TITLE 41: WATER

CHAPTER 1
GENERAL PROVISIONS

41-1-101. Permit for construction of Glendo Reservoir and storage of water; restrictions; adjudication of water rights after issuance.

(a) That the state engineer of the state of Wyoming is hereby authorized to approve when prepared in proper form and checked against his records, the application of the United States of America, bureau of reclamation, for permit to construct the Glendo Reservoir and to store water of the state of Wyoming from the North Platte River for the irrigation of lands in the states of Wyoming and Nebraska, and for development of power, flood control and silt control purposes.

(b) This permit may contain whatever restrictions the state engineer may consider necessary to protect water rights and other rights of the state of Wyoming.

(c) After issuance of permit under legislative authority and completion of the work according to terms of the permit, the state board of control is hereby authorized to adjudicate the water right upon proper showing of completion of construction. This authorization is made to conform with W.S. 41-4-104.

41-1-102. Library of water resources; established.

There is hereby established a library of water resources which shall be kept in the office of the state engineer.

41-1-103. Library of water resources; contents of library.

It shall be the duty and responsibility of the state engineer to collect and obtain copies of all books, technical reports, articles, pamphlets, research studies and other information presently in the possession of the Wyoming state library, University of Wyoming library and other state agencies, which pertain to the water resources of the state of Wyoming, and to make the same a part of said library of water resources.

41-1-104. Library of water resources; assistance in operating library.

The staff of the Wyoming state library shall render such assistance to the state engineer as he may request in locating, collecting and cataloguing the data and duplicate indexes shall be maintained in both the state engineer's office and the Wyoming state library.

41-1-105. Use of underground water in adjoining state; adjudication by board of control.

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 underground water rights upon proof of beneficial use as provided by W.S. 41-4-511.

41-1-106. Water and related land resources planning; commission's responsibility.

The commission is responsible for the coordination of Wyoming's water and related land resources planning and with the approval of the governor is authorized to enter into contracts and agreements with the United States of America or its duly authorized representative agency for planning pertaining to the utilization of Wyoming's water and related land resources.

41-1-107. Water and related land resources planning; authority of commission.

(a) With the approval of the governor the commission is authorized to accept federal funds through grants or matching funds or from other sources for water and related land resources planning.

(b) The commission is authorized:

(i) To adopt rules and regulations as are necessary to implement any programs which may be required of the state by federal water and related land resources planning legislation; and

(ii) To implement any programs which are required by this legislation to make the state eligible to receive funds from the federal government to carry out water and related land resources planning.

41-1-108. Water and related land resources planning; dispositions of monies and commission offices.

(a) Any funds so received shall be deposited with the state treasurer, to be accounted for as provided by law. Money may be expended as provided by law. All records, property, personnel positions and unused funds not necessary for administrative duties as determined by the state engineer shall be transferred for water planning development from the state engineer's budget to the commission.

(b) The commission shall occupy the facilities presently occupied by the water planning division of the office of state engineer or such facilities as may be made available.

41-1-109. Interference with natural flow of thermal springs; authority to correct.

The state engineer is given the authority to abolish, correct, discontinue or stop any condition which interferes with the natural flow of any thermal spring on state lands.

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

Nothing in this act [§§ 41-1-109 through 41-1-111] shall be construed to limit any nonthermal water, or mineral development so long as said development does not interfere with the natural flow of the thermal springs covered by this act.

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

The state engineer may seek injunctive relief to implement this act [§§ 41-1-109 through 41-1-111].

CHAPTER 2
PLANNING AND DEVELOPMENT

ARTICLE 1
IN GENERAL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The commission shall:

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

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

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

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

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

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

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

41-2-112. Wyoming water development program.

(a) The Wyoming water development program is established to foster, promote and encourage the optimal development of the state's human, industrial, mineral, agricultural, water and recreational resources. The program shall provide, through the commission, procedures and policies for the planning, selection, financing, construction, acquisition and operation of projects and facilities for the conservation, storage, distribution and use of water, necessary in the public interest to develop and preserve Wyoming's water and related land resources. The program shall encourage development of water facilities for irrigation, for reduction of flood damage, for abatement of pollution, for preservation and development of fish and wildlife resources [and] for protection and improvement of public lands

and shall help make available the waters of this state for all beneficial uses, including but not limited to municipal, domestic, agricultural, industrial, instream flows, hydroelectric power and recreational purposes, conservation of land resources and protection of the health, safety and general welfare of the people of the state of Wyoming.

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

(i) Emphasize multi-purpose water projects for maximum benefits and cost allocation;

(ii) Identify project costs and benefits;

(iii) Recommend an allocation of project costs, including expenditures of state funds for Level I reconnaissance studies and Level II feasibility studies, to be reimbursed by project beneficiaries and to be borne by the state;

(iv) Recommend terms and conditions of financing project costs, maintenance and operation, based on the benefits to be derived by project beneficiaries and their respective ability to pay;

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

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

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

41-2-113. Definitions.

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

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

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

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

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

(a) The commission shall, on the basis of the state water plan or as otherwise directed by the legislature and after consultation with and advice from state agencies and officials, other appropriate agencies and officials, the joint business council of the Eastern Shoshone and Northern Arapaho

Indian tribes and members of the public, identify and select potential projects to be studied for inclusion in the Wyoming water development program pursuant to the following schedule:

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

(A) Describe the project;

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

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

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

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

(F) Identify legal constraints to development;

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

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

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

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

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

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

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

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

(E) Include test drilling for groundwater projects;

(F) Contain final concept design and cost estimates;

(G) Include the project financing plan;

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

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

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

(iv) Level III construction and operation plans shall proceed as authorized and approved by the legislature under the immediate direction and control of the commission. Preference in the marketing of hydroelectric power from any such project shall be given to utilities serving Wyoming municipalities and to rural electric cooperatives where economical and permissible under federal law. Pursuant to legislative authorization for water development projects and prior to completion of Level III construction the commission may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) In preparation of the final concept design under W.S. 41-2-114(a)(ii), the commission shall after giving public notice hold a public hearing within the affected water division. Any interested person, association or state or federal agency may appear and participate as a party. Following the hearing, the commission shall make public a report of their findings relative to whether the project is in the public interest, stipulating if the proposed project functions and services can be served by any

person, association or corporation engaged in private enterprise, or if private enterprise has refused to provide the functions and services identified as being required by the proposed project. The commission shall then proceed as set forth in subsections (b) and (c) of this section. Nothing in this section shall be construed to interfere with the duties of the state engineer or the state board of control.

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

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

41-2-116. Water rights.

(a) The director of the Wyoming water development office shall, at the direction of the governor, file applications in the name of the state of Wyoming for permits to appropriate water, to construct dams and other works, and to take the steps necessary to acquire, maintain or preserve the priority of any right essential to any project which is or may become a project of the Wyoming water development program, except that nothing in this subsection shall be construed to authorize or empower the director of the Wyoming water development office to acquire water rights through the power of eminent domain.

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

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

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

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

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

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

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

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

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

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

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

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

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

(I) The state engineer or his designee;

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

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

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

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

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

(a) The commission shall:

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

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

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

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

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

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

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

(viii) Perform other duties as directed by law;

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

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

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

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

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

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

(b) Water division members shall receive a salary of fifty dollars ($50.00) per day and actual and necessary traveling expenses while away from home while engaged in the performance of commission duties.

41-2-119. Groundwater studies.

(a) The Wyoming water development commission may grant not to exceed four million five hundred thousand dollars ($4,500,000.00) to incorporated cities and towns, water and sewer districts and improvement and service districts in Wyoming for exploration for and feasibility studies of the use of underground water for municipal and rural domestic purposes, not to exceed four hundred thousand dollars ($400,000.00) for any one (1) exploration or study. The grants shall be made from revenues from water development account I and those revenues are hereby so appropriated. Any city or town, water and sewer district or service and improvement district receiving a grant pursuant to this section shall provide at least twenty-five percent (25%) of the cost of the exploration or study from its own funds. The commission shall adopt rules and regulations governing application procedures for the grants.

(b) The commission may expend not to exceed two million five hundred thousand dollars ($2,500,000.00) from the funds appropriated under subsection (a) of this section for exploration and for feasibility studies of the use of underground water for municipal and rural domestic purposes subject to the following conditions:

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

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

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

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

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

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

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

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

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

(ii) The commission's recommendation shall:

(A) Emphasize projects developing unappropriated water;

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

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

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

(E) Include financing methods subject to the following:

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

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

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

(IV) The term of a loan shall not exceed fifty (50) years after substantial completion of a project;

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

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

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

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

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

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

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

(iv) The commission may disqualify from consideration or give lower priority to a project proposed to correct problems identified in a review performed by the department of environmental quality under W.S. 18-5-306(c) where the board of county commissioners approved a subdivision application notwithstanding the department's recommendation that the application be disapproved.

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

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

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

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

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

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

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

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

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

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

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

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

(i) Proceed with next level of activity;

(ii) Continue study at the presently authorized level of activity; or

(iii) Terminate consideration of the project.

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

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

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

(i) The Level I study is substantially complete;

(ii) The due date for the Level I study report established by the legislature has not occurred;

(iii) The commission finds the Level II study to be in the best interest of the state;

(iv) The select water committee created under W.S. 28-11-101 reviews the commission request to proceed with the Level II study.

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

41-2-124. Accounts created within earmarked revenue fund; unexpended balance.

(a) The following accounts are created within the earmarked revenue fund:

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

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

(b) After July 1, 1992, any unexpended balance in water development accounts I and II as defined by subsection (a) of this section shall be invested by the state treasurer and the interest earned shall be credited to the account.

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

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

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

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

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

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

ARTICLE 2
PROJECTS

41-2-201. Authorization for water well supply and transmission project.

(a) The department of economic planning and development [economic development and stabilization board] is authorized to proceed with the design and construction of the city of Gillette well supply and water transmission project as described in the interdepartmental water conference feasibility report to the 1978 session of the Wyoming legislature. Prior to commencement of construction of the water supply and transmission project, the department of economic planning and development [economic development and stabilization board] shall:

(i) Enter into a signed project agreement with the city of Gillette, Wyoming, for the construction, operation and maintenance of the project by the city as specified in W.S. 41-2-201 through 41-2-203;

(ii) Assign the project to the city for design, construction, operation and repayment as specified by law, after execution of the project agreement with the city of Gillette and upon approval of the governor as specified in W.S. 41-2-115;

(iii) Approve the final design, plans and specifications and construction schedule for the project facilities and development of water service from the project facilities which shall include water supply provisions for the city of Gillette and surrounding area municipal and domestic requirements, the town of Moorcroft supplemental and emergency requirements and community of Rozet municipal and domestic requirements, the agricultural, domestic and stockwater requirements within or that can be served by the water well field area and the industrial requirements that can be served by the well field and water transmission lines.

(iv) Repealed by Laws 1987, ch. 99, § 5.

(v) Repealed by Laws 1987, ch. 99, § 5.

41-2-202. Authorization for expenditures from permanent Wyoming mineral trust fund.

The state loan and investment board, with the advice of the director of the department of commerce is authorized to loan not to exceed fifteen million dollars ($15,000,000.00) from the permanent Wyoming mineral trust fund, to be advanced to the city of Gillette as deemed necessary by the department of commerce to design and construct a water well supply and water transmission project. The loan shall not be advanced by the state loan and investment board until the qualified electors of the city of Gillette approve creation of the debt and approve the pledging of the revenue from the operation of the water project as the primary source of repayment of the loan and the pledging of the city's share of state excise taxes and other unrestricted revenue of the city as a secondary source of repayment of the loan. The term and conditions of the loan will be as set forth in W.S. 11-34-302. Principal, but not interest, payments on the loan may be deferred until the department of commerce determines and certifies to the state loan and investment board that the water system can generate sufficient revenue to commence repaying the loan and still allow revenues to maintain and operate the system. Principal payments shall be credited to the permanent Wyoming mineral trust fund and the interest payments shall be deposited into the general fund.

41-2-203. Approval of project expenditures, rates.

