (3) or more sufficient sureties, to be approved by the district board of directors and in such penal sum as they may direct, which bond with the approval of the board endorsed thereon by their president, shall be filed in the office of the county clerk. It is further directed that four (4) members of this board shall constitute a quorum and that no business shall transpire without a quorum in attendance. Any expenditure of funds shall be made only by signed vouchers bearing the signatures of both president and secretary-treasurer.

(d) At least thirty (30) days prior to the time for annual levy of general taxes by the board of county commissioners of the county wherein any such district is situated, the board of directors of such district shall certify to the board of county commissioners the amount of special mill levy, provided for in W.S. 41-3-803, which said district board considers necessary for district operations during the following year.

**41-3-803. Special tax authorized; power of board to enter into cooperative agreements; authority to make rules and hire employees.**

(a) The board of county commissioners of the county wherein each district is situated shall, at the time of the annual levy of general taxes, levy an additional special tax upon the real property in the amount certified to it by the district board of directors under W.S. 41-3-802, but not to exceed twelve (12) mills on each dollar of assessed valuation on all real property in the respective districts for the equipping and operational expenses of such district and for the payment of the bonded indebtedness of the same. The district board may receive voluntary donations and appropriations of money from any other source, and such donation hereinafter provided, by the county treasurer upon request of the district board. Nothing in this act shall be construed to prohibit boards of county commissioners from appropriating funds, paying any money or cooperating with any district so established under this act for the purpose of controlling or eradicating floods and all aforementioned moneys shall be turned over to the county treasurer to be kept in a fund designated as "... Flood Control District of ... County Fund". Authority for such appropriations, payments or cooperation by boards of county commissioners is hereby authorized.

(b) Districts created under this act are authorized to enter into cooperative agreements with any federal, state, local, or private agency for the control and eradication of floods on highways, rights-of-way, rivers, streams, canals or ditches. Flood control district boards are hereby authorized and empowered to make and adopt rules and regulations necessary for carrying out the purposes and provisions of this act and to enforce such rules and regulations and shall file those rules with the county clerk for each county in which the district is located. The boards are hereby empowered to appoint employees and assistants as may be necessary and to fix their compensation.

ARTICLE 9 - UNDERGROUND WATER

**41-3-901. Definitions.**

(a) As used in this act, unless the context plainly otherwise requires:

(i) "Person" means a natural person, partnership, association, corporation, municipality, irrigation district, the state of Wyoming, any agency or political subdivision thereof, and the United States or any agency thereof;

(ii) "Underground water" means any water, including hot water and geothermal steam, under the surface of the land or the bed of any stream, lake, reservoir, or other body of surface water, including water that has been exposed to the surface by an excavation such as a pit;

(iii) "Aquifer" means any underground geological structure or formation having boundaries that may be ascertained or reasonably inferred, in which water stands, flows or percolates;

(iv) "Well" means any artificial opening or excavation in the ground, however made, by which underground water is sought or through which it flows under natural pressure or is artificially withdrawn, and a series of wells developed as a unit and pumped collectively by a single pumping unit shall be considered as one (1) well;

(v) "Construction" of a well includes boring, drilling, jetting, digging or excavating, and installing casing, pump and other devices for withdrawing or facilitating the withdrawal of underground water, or measuring the depth to the water table or the flow of the well;

(vi) "Pollution" of underground water means any impairment of the natural quality of such water, however caused, including impairment by salines, minerals, industrial wastes, domestic wastes or sewage, whether indrafted directly or through infiltration into the underground water supply;

(vii) "Additional supply" means underground water for irrigation use which is appurtenant to lands that have a direct flow supply of surface water or have an original supply from another underground water source. The limit of use of additional supply is beneficial use;

(viii) "Hydrothermal system" means a groundwater system, including cold water recharge and transmission and warm and hot water discharge;



(ix) "Hydrothermal feature" means a surface manifestation of a hydrothermal system, including, but not limited to, hot springs, geysers, mud pots and fumaroles.

**41-3-902. Spring waters; perfection of right to use; limitation.**

All springs and spring waters where the yield does not exceed twenty-five (25) gallons per minute and where the use is for domestic or stock purposes only, shall be considered as groundwater. Perfection of the right to use spring water up to twenty-five (25) gallons per minute for domestic or stock use shall be made in accordance with the laws pertaining to groundwater.

**41-3-903. By-product water; definition.**

By-product water is water which has not been put to prior beneficial use, and which is a by-product of some nonwater-related economic activity and has been developed only as a result of such activity. By-product water includes, but is not limited to, water resulting from the operation of oil well separator systems or mining activities such as dewatering of mines.

**41-3-904. By-product water; appropriation; conditions and limitation.**

(a) Any person intending to appropriate by-product water for beneficial use shall file an application with the state engineer on the forms and in the manner prescribed for groundwater applications. By-product water shall be considered as being in the same class as groundwater for the purposes of administration and control. An application may be filed only if both the following conditions exist:

(i) The by-product water is intercepted while it is readily identifiable and before it has commingled with the waters of any live stream, lake, reservoir or other surface watercourse, or part of any groundwater aquifer; and

(ii) The developer of the water is the applicant, or an agreement is filed in the office of the state engineer wherein the developer of the water gives the applicant permission to use the water as proposed in the application. The agreement must be signed by the developer of the water, and may contain provisions for reservation of the water to the use of

the developer-grantor, and if so stipulated, the reservation can be superior in right and title to any use by the applicant-grantee.

