

CHAPTER 4 - BOARD OF CONTROL; ADJUDICATION OF WATER RIGHTS

ARTICLE 1 - IN GENERAL

41-4-101. Legal standard of measurement.

A cubic foot of water per second of time shall be the legal standard for the measurement of water in this state, both for the purpose of determining the flow of water in natural streams, and for the purpose of distributing water therefrom.

41-4-102. Copies of records as evidence.

Copies of papers, books, records and maps, on file and deposited by virtue of any law, in the office of the state engineer or state board of control, and certified by the state engineer or secretary of the state board of control, shall be competent evidence in the courts and have the same force and effect as the originals would if produced.

41-4-103. Cooperation and agreements with Utah; appropriations to Montana.

The state engineer is hereby authorized and empowered to receive and grant applications to appropriate water from streams in Wyoming where such water is to be conveyed and used for beneficial purposes within the state of Utah, and the board of control is hereby authorized and empowered to issue certificates of appropriation under such permits as may be granted by the state engineer of Wyoming upon certification from the state engineer of Utah that the waters appropriated have been put to beneficial uses set forth in the permits. The state engineer and the board of control of Wyoming are also authorized and empowered to cooperate with the state engineer of Utah in the determination, supervision, regulation and control of all water and water rights on all interstate streams; and to these ends the state engineer and board of control of Wyoming, by and with the consent of the governor, may enter into the necessary agreements with the state engineer of Utah to carry out the purposes of this section; provided, that such agreements are not in conflict with the provisions of the irrigation laws now in force in this state; provided, further, that such authority shall not be exercised by the state engineer or board of control until after the state of Utah has passed a law granting its state engineer like authority to that granted to the state engineer and board of control of Wyoming by this section. The

state engineer is further authorized and empowered to receive and grant applications to appropriate water from the Little Missouri River in Wyoming where such water is to be conveyed and used for beneficial purposes within the state of Montana, and the board of control is hereby authorized and empowered to issue certificates of appropriation under such permits as may be granted by the state engineer of the state of Wyoming, upon certification from the state of Montana that the waters appropriated have been put to beneficial uses set forth in the permit. Provided that the granting of any such permit for application to beneficial uses in the state of Montana shall in no manner impair or injure any existing water rights in the state of Wyoming.

41-4-104. Adjudication of rights to water for use in adjoining state.

After issuance of the permit under legislative authority and completion of the work according to the terms of the permit, the board of control may adjudicate said water rights upon proof of beneficial use as provided by W.S. 41-4-511.

41-4-105. Adjudication of rights to water for use in adjoining state; permits issued before February 25, 1939.

Where ditches or reservoirs have been built under permits issued by the state of Wyoming prior to February 25, 1939, and where water has been diverted by, or stored in such works and applied to beneficial use thereunder in an adjoining state, and where such state as a matter of policy grants reciprocal rights to divert and store water in such state for use in Wyoming, the state board of control shall by this act, be authorized to proceed with the adjudication of said water rights for use of the water in the state in which the same has been applied to a beneficial use and issue certificates of appropriation therefor, as provided by the statutes of Wyoming.

ARTICLE 2 - STATE BOARD OF CONTROL

41-4-201. Created; members; location of office; meetings generally; state engineer ex officio president; quorum.

There is hereby constituted a state board of control composed of the state engineer and the superintendents of the four (4) water divisions. The board shall have an office with the state engineer at Cheyenne. The board shall hold regular quarterly meetings each year, the dates to be set by the board. Other

meetings shall be held at the call of the president for the transaction of business as may come before it. Special meetings of the board may be called by the president after a request for a special meeting is made by a party seeking board action which cannot be accommodated at a regular meeting. The party or parties making a request shall make payment to the board of control to cover all costs of travel and per diem expenses incidental to the special meeting. The state engineer is ex officio president of the board, and may vote on all questions coming before it. A majority of all the members of the board constitutes a quorum to transact business.

41-4-202. Ex officio secretary of the board; duties generally.

The ex officio secretary of the state board of control shall be appointed by the board and be an employee of the state engineer. The duties of the secretary shall, under direction of the president of the board, consist of keeping a full, true and complete record of the transactions of the state board of control, and to certify, under seal, all certificates of appropriation made according to law, and to perform other duties as may be required by the board.

41-4-203. Collection of fees generally.

(a) The secretary of the state board of control shall collect in advance reasonable fees not to exceed the following:

(i) One hundred dollars (\$100.00) with each proof of appropriation of water or proof of construction of a reservoir;

(ii) For recording with county clerks any water right instrument or certificate not otherwise specifically provided for, the fees required in accordance with W.S. 18-3-402;

(iii) For making copies of any document recorded or filed in the office of the state board of control, a reasonable fee shall be assessed not to exceed ten dollars (\$10.00) per page.

41-4-204. Collection of fees; disposition generally.

Said secretary shall, out of the fees so collected, remit with each certificate or order of the state board of control, sent to a county clerk for recording, the statutory fee for recording such instrument and pay all costs of advertising each proof of

appropriation of water or proof of construction of reservoir; all other fees so collected to be paid to the state treasurer as by law provided.

41-4-205. State board of control; additional fees.

(a) The secretary of the board of control shall collect fees, not to exceed the following which shall be paid in advance, and turned over to the state treasurer:

(i) For making copies of the records of the board of control or of papers or documents filed with the board, ten dollars (\$10.00) for each page;

(ii) For attaching certificate and seal of the board to each document or documents requested, ten dollars (\$10.00).

41-4-206. Duty at first meeting.

It shall be the duty of said board at its first meeting to make proper arrangements for beginning the determination of priorities of right to the use of the public waters of the state, which determination shall begin on the streams most used for irrigation, and be continued as rapidly as practicable, until all the claims for appropriation now on record shall have been adjudicated.

41-4-207. Copies of judgments involving water rights to be sent to board.

It shall be the duty of the clerk of each district court in the state of Wyoming, upon the rendering of judgment by such court in each and every case wherein is involved in any way, any question affecting the title to any water right, irrigating or water system of any kind whatever, to forthwith prepare, free of charge, a certified copy of such judgment and forward the same to the state board of control.

41-4-208. Tabulations and supplements of adjudicated water rights; publication generally; contents; appropriations.

The president of the state board of control shall upon the taking effect of this act, employ competent assistants to compile and edit revised tabulations of adjudicated water rights in each of the four (4) water divisions of the state at such times as the president of the state board of control deems it necessary, and to compile and edit supplements to these

tabulations every two (2) years, and shall furnish the necessary supplies for such compilation. These tabulations shall contain the information on adjudicated water rights according to precedent heretofore established, with whatever improvement of arrangement of the subject matter is decided advisable by the president of the board.