After commencement of design and construction of the project and until completion, the department of commerce shall approve expenditures for project engineering and construction and the city of Gillette shall provide monthly progress reports confirming that the construction, design and specifications for the project are being followed and complied with. At least sixty (60) days prior to the commencement of each fiscal year, the city of Gillette shall submit its proposed budget for water user rates, operation and maintenance expenses and revenues to be applied to debt service the next fiscal year, to the department of commerce. If a reasonable level of revenues exceed the city's necessary operation,

maintenance and other costs for the water system and the project, the department of commerce shall certify to the state treasurer and the state loan and investment board the amount of repayment by the city to the permanent Wyoming mineral trust fund. The department of commerce shall certify to the state treasurer and state loan and investment board all such payments after reviewing proposed budgets of the city for water user rates, operation and maintenance expenses and revenue for each fiscal year.

41-2-204. Definitions.

(a) As used in this act [§§ 41-2-204 through 41-2-208]:

(i) "Interdepartmental water conference" means the conference created by W.S. 41-1-106 or a successor conference or agency responsible for the development and coordination of Wyoming's water and related resources;

(ii) "Stage I" means the existing Cheyenne water supply project in south central Wyoming, which consists of water collection, storage and transmission facilities to bring water from the headwaters of the Little Snake River drainage into the North Platte River drainage and to bring water from the headwaters of the Douglas Creek drainage into the Crow Creek drainage and from the North Platte River and Crow Creek drainages into the Cheyenne water system;

(iii) "Stage II" means the expansion of the existing Stage I facilities. Stage II proposes to construct new water development facilities including but not limited to interception lines and diversion, collection and storage structures to collect additional water in the Little Snake River drainage on the west side of the Continental Divide, increase the capacity of the pipeline to Hog Park Creek, enlarge Hog Park Reservoir, enlarge Rob Roy Reservoir on Douglas Creek, construct new interception lines and diversion structures to collect additional water from Douglas Creek and its tributaries, construct additional pipelines from Douglas Creek to Lake Owen and from Lake Owen to the Crow Creek drainage, and increase storage or diversions of water to the existing Cheyenne system. Water right applications, maps and permits for the facilities are on file in the office of the state engineer;

(iv) "Stage III" means a transbasin diversion of water from the headwater of the Little Snake River and its tributaries on the western side of the Continental Divide north and west of Stage I and Stage II. Stage III proposes to construct interception lines and diversions and collection structures to increase availability of water for transportation of water across the Continental Divide from the Little Snake River drainage into the North Platte River system, and increase storage and availability of water for use by cities, towns and other water users located in Carbon, Albany, Natrona, Converse, Niobrara, Goshen, Platte and Laramie counties. Water right applications, maps and permits for the facilities are on file in the office of the state engineer;

(v) "In-basin needs" means the assessment and study, which will consider existing rights, future needs and in-stream flow requirements for fish, wildlife and recreational purposes within the Little Snake River drainage and provide for protection of these rights and needs;

(vi) "In-basin project" means the storage structure or structures to increase storage for in-basin needs.

41-2-205. Authorization of Stage II.

(a) Subject to completion of the report of the feasibility study and holding of public hearings by the interdepartmental water conference as required by W.S. 41-2-114 and 41-2-115, Stage II is authorized.

(b) Stage II shall be given priority in the year 1979 by the state agencies and officials responsible to act hereunder. Appropriate draft legislation, which shall include funding, shall be submitted to the 1980 session of the legislature in accordance with W.S. 41-2-115. The feasibility report shall include in addition to contents otherwise required:

(i) A statement of the relative costs of water to users for various possible state and municipal cost shares;

(ii) A statement of the needs for water up to the year 2000 for the city of Cheyenne and surrounding communities at a minimum of three (3) different levels of population growth;

(iii) A statement of the needs for water up to the year 2000 at a minimum of three (3) different levels of population growth for the counties of Laramie, Albany, Carbon, Natrona, Converse, Niobrara, Goshen and Platte and other users of municipal water from the North Platte River tributaries that may have insufficient water for probable growth;

(iv) A statement of the amount of water from Stage II that could be used to meet the needs identified in paragraph (iii) of this subsection. Nothing contained herein or any actions taken hereunder shall affect, infringe upon, or diminish in any manner any water rights and permits or the future needs of the city of Cheyenne.

41-2-206. Feasibility study and hearings.

The interdepartmental water conference shall, in cooperation with the office of the state engineer, other appropriate state agencies and officials and members of the public make a feasibility study of the total effects of Stage I, Stage II and Stage III and of the in-basin needs and rights which will be considered in the final plan and hold hearings thereon in compliance with W.S. 41-2-114.

41-2-207. Repealed by Laws 1986, ch. 113, § 14.

41-2-208. Agricultural water rights.

There shall be no condemnation of agricultural water rights as a result of the planning, development and operation of stage I, stage II and stage III of the Little Snake River water management project.

41-2-209. Authorization for the construction of Stage II of the Little Snake Diversion Facilities.

(a) The department of economic planning and development [economic development and stabilization board] is authorized to proceed with the construction of Stage II of the Cheyenne Little Snake Diversion Facilities in south-central Wyoming. Stage II is specifically defined in W.S. 41-2-204(a)(ii) and (iii) [41-2-204(a)(iii)]. Prior to the commencement and construction of the project, the department of economic planning and development [economic development and stabilization board] shall:

(i) Enter into a signed project agreement, in a form acceptable to the Wyoming attorney general, with the city of Cheyenne, Wyoming, for the construction, operation and maintenance of the project by the city as specified in W.S. 41-2-209 through 41-2-211;

(ii) Approve the final design, plans, specifications and construction schedules for the project facilities and development of the water supplies, construction of new interception lines, collection, storage and transmission facilities;

(iii) Approve changes, analysis and plans of the city of Cheyenne for establishing, operating and maintaining the project; and

(iv) Prepare and obtain conveyances and approval by the state engineer of all water rights and permits from the city of Cheyenne to the state in connection with Stage III of the Little Snake River water management project. Stage III is specifically defined in W.S. 41-2-204(a)(iv) and (v) [41-2-204(a)(iv)] which conveyances shall be held in escrow until all of the Stage II project has been funded, at which time the documents shall be released to the state.

41-2-210. Projects authorized; financing; excess water.

(a) The following construction is authorized within the Stage II project:

(i) Enlargement of Rob Roy Reservoir, estimated to cost eighteen million dollars ($18,000,000.00);

(ii) Little Snake River collection system, estimated to cost twenty-five million dollars ($25,000,000.00);

(iii) Enlargement of Hog Park Reservoir, estimated to cost thirteen million dollars ($13,000,000.00);

(iv) Hog Park to Encampment River pipeline, estimated to cost two million dollars ($2,000,000.00).

(b) The projects enumerated in subsection (a) of this section shall be financed as follows:

(i) The city of Cheyenne shall finance the total cost of the project except for the portion funded by the state under paragraph (ii) of this subsection;

(ii) The state shall finance twenty million dollars ($20,000,000.00) of the total cost of the projects under paragraphs (a)(i), (ii), (iii) and (iv) of this section as provided by subsection (d) of this section.

(c) The state loan and investment board with the advice of the director of the department of commerce is authorized to loan not more than thirty-five million three hundred sixty thousand nine hundred sixty-five dollars ($35,360,965.00) from the permanent mineral trust fund to the city of Cheyenne or as much thereof as deemed necessary by the department of commerce to design and construct the portion of Stage II of the Little Snake River water management project provided by subsection (a) of this section. The revenue shall not be advanced until:

(i) The qualified electors of the city of Cheyenne approve creation of debt totaling the amount authorized by this subsection and approve the pledging of the revenue from the operation of the water project as the primary source of repayment of the debt as evidenced by the issuance of general obligation bonds to the state of Wyoming;

(ii) The city of Cheyenne submits a financing plan designed to reimburse the state of Wyoming subject to the following specific conditions:

(A) The city will pay interest charges computed at a rate which will be no more than one-half percent (.5%) below the rate for which the city of Cheyenne could sell the general obligation bonds on the open market, and shall not be less than five percent (5%) per annum. This rate determination shall be made by the state loan and investment board;

(B) Principal payments may be deferred on request of the city with the approval of the state loan and investment board but not beyond the original final payment date set by the state loan and investment board;

(C) The city shall apply available revenue from secondary sources of revenue, designated within the financing plan, to the repayment of the loan.

(iii) Repealed by Laws 1986, ch. 114, § 3.

(iv) A rate study is conducted for the city by a professional municipal finance and rate firm;

(v) The city agrees to mortgage to the state all facilities constructed with funds provided by the state loan and investment board and assign all easements, rights-of-way, water rights and permits as approved by the state engineer appurtenant thereto, in such form and to such extent as is required by the Wyoming attorney general. The conveyances shall be held in escrow. The state engineer shall not change the priority date of the water rights and permits as a result of this conveyance or escrow. Upon payment in full of the loan to the state of Wyoming, the conveyances shall be returned to the city of Cheyenne; and

(vi) Repealed by Laws 1986, ch. 114, § 3.

(d) The state treasurer shall pay not to exceed twenty million dollars ($20,000,000.00) from the Wyoming water development account provided by W.S. 39-14-111(j) to the city of Cheyenne as deemed necessary by the department of commerce as provided by paragraph (b)(ii) of this section. The payments are grants and not loans to the city of Cheyenne and shall not:

(i) Be disbursed until the election pursuant to W.S. 41-2-210(c) is held and the indebtedness approved by the electors;

(ii) Deplete the balance remaining within the Wyoming water development account to less than ten million dollars ($10,000,000.00) for projects listed within W.S. 41-2-210(a);

(iii) Be disbursed until the city of Cheyenne, in consultation with the state loan and investment board and the department of commerce, develops a proposed financing plan for funding the completion of the Stage II water project as defined in W.S. 41-2-204(a)(ii) and (iii). Copies of the plan shall be mailed to the governor and members of the legislature. This provision shall not be construed as requiring any approvals of such a financing plan.

(e) All water in excess of the needs of the city of Cheyenne within the service area of the city produced by Stage II of the project shall be assigned to and marketed by the Wyoming water development commission for as long as the excess water is available or until July 1, 2036, whichever is earlier. The first option to purchase not more than eighty percent (80%) of the surplus water shall be extended to cities, towns and special districts within the North Platte basin for the benefit of their inhabitants at a negotiated cost. Sales contracts entered into by the commission shall be administered by the commission. To optimize the amount of excess Stage II water available for marketing without jeopardizing water supplies necessary to meet the city of Cheyenne's municipal needs, the city shall develop a Stage II management plan acceptable to the water development commission and the state engineer. The board shall transfer thirty-seven and three-tenths percent (37.3%) of the proceeds from the sale of excess Stage II water to the city of Cheyenne which it shall apply to the repayment of the loan provided by subsection (c) of this section until the loan is repaid.

(f) Repealed by Laws 1986, ch. 114, § 3.

(g) All effluent from the city of Cheyenne's sewage treatment plant resulting from Stage II municipal water Cheyenne develops the ability and the need to recycle or use that water for municipal purposes. Sale contracts entered into by the commission shall be administered by the commission. The board shall provide thirty-seven and three-tenths percent (37.3%) of the proceeds of the sale of Stage II effluent to the city of Cheyenne for its use. The water development commission may withdraw up to sixty-two and seven-tenths percent (62.7%) of the Stage II effluent from sale and the city of Cheyenne may withdraw up to thirty-seven and three-tenths percent (37.3%) of the Stage II effluent from sale. If either the city or the commission withdraws any portion of its share of Stage II effluent from the market its share of revenues generated by sale of the remainder shall be reduced proportionately. The sale or withdrawal from sale of Stage II effluent shall not be accomplished without consultation among the commission, the city and the state engineer. Because the effluent affected hereby is a by-product of the Stage II dams and pipeline projects, there are no restrictions on the city of Cheyenne's use of its share of the revenues generated by the sale of Stage II effluent.

(h) Any revenues to the state from the lease, sale, assignment or transfer of excess Stage II water or Stage II effluent as provided in subsections (e) and (g) of this section shall be deposited in the Wyoming water development account funded by revenues under water development account I.

(j) In addition to the grant provided by W.S. 41-2-210(b)(ii) and (d), the state of Wyoming shall grant to the city of Cheyenne from the Wyoming water development account funded by revenues under water development account I not to exceed three million dollars ($3,000,000.00) to be used to pay fifty percent (50%) of excess project expenses for projects designated in subsection (a) of this section, provided:

(i) Payments shall be made only for project expenses in excess of the combined fifty-five million three hundred sixty thousand nine hundred sixty-five dollar ($55,360,965.00) grant and loan authorized by W.S. 41-2-210(b)(ii), (c) and (d);

(ii) The city shall submit all invoices for payment to the Wyoming water development commission for approval. The commission shall, upon review and approval of the invoices, make payments directly to the city for fifty percent (50%) of the total invoice amount;

(iii) Payments under this subsection are grants and not loans to the city of Cheyenne; and

(iv) Nothing in this subsection shall be deemed to alter or amend any provision of W.S. 41-2-210(e), (g) or (h).