(b) In all other cases, an application to appropriate by-product water shall be governed by the laws pertaining to surface water, and by-product water shall be considered as part of the surface supply, subject to use by existing priority rights.

**41-3-905. Application; generally; registration of vested rights; permit to construct well; registration of formerly exempted wells.**

Nothing herein contained shall be construed so as to interfere with the right of any person to use water from any existing well where such water is economically and beneficially used for irrigation or for municipal, railway, industrial or other beneficial use, to the extent only that such continued right does not injuriously affect existing adjudicated surface rights not heretofore abandoned, and such use is hereby declared to constitute a vested right, provided, that the owner of any such right acquired before April 1, 1947, must have filed with the state engineer the statement required by W.S. 41-3-901 through 41-3-938, on or before December 31, 1957, and the owner of any right acquired on or after April 1, 1947, must have registered his well with the state engineer as required by W.S. 41-3-901 through 41-3-938, prior to the effective date of this act, and provided further, that the right to take underground water from any well exempted from the provisions of W.S. 41-3-901 through 41-3-938, that is not exempted from the provisions of this act, and that shall be registered with the state engineer prior to the effective date of this act, shall also constitute a vested right in the use of water with priority as of the time of completion of the well. No well shall be constructed after the effective date of this act unless a permit has been obtained from the state engineer. All existing stock and domestic wells formerly exempted may be registered with the state engineer prior to December 31, 1972. The state engineer shall make appropriate forms for such registration available with each county clerk and at such other places as he deems feasible.

**41-3-906. Application; rights subject to preferences; rights of municipal corporations.**

Rights to underground water shall be subject to the same preferences as provided by law for surface waters, and rights

not preferred may be condemned and changed to a preferred use in the manner provided by law for surface waters. Nothing herein contained shall be construed to impair the rights of municipal corporations to acquire any underground water or underground water rights for a necessary public purpose by eminent domain or condemnation proceedings.

**41-3-907. Application; preferred right of appropriations for stock or domestic use.**

Appropriations of underground water for stock or domestic use, the latter being defined as household use and the watering of lawns and gardens for noncommercial family use where the area to be irrigated does not exceed one (1) acre, where the yield or flow does not exceed .056 cubic feet per second or twenty-five (25) gallons per minute, shall have a preferred right over rights for all other uses, regardless of their dates of priority, subject to the provisions of W.S. 41-3-911, as amended, if an appropriation is for two (2) or more uses, and includes one (1) of the above preferred uses, the preferred use shall be limited to .056 cubic feet per second or twenty-five (25) gallons per minute, and the application shall specify one (1) acre upon which such preferred uses shall be made. Such preferred use shall not include municipal use by any person of water appropriated by a municipality or company, or any instance where water is purchased or held out for sale.

**41-3-908. Division advisory committee; appointment; removal; duties; expense allowances.**

(a) In each of the water divisions of the state, as defined in W.S. 41-3-501, there shall be established a division advisory committee on underground water. Each committee shall consist of three (3) persons, appointed by the governor, who shall in making such appointments, select persons who, in his opinion, will adequately represent the landowners and water users of the division, the geographical areas of the division and the public interest. The first committee in each division shall consist of one (1) member appointed for a term of two (2) years, one (1) member appointed for a term of four (4) years, and one (1) member appointed for a term of six (6) years. Their successors shall each be appointed for a term of six (6) years. The governor may remove any member of any advisory committee as provided in W.S. 9-1-202.

(b) The duties of the division advisory committee on underground water are:

(i) To call and supervise the election of the members of control area advisory boards;

(ii) To assist and advise the state engineer and the board regarding policies that affect the underground water of this state, such assistance and advice to consider both the interests of underground water users and the interests of the general public;

(iii) To provide advice and assistance to the state engineer and superintendents in arriving at solutions to underground water problems as they arise within the water division;

(iv) To provide advice and assistance to control area advisory boards, particularly in the development of control measures which are recommended to the state engineer for adoption;

(v) To provide underground water users within the division with information relative to the policies and procedures of the state engineer and board which affect the use of underground water.

(c) The members of each of the division advisory committees shall receive the same per diem, mileage and expense allowances while attending and traveling to and from control area board meetings and other official business of the committee in the same manner and amount as employees of the state.