41-4-209. Tabulations and supplements of adjudicated water rights; adequate copies to be printed; president to direct.

Adequate copies, as determined by the president of the state board of control, of the tabulation of adjudicated water rights and supplements shall be printed under the direction of the president of the state board of control upon a printing contract let by the department of administration and information, general services division, procurement.

41-4-210. Tabulations of adjudicated water rights; distribution and sale of copies; disposition of proceeds.

The state board of control is hereby instructed to deposit with the state library five (5) copies for use therein and to distribute sufficient copies for administrative purposes to the water division superintendents and water commissioners and their assistants. The balance of the copies of the complete tabulations of adjudicated water rights in Water Divisions Nos. 1, 2, 3 and 4 shall be safely kept by the board of control for sale at a reasonable price to be determined by the board. Funds derived from the sale of such volumes shall be paid into the general fund of the state of Wyoming.

41-4-211. Authority to administer oaths; rulemaking authorized.

(a) The members of the board of control shall administer oaths in all cases where it is necessary in the performance of their official duties.

(b) The board of control may adopt reasonable rules and regulations to carry out the duties imposed by law on the board of control. The rules and regulations may specify that the applicant shall pay the cost of advertising.

ARTICLE 3 - ADJUDICATION

41-4-301. Streams to be first adjudicated.

The method of determining the priority and amounts of appropriation to be as follows: the board of control shall decide at their first meeting, the streams to be first adjudicated, and shall fix a time for the beginning of taking of testimony, and the making of such examination as will enable them to determine the rights of the various claimants.

41-4-302. Notice; by publication; contents; taking of testimony; adjournment of hearings generally.

The said board shall prepare a notice, setting forth the date when the engineer will begin a measurement of the stream, and the ditches diverting the water therefrom, and a place, and a day certain, when the superintendent of the water division in which the stream to be adjudicated is situated, shall begin the taking of testimony as to the rights of the parties claiming water therefrom. Said notice shall be published in two (2) issues of a newspaper having general circulation in the county in which such stream is situated, the publication of said notice to be at least thirty (30) days prior to the beginning of taking testimony by said division superintendent, or for the measurement of the stream by the state engineer, or his assistant; and the superintendent taking such testimony shall have the power to adjourn the taking of evidence from time to time, and from place to place; provided, all places appointed and adjourned to by the superintendent shall be so situated, as related to the streams, as shall best suit the proper convenience of the persons interested in the determination of such priorities and appropriations.

41-4-303. Notice; by mail to claimants.

It shall also be the duty of said division superintendent to mail to each party having a recorded claim to waters of said stream, by registered mail, a similar notice setting forth the date when the state engineer, or his assistant, will begin the examination of the stream and ditches diverting water therefrom, and also the date when the superintendent will begin the taking of testimony, and the date when the taking of such testimony by said division superintendent shall close.

41-4-304. Notice; all claimants to be notified.

In issuing notices to claimants in priority adjudications of the waters of any stream and its tributaries, as provided in W.S. 41-4-305, all parties named in claiming the waters of said

stream or tributaries in said transcript shall be notified by mail.

41-4-305. Notice; enclosure of form for statement by claimant; contents.

(a) Said division superintendent shall, in addition, enclose with said notice a blank form on which said claimant shall present in writing all the particulars showing the amounts and dates of appropriations to the use of water of said stream to which he lays claim; the said statement to include the following:

- (i) The name and post office address of the claimant;
- (ii) The nature of the use on which the claim for appropriation is based;
- (iii) The time of the commencement of such use, and if distributing works are required;
- (iv) The date of beginning of the survey;
- (v) The date of beginning of construction;
- (vi) The date when completed;
- (vii) The date of beginning and completion of enlargements;
- (viii) The dimensions of the ditch as originally constructed and as enlarged;
- (ix) The date when water was first used for irrigation or other beneficial purposes, and if used for irrigation, the amount of land reclaimed the first year; the amount in subsequent years, with the dates of reclamation, and the amount of land such ditch is capable of irrigating;
- (x) The character of the soil and the kind of crops cultivated and such other facts as will show a compliance with the law in acquiring the appropriation and the rank of priority claimed.

41-4-306. Notice; statements to be under oath; administering.

Each of said claimants shall be required to certify to his statements under oath, and the superintendent of the water division in which the testimony is taken is hereby authorized to administer such oaths, which shall be done without charge to the claimant, as also shall be the furnishing of blank forms for said statement.

41-4-307. Notice; payment of printing costs.

All bills for the printing of notices to claimants of water in the adjudications provided for in this act shall be paid for by the secretary of the state board of control.

41-4-308. Taking of testimony generally; taking of proof.

Upon the date named in the notice provided for in the preceding sections, the division superintendent shall begin the taking of testimony and shall continue until the testimony shall be completed; provided, that in case the division superintendent of any water division is directly or indirectly interested in the water of any stream of his division, or is prevented by illness or other disability from the taking of the proofs, the taking of evidence so far as relates to the stream shall be under the direction of the division superintendent of the next nearest water division or under the direct personal supervision of the state engineer, as may be deemed by the engineer the most expedient. Provided, that in the taking of proofs of appropriation of water made under a permit issued by the state engineer, the permits having been issued subsequent to the adjudication of the waters of the stream from which the appropriation is made, the superintendent may, in his discretion, authorize the water commissioner of the district in which the appropriation is made to take the proofs. Upon the taking of the proofs so ordered the water commissioner shall at once forward them to the division superintendent. The water commissioner shall take no proofs except those specifically ordered by the division superintendent. Provided that in the taking of proofs of appropriation of water made under a permit issued by the state engineer subsequent to the adjudication of the water of the stream from which the appropriation is made, the superintendent may, in his discretion authorize the water commissioner of the district in which the appropriation is made to take the proofs. Upon the taking of the proofs so ordered the water commissioner shall at once forward them to the division superintendent. The water commissioner shall take no proofs except those specifically ordered by the division superintendent.

41-4-309. Notice on completion of testimony; inspection of evidence.

Upon the completion of the taking of evidence by the division superintendent, it shall be his duty to at once give notice, in one (1) issue of some newspaper of general circulation in the county where such determination is, and by registered mail to the various claimants, that upon a certain day, and a place named in the notice, all of said evidence shall be open to the inspection of the various claimants, and said superintendent shall keep said evidence open to inspection at said place, not less than one (1) day and not more than five (5) days.

41-4-310. Duty of claimants to appear; failure to comply; time limits for appearance; rights of claimant not notified of adjudication.