41-2-211. Approval of project expenditures; state engineer duties.

(a) After commencement of design and construction of the project and until completion, the department of economic planning and development [economic development and stabilization board] shall approve expenditures for project engineering and construction. The city of Cheyenne shall provide to the director of the department of economic planning and development [chairman of the economic development and stabilization board] monthly progress reports confirming that the construction, design and specifications for the project are being followed and complied with.

(b) The state engineer shall conduct a study based on records available from prior years and actual measurements to determine the level of water at the Dixon measuring station required to satisfy water rights senior to the rights of the city of Cheyenne. He shall use the results of this study to aid in the regulation of the Little Snake River drainage provided that the result does not give junior rights priority over senior rights.

41-2-212. Repealed by Laws 1982, ch. 60, § 16.

41-2-213. Repealed by Laws 1982, ch. 60, § 16.

41-2-214. Repealed by Laws 1982, ch. 60, § 16.

41-2-215. Repealed by Laws 1982, ch. 60, § 16.

41-2-216. Definitions.

(a) As used in this act:

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

(ii) "Department" means the department of economic planning and development [economic development and stabilization board];

(iii) "District" means the Horse Creek conservation district;

(iv) "Project" means the Hawk Springs project under W.S. 41-2-217;

(v) "This act" means W.S. 41-2-216 through 41-2-218.

41-2-217. Project components.

(a) The Hawk Springs project consists of the following components:

(i) Necessary repairs to Dam No. 1 on Hawk Springs Reservoir, Goshen County;

(ii) Renovation of the existing delivery system of the district;

(iii) A public recreation area;

(iv) A geological and hydrological review of the project by the department;

(v) Replacement of the existing Horse Creek siphon;

(vi) Lining of the existing canal and, where economically feasible, replacing the canal with buried pipe;

(vii) Installation of necessary public facilities.

41-2-218. Project financing; terms; conditions; restrictions on sale of water; loan acceleration.

(a) Subject to the conditions in subsection (b) of this section, the construction of the project shall be financed as follows:

(i) A grant to the district through the department not to exceed four million five hundred fifteen thousand dollars ($4,515,000.00), of which two million three hundred thirty thousand dollars ($2,330,000.00) shall be expended only for dam repair and outlet works and two million one hundred eighty-five thousand dollars ($2,185,000.00) for canal repairs. The department shall release grant funds as it deems necessary;

(ii) A loan to the district through the department as authorized in W.S. 9-2-206 [repealed] in an amount not to exceed one million nine hundred seventy-five thousand dollars ($1,975,000.00) to construct the project for a term of fifty (50) years to commence as provided in subparagraph (D) of this paragraph at an annual interest rate of four percent (4%) provided:

(A) No principal or interest is due and payable during the first five (5) years of the term of the loan;

(B) Interest shall not accrue on the principal during the first five (5) years of the term of the loan;

(C) The department shall establish a repayment schedule amortized over the remaining forty-five (45) years of the loan term in accordance with the conditions in this act [§§ 41-2-216 through 41-2-218]; and

(D) The loan funds shall be released to the district upon execution of the loan agreement, but the term of the loan for purposes of repayment shall not commence until the project is substantially completed as determined by the department.

(iii) Authorization to the game and fish commission to expend not more than one hundred seventy thousand dollars ($170,000.00) for necessary public facilities for the public recreation area in consultation with the department and the recreation commission [parks and cultural resources commission];

(iv) Authorization to the department to expend not more than sixty thousand dollars ($60,000.00) for a geological and hydrological review of the project under W.S. 41-2-217(a)(iv).

(b) The department shall not release any funds to the district authorized under paragraphs (a)(i) and (ii) of this section until:

(i) An independent geological and hydrological review under W.S. 41-2-217(a)(iv) has been completed;

(ii) The department and the district have entered into a project agreement providing the district shall undertake construction of all project components concurrently containing the following provisions and terms:

(A) The department shall review and approve all design and construction plans prior to construction;

(B) The district shall supervise design and construction and submit all requests for payment to the department;

(C) The department shall directly make necessary payments in response to requests for payment;

(D) The district shall provide security to the department as deemed sufficient by the attorney general to include a mortgage on the dam and canals and an assignment of water rights;

(E) The district shall grant to the department for the state, ownership of the storage in Hawk Springs Reservoir from elevation 4,446.9 feet to elevation 4,461.9 feet according to the 1982

United States soil conservation service survey, approximately one thousand seven hundred seventy-nine (1,779) acre-feet of water;

(F) The district shall operate the reservoir to provide a pool depth of twenty (20) feet by January 1 in those years when sufficient water is available;

(G) The district shall grant public access in perpetuity to the Hawk Springs Reservoir proper and to all adjacent lands owned by the district or the state for the purposes of hunting, fishing and general recreation including the construction of such facilities as deemed necessary by the game and fish commission to maximize the public enjoyment;

(H) The district shall pay all the costs including manpower for all operation, maintenance and repairs to the dam and water delivery system after the project is completed;

(J) The department shall determine an amount to be assessed annually by the district against district members and the district shall place the funds so collected into a separate account as a sinking fund adequate to meet future maintenance costs for the project;

(K) The department may contract with the district for maintenance of public facilities constructed under this project.

(c) There shall be no sale or transfer of ownership of water by the district to other than agricultural users without prior approval of the state board of control. In the event that such a sale or transfer is approved, the balance of the loan associated with the sale is immediately due and payable.

41-2-219. Definitions.

(a) As used in this act:

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

(ii) "Department" means the department of economic planning and development [economic development and stabilization board];

(iii) "District" means a court approved assessment district consisting of the shareholders in the Shell Canal Company;

(iv) "Project" means the rehabilitation of Shell Canal as described in the report submitted by the water development commission entitled "Shell Canal Rehabilitation Project";

(v) "This act" means W.S. 41-2-219 through 41-2-222.

41-2-220. Authorization of project.

In order to provide for agricultural use in the Shell Creek drainage of Big Horn county, Wyoming, the district is authorized to proceed with the final design and rehabilitation of Shell Canal.

41-2-221. Formation of district; duties.

The Shell Canal company shall form a court approved assessment district. The district shall obtain all permits and clearances necessary to proceed with the project. The department shall do any and all things necessary to assure the compliance by the district with conditions provided for in this act [§§ 41-2-219 through 41-2-222].

41-2-222. Project financing.

(a) The state of Wyoming shall loan to the district from the water development account through the department as authorized in W.S. 9-2-206 [repealed] a sum not to exceed ninety-five thousand dollars ($95,000.00) for a term of fifty (50) years at an annual interest rate of six percent (6%) provided [that]:

(i) The district offers security as deemed adequate and acceptable to the attorney general;

(ii) No principal or interest is due and payable during the first five (5) years of the term of the loan;

(iii) Interest shall not accrue on the principal during the first five (5) years of the term of the loan;

(iv) The district shall establish a sinking fund for repair and maintenance from an annual assessment of one dollar ($1.00) per acre for each acre to which a water right is attached;

(v) The department establishes a repayment schedule in accordance with the conditions prescribed in this act [§§ 41-2-219 through 41-2-222].

(b) The state of Wyoming shall grant the district not to exceed ninety-five thousand dollars ($95,000.00) for construction of the project. The department shall release grant funds as it deems necessary.

ARTICLE 3
LITTLE BIGHORN RIVER

41-2-301. Use of surface waters and tributaries for transportation of coal to other states.

(a) On the advice of the state engineer the legislature of the state of Wyoming hereby grants to Texas Eastern Wyoming, Inc., a Delaware corporation (to the extent that it is or may be the holder of a permit, certificate or application to appropriate, store or divert water), all approval required by W.S. 41-3-105 and 41-3-115 to use outside of the state of Wyoming not more than twenty thousand (20,000) acre-feet annually of the surface waters of the Little Bighorn River and its tributaries (including intrastate and interstate tributaries) as a medium of pipeline transportation of coal to another state or states and for uses related to or connected with a pipeline system of transportation of coal. No more than ten thousand (10,000) acre-feet of such water shall be used annually to transport coal other than coal mined within the boundaries of Wyoming.

(b) The approval granted by this act [35-12-119, 41-2-301] to use not more than twenty thousand (20,000) acre-feet annually of such surface waters outside the state of Wyoming shall automatically terminate if there is a permanent termination of the use of such surface waters as a medium of pipeline transportation of coal.

(c) The use of such surface waters outside the state of Wyoming pursuant to this approval shall not require a grant of reciprocal rights from any adjoining states as set forth in W.S. 41-3-115(c).

(d) If any portion of the twenty thousand (20,000) acre-feet of surface water is conveyed outside the state of Wyoming and then returned to the state of Wyoming, any such water may be again conveyed outside the state but shall not be counted again in determining the total twenty thousand (20,000) acre-feet annual quantity of water.

(e) Appropriation of the surface waters to be used pursuant to this section shall be in accordance with Title 41, Chapters 3 and 4, Wyoming Statutes 1977. Nothing in this section shall be construed as a directive to the state engineer to grant any approval or issue or amend permits, or in any way infringe on his discretion under the state law.

(f) The approvals, rights and benefits granted by this section may be pledged, mortgaged or otherwise hypothecated in connection with any financing and shall also inure to the benefit of any successors or assigns of Texas Eastern Wyoming, Inc. Provided that each such successor or assign is a corporation, partnership, joint venture or other entity with respect to which Texas Eastern Wyoming, Inc., or a parent, subsidiary or other affiliate thereof, is a member or the holder of equity interest.

(g) Notwithstanding the effective date of this section, the approval granted by this section shall terminate and expire unless, within ninety (90) days after the effective date of this section, an initial contract is entered into by and between but not limited to the state and Texas Eastern Wyoming, Inc., which is signed by the governor upon the advice of the attorney general that the contract contains in appropriate form and detail the provisions set forth in subsection (h) of this section.

(h) The contract referred to in subsection (g) of this section shall contain provisions as follows:

(i) There shall be a joint study, conducted pursuant to W.S. 41-2-114(c), to be funded entirely by Texas Eastern Wyoming, Inc., (hereinafter referred to as "Texas Eastern") to evaluate the feasibility of a water project to develop the surface waters of the Little Bighorn River including its interstate and intrastate tributaries. The present description of the water project, based upon engineering estimates of the water which will be available from the Little Bighorn River, consists of a maximum diversion of three hundred (300) cubic feet per second from the Little Bighorn River through a water pipeline to a reservoir or two (2) reservoirs to store forty-two thousand five hundred eighty (42,580) acre-feet of water annually;

(ii) If, after completion of the joint feasibility study, Texas Eastern desires to proceed with development, the state will have three (3) options. The state will have the exclusive right to determine which option it desires to select;

(iii) First option:

(A) If the state determines to select the first option, Texas Eastern will finance, construct and own the water project and the related water rights, and Texas Eastern will operate and maintain the water project and pay all costs in connection therewith;

(B) The water in excess of a firm yield of twenty thousand (20,000) acre-feet per annum (or any lesser quantity which is required for the slurry pipeline transportation system) will be made available for sale at the reservoir to the state at a cost equal to a pro rata share of all operating and maintenance costs of the water project;

(C) The state will be entitled to sell the water it purchases from Texas Eastern at such prices as the state may determine but the state will agree that it will not sell water for industrial use at a price less than the cost per acre-foot of water to Texas Eastern. The state will also agree that it will not sell water for industrial use unless the purchaser contracts with Texas Eastern to pay an annual amount equal to the actual sums Texas Eastern is required to pay to the present owners of the water rights, but the state will have no liability for such payments to Texas Eastern or to the present owners of the water rights;

(D) The state will be entitled to all revenues from water sales;

(E) If the state sells water from the water project for industrial use, the state will sell the water only after complying with the review and public hearing processes provided by W.S. 41-2-115, and any water sale for industrial use will be contingent upon the industrial user's obtaining any permit required by law;

(F) The reservoirs will be available for public recreational uses;

(G) Texas Eastern will provide the state, political subdivisions or special districts an opportunity to obtain capacity in any water pipeline Texas Eastern constructs to transport water from the water project at a capital cost and operating cost equal only to the incremental cost of constructing and operating a larger water pipeline to provide additional capacity for use of the state, political subdivisions or special districts;

(H) After the use of water from the water project for the slurry pipeline transportation system is permanently terminated, good and marketable title to the water project and the related water rights will be conveyed to the state without cost to the state.