**41-3-909. State engineer; powers generally.**

(a) In the administration and enforcement of this act and in the effectuation of the policy of the state to conserve its underground water resources, the state engineer is authorized and empowered on advice and consent of the board of control:

(i) To prescribe such rules and regulations as may be necessary or desirable to enable him to efficiently administer this act;

(ii) To require such reports from well drillers as may be necessary or desirable;

(iii) To require such annual reports from underground water users as may be necessary or desirable;

(iv) To make such investigations as may be necessary or desirable, and to cooperate in such investigations with agencies of the United States, agencies of this state or any other state, political subdivision of this state, any public or private corporation, or any association or individual;

(v) To make regulations concerning the spacing, distribution and location of wells in critical areas;

(vi) To establish standards for the construction of wells, to work with the division advisory board, governmental subdivisions, and water user organizations to encourage the adoption of local standards of beneficial use and methods of conveyance and application of water designed to conserve and prevent waste of supplies;

(vii) To require, whenever practical, all flowing wells to be so capped or equipped that the flow of water can be stopped when the wells are not in use, and to require both flowing and nonflowing wells to be so constructed and maintained as to prevent the waste of underground water either above or below the land surface;

(viii) To require the abatement of any condition, or the sealing of any well, responsible for the admission of polluting materials into an underground water supply;

(ix) To delegate any of the duties and powers imposed or granted by this act, to the deputy state engineer or to an assistant state engineer, or other qualified member of his staff;

(x) To bring suit to enjoin the construction of illegal wells or the withdrawal or use of water therefrom, or to enforce any of the provisions of this act or of orders issued thereunder, and to intervene in any action or proceeding when it appears that the determination of such action or proceeding may result in the depletion of underground water resources of the state contrary to the policy expressed in this act.

**41-3-910. State engineer; power to determine area and boundaries of districts.**

The state engineer is authorized and directed to determine the area and boundaries of districts overlying the various aquifers yielding underground waters in this state and to assign to each

district a distinctive name or number. He may establish subdistricts when parts of an aquifer require or may require separate regulations from the rest. He may alter the boundaries of such districts and subdistricts at any time. He may establish different districts for different aquifers that overlie each other in whole or in part.

**41-3-911. Authority to order interfering appropriator to cease withdrawals of water; hearing complaints by appropriators.**

(a) Whenever a well withdrawing water for beneficial purposes shall interfere unreasonably with an adequate well developed solely for domestic or stock uses as defined in W.S. 41-3-907, whether in a control area or not, the state engineer may, on complaint of the operator of the stock or domestic well, order the interfering appropriator to cease or reduce withdrawals of underground water, unless such appropriator shall furnish at his own expense, sufficient water at the former place of use to meet the need for domestic or stock use. In case of interference between two (2) wells utilizing water for stock or domestic use as defined in W.S. 41-3-907, the appropriation with the earliest priority shall have the better right.

(b) Any appropriator of either surface or underground water may file a written complaint alleging interference with his water right by a junior right. Complaints are to be filed with the state engineer and are to be accompanied by a fee of one hundred dollars (\$100.00) to help defray costs of investigation. This section is not applicable to interference between two (2) surface water rights. Upon receiving the complaint and fee, the state engineer shall undertake an investigation to determine if the alleged interference does exist. Following the investigation, the state engineer shall issue a report to all interested parties stating his findings. The report may suggest various means of stopping, rectifying or ameliorating the interference or damage caused thereby.

(c) Any interested appropriator who is dissatisfied with the results of the foregoing procedure may proceed under the applicable provisions of the Wyoming Administrative Procedure Act. If a hearing is to be held, it shall be held before the appropriate water division superintendent. The superintendent shall report to the board of control at its next meeting. The board shall issue its order to include findings of fact and conclusions of law.

**41-3-912. Control areas; board member districts; designation; redesignation; duty of state engineer; hearings.**

(a) "Control area" means any underground water district or subdistrict that has been so designated by the board of control. The board of control may designate a control area for the following reasons:

(i) The use of underground water is approaching a use equal to the current recharge rate;

(ii) Ground water levels are declining or have declined excessively;

(iii) Conflicts between users are occurring or are foreseeable;

(iv) The waste of water is occurring or may occur; or

(v) Other conditions exist or may arise that require regulation for the protection of the public interest.

(b) Whenever the engineer has information leading him to believe that any underground water district or subdistrict should become a control area, he shall immediately report in writing to the board of control all information known by him with reference to said area.

(c) The board of control shall fix a time and place to consider the information supplied by the state engineer and hear any other evidence presented at the time of the hearing. At the conclusion of the hearing, the board of control shall issue an order declaring that the area in question is or is not to be a control area. If the board determines that a control area needs to be created, it shall define the area geographically and stratigraphically. The board of control may designate five (5) board member districts for the purpose of the election of the control area advisory board.

(d) On the petition of five (5) persons owning or entitled by public land filing to the possession of land within the control area, or upon the recommendation of the state engineer, the board of control may consider the redesignation of the geographic or stratigraphic boundaries of a control area. If redesignation is considered, the board shall fix a time and place to hear the information supplied by the petitioners, the state engineer or other interested persons. Within ninety (90)

days of the hearing, the board shall issue its order. If a control area is redesignated geographically, the board shall determine whether to divide the area into board member districts pursuant to subsection (c) of this section.