Whenever the state board of control shall, as provided by law, proceed to adjudicate and determine the rights of the various claimants to the use of water upon any stream or other body of water, it shall be the duty of all claimants interested in such stream or other body of water to appear and submit proof of their respective appropriations, at the time and in the manner required by law; and any such claimant who shall fail to appear in such proceedings and submit proof of his appropriations shall be barred and estopped from subsequently asserting any rights theretofore acquired upon the stream or other body of water embraced in such proceedings, and shall be held to have forfeited all rights to the use of said stream theretofore claimed by him. Provided, that any person claiming the right to the use of water of any stream heretofore adjudicated by the board of control who, having been or claiming to have been at the time an appropriator therefrom, shall have failed to appear and submit proof of his claim shall be permitted within one (1) year after the passage of this act, but not thereafter, to apply for a hearing and an adjudication of his rights in the manner hereinafter provided; and provided, further, that any claimant upon whom no other service shall be made than by publication in the newspaper, of the notice of such proceedings and taking of testimony, may, within one (1) year after the entry of the order or decree of the board, determining the rights of the various claimants upon any particular stream or other body of water, have the same opened and be let in to give proof of his appropriation; but before the decree of the board can be opened in such case, the applicant shall give notice to all other persons interested in the water of the stream or other body of

water in question, and shall with his petition file the same kind of proof as required of claimants in original hearings and make it appear to the satisfaction of the board that during the pendency of the proceedings he had no actual notice thereof in time to appear and make proof of his claim; and all parties interested may present affidavits as to the matter of actual notice of the applicant.

41-4-311. Others contesting rights of original claimants; when permitted; procedures generally.

Whenever the rights to the use of the waters of any stream and all its tributaries within the state have been adjudicated as provided by law, and it shall appear by the records of such adjudication that it had not been had at one (1) and the same proceeding, then in such case the state board of control shall be and is hereby authorized to give notice of the opening to public inspection of all proofs or evidences of appropriation of water, and the findings of the board in relation thereto from the stream and its tributaries in the manner and according to the provisions of W.S. 41-4-309; and any persons, corporations or associations who may desire to contest the claims or rights of other persons, corporations or associations, as set up in the proofs or established by the board, shall proceed in the manner provided for in W.S. 41-4-312, 41-4-313 and 41-4-314; provided, that contests may not be entered into and shall not be maintained except between appropriators who were not parties to the same adjudication proceedings in the original hearings.

41-4-312. Others contesting rights of original claimants; notice to superintendent; time limits; affidavit; notice of hearing generally.

Should any person, corporation or association of persons owning any irrigation works, or claiming any interest in the stream or streams involved in the adjudication, desire to contest any of the rights of the persons, corporations or associations who have submitted their evidence to the superintendent as aforesaid; such persons, corporations or associations shall, within fifteen (15) days after the testimony so taken shall have been opened to public inspection, in writing, notify the superintendent of the water division in which is located said irrigation works or stream or streams, stating with reasonable certainty the grounds of their proposed contest, which statement shall be verified by the affidavit of the contestant, his agent or attorney, and the said division superintendent shall notify the said contestant and the person, corporation or association whose rights are

contested, to appear before him at such convenient place as the superintendent shall designate in said notice.

41-4-313. Others contesting rights of original claimants; when hearing to be held; notice; powers of superintendents; proceedings generally.

Said superintendent shall also fix the time, both as to the day and hour, for the hearing of said contest, which date shall not be less than thirty (30) nor more than sixty (60) days from the date the notice is served on the party, association or corporation, which notice and the return thereof shall be made in the same manner as summons are served in civil actions in the district courts of this state. Superintendents of water divisions shall have power to adjourn hearings from time to time upon reasonable notice to all the parties interested, and to issue subpoenas and compel the attendance of witnesses to testify upon such hearings, which shall be served in the same manner as subpoenas issued out of the district courts of the state; and shall have the power to compel such witnesses so subpoenaed to testify and give evidence in said matter; said witnesses shall receive fees as in civil cases, to be paid by the party or parties against whom the contest shall be finally determined. The evidence on such proceedings shall be confined to the subjects enumerated in the notice of contest.

41-4-314. Others contesting rights of original claimants; daily deposit required during hearings; cost of preparation of transcript; disposition of moneys deposited upon close of hearing.

The superintendent shall require a deposit of eight dollars (\$8.00) from each of the contestants and contestees for each day he shall be so engaged in taking evidence on said contest. The contestant shall pay the cost of preparation of the transcript of said evidence before the contest is transmitted by the superintendent to the board of control for final determination or adjudication. Upon the final determination or the adjudication of the matters by the board of control, an order shall be entered directing that the money so deposited shall be refunded to the persons, associations or corporations in whose favor such contest shall be determined, and that all moneys deposited by other parties therein shall be turned over by the superintendent to the state treasury to the credit of the general fund.

41-4-315. Others contesting rights of original claimants; duty of superintendent to transmit evidence and testimony to board of control; issuance and costs of new certificate.

(a) Upon the completion of the testimony and evidence taken in contests initiated under the provisions of this act, it shall be the duty of the superintendent to transmit all evidence and testimony in said contests to the office of the board of control in person or by registered mail, and the action of said board in relation thereto shall be governed by the provisions of law applicable to contest cases in original adjudication proceedings; provided, that, if as a result of any such contest it shall be necessary to cancel any final certificate theretofore issued by said board and issue a new certificate in accordance with the findings of the board, such certificate shall be issued without cost to the person entitled to it, other than is incident to a proper recording of such certificate in the office of the county clerk.

(b) Upon the completion of the evidence in the original hearing before the superintendent, and the evidence taken in all contests, it shall be his duty to transmit all the evidence and testimony in said adjudication to the office of the board of control in person, or by registered mail.

41-4-316. Examination and measurement of capacity of streams and works diverting water; maps or plats.

It shall be the duty of the state engineer or some qualified assistant, to proceed at the time specified in the notice to the parties on said stream, to be adjudicated, to make an examination of said stream, and the works diverting water therefrom, said examination to include the measurement of the discharge of said stream, and of the carrying capacity of the various ditches and canals diverting water therefrom; an examination of the irrigated lands and an approximate measurement of the lands irrigated, or susceptible of irrigation from the various ditches and canals, which said observation and measurements shall be reduced to writing, and made a matter of record in his office; and it shall be the duty of the state engineer to make, or cause to be made, a map or plat on a scale of not less than one (1) inch to the mile, showing, with substantial accuracy, the course of said stream, the location of each ditch or canal diverting water therefrom, and the legal subdivisions of lands which have been irrigated, or which are susceptible of irrigation from the ditches and canals already constructed.