(iv) Second option:

(A) If the state determines to select the second option, the state will issue its tax exempt revenue bonds to finance the water project and the state will construct, own and operate the water project and will own the related water rights. Good and marketable title to the related water rights will be conveyed to the state without cost to the state;

(B) The state will sell and Texas Eastern will purchase a firm yield of twenty thousand (20,000) acre-feet per annum from the state (or any lesser quantity which is required for the pipeline transportation system);

(C) Texas Eastern will pay the present owners of the water rights an annual amount for use of the water for the slurry pipeline transportation system pursuant to the water rights. In addition, Texas Eastern will pay the following amounts to the parties indicated for the water purchased, regardless of the amount of water actually used by Texas Eastern:

(I) An annual amount equal to all principal and interest payable on the revenue bonds of the state;

(II) An annual amount to be determined by the state treasurer equal to the difference between the actual interest on the tax exempt revenue bonds of the state and the interest which would have been paid if corporate bonds had been issued to finance the water project as a part of the slurry pipeline transportation system payable to the Wyoming Water Development Fund;

(III) An annual amount in lieu of taxes equal to all ad valorem taxes for all taxing jurisdictions payable to the taxing jurisdictions to the same extent as if Texas Eastern owned the water project;

(IV) An annual amount equal to all operating and maintenance costs of the water project.

(D) The state will be entitled to sell water in excess of the water committed to Texas Eastern at such prices as the state may determine but the state will agree that it will not sell water for industrial use at a price less than the cost per acre-foot of water to Texas Eastern. The state will also

agree that it will not sell water for industrial use unless the purchaser contracts with Texas Eastern to pay an annual amount equal to the actual sums Texas Eastern is required to pay to the present owners of the water rights, but the state will have no liability for such payments to Texas Eastern or to the present owners of the water rights;

(E) To the extent that the state sells water from the water project other than to Texas Eastern, the state will pay a pro rata share of the operating and maintenance costs of the water project and will to such extent credit Texas Eastern's obligation to pay all operating and maintenance costs;

(F) The state will be entitled to all revenues from water sales under subparagraph (D) of this subsection;

(G) If the state sells water from the water project for industrial use, the state will sell the water only after complying with the review and public hearing processes provided by law and any water sale for industrial use will be contingent upon the industrial user's obtaining any permit required by law;

(H) Texas Eastern will provide the state, political subdivisions or special districts an opportunity to obtain capacity in any water pipeline Texas Eastern constructs to transport water from the water project at a capital cost and operating cost equal only to the incremental cost of constructing and operating the water pipeline to provide additional capacity for use of the state, political subdivisions or special districts.

(v) Third option:

(A) If the state determines to select the third option, Texas Eastern will finance, construct and operate the water project and will own the related water rights without participation by the state;

(B) Texas Eastern will amend the water permits so that the water is not authorized to be used for industrial use other than for a slurry pipeline transportation system;

(C) The reservoir will be available for public recreational uses;

(D) Texas Eastern will provide the state, political subdivisions or special districts an opportunity to obtain capacity in any water pipeline Texas Eastern constructs to transport water from the water project at a capital cost and operating cost equal only to the incremental cost of constructing and operating a larger water pipeline to provide additional capacity for use in the state, political subdivisions and special districts;

(E) After the use of water for the slurry pipeline system is permanently terminated, good and marketable title to the water project and the related water rights will be conveyed to the state without cost to the state, if agreed to by the state.

(vi) As a material consideration for and as a condition of the use of the water described in subsection (a) of this section, Texas Eastern Wyoming, Inc., shall agree, by contract, that if any coal slurry preparation plant utilizing water authorized under this section is constructed outside of the state of Wyoming, then Texas Eastern Wyoming, Inc. shall annually pay to each entity involved an amount equal to the ad valorem taxes which would be due to any taxing entity having authority to levy an ad valorem tax on the plant if the preparation plant facilities were located at the principal reservoir site in Sheridan County, Wyoming.

(j) In connection with the implementation of this section, on behalf of the state, the governor may enter into contracts on such terms and conditions as may be deemed desirable with any persons or entities with regard to development of a water project using the waters of the Little Bighorn River or connected with the project. Nothing in this section may be construed as requiring the governor to enter into any contract.

ARTICLE 4
SPLIT ROCK FORMATION

41-2-401. Well site.

(a) A sum of money not to exceed two hundred thousand dollars ($200,000.00) is appropriated from the water development account to the department of economic planning and development [economic development and stabilization board], with advice and assistance from the state engineer and the Wyoming water development commission, to develop a potential water well site in the Split Rock Formation, using the existing water filings by the department of economic planning and development [economic development and stabilization board]. The state engineer shall determine the site and dimensions of the potential well field based on best available geologic data.

(b) The department of economic planning and development shall report to the 1982 legislative session and make recommendations concerning future water development on the Split Rock Formation.

ARTICLE 5
PARK RESERVOIR DAM

41-2-501. Definitions.

(a) As used in this act:

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

(ii) "Department" means the department of economic planning and development [economic development and stabilization board];

(iii) "District" means a court approved assessment district consisting of the shareholders in the Park Reservoir Company;

(iv) "Project" means the reconstruction of Park Reservoir Dam as described in the report submitted by the water development commission entitled "Reconstruction of Park Reservoir Dam";

(v) "Public benefit" means those things including but not limited to fisheries, aesthetics, water quality, recreation and flood control which are enjoyed by the public in general and no specific identifiable group in particular;

(vi) "Water development account" means water development account I;

(vii) "This act" means W.S. 41-2-501 through 41-2-506.

41-2-502. Authorization of project.

In order to provide water for agricultural, municipal, recreational and environmental use in the Big Goose Creek and Little Goose Creek drainages of north central Wyoming, the district is authorized to

proceed with the final design and reconstruction of the Park Reservoir Dam and appurtenant works to store the amount of water authorized in the original permit.

41-2-503. Formation of district; duties.

The Park Reservoir Company shall form a court-approved assessment district. The district shall complete all filings and obtain any permits necessary to proceed with the project. The department shall do any and all things necessary to assure the compliance by the district with conditions provided for in this act.

41-2-504. Project financing.

(a) The state of Wyoming shall fund directly from its water development account an amount not to exceed one million three hundred twenty-five thousand dollars ($1,325,000.00) in return for:

(i) Five hundred eighty-eight (588) acre-feet of stored water in Park Reservoir to maintain a minimum pool for fisheries;

(ii) Five hundred thirty (530) acre-feet of stored water in Park Reservoir to be used to augment flushing flows in the East Fork of Big Goose Creek at the rate of ninety (90) cubic feet per second for seventy-two (72) hours;

(iii) Ninety (90) acre-feet of stored water in Park Reservoir to be used to sustain a minimum flow in the East Fork of Big Goose Creek when inflow into the reservoir drops below four and one-half (4.5) cubic feet per second.

(b) The state of Wyoming shall not be subject to normal operation and maintenance costs for fifty (50) years beginning with the completion of the project.

(c) The state of Wyoming shall loan to the district through the department as authorized in W.S. 9-3-312 a sum not to exceed one million two hundred thousand dollars ($1,200,000.00) from its water development account for a term of forty (40) years at five percent (5%) interest provided:

(i) The district offers security as deemed adequate and acceptable to the Wyoming attorney general; and

(ii) The department establishes a repayment schedule in accordance with the conditions herein prescribed.

41-2-505. Management plan; restriction on sale of water; loan acceleration.

(a) The district and the division 2 superintendent of the state board of control, with approval of the state engineer, shall establish a reservoir management plan to achieve the objectives of this act.

(b) There shall be no sale or transfer of ownership of water from Park Reservoir to other than agricultural users without prior approval of the state board of control. In the event that such a sale or transfer is approved, the balance of the loan associated with the sale is immediately due and payable.

41-2-506. Reconstruction and repair.

(a) One million two hundred thousand dollars ($1,200,000.00) is appropriated from the water development account for completion of reconstruction and repairs to correct damage caused by embankment movement and to stabilize the embankment against further displacement of the Park

Reservoir Dam. The department shall release funds it deems necessary for reconstruction and repair to the district. Fifty-two and one-half percent (52 1/2%) of any funds released by the department shall be a direct appropriation in exchange for public benefits received under W.S. 41-2-504. Forty-seven and one-half percent (47 1/2%) of the funds released by the department shall be a loan.

(b) Funds released by the department as a loan under subsection (a) of this section shall be subject to the following conditions:

(i) The district shall offer security deemed adequate and acceptable by the attorney general; and

(ii) The department shall establish a repayment schedule subject to the following conditions:

(A) Upon completion of the project, the total amount of the loan shall be determined and the term of the loan shall commence;

(B) The term of the loan shall be forty (40) years at an annual interest rate of five percent (5%);

(C) No interest or principal shall be payable during the first ten (10) years of the term. The loan shall be amortized over the remaining thirty (30) years of the term;

(D) Any proceeds received by the district for reimbursement of any contractual obligations of any third person owed to the district shall be applied to repayment of the loan authorized by W.S. 41-2-506(a), after payment of costs and fees expended in connection therewith, as allowed by the district court having jurisdiction over the district; and

(E) If the sale or transfer of ownership of water is approved under W.S. 41-2-505, the balance of the loan under this section associated with the sale or transfer is immediately due and payable.

(c) The attorney general shall assist the district in pursuing any claim based on a cause of action arising out of the reconstruction or repair of the Park Reservoir Dam.

ARTICLE 6
GREEN RIVER

41-2-601. Use of surface waters and tributaries for slurry pipeline and fertilizer plant.

The legislature of the state of Wyoming hereby grants to Chevron Chemical Company, a Delaware corporation, the consent required by W.S. 41-3-105 and 41-3-115(b) and (c) to export from and use outside the state of Wyoming up to three thousand (3,000) acre-feet annually of the surface waters of the Green River and its tributaries for a phosphate rock concentrate slurry pipeline transportation system from Utah to Wyoming and for uses related to the operation of a fertilizer plant in Wyoming, subject to the acquisition of a water service contract with the state of Wyoming regarding Fontenelle Reservoir.

ARTICLE 7
TOWN OF SOUTH SUPERIOR

41-2-701. Water supply and transmission project.

(a) The department of economic planning and development [economic development and stabilization board] is authorized to proceed with the design and construction of a domestic and municipal water supply and transmission system for the town of South Superior in Sweetwater county. The source of supply may be from surface or groundwater as the department [board] determines will best satisfy the present and future needs of the municipality in the most economical manner. Prior to commencement of construction of the water supply and transmission project, the department of economic planning and development [economic development and stabilization board] shall:

(i) Enter into a signed project agreement with the town of South Superior, Wyoming, for the construction, operation and maintenance of the project by the city;

(ii) Assign the project to the town for design, construction and operation, after execution of the project agreement with the town of South Superior and upon approval of the governor as specified in W.S. 41-2-115;

(iii) Approve the final design, plans and specifications and construction schedule for the project facilities and development of water service from the project facilities to the town of South Superior;

(iv) Approve the operation and maintenance plans for the project which shall be developed by the town of South Superior and the department of environmental quality; and

(v) Approve and authorize payments and disburse the funds appropriated for the project, in accordance with the plans and specifications approved by the department [board] and with the terms and conditions of the agreement executed with the town of South Superior.

(b) The department of economic planning and development [economic development and stabilization board] shall expend not to exceed three million dollars ($3,000,000.00) to determine the most satisfactory and economical source of supply and transmission system for the water project authorized in subsection (a) of this section and to design and construct the water project for the town of South Superior.

ARTICLE 9
LITTLE BIGHORN RIVER

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

ARTICLE 10
DEBT SERVICE ACCOUNTS

41-2-1001. Creation; use of funds; interest.

(a) The following accounts are created within the debt service fund:

(i) Fontenelle reservoir account;

(ii) Buffalo Bill dam account;

(iii) Palisades reservoir account;

(iv) Miscellaneous water investment account;

(v) Keyhole reservoir account.