(e) On the petition of five (5) persons owning or entitled by public land filing to the possession of land within the control area, the control area advisory board shall consider the designation or redesignation of board member districts. If the control area advisory board determines that board member districts should be designated or redesignated, it shall submit its recommendation to the board of control for approval.

(f) The action of the board of control in denying at any time a petition or recommendation for redesignation is final and not subject to review.

(g) Whenever a control area has been designated or redesignated the state engineer may, without hearings or other proceedings, refuse to grant permits for the drilling of any wells within the control area.

**41-3-913. Control areas; election of control area advisory board; mileage and expense allowances.**

(a) When an underground water district or subdistrict is declared to be a control area, when the board of control geographically redesignates a control area or when the board of control approves the recommendation of a control area advisory board that board member districts be designated or redesignated, a control area advisory board shall be created in the manner provided herein. The control area advisory board shall consist of five (5) adults who own land or underground water rights, or who are the officers, officials or members of the board of a corporation which owns land or underground water rights within the control area. The board shall represent the entire control area.

(b) The state engineer shall notify the division advisory committee of the division in which the control area is located, of the designation or redesignation of the control area. Within twenty (20) days of notification, the division advisory committee shall select a nominating committee of not less than three (3) persons entitled to vote in the election of the control area advisory board. The nominating committee shall nominate not less than five (5) persons for election to the control area advisory board or, if board member districts have



been established, it shall nominate at least one (1) person for election in each district. Within thirty (30) days of its selection, the nominating committee shall report its nominations to the division advisory committee. The division advisory committee shall call an election of members of the control area advisory board, to be held within forty (40) days from the date of the report. The call of the election shall state the time, the place within the control area, the purpose of the election, and the names of persons nominated for election. It shall be published for two (2) consecutive weeks at least twenty (20) days prior to the election in a newspaper of general circulation in each county in which a part of the control area or board member district lies.

(c) Every person or corporation owning or, by virtue of public land filing, entitled to possession of land which is a part of the control area is entitled to cast for each member to be elected one (1) vote for each acre of such land as assessed upon the last annual assessment roll of the county in which the land is located, or as shown by the public land filing. A person owning a tract of land of less than one (1) acre is entitled to cast one (1) vote for each member to be elected. The grantee or assignee of the water in or under any described land is entitled to vote, as prescribed herein, in the place of the person or corporation owning or entitled to the possession of the land. However, if board member districts are established, only the votes which derive from within each district shall be cast in the election of the district board member.

(d) At the hour and place of the election the division advisory committee shall call the roll of those entitled to vote, and the number of votes each is entitled to. They shall make a record of the qualified voters present, receive all proxies and prescribe the method of canvassing the votes. All proxies shall be in writing and signed by the person entitled to vote. The five (5) persons receiving the highest number of votes, or the person receiving the highest number of votes within each board member district, shall be declared to be elected, regardless of whether or not they have received a majority of votes cast. No election shall be invalid because a majority of the acreage of the control area or board member district was not represented at the election. Two (2) of the members so elected shall serve until one (1) year from the third Tuesday in July of the year following the election, and three (3) of the members so elected shall serve until two (2) years following such date. The division advisory committee shall decide by lot which members shall serve for these terms.

(e) During the first fifteen (15) days of July next preceding the expiration of the term of any member an election shall be held to elect members of the control area advisory board. The control area advisory board shall call and conduct the election in the same manner prescribed for the first election. Members elected at any election after the first election shall serve for a term of four (4) years. Whenever the office of any member becomes vacant for any cause, a person to fill the vacancy of the unexpired term shall be appointed by the remaining members. The costs of elections shall be paid by the state engineer's office.

(f) Each member of the control area advisory board shall receive the same per diem, mileage and expense allowances while attending and traveling to and from meetings of the board and other official business of the board in the same manner and amount as employees of the state. No person shall represent more than one (1) board member district during any term of office, and no person shall serve on a control area advisory board for more than two (2) consecutive terms.

**41-3-914. Adjudication of waters within control area.**

(a) After the boundaries of any control area have been determined by the board, the appropriate superintendent shall proceed with the adjudication of unadjudicated wells within the control area. After completing the adjudication, the superintendent shall hold evidence of the adjudication open for inspection by the public at a time and place to be fixed by the superintendent, and notice thereof shall be published in two (2) issues of a newspaper of general circulation in the county or counties where the control area is situated.

(b) If any well owner, lessee or user within a control area refuses to adjudicate a well, or supply the necessary information to permit adjudication of any well, the superintendent may tag and lock the pump or well to prevent use of water therefrom. The penalty for interfering with the tag or lock on a well is as provided in W.S. 41-3-616. The use of water from a well so tagged and locked is prima facie evidence that the well owner, lessee or user has violated the provisions of this section.

(c) The taking of proof, filing objections or contests, giving notices, conducting of hearings, making adjudications of water rights, determining of priorities as between

appropriators, issuing of certificate of appropriation, and taking appeals shall, insofar as applicable, and not in conflict with the provisions of this act be governed by the provisions of W.S. 41-4-101 through 41-4-207 and 41-4-211 through 41-4-517.