41-4-317. Determination of priorities to streams; limitations on amount of water to be allotted; disposition of excess water generally.

At the first regular meeting of the board of control after the completion of such measurement by the state engineer, and the return of said evidence by said division superintendent, it shall be the duty of the board of control to make and cause to be entered of record in its office, an order determining and establishing the several priorities of right to the use of waters of said stream, and the amounts of appropriations of the several persons claiming water from such stream, and the character and kind of use for which said appropriation shall be found to have been made. Each appropriation shall be determined in its priority and amount, by the time by which it shall have been made, and the amount of water which shall have been supplied for beneficial purposes; provided, that such appropriator shall at no time be entitled to the use of more water than he can make a beneficial application of on lands, for the benefit of which the appropriation may have been secured, and the amount of any appropriation made by reason of an enlargement of distributing works, shall be determined in like manner; provided, that no allotment for the direct use of the natural unstored flow of any stream shall exceed one (1) cubic foot per second for each seventy (70) acres of land for which said appropriation shall be made, and provided, further, where there may be in any stream water in excess of the total amount of all appropriations from said stream, such excess shall be divided among the appropriators therefrom in proportion to the acreage covered by their respective permits, and provided, also, that such additional water shall be beneficially used, except as hereinafter provided.

41-4-318. Surplus water; defined.

For the purpose of this act, surplus water is hereby defined to be that quantity of water belonging to the state of Wyoming flowing in the natural channel of any main stream or a tributary of a main stream within the boundaries of Wyoming, at any time in excess of the total amount required to furnish to all existing appropriations from said stream system the maximum amount of water for which all said appropriations have been granted, whether by permit or by adjudicated decree as of March 1, 1945.

41-4-319. Surplus water; regulation and control.

It shall be the duty of the state engineer, water superintendents and water commissioners and their assistants to divide, regulate and control the diversion and taking of surplus water from any stream in a manner that all applicants will be able to obtain a proportionate share, as hereinafter defined, of the surplus water.

41-4-320. Surplus water; rights of use generally.

(a) A right to the use of surplus water as herein defined in the amount of one (1) cubic foot of water per second for each seventy (70) acres of land having an adjudicated water right or a water right under permit is hereby adjudicated to attach to all original direct flow water rights, and only on lands described in adjudicated appropriations as of record in the office of the state board of control or under valid permits or filings as of record in the office of the state engineer. The rights so adjudicated shall bear date of priority as of March 1, 1945. Rights unadjudicated shall acquire the surplus right as the original is perfected.

(b) Any permits issued or water rights granted in the state of Wyoming after March 1, 1945, shall be subject to the adjudication of surplus water as provided herein.

41-4-321. Surplus water; who may divert.

Surplus water, as herein defined, may be diverted by anyone having either an adjudicated appropriation or a permit granting a right to divert and take from said stream and/or its tributaries a quantity of water for beneficial use.

41-4-322. Surplus water; limitations on use.

Each applicant shall be entitled to divert for beneficial use such quantity of surplus water as he can so use, not in excess of one (1) cubic foot of water per second of time for each seventy (70) acres of land irrigated therewith, and not in excess of an amount which equals his proportionate share of the total quantity of previously appropriated water from said stream.

41-4-323. Surplus water; senior priority.

When anyone has applied surplus water to beneficial use, as herein provided, he shall be entitled thereafter to divert and

beneficially use his proportionate share thereof, and such diversion and beneficial use, when accomplished, is hereby declared to be an appropriation of such water, entitled to a priority senior to any water right acquired after March 1, 1945.

41-4-324. Surplus water; construction of W.S. 41-4-317 through 41-4-324.

Nothing in this act shall be so construed as to permit, authorize or make lawful the diversion or taking of any water other than surplus water as herein defined.

41-4-325. Contents of certificate of priority; recording; fees; transmittal of appropriation; fees for proofs submitted at hearings; disposition.

As soon as practicable after the determination of the priorities of appropriation of the use of waters of any stream, it shall be the duty of the secretary to issue to each person, association or corporation represented in the determination a certificate to be signed by the president of the board of control, and attested under seal, setting forth the names and post office address of the appropriator; the priority date and number of the appropriation; the amount of water appropriated; and if the appropriation is for irrigation, a description of the legal subdivisions of land to which the water is to be applied. Certificates shall be transmitted to the county clerk of the county in which the appropriation shall have been made, and it shall be the duty of the county clerk upon receipt of the recording fee required by W.S. 18-3-402 to record the same in a book especially prepared and kept for that purpose, and thereupon immediately transmit the same to the respective appropriators. At the time of the submission of testimony to the division superintendent he shall collect for each proof taken a fee not to exceed fifty dollars (\$50.00) which fee shall be transmitted to the secretary of the board of control together with the testimony and proofs of appropriation. The county recording fee shall be used as above provided and the remainder shall be credited to the general fund.

41-4-326. Conclusiveness of final decrees of board.

The final orders or decrees of the state board of control, in the proceedings provided by law for the adjudication and determination of rights to the use of the public waters of the state, shall be conclusive as to all prior appropriations, and the rights of all existing claimants upon the stream or other

body of water lawfully embraced in the adjudication, subject, however, to the provisions of law for rehearings in such proceedings and for the reopening of the orders or decrees therein and for appeals from such orders or decrees.

41-4-327. Rehearing after final order of board.

After any final order of the board of control adjudicating the priorities upon any stream, any party interested therein may within one (1) year thereafter apply for a rehearing for reasons to be stated in the application; and upon the filing of such application, the secretary of the board shall mail written notice thereof to every other party interested, and therein fixing and stating a time when said application will be heard.

41-4-328. Authority to modify order and correct testimony.

Upon such hearing the board shall have authority to modify or alter the original order in such respect as shall appear just and proper. But it shall not be necessary for an application for rehearing to be filed to entitle any party to an appeal. Upon such hearing the board shall also have authority to permit, upon good cause shown, the correction of the testimony of any party or witness, if it shall appear that a mistake has occurred therein, but no other new evidence shall be received at such hearing unless it shall be shown to the satisfaction of the board that the same is material, and has been discovered since the taking of the original testimony and could not with reasonable diligence have been discovered before that time.

41-4-329. Excess water; defined.

For the purpose of this act, excess water is hereby defined to be that quantity of water belonging to the state of Wyoming flowing in the natural channel of any main stream or a tributary of a main stream within the boundaries of Wyoming, at any time in excess of the total amount required to furnish to all existing appropriations from the stream system the maximum amount of water to which all appropriations are entitled, whether by permit or by adjudicated decree as of March 1, 1985.