(b) Any unexpended balance in an account created by subsection (a) of this section shall be invested by the state treasurer and the interest earned shall be credited to the account.

(c) The Wyoming water development commission shall annually review the accounts created by subsection (a) of this section and report to the joint agriculture, public lands and water resources interim committee in the report required under W.S. 41-2-118(a) the amount of funds in any account which are in excess of that amount needed to meet obligations specified in subsections (d) through (h) of this section.

(d) All revenues received by the state from the lease, sale, assignment or transfer of ownership of power or water resulting from the state's interest in the Fontenelle reservoir shall be deposited in the account created by paragraph (a)(i) of this section. The Wyoming water development commission shall use any monies in the account to meet the loan, operation, maintenance and replacement obligations of the state relating to the Fontenelle reservoir project. Funds previously credited to the account created by W.S. 9-2-211(d) shall be transferred to the account created by paragraph (a)(i) of this section.

(e) All revenues received by the state from the lease, sale, assignment or transfer of ownership of power or water resulting from the state's interest in the Buffalo Bill dam shall be deposited in the account created by paragraph (a)(ii) of this section. The Wyoming water development commission shall use any monies in the account to meet the loan, operation, maintenance and replacement obligations of the state relating to the Buffalo Bill dam project.

(f) Revenues received by the state from the lease, sale, assignment or transfer of ownership of water resulting from the state's interest in Palisades reservoir shall be deposited with the game and fish department until the department has been reimbursed for the sixty-five thousand dollars ($65,000.00) approved by the Wyoming game and fish commission for deposit into the account created by paragraph (a)(iii) of this section. Thereafter, all revenues received by the state from the lease, sale, assignment or transfer of ownership of water resulting from the state's interest in the Palisades reservoir shall be deposited in the account created by paragraph (a)(iii) of this section. The Wyoming water development commission shall administer the account and use any monies in the account to meet annual operation, maintenance and other contract obligations of the state relating to the Palisades reservoir project.

(g) Revenues received by the state from the lease, sale, assignment or transfer of water from projects funded by the Wyoming water development program or from the lease, sale, assignment or transfer of projects, or any portions thereof, funded by the Wyoming water development program shall be deposited into the account created by paragraph (a)(iv) of this section. The Wyoming water development commission shall administer the account and use any monies in the account to meet the contract obligations of the state relative to said leases, sales, assignments or transfers. The account balance shall at no time exceed fifty thousand dollars ($50,000.00).

(h) The Wyoming water development commission shall administer the account created by paragraph (a)(v) of this section and use any monies in the account for replacement water purchases and to meet annual operation, maintenance and other contract obligations of the state relating to the Keyhole reservoir project.

ARTICLE 11
WIND RIVER INDIAN RESERVATION

41-2-1101. Projects.

(a) The joint business council of the Eastern Shoshone and Northern Arapaho Indian tribes may apply to the Wyoming state engineer for a grant or grants totaling not more than one million three hundred thousand dollars ($1,300,000.00) for rehabilitation or expansion of existing water delivery systems or for water storage projects within the Wind River Indian Reservation as defined, budgeted and prioritized by the tribes in consultation with the state engineer. The state engineer shall review any proposal submitted and shall grant the amount necessary to complete the proposal to the joint business council when each proposed project is initiated, provided that the state engineer shall determine that the requirements of this section have been met by the joint business council.

(b) The joint business council of the Eastern Shoshone and Northern Arapaho Indian tribes may apply for assistance from the state and serve as a sponsor for water development programs and projects in the same manner as political subdivisions and special districts.

ARTICLE 12
LITTLE SNAKE RIVER

41-2-1201. Mitigation account.

(a) The Little Snake River mitigation account is created within the earmarked revenue fund.

(b) Funds in the Little Snake River mitigation account shall be used by the Wyoming water development commission to complete the Little Snake River mitigation study to identify water supply and rehabilitation needs in the Little Snake River basin in Wyoming and to evaluate alternative measures to meet those needs.

(c) The Wyoming water development commission shall administer the Little Snake River mitigation account created by subsection (a) of this section.

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 [§§ 41-3-101 through 41-3-103], 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] 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 [§§ 41-3-107, 41-3-109] 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 by the state engineer, with a copy of any conveyance or agreement attached, 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 [§§ 41-3-110 through 41-3-113] 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.

Any person who wrongfully causes to be shut down a diversion made under a temporary water right required under and by virtue of this act shall, upon conviction thereof, be guilty of a misdemeanor and may be fined in an amount not to exceed one hundred dollars ($100.00) for each day for which he shall cause such diversion to be wrongfully shut down.

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.

(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 act [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 [§§ 41-3-201 through 41-3-208], 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 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.

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 petitioners [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 maps in duplicate, one (1) of which shall be on tracing linen, 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 make a record of same in a proper book kept for that purpose.

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 [§§ 41-3-209 through 41-3-215] 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 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 on tracing cloth; however the state engineer may require certain information be submitted on special forms to be furnished by him.

(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 [§§ 41-3-301 through 41-3-304, 41-3-318, 41-3-319 and 41-3-321], 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 notary public 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. 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 a penalty not to exceed five hundred dollars ($500.00) per day for each day the violation continues. The state engineer is authorized to cancel any permit wherein the provisions of the above sections have not been, or are not being, complied with, and the cancellation shall operate as a forfeiture of all rights acquired under and by virtue of any permit theretofore approved by the state engineer. An appeal from any decision of the state engineer may be made to the board of control, and from the decision of the board of control appeal may be taken to the district court.

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 [§§ 41-3-301 through 41-3-304, 41-3-318, 41-3-319, 41-3-321] 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 [§§ 41-3-320, 41-3-322 through 41-3-327] shall apply to reservoirs heretofore lawfully constructed as well as to all reservoirs hereafter lawfully constructed.

41-3-327. Carey Act lands.

This act [§§ 41-3-320, 41-3-322 through 41-3-327] 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 any such person so arrested into the custody of the sheriff, it shall be the duty of the water commissioner making such arrest, to immediately in writing and upon oath, make complaint before the proper justice of the peace against the person so 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 law for the opening of headgates lawfully closed, 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 of the law for changing or interfering with headgates, 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.

Any person who willfully opens, closes, changes or interferes with any well, headgate or waterbox without authority, or who willfully uses water which has been lawfully denied him by the water commissioner or other competent authority, is guilty of a misdemeanor and shall be fined not exceeding five hundred dollars ($500.00). The possession or use of water lawfully denied by the water commissioner or other competent authority is prima facie evidence of guilt.

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

Duplicate 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.

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 [§§ 41-3-701 through 41-3-779].

41-3-702. Short title; definitions.

(a) This act [§§ 41-3-701 through 41-3-779] 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 [§§ 41-3-701 through 41-3-779], 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 [§§ 41-3-701 through 41-3-779] 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 [§§ 41-3-701 through 41-3-779] 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 [§§ 41-3-701 through 41-3-779], 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 capitol building, in Cheyenne, Wyoming, 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 [§§ 41-3-701 through 41-3-779], 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 [§§ 41-3-701 through 41-3-779] 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 [§§ 41-3-701 through 41-3-779] 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 [§§ 41-3-701 through 41-3-779] 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 public lands which public 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 this paragraph [subdivision] 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 [§§ 41-3-701 through 41-3-779], 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 [§§ 41-3-701 through 41-3-779], 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 [§§ 41-3-701 through 41-3-779], 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 [§§ 41-3-701 through 41-3-779] 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 [§§ 41-3-701 through 41-3-779] 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 a 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 [title 1] 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 [§§ 41-3-701 through 41-3-779] 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 [§§ 41-3-701 through 41-3-779] 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 [§§ 41-3-701 through 41-3-779] 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.

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 [§§ 41-3-701 through 41-3-779] 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 [§§ 41-3-701 through 41-3-779], 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 [§§ 41-3-701 through 41-3-779]. 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 [§§ 41-3-701 through 41-3-779] 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 [§§ 41-3-701 through 41-3-779] 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 [§§ 41-3-801 through 41-3-803] 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 [§§ 41-3-801 through 41-3-803] 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 [§§ 41-3-901 through 41-3-938], 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 [§§ 41-3-901 through 41-3-938] 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 [§§ 16-3-101 through 16-3-115]. 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. 41-3-938. 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 [§§ 41-3-901 through 41-3-938] 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 fifty dollars ($50.00) 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 [§§ 41-3-901 through 41-3-938], 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 [§§ 16-3-101 through 16-3-115].

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 [§§ 41-3-901 through 41-3-938], 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. 41-3-614.

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 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 or state board of control, and shall be held in an appropriate place within the county in which the proposed well or requested change is to be located.

(b) If no objections are filed against the application or petition 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 hearing on the application or petition and shall notify the applicant or petitioner of the time and place thereof. The hearing shall be open to the public, and shall be held before the control area advisory board and the state engineer or the state board of control 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. In the event a hearing is held he shall make known to the parties the records and

information upon which he relies. The state engineer, for good cause, may impose costs of the hearing proportionally upon the applicant or petitioner and the objectors.

(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) All procedures set forth in this section shall be conducted in conformance with and subject to the provisions of the Wyoming Administrative Procedure Act.

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 by such holder, the state engineer finds that the holder of any permit is wilfully violating or has wilfully violated any provision of such permit or any provision of this act [§§ 41-3-901 through 41-3-938] 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. Whenever, after notice to and opportunity to be heard by such holder, the board of control finds that the holder of any certificate of registration or certificate of appropriation is wilfully violating or has wilfully 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.

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. 41-3-614.

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.

(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 [§§ 41-3-1001 through 41-3-1014] 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 [§§ 41-3-1001 through 41-3-1014] 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 [§§ 41-3-1001 through 41-3-1014] 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 [§§ 41-3-1001 through 41-3-1014] 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 [§§ 41-3-1001 through 41-3-1014] 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.

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 [§§ 41-4-104, 41-4-105], 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) Fifty dollars ($50.00) 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; 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 state board of supplies [purchasing and property control division].

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 county in which the stream, the appropriation of whose waters shall have been so adjudicated, shall be situated, the said bills to be approved by the superintendent of the water division in which the adjudication is made.

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 [§§ 31-4-311, 31-4-315], 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 [§§ 41-4-317 through 41-4-324], 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 [§§ 41-4-317 through 41-4-324] 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 [§§ 41-4-329 through 41-4-331], 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 [§§ 41-4-329 through 41-4-331].

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.

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 wilfully divert or use water to the detriment of others without compliance with law shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in a sum not exceeding one hundred dollars ($100.00), or by imprisonment in the county jail for a term not exceeding six (6) months, or by both such fine and imprisonment; and the possession or use of water, except when a right of use is acquired in accordance with law, shall be prima facie evidence of the guilt of the person using it.

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 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 a suitable book 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 is found defective, it is the duty of the state engineer to return the application for correction by registered letter requesting registry return receipt, the date of such return, 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 letter accompanying the return of the application, and a record made thereof in the book kept for recording receipts of such application. 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, 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.

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 in duplicate, the original of which shall be on tracing linen drawn 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) Every other application for permit to appropriate water for beneficial uses must be accompanied by a map or plat in duplicate, showing accurately the location and extent of the proposed work. The original of these maps or plats must be drawn on tracing linen, on a scale to conform to the regulations of the state engineer; 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 surveyor, giving the date of survey, his name and post-office address.

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.

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.

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 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 fifty dollars ($50.00), which fee shall be transmitted to the secretary of the board of control together with the several proofs taken. The appropriate amount for the county recording fee shall be used by the secretary of the board to pay 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 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 recording 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. The advertisement shall be paid for by the county as provided by W.S. 41-4-307. 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 costs of advertising groundwater proofs shall be paid by the county as provided by W.S. 41-4-307.

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; and

(v) No change of use shall be granted;

(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 [§§ 41-4-514 through 41-4-516], 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 [§§ 41-4-514 through 41-4-516].

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 work as is reasonably necessary to maintain the ditch, may, after having given ten (10) days written notice to such owner or owners who have failed to perform his, her or their proportionate share of such work, necessary for the operation and maintenance of said ditch or ditches, perform his, her or their share of such work, and recover therefor from such person or persons so failing to perform his, her or their share of such work in any competent court having jurisdiction of the matter, the expense or value of such work or labor so performed.

41-5-103. Ditches; jointly owned; lien for work.