(d) At the first regular meeting of the board after completion of such proof and advertisement, the board shall cause to be entered in the records of its office an order showing the priorities of right to the use of water in the control area, the amount of appropriation of the parties claiming water therefrom, the character and kind of use for which the appropriation is made, and the places or points of use. The secretary of the board shall issue to each person represented in the determination, a certificate of appropriation signed by the president of the board and attested under seal of the secretary of the board which shall state the name and post-office address of the appropriator, the priority date of the appropriation, the amount of water appropriated, the use to which the water has been applied and, if the appropriation is for irrigation, a description of the legal subdivision of land to which the water is applied, or the place of use if the appropriation is not being used for irrigation. The certificate shall be transmitted by certified mail to the county clerk of the county in which the appropriation has been made and the county clerk shall, upon receipt of the proper fee, record the same and thereupon immediately transmit the certificate to the appropriator. At the time of the submission of final proof of appropriation before the state engineer or superintendent of a water division, a fee not to exceed one hundred dollars (\$100.00) shall be collected, which shall be used for advertising the proof of appropriation and recording the certificate. The priority of appropriation shall be the determining factor in adjudicating underground water; the person first making the appropriation being first entitled to the use of the underground water, except as modified by W.S. 41-3-933.

**41-3-915. Control areas; hearing to determine adequacy of water for all appropriators; corrective controls generally; agreements in lieu of controls.**

(a) After designation of an area as a control area by the board, the state engineer may temporarily adopt any of the corrective controls provided for by this section, where it appears that immediate regulation is required. After the well adjudication procedure has been completed, the state engineer may, on his own motion, and shall on the petition of twenty (20) appropriators or of one-tenth of the appropriators of water from

a control area, cause a hearing to be held before the state engineer and the control area advisory board to determine whether the underground water in the area is adequate for the needs of all appropriators of underground water in such area. Public notice of the time and place of the hearing shall be published once in a newspaper circulated in the area not more than thirty (30) days before the time set for the meeting. If the state engineer finds after the hearing, and after receiving the advice of the control area advisory board, that the underground water in the control area is insufficient for all of the appropriators, he may by order adopt one (1) or more of the following corrective controls:

(i) He may close the controlled area to any further appropriation of underground water, in which event he shall thereafter refuse to grant any applications for a permit to appropriate underground water in that area, provided, that such area may be reopened to appropriations at any time the state engineer shall find on the basis of additional evidence that there is unappropriated water in the area, in which event the state engineer shall reconsider all applications for permits refused on the grounds of the order closing the area;

(ii) He may determine the permissible total withdrawal of underground water in the control area for each day, month or year, and, insofar as may be reasonably done, he shall apportion such permissible total withdrawal among the appropriators holding valid rights to the underground water in the control area in accordance with the relative dates of priority of such rights;

(iii) If he finds that withdrawals by junior appropriators have a material and adverse effect upon the supply available for and needed by senior appropriators, he may order such junior appropriators to cease or reduce withdrawals forthwith;

(iv) If he finds that cessation or reduction of withdrawals by junior appropriators will not result in proportionate benefits to senior appropriators, he may require and specify a system of rotation of use of underground water in the controlled area;

(v) He may institute well spacing requirements if permits are granted to develop new wells.

(b) The state engineer shall cause a copy of any such order to be served upon each person affected thereby in the manner provided for service of process in civil actions.

(c) Appropriators of underground water from a control area may agree to any method or scheme of control of withdrawals, well spacing, apportionment, rotation or proration of the common supply of underground water. The state engineer shall encourage and promote such agreements and supply the parties with information and advice. When the state engineer, with the advice of the control area advisory board, shall find that any such agreement, executed in writing and filed in his office, is consistent with the intent, purposes and requirements of this act, and would not be detrimental to the public interest or to the rights of other persons not parties to the agreement, he shall approve the agreement, and thereafter such agreement shall control, until terminated as hereinafter provided, in lieu of any order issued pursuant to subsection (a) of this section.

(d) Any agreement approved by the state engineer may be terminated by the terms of the agreement, by the consent of the parties, or by order of the state engineer if he finds, after investigation and a public hearing before the control area advisory board, held at least two (2) weeks after one (1) published notice in a newspaper of general circulation in each county in which a part of the control area lies, that the agreement is not being substantially complied with by the parties, or that changed conditions have made the agreement inequitable, or that the continuance of the agreement is no longer consistent with the intent, purpose and requirements of this act, or is a detriment to the public interest or to the rights of other persons not parties to the agreement.

**41-3-916. Priority of rights when 1 source of supply.**

Where underground waters in different aquifers are so interconnected as to constitute in fact one source of supply, or where underground waters and the waters of surface streams are so interconnected as to constitute in fact one source of supply, priorities of rights to the use of all such interconnected waters shall be correlated and such single schedule of priorities shall relate to the whole common water supply. The state engineer may by order adopt any of the corrective controls specified in W.S. 41-3-915.