41-4-330. Excess water; rights of use generally.

(a) A right to the use of excess water as defined by W.S. 41-4-329 in the amount of one (1) cubic foot per second for each seventy (70) acres of land having an adjudicated water right or a water right under permit, except those having a priority date

prior to March 2, 1945, is hereby adjudicated to attach to all original direct flow water rights, and only on lands described in adjudicated appropriations of record in the office of the state board of control or under valid permits or filings of record in the office of the state engineer. The rights so adjudicated shall bear date of priority as of March 1, 1985. Rights unadjudicated shall acquire the excess right as the original is perfected.

(b) Any permits issued or water rights granted in the state of Wyoming with a priority date after March 1, 1985, shall be subject to the adjudication of excess water as provided herein.

41-4-331. Excess water; senior priority.

When anyone has applied excess water to beneficial use, as herein provided, he shall be entitled thereafter to divert and beneficially use his proportionate share thereof, and the diversion and beneficial use, when accomplished, is hereby declared to be an appropriation of the water, entitled to a priority senior to any water right acquired after March 1, 1985. The provisions of W.S. 41-4-321 through 41-4-324 shall apply to excess water in the same manner as it does to surplus water, except that excess water shall, pursuant to W.S. 41-4-323, have a priority date of March 1, 1985. The term "surplus" in W.S. 41-4-324 shall apply to excess water under this act.

ARTICLE 4 - PROCEEDINGS UPON APPEAL

41-4-401. Rights of appeal to district court.

Any party or number of parties acting jointly, who may feel themselves aggrieved by the determination of the board of control, may have an appeal from the board of control to the district court of the county in which the stream or streams, involved in such determination, may be situated, provided that in case the said stream or streams shall be situate in, and run through more than one (1) judicial district, or more than one (1) county, then, and in such case, it shall be the duty of the board of control, in making its determination, to designate the district court of the county, to which such appeal may be taken. All persons joining in the appeal shall be joined as appellants and all persons having interests adverse to the parties appealing, or either of them, shall be joined as appellees.

41-4-402. Repealed by Laws 1985, ch. 191, § 2.

41-4-403. Repealed by Laws 1985, ch. 191, § 2.

41-4-404. Repealed by Laws 1985, ch. 191, § 2.

41-4-405. Repealed by Laws 1985, ch. 191, § 2.

41-4-406. Pleadings and practice.

All proceedings on appeal shall be conducted according to the provisions of the Wyoming Administrative Procedure Act and the Wyoming Rules of Appellate Procedure.

41-4-407. Procedure after judgment.

It shall be the duty of the clerk of the district court immediately upon the entry of any judgment, order or decree by the district court, or by the judge thereof, in an appeal from the decision of the board of control, to transmit a certified copy of said judgment, order or decree to the secretary of the state board of control. It shall be the duty of the secretary to immediately enter the same upon the records of such office, and the state engineer shall forthwith issue to the superintendent or superintendents of water divisions, instructions in compliance with the said judgment, order or decree, and in execution thereof.

41-4-408. Costs; division of water pending appeal.

All costs made and accruing by reason of such appeal shall be adjudged to be paid by the party or parties against whom such appeal shall be finally determined. During the time an appeal from the order of the board of control is pending in the district court, and until a certified copy of the judgment, order or decree of the district court is transmitted to the state engineer, the division of water from the stream involved in such appeal shall be made in accordance with the order of the board of control.

ARTICLE 5 - APPLICATION FOR PERMIT FOR APPROPRIATION; PROCEDURE

41-4-501. Permit required prior to construction of ditches, canals or other distributing works; contents of application; unlawful diversion or use of water prohibited; rulemaking authority.

(a) Any person, association or corporation hereafter intending to acquire the right to the beneficial use of the public water of the state of Wyoming shall, before commencing the construction, enlargement or extension of any ditch, canal or other distributing works, or performing any work in connection with said construction, or proposed appropriation, make an application to the state engineer for a permit to make such appropriation. Such 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 ditch, canal or other work, the time within which it is proposed to begin construction, the time required for completion of construction and the time required for the complete application of the water to the proposed use. Any person who shall willfully divert or use water to the detriment of others without compliance with law shall be deemed guilty of a misdemeanor punishable pursuant to W.S. 41-3-616.

(b) The state engineer may allow the application to be submitted electronically as provided by the Uniform Electronic Transactions Act, W.S. 40-21-101 through 40-21-119.

(c) The state engineer may adopt reasonable rules and regulations in accordance with the Wyoming Administrative Procedure Act as necessary to implement this section.

(d) Any rules and regulations implementing this section or any predecessor to this section which were duly adopted according to the procedure for adoption at the time of adoption, which were effective as of July 1, 2008 and which have not been repealed or replaced as of July 1, 2008, are deemed to have been lawfully adopted in accordance with law and within the scope of the state engineer's rulemaking authority.

41-4-502. Application for permit to acquire right to beneficial use of public water; duty of state engineer upon receipt; use for irrigation purposes; defective applications; corrections; cancellation; extensions.

On receipt of an application for a permit to acquire the right to the beneficial use of the public water of the state of Wyoming, which application shall be on a form prescribed or designated by the state engineer, it is the state engineer's duty to date the application and to make a record of receipt of the application in his office. It is the state engineer's duty to examine all applications to ascertain that they contain all the necessary information to show the location, nature and

amount of the proposed beneficial use. If the proposed beneficial use is for irrigation purposes, the application shall give the total acreage to be irrigated and the acreage in each legal subdivision of land proposed to be irrigated. If, upon such examination, an application submitted in hard copy is found defective, it is the duty of the state engineer to return the application for correction, with reasons therefor, and the time allowed within which to make such corrections, which shall not be less than ninety (90) days, shall be endorsed on the application, or by correspondence accompanying the return of the application, and a record made thereof. A like record shall be kept of the date of the return of corrected applications, and of the date of the refusal and return of applications rejected. If the application is submitted in hard copy, the defective application shall be returned by certified mail, requesting return receipt. If the application is submitted electronically, the defective application shall be returned electronically. If, at the expiration of the time allowed within which to make such corrections, the application has not been returned to the office of the state engineer with the corrections properly made, it is the duty of the state engineer to cancel the filing covered by the application. The state engineer, if in his opinion an extension is justified, or, upon request by the applicant for good cause shown, shall grant extensions of time for making corrections. However, extensions will not be granted if the request for the extension is received after the expiration of the time period the applicant seeks to extend.

41-4-503. Recordation; approval or rejection generally.