Upon the failure of any co-owner to pay his proportionate share of such expense as mentioned in W.S. 41-5-102, within thirty (30) days after receiving a statement of the same as performed by his co-owner or owners, such person or persons so performing such labor may secure payment of said

claim by filing an itemized and sworn statement thereof, setting forth the date of the performance and the nature of the labor so performed, with the county clerk of the county wherein said ditch is situated, and when so filed it shall constitute a valid lien against the interest of such person or persons who shall fail to perform their proportionate share of the work requisite to the proper maintenance of said ditch, which said lien when so taken may be enforced in the same manner as provided by law for the enforcement of construction liens.

41-5-104. Ditches; bridge to be built when ditch crosses public roads; costs of construction; failure to comply.

When any such ditch or watercourse shall be constructed across any public traveled road, and not bridged within three (3) days thereafter, it shall be the duty of the county commissioners of the county in which said ditch and road are located, to put a bridge over said ditch or watercourse, and call upon the owner or owners of said ditch or watercourse to pay the expenses of constructing said bridge, and if payment thereof be refused, a civil action may be maintained for the recovery of the same, together with all accruing costs.

41-5-105. When capital stock of irrigation companies assessable for maintenance.

Any ditch or irrigation company or association, all the property or capital stock of which is owned by farmers or others, owning lands under the line of such company's or association's ditch, and receiving water therefrom, by reason of their being owners or stockholders in said company or association, shall have the right to levy and collect such annual assessments on the capital stock of said company, or members or owners of such association, whether said capital stock be fully paid up or otherwise, as may be deemed necessary by the trustees of said company, or a majority of the stock of such association, for the purpose of maintaining its ditches, flumes, tunnels, and the payment of all necessary expenses of such company; provided, that this section shall only apply to such water companies or associations whose capital stock or ditch property is wholly owned by persons or corporations owning land under the line of their ditches, and using water therefrom by reason of being such stockholders in said companies; and provided further, that said company or association shall have the right to close the headgate and refuse water to all such stockholders, owners or members who fail or refuse to pay said assessments after ten (10) days notice thereof, in writing, made by the president, agent or attorney of said company or association.

41-5-106. Keeping fish out of irrigation systems.

The game and fish department of the state of Wyoming may construct and maintain, at or near the point of diversion where the water of any stream or reservoir is diverted by any means of conveyance from its natural channel, some fit and proper device whereby all fish will be prevented from entering said means of conveyance; provided, such device does not obstruct or diminish the flow of water through said means of conveyance; and provided further that the determination as to obstruction shall be within the discretion of the water commissioner of the district within which such structure is placed subject to appeal to the division superintendent, and from the decision of the division superintendent to the state engineer.

41-5-107. Removal or destruction of bridges or flumes.

Whenever any person, persons or corporation shall remove or destroy any bridge or flume which crosses any ditch, canal or other irrigation works, when said flume or bridge is in good condition a legal right for such crossing having been acquired, said person, persons or corporations must replace said bridge or flume, in as good condition as before removal. If said bridge or flume is removed by the owner or owners of the said ditch, canal or irrigation works; it shall be the duty of the water commissioner to keep the controlling works of the said ditch, canal or irrigation works closed until the

said bridge or flume is properly replaced. If any other person or persons shall remove or destroy any such bridge or flumes they shall be deemed guilty of a misdemeanor and shall be subject to a fine of not more than one hundred dollars ($100.00) or imprisonment in the county jail for not more than ninety (90) days, or both such fine and imprisonment.

41-5-108. Driving or floating logs, timber or lumber on streams.

(a) Any person, association or corporation desiring or intending to drive or float logs, timber or lumber down or upon any stream in this state shall, before commencing operations apply to the state engineer for a permit to drive or float the same. Such application shall be in writing and shall state that the driving of such logs, timber or lumber will be conducted with all possible expedition and in such manner as not to interfere with, or injure any irrigating ditch or other property along the stream on which said drive is to take place, and the applicant shall be required by the state engineer to give bond to the state of Wyoming in such sum as the state engineer may deem sufficient, conditioned for the conducting of said drive without delay and for the protection of the owners of irrigating ditches and property along the stream whereon said drive is to be made. When said permit is issued the said applicant may proceed to conduct said drive upon the stream or streams therein mentioned. Provided, however, that no permit shall be granted allowing any logs, timber or lumber to be left in or upon any stream so as to be frozen in during winter, and it shall be the duty of the state engineer to issue to all applicants a license to float timber or lumber on all streams of sufficient capacity, upon compliance with the provisions aforesaid.

(b) Anyone violating any of the provisions of this section, shall, on conviction, be fined in any sum not exceeding one hundred dollars ($100.00), or imprisoned in the county jail not exceeding three (3) months, or by both such fine and imprisonment.

41-5-109. Construction of acts.

(a) Nothing in this chapter contained, shall be so construed as to impair the prior vested rights of any mill or ditch owner, or other person, to the use of any such watercourse.

(b) This chapter shall in no wise be construed as impairing or abridging any rights already vested in any person or persons, company or corporation by virtue of the law heretofore in force.

41-5-110. Prohibited acts; penalty for violation.

Any person or persons who shall knowingly and wilfully cut, dig or break down, or open any gate, bank, embankment or side of any ditch, canal or reservoir, flume, tunnel or feeder in which such person or persons may be joint owners, or on the property of another, or in the lawful possession of another or others, and used for the purpose of irrigation, milling, manufacturing, mining or domestic purposes, with intent maliciously to injure any person, association or corporation, or for his or her own gain, unlawfully, with the intention of stealing, taking or causing to run or pour out of such canal or reservoir, feeder or flume, any water for his or her own profit, benefit or advantage, to the injury of any other person, persons, association or corporation lawfully in the use of such water, or of such ditch, canal, tunnel, feeder or flume, he, she, it or they, so offending shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding one hundred dollars ($100.00), and may be imprisoned in the county jail not exceeding six (6) months, or both, in the discretion of the court.

41-5-111. Irrigation facility modification and maintenance.

(a) Any person who, acting directly or indirectly through an agent or representative, in trespass or in other violation of the rights of a user, wrongfully modifies an existing irrigation ditch or other

irrigation facility in any manner that diminishes the capacity or adversely affects the utility of the ditch or irrigation facility is liable to the users for all restoration costs. If restoration is not feasible and the effort or cost of maintaining the modified ditch or facility is increased, then the person is thereafter liable to the users for the amount of increased maintenance that results from the modifications.

(b) For cases in which restoration is feasible, any adversely affected user may serve a written demand for restoration. If restoration is not feasible and requires increased maintenance, efforts or costs, any adversely affected user may serve a written demand for immediate and continued maintenance. A copy of this section shall be annexed to the written demand. The demand shall be delivered to the actor in person, or if the actor cannot be found then the demand shall be delivered conspicuously to the actor's usual place of business or residence. If the actor fails to accomplish complete restoration or all the currently necessary maintenance within forty-eight (48) hours after the written demand is delivered in accordance with this subsection, the user may perform the restoration and may do the maintenance that is then necessary, as well as that which becomes necessary thereafter, and may recover the reasonable costs thereof from the actor. If the modification is so gross that restoration cannot reasonably be completed within the forty-eight (48) hour period, then the duty to restore is satisfied when:

(i) Within twenty-four (24) hours after delivery of the demand, the actor undertakes a good faith effort to mitigate harm to other users and to restore the facility and the effort is:

(A) Commensurate with the magnitude of harm or potential harm to the users; and

(B) Continuously and diligently pursued to completion in a timely manner.

(c) Every user who provides the restoration or maintenance shall have a lien on the actor's interest or property that is involved in the modification. If the property involved is land, the lien extends to one (1) acre, unless the modification extends or covers more than one (1) acre, in which case the lien shall extend to all the additional land covered by the modification. If the land subject to the modification is located in any city, town or subdivision, the lien shall extend to each entire lot upon which the modification is located. If the actor's interest or property is only a ditch right or reservoir right, or such, then the one (1) acre shall be at the site where the water under the actor's ditch or reservoir right, or other interest is first applied to beneficial use.

(d) In order to have a perfected lien, a lien claimant shall file with the county clerk a lien statement that conforms to the requirements of W.S. 29-1-301, and shall notify the last known owner as provided in W.S. 29-1-301. The county clerk shall file and index the statement as provided in W.S. 29-1-301. When so perfected, the lien may be enforced in the same manner as provided in W.S. 29-4-101 and 29-4-102 and is subject to the limitation in W.S. 29-2-109.

(e) If litigation is necessary to enforce the lien, the prevailing party shall be awarded reasonable attorney's fees and costs of litigation, to be fixed and awarded by the court, unless the court finds that the nonprevailing party had reasonable grounds to expect to prevail.

(f) The remedies provided by this section are not exclusive but are supplemental to other remedies in law or equity. This section does not in any way alter or affect law regarding water rights, covenants, easements or other servitudes, or other rights.

(g) As used in this section:

(i) "Actor" means a person who wrongfully modifies an existing irrigation ditch or other irrigation facility as specified in subsection (a) of this section;

(ii) "User" means an individual, ditch company whether organized or unorganized, irrigation district, or other person or entity lawfully permitted to use water under an adjudicated or other valid water right who uses a ditch or facility for conveyance of direct flow, or waste water, or storage of water in the beneficial use of water under the water right.

ARTICLE 2
BONDS AND LIENS FOR LABOR AND MATERIALS

41-5-201. Contractor's bond.

Whenever any ditch or canal company, or other owner or owners, shall contract with any person, persons or corporation, for the construction of its, his or their ditch, canal or reservoir, or any part thereof, such company, owner or owners, shall take from the person, persons or corporation with whom such contract is made, a good and sufficient bond, conditioned that such contractor or contractors shall pay or cause to be paid all laborers, mechanics, material men, ranchmen, farmers, merchants and other persons who supply such contractor or contractors, or any of his or their subcontractors with labor, work, material, or goods of any kind which shall enter into or become a part of such irrigation works, which bonds shall be filed by such company or other owner in the office of the county clerk and ex officio register of deeds in the county where the principal work of such contractor shall be carried on; and if any such ditch or canal company, or other owner or owners, shall fail to take such bond, such ditch or canal company or other owner or owners shall be liable to the persons herein mentioned to the full extent of all such debts so contracted by such contractor, or contractors, or any of his or their subcontractors. Any such contractor or contractors may take a similar bond from each subcontractor to secure the payment of all debts of the kind above mentioned incurred by him, and file the same as above provided. All such persons mentioned in this section to whom any debt of the kind above mentioned shall be due from any contractor or subcontractor shall severally have a right of action upon any such bond covering such debt taken as herein provided for the recovery of the full amount of such debt. Provided, however, that in order that the right of action upon such bonds may exist, such persons or parties herein granted such right shall comply with either of the following conditions, to-wit, first, an action in a court of competent jurisdiction, in the county where such bond is filed, shall be commenced within ninety (90) days after the last item of indebtedness shall have accrued; or, second, an itemized statement of the indebtedness duly verified, shall, within ninety (90) days after the last item of such indebtedness shall have accrued, be filed in the office of the county clerk of the proper county; and an action shall be brought in any court of competent jurisdiction of such county within three (3) months after the filing of such statement. In case an action is commenced upon the bond of a contractor liable for the claim, and in such case the result of such action shall be binding upon the subcontractor, and his sureties, and in any case when a contractor has paid a claim for which a subcontractor is liable, such contractor shall bring action against the subcontractor and his sureties within sixty (60) days after the payment of such claim.

41-5-202. Statement of mechanic's lien; delivery to owner of ditch; retention of unpaid amount from subsequent payments to contractor.

Every laborer, mechanic, ranchman, farmer, merchant or other person performing any work or labor or furnishing any material, or goods of any kind which enter into and become a part of such irrigation works, to any contractor or subcontractor in the construction of any ditch, canal or reservoir, or any part thereof used by such contractor or subcontractor in carrying on said work of construction, whose demand has not been paid, may deliver to the owner or owners of such ditch, canal or reservoir, or to its, his or their agent, a verified statement of the account, and thereupon such owner or owners or its, his or their agent, shall retain out of the subsequent payments to the contractor or contractors the amount of such unpaid account for the benefit of the person to whom the same is due.

41-5-203. Statement of mechanic's lien; delivery of copy to contractor; time limits for disputing claims; recovery by civil action; application of W.S. 41-5-201 through 41-5-203.