**41-3-917. Change of location of well without loss of priority; appeal from action of state board of control or state engineer.**

(a) An appropriator of underground water may change the location of his well to a point within the same aquifer in the vicinity of the original location, without loss of priority, by securing approval of the state board of control if the groundwater right has been adjudicated or if the groundwater right has not been adjudicated but the water has been applied to beneficial use. In cases involving domestic or stock water wells which are not adjudicated but the water has been applied to beneficial use, the state engineer may approve a change of location. If the right is not adjudicated and the water has not been applied to beneficial use, approval for the change in location may be granted by the state engineer. No petition shall be granted if the rights of other appropriators shall be injuriously affected thereby. No petition granted shall increase the total amount of the appropriation of water set forth in the original permit. The state board of control and the state engineer may make such regulations as may be necessary to carry out the provisions of this section. The state engineer may approve a change of well location even if water has not been applied to a beneficial use.

(b) A decision by the state engineer granting or denying a petition to change the location of an unadjudicated right under this section may be appealed to the board of control. An appeal may be taken to the district court pursuant to W.S. 16-3-101 through 16-3-115 from an order of the board of control:

(i) Affirming or reversing a decision of the state engineer appealed to the board under this subsection; or

(ii) Granting or denying a petition to change the location of an adjudicated right under this section.

**41-3-918. Appeals.**

Any person aggrieved by an order of the board or of the state engineer concerning underground water, or by their or his failure to act, may appeal in the manner provided by W.S. 41-4-517, and the Wyoming Administrative Procedure Act.

**41-3-919. Prohibited acts; penalty for violation.**

Any person who withdraws underground water or who fails to stop or reduce the flow of underground water in violation of any order of the state engineer made pursuant to this act, or any person who does not have a permit, certificate or vested right to appropriate underground water who shall withdraw underground water from any well other than a well for stock or domestic purposes as defined in W.S. 41-3-907, is guilty of a misdemeanor and upon conviction shall be punished under W.S. 41-3-616.

**41-3-930. Application; who required to file; filing; contents; use of water from existing well; statement of claim.**

(a) Any person who intends to acquire the right to beneficial use of any underground water in the state of Wyoming, shall, before commencing construction of any well or other means of obtaining underground water or performing any work in connection with construction or proposed appropriation of underground water or any manner utilizing the water for beneficial purposes, file with the state engineer an application for a permit to make the appropriation and shall not proceed with any construction or work until a permit is granted by the state engineer, provided, that whenever a bore hole constructed for mineral exploration, oil and gas exploration, stratigraphic information or any other purpose not related to groundwater development shall be found to be suitable for the withdrawal of underground water, application shall be filed with and approved by the state engineer before water from the bore hole is beneficially utilized. The state engineer may authorize the construction and use of multiple wells for industrial purposes for in situ mining, dewatering or use for pollution control or remediation with a single permit if the groundwater to be developed by the proposed appropriation is to be used for a specific purpose within the department of environmental quality permitted boundary and served from a single source of supply. The application shall contain the name and post-office address of applicant or applicants, a detailed description of the proposed use, the location by legal subdivision of the proposed well or other means of obtaining underground water, the estimated depth of the proposed well, the quantity of water proposed to be withdrawn and beneficially utilized in gallons per minute and acre-feet per calendar year, the location by legal subdivision of the area or point of use shall be provided, and such other information as the state engineer may require.

(b) In addition to providing the information required in subsection (a) of this section, applications for permits to appropriate groundwater, geothermal or otherwise, located within

fifteen (15) miles of the boundary of Yellowstone National Park shall be accompanied by a written report prepared by a qualified professional and containing such geologic, hydrologic and other information necessary to show that the proposed development will not impair or produce an injurious effect on the hydrothermal system or hydrothermal features located within the boundaries of Yellowstone National Park. The state engineer shall consider all the information provided by the applicant and any other information available to him or necessary to make an informed decision before acting on the application. If upon review of the submitted information or other records available to him, the state engineer determines that the applicant has not shown that the proposed development will not impair or produce an injurious effect upon the hydrothermal features located within the boundaries of Yellowstone National Park, the state engineer shall deny the application for permit. Wells for domestic and stock purposes as defined in W.S. 41-3-907 will be exempt from the requirements of this section.

(c) Nothing in this section shall be construed so as to interfere with the right of any person to use water from any existing well constructed prior to May 24, 1969 where the water is economically and beneficially used for stock or domestic use as provided by W.S. 41-3-907, and the uses from the well are hereby declared to constitute a vested right, provided, that the owner of the water right must have registered the right prior to December 31, 1972. If the water right was not registered prior to December 31, 1972 an application shall be filed in accordance with the provisions of this section to obtain a water right and the applicant shall receive, as the water right priority date, the date the application is received by the state engineer.

**41-3-931. Application; when granted generally; denial subject to review; defects and corrections generally; cancellation.**

An application for a permit for a well in any areas not designated as a critical area shall be granted as a matter of course, if the proposed use is beneficial and, if the state engineer finds that the proposed means of diversion and construction are adequate. If the state engineer finds that to grant the application as a matter of course, would not be in public's water interest, then he may deny the application subject to review at the next meeting of the state board of control. If the state engineer shall find that the proposed means of diversion or construction are inadequate, or if the application is otherwise defective, he may return the



application for correction. If such correction is not made within ninety (90) days, the state engineer may cancel the application.