All applications which shall comply with the provisions of this chapter, and with the regulations of the engineer's office, shall be recorded in a suitable book kept for that purpose; and it shall be the duty of the state engineer to approve all applications made in proper form, which contemplate the application of the water to a beneficial use and where the proposed use does not tend to impair the value of existing rights, or be otherwise detrimental to the public welfare. But where there is no unappropriated water in the proposed source of supply, or where the proposed use conflicts with existing rights, or threatens to prove detrimental to the public interest, it shall be the duty of the state engineer to reject such application and refuse to issue the permit asked for.

41-4-504. Endorsement by state engineer; return to applicant; effect of approval or rejection.

The refusal or approval of an application shall be endorsed thereon and a record made of such endorsement in the state engineer's office. The application so endorsed shall be returned to the applicant. If approved, the applicant shall be authorized, on receipt thereof, to proceed with the construction of the necessary works, and to take all steps required to apply the water to a beneficial use, and to perfect the proposed appropriation. If the application is refused, the applicant shall take no steps toward the prosecution of the proposed work, or the diversion and use of the public water so long as such refusal shall continue in force. Any violation of this section, unless exempt under W.S. 41-3-301, shall be punishable pursuant to W.S. 41-3-616(a).

41-4-505. Additional information before approval or rejection.

(a) Before either approving or rejecting an application, the state engineer may require such additional information as will enable him to properly guard the public interests, and may, in the case of applications proposing to divert more than twenty-five (25) cubic feet of water per second of time, or to reclaim over one thousand (1,000) acres of land, require a statement of the following facts:

(i) In case of incorporated companies, he may require the submission of the articles of incorporation, the names and places of residence of its directors and officers, and the amount of its authorized and of its paid up capital;

(ii) If the applicant is not an incorporated company, he may require a showing as to the name or names of the party or parties proposing to construct the work, and a showing of facts necessary to enable him to determine whether or not they have the financial ability to carry out the proposed work, and whether or not the said application has been made in good faith.

41-4-506. Time limits for completing construction work; extensions; forfeiture of rights; cancellation of permit; notice of date of expiration to appropriator.

Whenever the state engineer places his endorsement of approval on any application for a water permit, he shall require that actual construction work be completed within the time set by him in the permit. The time set for completion shall not exceed a period of five (5) years after the date of approval of application. In the case of an application for a ditch permit,

he shall further require that the application of the water to beneficial use must be completed before the date which he shall specify, and which shall not be earlier than the date specified for the completion of construction; and that final proof of appropriation must be submitted within five (5) years after the date specified for the completion of the application of the water to beneficial use. He may limit the application to a less period of time for the completion of construction and application of water to beneficial use than is asked for in the application. For good cause shown, the state engineer may at any time, or from time to time, before the date of expiration, extend any or all of these periods. An extension of time for compliance with any of the specified requirements shall be construed to automatically extend for a like period the time for compliance with any of the specific requirements in relation to which the time expires thereafter. Default by the holder of the permit in any of the specified requirements shall work a forfeiture of the water right involved. The state engineer may upon such default cancel the permit. The state engineer shall, by registered mail, with a return receipt requested at least three (3) months before default in any of these requirements shall be operative, notify the permit holder, at the post-office address given by him when the time allowed will expire. If the permit holder cannot be reached by registered mail, or if the address of the permit holder is unknown, the state engineer shall publish notice of the default for three (3) weeks in a newspaper of general circulation published in the county, or in case there is no newspaper of general circulation published in the county, then in a newspaper published in the state of Wyoming and in general circulation in the county, the last publication to be at least two (2) months before cancellation of the permit.

41-4-507. Maps and plats; when required with application; contents; format requirements; copies; duties of state engineer generally.

(a) Each application for a permit to appropriate waters for beneficial uses under a project embracing the major irrigable portion of an entire drainage basin within the limits of this state which has been approved by either state or federal agencies for development and construction in subdivisions as the result of preliminary investigations must be accompanied by a map or plat made by or under the responsible charge of a professional engineer or professional land surveyor and be signed by and bear the seal of the professional engineer or professional land surveyor. The map or plat shall be on a scale

to conform to the regulations of the state engineer, showing the approximate location of all streams, proposed reservoirs, main canals and the other data required under the terms of W.S. 41-3-301, together with the approximate location and area of the lands to be irrigated and approximate capacity of each of the reservoirs to be constructed. It shall be the duty of the state engineer to approve any such application made in conformity herewith which contemplates the application of the water of a drainage basin to the beneficial use of a major irrigable portion thereof where the proposed use does not tend to impair the value of existing rights, or to be otherwise detrimental to the public welfare; provided, however, that any permit for appropriation of waters for beneficial uses upon the irrigable lands designated in such a drainage basin project application, must be conditioned for the submission to the state engineer of detailed maps, plans and specifications applicable to a single subdivision of the project and the approval thereof by the state engineer, prior to the commencement of the construction of any such subdivisions; provided further that such subdivision maps, plans and specifications shall conform to the requirements hereinafter set forth as applicable to other applications not embracing the major irrigable portion of an entire drainage basin.

(b) Except for applications made pursuant to subsection (a) or (c) of this section, every other application for a permit to appropriate water for beneficial uses must be accompanied by a map or plat, showing accurately the location and extent of the proposed work. The maps or plats must be on a scale to conform to the regulations of the state engineer and be made by or under the responsible charge of a professional engineer or professional land surveyor and be signed by and bear the seal of the professional engineer or professional land surveyor; they must show the location of the headgate or point of diversion by courses and distances from some government corner; they must show the actual location of the ditch or canal, or water line of the reservoir, and must show, wherever section lines are crossed, the distance to the nearest government corner. The map or plat must show the course of the river, stream or other source of supply; the location and area of all lands proposed to be reclaimed; the position and area of all reservoirs or basins intended to be created for the purpose of storing water; the location of the intersection with all other ditches, canals, laterals or reservoirs which are caused by this work, or with which connections are made. These maps must contain the name of the proposed work, and, where possible, the number of the permit. They must in addition, have the name or names of the

applicant or applicants and the certificate of the engineer or surveyor, giving the date of survey, his name and address.

(c) Notwithstanding subsections (a) and (b) of this section, an application and accompanying maps, plans, plats and designs filed in the state engineer's office shall comply with the requirements of W.S. 33-29-801(a)(ii) through (iv) and subsections (d) and (e) of this section when the application is to:

(i) Construct small reservoirs for stock or other beneficial uses where the capacity of the reservoir does not exceed twenty (20) acre feet or twenty (20) feet in dam height;

(ii) Develop springs for any beneficial use up to twenty-five (25) gallons per minute; or

(iii) Construct flood water detention dams storing fifty (50) acre feet or less and not to exceed twenty (20) feet in height provided the dam has a minimum outlet of eighteen (18) inches diameter and the dead storage does not exceed twenty (20) acre feet.