Whenever any verified account mentioned in W.S. 41-5-202 shall be placed in the hands of any such owner or owners or its, his or their agent, as above stated, it shall be the duty of such owner or owners to furnish the contractor with a copy of such verified account, so that if there be any disagreement between the debtor and creditor as to the amount due the same may be amicably adjusted, and if the contractor, or subcontractor if he be the debtor, shall not, within ten (10) days after the receipt of such account, give the said owner or owners or its, his or their agent, written notice that the claim is disputed, he shall be considered as assenting to its payment, and the owner or owners or its, his or their agent, shall be justified in paying the same when due and charging the same to the contractor. The person or persons to whom any such debt is due and who shall deliver a verified account thereof as above provided, may recover the amount thereof in an action at law, to the extent of any balance due by such owner or owners to the contractor at or after the time of delivering the verified account. Provided, that nothing contained in this section or in W.S. 41-5-202 shall interfere with the right of action upon the bond or bonds provided for in W.S. 41-5-201, or against the company or other owner, for the full amount of any such debt in case of a failure to take a bond.

CHAPTER 6
IRRIGATION AND DRAINAGE DISTRICTS GENERALLY

ARTICLE 1
JOINT OPERATION AND COOPERATION BETWEEN DISTRICTS

41-6-101. Authority to cooperate.

Whenever two (2) or more incorporated irrigation or drainage districts desire to cooperate in the operation and maintenance of their respective systems of irrigation or drainage works, they may do so by availing themselves of the provisions of this act [§§ 41-6-101 through 41-6-127], as hereinafter more particularly provided.

41-6-102. Election upon request of landowners; procedure generally.

The commissioners of any such district may, and, upon written request of not less than ten (10) landowners thereof, shall, at any time, submit to the qualified electors thereof the question as to whether or not they desire their district to cooperate with any other district or districts named, in the operation and maintenance of their respective systems under the provisions of this act [§§ 41-6-101 through 41-6-127]. Such question may be submitted at any general district election, or at a special election duly called for the purpose, notice of which shall have been given as required by law in case of general elections in irrigation districts. In every case, the notice of election shall state briefly but clearly the question to be submitted, naming the district or districts with which it is proposed to cooperate. The vote shall be by ballot, and a majority of the votes cast shall determine the question. If more than two (2) districts are involved in the proposal, the electors shall in like manner determine the district or districts, if any, with which they desire their district to cooperate, in the event that they do not desire to cooperate with all the districts named in the proposal, or in the event that any district or districts named in the proposal should vote adversely thereto. All elections held hereunder shall be conducted in the same manner as general irrigation district elections are required by law to be conducted.

41-6-103. Certificate of election proceedings to be filed; effect of filing; effect of informal certificates on validity of election.

Whenever any two (2) or more irrigation or drainage districts shall have voted to cooperate with one another under the provisions of this act [§§ 41-6-101 through 41-6-127], the respective commissioners thereof shall file in the office of the clerk of the court having jurisdiction of the district proceedings, a certified copy of the minutes of the election proceedings, including a copy of the election notice. From and after the filing of such certificates, the operation and maintenance of the respective irrigation or drainage, or irrigation and drainage works of said districts shall be under the exclusive management and control of a board of district managers, as hereinafter particularly provided. No informality in these certificates, or in the records of which they are a copy, shall affect the validity of any such election, if in fact the same was held in substantial compliance with this act.

41-6-104. Appeals.

Any district aggrieved by any order of apportionment of operation and maintenance costs, or any part thereof, may obtain judicial review as provided by the Wyoming Administrative Procedure Act [§§ 16-3-101 through 16-3-115] and the Wyoming Rules of Appellate Procedure.

41-6-105. Withdrawal from joint operations.

The commissioners of any district belonging to any association formed hereunder [§§ 41-6-101 through 41-6-127], may at any time submit to the qualified electors of their district the question as to whether or not the district shall withdraw from such association. Such election shall be held as above provided, and if in any case, the vote shall be in favor of withdrawal, the result thereof shall be duly certified to the proper court, and notice thereof served upon the other districts involved. Thereupon such withdrawal will become operative on the first day of the second December following such election, and thereafter the provisions of this act shall be applicable to such district.

41-6-120. Number of members; qualifications; succession; quorum; voting procedures.

The board of district managers shall be composed of as many members as there are districts to be represented, and a majority of its members shall constitute a quorum. The commissioner in each district who has longest served the district as such commissioner, shall be the member of the board of district managers from such district. In case of death, resignation, disability or absence of any district manager, the commissioner from his district who is next in seniority of service shall act as district manager in his stead. Where there is no seniority in service among the commissioners of any district, they themselves shall determine the order in which they shall successively serve as members of the board of district managers. If the commissioners of all of the associated districts shall at any time so order, the board of district managers may thereafter be composed of two (2) commissioners from each district, but in such case the vote upon any question before the board shall be by districts, each district being entitled to cast one (1) vote by its representatives or representative present.

41-6-121. President.

The presidency of the board of district managers shall devolve successively upon the representatives of the respective districts, and the order of succession shall be determined in the first instance by lot. The first president shall hold office until the first day of the next succeeding December, and succeeding presidents shall hold office for terms of one (1) year each. In the absence of the president, or in case of his death, resignation or inability to act, his duties shall be discharged by the commissioner from his district who would be entitled to act in his stead, under the provisions of W.S. 41-6-120. The president shall preside at all meetings of the board. He may vote upon all questions, and, in case of tie, shall also cast the deciding vote. He shall perform such other duties as may be imposed upon him by law, or the order of the board.

41-6-122. Secretary.

The board of district managers shall appoint a secretary who may or may not be one of their number. Such secretary shall hold his position at the pleasure of the board, and shall perform such duties as may be imposed upon him by law, or order of the board.

41-6-123. Treasurer.

The board of district managers shall appoint a treasurer for each of the associated districts. The same person may be the treasurer of two (2) or more districts, and may also be secretary of the board. The funds of the associated districts shall not be commingled, however, but shall in all cases be separately kept and accounted for.

41-6-124. Adoption of name.

At its first meeting, the board of district managers shall adopt a name which shall be formed by prefixing to the phrase "board of district managers", some word or words different from any used for a like purpose by any other board within the same judicial jurisdiction. A certificate of the adoption of such name shall be filed promptly with the clerk of the court, or clerks, of the courts, having jurisdiction of the several district proceedings.

41-6-125. Powers generally.

In the operation, maintenance, preservation and repair of the constructed works of the associated districts, and in the assessment, levy, collection and disbursement of district revenues for such purposes, and for the payment of the principal and interest on outstanding indebtedness, the board of district managers shall succeed to and possess all the powers and be charged with all the duties of the commissioners of the several districts which it represents. All other powers of the commissioners of such districts shall be possessed and retained by them, unimpaired, including those relating to uncompleted district works, or such additions to or extensions of such works as require a revision or modification of assessed benefits. Whenever necessary in the discharge of its duties, the board may use the name and corporate seal of any district which it represents, always indicating, however, in some appropriate manner, that the signature and seal have been affixed by the board.

41-6-126. Duties.

It shall be the duty of the board of district managers so to control and conduct the affairs of the districts under their jurisdiction that each shall bear its just portion of the burdens and receive its just share of the benefits resulting from cooperating management. Accurate and detailed accounts of the amount and cost of labor and material used in the work of each district shall be separately kept, so far as practicable, and whenever labor or material is used for the common benefit of two (2) or more districts, a just apportionment of the cost thereof shall be made between or among the districts benefited, and, in each such case the records of the board shall be made to show clearly the basis of such apportionment.

41-6-127. Purchase of machinery, tools or equipment.

In the operation and maintenance of the works under its charge, the board of district managers shall, as far as practicable, avoid a duplication of labor and equipment. It shall have no power, however, to purchase machinery, tools or other equipment on account of any district, without written authority from two (2) of the commissioners from such district, and it shall have no power to purchase machinery, tools or other equipment on the joint account of two (2) or more districts, without written authority from two (2) of the commissioners of each of the districts to be charged therewith, which authority shall prescribe the agreed basis upon which the cost of such purchase shall be apportioned between or

among such districts. Each district shall be charged with a reasonable rental or hire for the use of property or equipment owned by the associated districts. Such rental or hire shall be uniform to all the districts and shall be so adjusted as to cover, all nearly as can be estimated, repair, interest and replacement costs, and such readjustments shall be made from time to time as may be necessary in order that these costs shall ultimately be borne by the districts in proportion to the use which each has made of such property or equipment.

ARTICLE 2
BONDS HELD BY STATE

41-6-201. Payment of installments.

Any irrigation or drainage district, all of whose outstanding bonds are held by the state of Wyoming, may, on any date when an installment of principal or interest matures, pay to the state treasurer the whole of any unmatured installment or installments of the principal indebtedness evidenced by any such bond or bonds. Upon receipt of any such payment, said treasurer shall make proper notation thereof upon the bond or bonds to which it is to be applied, and shall also make proper notation of credit for any unaccrued interest upon the installments paid which may be included in any coupon subsequently maturing.

41-6-202. Payment of installments; construction assessments of landowners.

The owner of any land in any irrigation or drainage district coming within the provisions of W.S. 41-6-201, may, not less than ten (10) days before the maturity of any installment of principal or interest evidenced by such bonds, pay to the treasurer of the county in which said lands are situated, all or any part of the unmatured portion of any assessment for construction levied against the same to provide for the payment of its proportionate share of the indebtedness evidenced by said bonds. Upon receipt of any such payment, said county treasurer shall cause proper credit to be entered upon the record of said assessment, and thereafter a corresponding reduction shall be made in the annual installments of said assessment to be collected. The acceptance of such payments shall not be construed, however, as relieving any such land from its liability for future assessments made for any lawful purpose. Upon receipt of any such payments, the county treasurer shall promptly remit the same to the state treasurer, who shall, on the date on which the next installment of principal or interest shall mature, credit all payments thus received upon the bonds of the district, as provided in the preceding section, retaining any amount too small to be applied until it shall be sufficiently augmented by future payments to admit of its application as therein provided.

41-6-203. Filing of certificate of delinquency; suspension of district commissioners; appointment of special commissioner; powers and duties generally; compensation.

(a) If the bonds or other obligations, or any part thereof, of any drainage or irrigation district, which are owned by the state of Wyoming, are in default as to principal or interest or both, or if the state of Wyoming holds an unsatisfied judgment against any drainage or irrigation district for unpaid interest or principal or both, of the bonds of that district which are owned by the state of Wyoming, upon being advised in writing of that fact by the state treasurer, the state loan and investment board shall file a certificate setting forth that fact and stating the amount of the delinquency, the name of the district and the names of the commissioners of the district, with the clerk of the district court having jurisdiction of the drainage or irrigation district the bonds or obligations of which, or any part thereof, are in default or the judgment is unsatisfied. Upon filing the certificate and the filing being called to the attention of the judge of the district court, the judge of the district court shall suspend the commissioners of the district from office.

(b) Immediately upon the suspension of the commissioners as provided in subsection (a) of this section, the state loan and investment board, by and with the consent and approval of the governor, shall appoint a special commissioner for the district who shall be a resident of the state of Wyoming. The governor may remove any special commissioner as provided in W.S. 9-1-202. Any vacancy created by the removal of a special commissioner may be filled by further appointment of another special commissioner for the district by the state loan and investment board, by and with the consent and approval of the governor.

(c) The special commissioner has all the power and authority and shall perform all the duties required by law of commissioners of drainage or irrigation districts, as the case may be, and shall perform his duties in accordance with the laws governing those districts.

(d) Compensation and expenses of the special commissioner shall be paid for by the district.

41-6-204. Term of special commissioner; appointment of district commissioners after expiration of term.

The special commissioner, or his successor or successors, shall continue in charge of such drainage or irrigation district until a certificate is filed with the clerk of the district court of the district in which said drainage or irrigation district is located by the state loan and investment board to the effect that the delinquency has been removed and that such drainage or irrigation district is in such financial condition that it is believed that the special commissioner is no longer necessary, whereupon commissioners for such district may be appointed by the court, or elected by the district, as the case may be; provided, however, that this shall not prevent the subsequent appointment of a special commissioner for any of the reasons provided in W.S. 41-6-203.

41-6-205. Special commissioner may serve for several districts.

The state loan and investment board may appoint the same person as special commissioner for any number of drainage or irrigation districts.

41-6-206. Action by attorney general; service of process; sale of property to satisfy judgment.