**41-3-932. Public notice of application or petition; hearing before state engineer and control area advisory board; cost.**

(a) Upon the filing of a petition to amend an existing water right or an application to appropriate underground water for any use other than domestic, stockwatering or miscellaneous purposes where the quantity of water to be appropriated is twenty-five (25) gallons of water per minute or less, from an area designated as a control area by the state board of control, the state engineer shall cause to be published, at applicant's expense, in a newspaper of general circulation in the county wherein the proposed well or requested change will be located, for at least once a week for three (3) consecutive weeks, a notice of the filing of the application or requested changes and that objections to the granting thereof may be filed within ten (10) days after the last publication of the notice, on the grounds that there is no unappropriated water in the proposed source of supply or that the granting of the application would be detrimental to the public interest. If objections are filed within the time specified in the notice, the state engineer shall set a date for a hearing on the application or requested changes and the objections thereto and shall notify the applicant or petitioner and the objectors thereof. If the applicant or petitioner questions the standing of the objector, the state engineer shall make written findings of fact on the issue and may overrule the objection on that basis. The hearing shall be before the control area advisory board and the state engineer, and shall be held in an appropriate place within the county in which the proposed well or requested change is to be located. The state engineer, for good cause, may impose costs of the hearing proportionally upon the applicant or petitioner and the objectors. The hearing under this subsection shall be a contested case hearing conducted in conformance with and subject to the provisions of the Wyoming Administrative Procedure Act. A decision by the state engineer granting or denying an application or petition under this subsection may be appealed to the board of control within thirty (30) days of the date of receipt of notice of the decision. Upon appeal and based on the contested case record and upon additional evidence, if any, taken at the direction of the board, the board may affirm, modify or reverse the findings of the state engineer. An appeal from an order of the board of control may be taken to the

district court pursuant to the Wyoming Administrative Procedure Act.

(b) If no objections are filed against the application or petition under subsection (a) of this section but the state engineer is of the opinion that the application or petition may be detrimental to the public interest, or desires to obtain the recommendations of the control area advisory board, he shall set a date for a public hearing on the application or petition and shall notify the applicant or petitioner of the time and place thereof. Not less than fifteen (15) days prior to the hearing the state engineer shall cause notice of the hearing to be published, at the expense of the applicant or petitioner, in at least one (1) newspaper having general circulation in the county in which the proposed well or requested change is to be located. The state engineer shall notify the applicant or petitioner of the time and place of the hearing. The public hearing shall be held before the control area advisory board and the state engineer in an appropriate place in the county in which the proposed well or requested change is to be located. In making any determination required by this section, the state engineer may rely upon records and information on file in his office or in the office of the board of control. In the event a hearing is held he shall make known the records and information upon which he relies at least fifteen (15) days before the hearing. A decision by the state engineer under this subsection may be appealed by the applicant or petitioner to the board of control within thirty (30) days of the date of receipt of notice of the decision. Upon appeal the board of control shall conduct a contested case hearing in accordance with its rules and regulations and the Wyoming Administrative Procedure Act. An appeal from an order of the board of control may be taken to the district court pursuant to the Wyoming Administrative Procedure Act.

(c) The application or petition shall be granted and the permit issued only if the state engineer finds, after receiving the advice of the control area advisory board, that there are unappropriated waters in the proposed source, that the proposed means of diversion or construction is adequate, that the location of the proposed well or other work does not conflict with any well spacing or well distribution regulation, and that the proposed use would not be detrimental to the public interest. If the state engineer finds that the application or petition is incomplete or otherwise defective, he shall return the application or petition for correction. If the correction is

not made within ninety (90) days, the application or petition shall be rejected.

(d) Repealed By Laws 2014, Ch. 90, § 2.

(e) A petition to amend an existing water right which originated with the board of control may be subject to additional action by the board of control. Any petition to amend an existing water right granted by the state engineer pursuant to this section, if that decision is not appealed, shall be returned to the board of control for any additional action that may be required by law.

**41-3-933. Express conditions limiting rights of appropriator; additional conditions.**

It is an express condition of each underground water permit that the right of the appropriator does not include the right to have the water level or artesian pressure at the appropriator's point of diversion maintained at any level or pressure higher than that required for maximum beneficial use of the water in the source of supply. The state engineer may issue any permits subject to such conditions as he may find to be in the public interest.

**41-3-934. Time limits to complete construction; extensions; cancellation generally.**

If the permit is granted, the applicant shall complete the construction and apply the water to beneficial use before the date specified in the conditions of approval, which shall not be more than three (3) years after the date of approval. The state engineer may extend the period or cancel the permit in accordance with the procedures set forth in W.S. 41-4-506.