(d) An application made pursuant to subsection (c) of this section shall be signed by the applicant or an agent acting for him and shall be accompanied, at a minimum, by aerial photographs, digital imagery or United States geological survey quadrangle maps, of a scale provided by Wyoming board of professional engineers and professional land surveyors rule, with designation of the township, range, section and section corner or quarter corner and the location of the installation designated in the quarter section on the photographs or United States geological survey quadrangle maps and a description of:

(i) The dam including height, width, depth, construction materials, depth to be submerged and height of the free board; and

(ii) The reservoir including length, width, average depth, submerged area and capacity.

(e) Aerial photographs, digital imagery or United States geological survey quadrangle maps accompanying an application made pursuant to subsection (c) of this section shall comply with the following requirements:

(i) Two (2) aerial photographs, digital images or United States geological survey quadrangle maps shall accompany each application;

(ii) The scale on the aerial photographs, digital imagery or United States geological survey quadrangle maps shall not be less than two (2) inches to the mile;

(iii) An identified section corner or quarter corner shall be shown on each aerial photograph, digital image or United States geological survey quadrangle map;

(iv) The entire section in which the facility is located shall be shown on each aerial photograph, digital image or United States geological survey quadrangle map along with subdivision lines showing forty (40) acre tracts; and

(v) The location of the facility shall be shown within the proper forty (40) acre subdivision.

(f) The state engineer may adopt rules and regulations which provide exceptions to the filing requirements of subsections (a) and (b) of this section for projects for which, because of the size, nature or location, an exception would not impede upon public safety or the integrity of a water right. The exceptions provided pursuant to this subsection shall be in addition to the exceptions provided in subsection (c) of this section.

41-4-508. Maps and plats; examination; approval; filing; return of copy.

It shall be the duty of the state engineer to examine these maps or plats and to ascertain if they agree with the description contained in the application, and when found to agree, or made to agree, to approve the same, file one (1) copy in his office and return the other, approved, to the party filing them. These maps or plats may be received and maintained by the state engineer in an electronic format.

41-4-509. Maps and plats; additional information; longitudinal profiles of ditches.

In case of ditches or canals carrying more than fifty (50) cubic feet of water per second, the engineer may require, in addition to the maps or plats above described, the following: a longitudinal profile of the ditch showing the bottom and

proposed water line; the horizontal scale of this line shall not be less than one (1) inch to one thousand (1,000) feet, and the vertical scale not less than one (1) inch to twenty (20) feet. If submitted electronically, the file shall be capable of reproduction at these scales.

41-4-510. Maps and plats; additional information; cross section plans; plans of obstructions; reservoir specifications; field notes.

The engineer may require, in addition to the maps and plats above described, a plan showing cross sections at a sufficient number of points to show the different forms which the ditch, when completed, will take, and showing what proportion of the water is to be conveyed in excavation and what proportion to be conveyed in fill. These plans shall be drawn, or be capable of being drawn and printed if submitted electronically, on a horizontal and vertical scale of one (1) inch to twenty (20) feet. Plans of any dams, cribs, embankments or other proposed work to obstruct any river, stream, lake or pond, or other source of water supply, shall be drawn on a longitudinal scale of not less than one (1) inch to two hundred (200) feet, and for cross sections on a scale of not less than one (1) inch to twenty (20) feet; and shall show what material is intended to be used and placed in such work. Timber, brush, stone or other material except earth used in such works shall be shown in detail on a plan, the scale of which shall not be less than one (1) inch to four (4) feet. The maps of all proposed reservoirs shall show the surface of the ground under water, and a sufficient number of lines of level shall be shown so that the contents of the reservoir or basin may be approximately determined. If the levels shall be shown by contour lines they shall be on a scale sufficiently large to show vertical levels not exceeding five (5) feet, and with all such reservoir plans there shall be furnished a plan, on a scale of not less than one (1) inch to four (4) feet, showing the method of providing a wasteway for such reservoir, and method of drawing off the water from such reservoir or basin. If the state engineer deems it necessary he may require the submission of complete plans and specifications for his approval. He may also require the filing of field notes of canal and reservoir surveys.

41-4-511. Final proof of appropriation; procedures generally.

Whenever an appropriation of water has been perfected in accordance with any permit issued by the state engineer, the

appropriator may submit final proof of appropriation of water at any time within the time specified by W.S. 41-4-506, to the superintendent of the water division in which the water right involved is situated, or, when more expedient, before the superintendent of another water division or the state engineer, or before a water commissioner in accordance with the provisions of W.S. 41-4-308. Proof shall be made by appropriators under oath upon forms furnished by the state board of control. The superintendent shall collect for each proof taken a fee not to exceed one hundred dollars (\$100.00), which fee shall be transmitted to the secretary of the board of control together with the several proofs taken. The secretary of the board of control shall use the fee to pay the appropriate amount for the county recording fee for the recording of the certificate of appropriation in the office of the county clerk of the county in which the water right is situated and the newspaper advertising fee for advertising the several proofs as provided in this section. The remainder of the fee shall be remitted to the state treasurer to the credit of the general fund. If the board of control rejects any proof, the fee shall be returned to the person, association or corporation submitting such proof. At least thirty (30) days prior to any regular meeting of the state board of control the superintendent of each water division shall cause all proofs taken by him to be advertised in at least one (1) issue of a newspaper having general circulation in the community where the water right involved is situated, such advertisement to contain in each case the permit number, the date of priority, the name of the ditch, canal or reservoir, the name of the appropriator, the name of the stream from which the appropriation is made, and the amount of the appropriation expressed in acres for ditches designed for the irrigation of lands and in acre-feet for reservoirs, or in cubic feet per second or gallons per minute when the appropriation is for domestic, stock, municipal, industrial, manufacturing, fish hatchery or power purposes. Advertisements shall state the time when, and the place where, the proofs of appropriation of water taken by the superintendent will be open for public inspection for a period of not less than one (1) or more than five (5) days, and the last day of the period shall not be less than fifteen (15) days prior to the meeting of the board. Any party claiming an interest in any water right from the stream or streams to which the advertised proofs refer, shall have the right to contest the proposed adjudications according to the provisions of W.S. 41-4-312 through 41-4-315. Upon the completion of the taking of proofs of appropriation and the advertising, the superintendent of each water division shall transmit to the office of the state board of control in Cheyenne

the several proofs taken, together with fees collected, and shall accompany the same with affidavits of publication as evidence of the required advertisement. At its next regular meeting the board shall consider all proofs of appropriation received from the division superintendents and if satisfied that there are no conflicts and that any appropriation involved has been perfected in accordance with the permit issued by the state engineer, the state board of control by the hand of its president, attested under seal, shall issue a certificate of appropriation of water as described in W.S. 41-4-325 and send the certificate to the county clerk of the county in which the use of water has been made to be recorded by the clerk as provided in W.S. 41-4-325.