**41-3-935. Adjudication procedure.**

(a) Any person constructing any well under a permit shall, within thirty (30) days after the completion or abandonment of such work, report to the state engineer the data required relating to such well, on forms furnished by the state engineer. A well shall be considered complete when it is possible to install a pump and pump water. In the case of an artesian well, completion is the time when the drill rig is moved off of the drilling site.

(b) Adjudication of all ground water rights except stock watering and domestic uses of ground water referenced in W.S. 41-3-907 shall proceed upon completion of the work according to the terms of the permit and the recording on forms furnished by the state engineer of such information as is deemed necessary concerning the works, and the filing of a map signed by a Wyoming licensed professional engineer or land surveyor, showing the location of the well and the point or points of use. The state engineer or his authorized representative shall inspect the works, the lands irrigated or other uses being made of the water upon receipt of the map. The adjudication of stock watering and domestic uses of ground water referenced in W.S. 41-3-907 may be initiated by the state engineer or the appropriator of record and will not require the filing of a map signed by a Wyoming licensed professional engineer or land surveyor, showing the location of the well and the points and areas of use or require the inspection by the state engineer or his authorized representative of the works, the lands irrigated or other uses being made of the water unless, in the discretion of the state engineer, such procedures are deemed necessary and appropriate. At this time the board may consider for adjudication the ground water rights upon proof of beneficial use being submitted by the appropriator.

(c) Adjudication shall proceed in the same manner prescribed for the adjudication of surface water appropriations once the state engineer or his authorized representative has reported his findings to the board. A ground water appropriation attaches to the land for irrigation, or for such other purposes or object for which it was acquired.

(d) In the interest of an orderly adjudication procedure for ground water, the state engineer, with the concurrence of the board, may order adjudication of any ground water appropriations in the state. Upon one (1) year notice, any appropriator whose appropriation is to be adjudicated shall furnish the state engineer all of the documents mentioned in subsection (b) of this section. If any appropriator refuses to supply any of this information, the superintendent may tag and lock the well. Any appropriator that interferes with the tag or lock is subject to the same penalty as provided in W.S. 41-3-938. Use of water well so tagged or locked is prima facie evidence of such interference.

**41-3-936. Priority of appropriation.**

The priority of appropriation of underground water obtained prior to April 1, 1947, shall date from time of completion of the well. The priority of appropriation of underground water obtained subsequent to April 1, 1947, and prior to March 1, 1958, shall date from the filing of registration in the state engineer's office. The priority of appropriation of underground water obtained on or subsequent to March 1, 1958, shall date from the filing of the application for permit in the state engineer's office. Priority of appropriation of underground water for stock or domestic purposes, as defined in W.S. 41-3-907, shall date from the time of completion of the well if properly registered with the state engineer prior to December 31, 1972. If registered with the state engineer subsequent to December 31, 1972, the priority shall date from the filing or registration in the state engineer's office.

**41-3-937. Cancellation or suspension of permits or certificates.**

Whenever, after notice to and opportunity to be heard, the state engineer finds that the holder of any permit is willfully violating or has willfully violated any provision of such permit or any provision of this act or of any order issued pursuant to this act, the state engineer may cancel or suspend such permit or impose conditions on the future use thereof to prevent such violation, pursuant to W.S. 41-3-616(c). Whenever, after notice to and opportunity to be heard, the board of control finds that the holder of any certificate of registration or certificate of appropriation is willfully violating or has willfully violated any provision of such certificate or any provision of this act or of any order issued pursuant to this act, the board of control may cancel or suspend such certificate or impose conditions on the future use thereof to prevent such violation, pursuant to W.S. 41-3-616(d).

**41-3-938. Penalty.**

Any person who drills, digs or constructs any works for the securing of underground water without having obtained a permit is guilty of a misdemeanor and upon conviction shall be punished under W.S. 41-3-616.

ARTICLE 10 - INSTREAM FLOWS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Immediately after permits have been applied for under W.S. 41-3-1003(c), the water development commission shall determine the feasibility of providing instream flows for the recommended segments of streams from unappropriated direct flows or from existing storage facilities or from new facilities. The feasibility study shall include a determination of water necessary to maintain or improve existing fisheries for water rights under W.S. 41-3-1001(b) or of water necessary to provide fisheries for water rights under W.S. 41-3-1001(a). The feasibility study shall also include the availability of storage sites, the estimated cost of providing any required storage and such other findings and conclusions as the water development commission deems appropriate. The cost of any consultant and any associated costs that the water development commission determines are necessary to complete a feasibility study under this section shall be borne by the game and fish commission. The water development commission shall consult with the game and fish commission prior to entering into any contract related to a feasibility study under this section.

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Unless present or future injury to the fishery has been shown;

(ii) If the call for regulation is a futile call; or

(iii) If the call for regulation will impair senior water rights.

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

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

**41-3-1010. Litigation costs.**

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

**41-3-1011. Abandonment.**

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

**41-3-1012. Ingress and egress.**

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

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

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

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

Nothing in this act shall be construed to supersede, impair or abrogate the right of the state of Wyoming to fully utilize and appropriate to consumptive beneficial use, those quantities of water allocated to the state of Wyoming by interstate compact or United States supreme court decree.