41-4-512. Final proof of appropriation; date of priority.

The priority of such appropriation shall date from the filing of the application in the engineer's office.

41-4-513. Adjudication of underground water rights.

After issuance of a permit, or recording of a statement of claim, or registration of a well, under the procedures provided for by law, and completion of the work according to the terms of the permit, as certified to by the state engineer or his authorized representative following an inspection of the work, and the recording of such information as is deemed necessary concerning the works, and an inspection of the lands irrigated or of the other uses being made of the water, the board of control may adjudicate such underground water rights upon proof of beneficial use being submitted as provided for by W.S. 41-4-511. The appropriator shall pay the necessary fees as provided by W.S. 41-4-511.

41-4-514. Petition for amendment of permits; petition for amended certificate of appropriation; hearings on petition; notice; costs.

(a) The state engineer may correct clerical errors and, upon written petition of the permit holder, amend any permit to appropriate water at any time prior to adjudication by the state board of control when in the judgment of the state engineer the amendment appears necessary, and providing:

(i) No petition to amend shall be granted if existing water appropriators who have adjudicated water rights or valid permits are injuriously affected;

(ii) The priority date of the permit shall not be improved;

(iii) The total amount of the appropriation of water shall not exceed the amount set forth in the original permit and, for irrigation permits, the total area of land shall not exceed the total area described in the original permit;

(iv) The changes shall be limited to those within the area and concept of the original application for permit or development plan;

(v) No change of use shall be granted; and

(vi) A reasonable filing fee not to exceed fifty dollars (\$50.00) shall accompany each petition filed with the state engineer.

(b) The state engineer may hold a public hearing on a petition under subsection (a) of this section to gather facts to determine if other appropriators will be injuriously affected. The state engineer shall hold a public hearing on a petition under subsection (a) of this section if requested to do so by any affected appropriator. If the state engineer holds a public hearing, the state engineer shall cause to be published no less than fifteen (15) days before the hearing a notice of the hearing to be advertised in at least one (1) issue of any newspaper having general circulation in the community where the water right or valid permit involved is situated. The petitioner shall pay the cost of the advertisement prior to the time of hearing, and provide a record of proceedings to be transmitted to the state engineer. Following receipt of the record, the state engineer shall promptly review the record and issue a written order granting or denying the permit amendment.

(c) Any decision by the state engineer granting or denying a permit amendment under this section may be appealed to the board of control which shall conduct a contested case hearing in accordance with its rules and regulations and the Wyoming Administrative Procedure Act.

(d) The state board of control is authorized, upon the written petition of the owner, to issue amended certificates of appropriation for water rights that have been adjudicated for the purpose of correcting clerical errors and when in the judgment of the board it appears necessary. The total amount of

the appropriation of water shall not exceed the amount set forth in the original certificate of appropriation and, in the case of an appropriation for irrigation use, the total area of the lands shall not exceed the total area described in the original certificate of appropriation. The amended area shall not exceed the area actually irrigated under the original right. Any petitioner shall be the owner of all the land involved in the petition, except that in cases where amendments are petitioned for in a regularly organized conservancy or irrigation district, the consent of the district board and the consent or agreement of the land owners directly involved is sufficient. Proper adjustments shall be made in any assessment levied against lands affected by the amendment. The rights of other appropriators shall not be injuriously affected thereby.

(e) Upon petition for an amended certificate of appropriation of water, the state board of control may 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 situated. The state board of control shall hold a public hearing if requested to do so by any affected appropriator. The petitioner shall pay the cost of the publication prior to the time of hearing and provide a record of proceedings to be transmitted by the division superintendent to the state board of control, together with his report. At the time the petition is filed a fee not to exceed fifty dollars (\$50.00) for each amended certificate issued shall be collected by the state board of control with a deposit of sufficient funds to cover the cost of preparing and recording a certified copy of the order. The fees for recording shall be returned to the petitioner in case the petition is not granted.

41-4-515. Endorsement of correction on records.

When any permit is corrected by the state engineer, as authorized by this act, the corrections shall be endorsed on the records and shall not affect the priority of the permit.

**41-4-516. Rules and regulations authorized for W.S.
41-4-514 through 41-4-516.**

The state engineer is hereby authorized to provide rules and regulations regarding the form of application and procedure to be followed by the applicant in proceeding under this act.

41-4-517. Appeal from action of state engineer or order of board of control.

Any applicant who is aggrieved by the endorsement made by the state engineer upon his application, may, in writing, in an informal manner and without pleadings of any character, appeal to the board of control within sixty (60) days of the date of receipt of notice of the endorsement, for an examination and reversal of any such action of the state engineer. Upon receipt of such an appeal, the secretary of the board of control shall notify the members of the board of control and upon receipt of replies from them shall fix a date, as early as may be possible, when such appeal shall be heard before the board. All parties and those who claim an adverse interest thereto, shall be notified and shall be given an opportunity to be heard. Any person aggrieved by any order or determination of the board of control in cases embracing such appeals from the state engineer, may appeal to the district court of the county in which the greatest use of water is proposed to be made under the application. The procedure in the appeal from a decision of the board of control shall be in conformity with the Wyoming Administrative Procedure Act and the Wyoming Rules of Appellate Procedure. The attorney general shall, in such cases, represent the state board of control.

CHAPTER 5 - IRRIGATION GENERALLY

ARTICLE 1 - CARE, MAINTENANCE AND PROTECTION OF IRRIGATION WORKS

41-5-101. Ditches; generally.

The owner or owners of any ditch for irrigation, or other purposes, shall carefully maintain the embankments thereof so that the water of such ditch may not flood or damage the premises of others.

41-5-102. Ditches; jointly owned; action to recover proportionate share of work.

In all cases where irrigating ditches are owned by two (2) or more persons and one (1) or more of such persons shall fail or neglect to do his, her or their proportionate share of the work necessary for the proper maintenance and operation of such ditch or ditches or to construct suitable head gates or measuring devices at the points where water is diverted from the main ditch, such owner or owners desiring the performance of such