Whenever the state loan and investment board deems it advisable after being advised of the default in the payment by any drainage or irrigation district of principal or interest, or both, due to the state of Wyoming upon bonds or other obligations of such drainage or irrigation district owned by the state of Wyoming, it shall instruct the attorney general to take such steps as he deems necessary to collect the amount due. In case an action is filed, process may be served in case a special commissioner has been appointed by leaving a copy thereof with the special commissioner. Any property which the district owns, or in which it has any equity, may be levied upon to satisfy any judgment obtained in the manner now provided by law, except that no appraisement of such property shall be required; and at any sale of property of said district under execution, the state of Wyoming may bid in such property in any amount deemed advisable by the state loan and investment board; provided, however, that no property of the district shall be bid in by the state of Wyoming for a sum in excess of the amount of the judgment held by the state of Wyoming.

41-6-207. Certificate stating special commissioner no longer necessary to be filed; state loan and investment board to sell equipment; disposition of proceeds.

The state loan and investment board shall immediately, after the effective date of this section, file with the clerk of any district court which has appointed a special commissioner under the provisions of W.S. 41-6-203, a certificate to the effect that the drainage district for which such special commissioner

was appointed is in such financial condition that it is believed that the special commissioner is no longer necessary, which certificate shall comply in all respects with the provisions of W.S. 41-6-204, except that it shall not be necessary that the certificate state that all delinquency has been removed. The Wyoming farm loan board is further directed to immediately take all necessary steps to sell and dispose of any and all equipment owned by the state loan and investment board or the state of Wyoming and used by such commissioner in the operation of any such drainage district, such sale to be conducted in accordance with the provisions of existing law for the sale of state property. When such sales shall have been completed all proceeds received therefrom shall be paid into the general fund of the state of Wyoming by the state loan and investment board.

41-6-208. Title and control of lands bid in by state; disposition of income.

The title to any lands so bid in shall be taken in the name of the state loan and investment board, and said lands shall be administered, leased and sold by the state loan and investment board, and said board shall have full power and authority to sell, contract for sale, and lease said lands for such prices and upon such terms as the state loan and investment board deems for the best interests of the state. All rentals or income from such lands shall be applied, first, to the payment of the expenses of the administration of such lands, and the balance, if any, together with all proceeds from the sale of such lands, shall be paid to the state treasurer and by him credited to the permanent fund bond account of the drainage or irrigation district in which such lands are located.

41-6-209. Quorum of board.

A majority of the members of the state loan and investment board shall constitute a quorum to transact any business provided for under W.S. 41-6-203 through 41-6-206, 41-6-208 and 41-6-209.

ARTICLE 3
DETERMINATION OF RIGHTS OF JOINT
USERS OR CLAIMANTS

41-6-301. Disagreements may be referred to water commissioner; action by commissioner; fees.

When two (2) or more persons, joint owners in an irrigation ditch or reservoir, not incorporated, or their lessees, are unable to agree relative to the division or distribution of water received through their ditch or from their reservoir, it shall be lawful for any of the owners or lessees to apply to the water commissioner of the district in which the ditch or reservoir shall be located, by a written notice setting forth that fact, asking the water commissioner to take charge of the ditch or reservoir for the purpose of making a just division or distribution of the water from the ditch or reservoir to the parties entitled to the use of the water. The water commissioner shall take exclusive charge of the ditch or reservoir for the purpose of dividing the water in accordance with rights established by existing decrees, and continuing the work until the necessity shall cease to exist. In all cases where the water commissioner or a deputy water commissioner is called upon to divide the waters of a ditch or reservoir between appropriators, when the term of his employment exceeds three (3) consecutive days he shall be paid in full for his service by the interested water users in proportion to the established rights of each. Any payments not made for the service of the water commissioner after a written demand has been made for payment, the bill for the water commissioner's services shall be a lien upon any land or other property owned by an interested water user refusing to pay and may be recovered in any court of competent jurisdiction. Any reimbursement recovered under this section for services of the water commissioner shall be paid into the general fund.

41-6-302. Actions for injunctions; notice; hearings; issuance of injunctions or restraining orders; bond.

In cases when suits for injunction are brought affecting the use of water from streams upon which the rights to the use of water have been adjudicated, no restraining order shall be granted by the court, judge or court commissioner, before hearing had after at least three (3) days notice thereof, served upon all persons defendant. All suits for injunction involving the use of water from streams shall be heard, either in term time or during vacation as the case may be, not later than fifteen (15) days after issues joined. In no case shall an injunction or restraining order be issued or become operative until the party obtaining the same executes an undertaking, to the defendants, with good and sufficient surety, to be approved by the clerk of the court granting the same, in an amount fixed by court, judge or commissioner allowing the same, conditioned to secure to the party enjoined all actual damages he may sustain if it be finally decided that the injunction or restraining order ought not to have been granted.

41-6-303. Relative interests of joint owners.

Unless the owners of ditches, canals and reservoirs make a record as herein provided, or have a record thereof made in some other manner, showing the relative ownership of each interested party in such irrigation works, said interests shall be established by the ratio between the water right of each water user to the total water rights adjudicated under such irrigation works. The relative interests of joint owners shall, therefore, be fixed by the issuance of the final certificate of appropriation as the same appears of record on the date of the passage of this act or as they shall hereafter be recorded in the office of the board of control and in the office of the respective county clerks, and no action for the recovery of the title to such irrigation works can be brought after ten (10) years from the date when the final certificates of appropriation have been recorded in the office of said county clerk; provided, that during such ten (10) years the interested water users as mentioned in the final certificates of appropriation, or their successors, have had continuous, open, adverse and undisputed possession of such irrigation works. Every conveyance of a ditch, canal or reservoir, or any interest therein, shall hereafter be executed and acknowledged in the same manner as a conveyance of real estate and recorded as herein provided, and any such conveyance which shall not be made in conformity with the provisions of this act, shall be null and void as against subsequent purchasers thereof in good faith and for a valuable consideration.

41-6-304. Affidavits of interest; parties joining in; filing; contents.

Any person, persons, partnership or association of individuals, or corporation, may file in the office of the board of control, and in the office of the county clerk of the county wherein any ditch, reservoir or other irrigation works shall be located, an affidavit, duly sworn to before an officer authorized to acknowledge deeds, or before a water superintendent of this state, joined in, signed, and sworn to by all the parties having an interest in such ditch or ditch right, or by the guardian of any such person, if insane or a minor, or in case of a corporation by any two (2) of its officers, stating therein the name of the ditch, the ownership of said ditch, the interest each claimant owns therein specifically, the method of securing rights of way or irrigation works and the date of such procedure and referring to the records of the office of the state engineer or board of control, or both, relative to dimensions of irrigation works, their location, and adjudicated rights to water conveyed in or stored in such works and such other information as may be deemed necessary.

41-6-305. Affidavits of interest; as evidence; statute of limitations for civil actions upon.

When said affidavit hereinbefore mentioned has been duly executed and filed and recorded as hereinbefore prescribed, the facts therein stated shall be prima facie evidence of the truth thereof in any court of the United States, and no action for the recovery of the title or possession of such irrigation works can be brought after ten (10) years from the time of the recording of such affidavit; provided, that during such ten (10) years the claimant as mentioned in such affidavit, or his

successor, in rights, has been in continuous, open and undisputed possession of such irrigation works.

41-6-306. Affidavits of interest; transfer of interests after filing.

Any transfer made to a purchaser in good faith and for a valuable consideration, of any such irrigation works after the expiration of ten (10) years from the filing of the affidavit as hereinbefore provided, shall vest in the grantee of such transfer an absolute title in fee simple, free from the claims of any person whatsoever, to the extent that such irrigation works are claimed in the said affidavit of such grantor or his predecessor in interest, unless before the expiration of said ten (10) years any other party claiming an interest in such irrigation works has filed in the office of the county clerk of the county wherein his, her, or its land, irrigated by such ditch, may be situated, an affidavit as mentioned in section 23 hereof [§ 41-6-304].

41-6-307. Affidavits of interest; perjured statements.

Any person who knowingly falsely states his or her ownership in such irrigation works, or the extent thereof, or any guardian who in like manner makes such statement on behalf of his or her ward, or any person who in like manner makes such a statement on behalf of a corporation, shall be guilty of perjury and upon conviction thereof shall be punished.

41-6-308. Action in equity to determine rights of claimants; construction of act.

Where the ownership of any irrigation works is disputed, or jointly claimed by any person, partnership or corporation, and the several owners cannot agree upon the amount of interest owned by each, and one (1) or more claimants of such right desire the filing of the affidavit as hereinbefore mentioned, while the other or others do not desire to join therein, one (1) or more such claimants may bring an action in equity in the district court of any county wherein the land or parts of the land affected by such ditch or ditch right is located, and said court shall determine the right of the several claimants to such ditch or ditch right, and determine all the facts necessary in the affidavit hereinbefore prescribed, and such decree shall, after being filed and recorded in the office of the county clerk of the proper county as hereinbefore prescribed, have the same force and effect as the affidavit hereinbefore prescribed; provided, that the provisions of W.S. 41-6-303 through 41-6-308 shall not be construed to relate to water rights, or in any way to conflict with the laws governing the same.

ARTICLE 4
CONTESTING ORGANIZATION OR ASSESSMENTS; LIMITATION OF ACTIONS

41-6-401. Organization.

When any irrigation or drainage district has been organized and the legality of its organization has not been questioned by proceedings in quo warranto, or otherwise, within one (1) year from the effective date of this act as to districts heretofore organized, or within two (2) years from the date of entry of the order of court establishing such district and appointing commissioners therefor as to districts hereafter organized, it shall be conclusively deemed to be a legally established district, and its lawful organization shall not be questioned in any subsequent suit or proceeding.

41-6-402. Assessments.

Where any irrigation or drainage district shall make and levy any assessment against any property within such district, the same shall not be questioned in any suit or proceeding unless such suit or proceeding is instituted on or before the second December 31st following such levy or assessment.

ARTICLE 5
TAXES AND ASSESSMENTS;
ENFORCEMENT OF LIENS

41-6-501. "Land" defined.

The word "land", as used in this act [§§ 41-6-501 through 41-6-507], shall be construed to mean town lots and any and all kinds of real property and premises, with the improvements thereon and the fixtures and appurtenances thereunto belonging.

41-6-502. "Person" defined.

The word "person", as used in this act [§§ 41-6-501 through 41-6-507], shall be construed to mean any person, corporation or copartnership, or any association owning land.

41-6-503. Foreclosure of tax deeds; tax certificates as liens; actions to enforce generally; sale of lands generally.

Any person, drainage district or irrigation district holding a drainage or irrigation tax sale certificate of purchase or tax deed heretofore or hereafter issued for delinquent drainage or irrigation taxes and assessments legally levied and assessed, together with the penalty and costs due on the land described therein, shall have a lien on said land for such taxes, penalty and costs, and all subsequent taxes paid thereon by said person, drainage or irrigation district and those under whom he holds, with interest thereon, and all accruing penalties, and for the value of all improvements placed thereon by such lienholder while lawfully in possession of the premises, and those under whom the same is held, which lien shall be superior to any other lien, except that of subsequent taxes, and may be enforced by such lienholder by a civil action in the district court of the county wherein said land lies, or in any action in such court concerning said land in which such lienholder may be made a defendant; in which action every person having an interest in said land, as shown by the records in the office of the county clerk and ex officio register of deeds of said county, may be made a party; and all the proceedings in such action, so far as applicable and not inconsistent with the provisions of this act [§§ 41-6-501 through 41-6-507], shall be the same as provided by law, for the foreclosure of mortgages on real estate by action and sales thereunder; provided that the decree rendered in such action may contain the order of sale, directed to the sheriff of said county, commanding him to advertise and sell said lands without appraisement, and to make a return of his proceedings thereunder within sixty (60) days from the date thereof, which shall be sufficient authority for the sale of said land, and no other order of sale shall be necessary; and provided further, that any number of tracts of land belonging to any one (1) person upon which any one (1) lienholder shall have said lien, may be united in one (1) suit, in which suit each of said tracts of land shall bear its proportionate share of the cost of such suit, calculated upon the amount for which it shall sell. Provided further, that no such action shall be commenced on any drainage or irrigation district tax sale certificate within eighteen (18) months from the date of the sale mentioned herein.

41-6-504. Foreclosure of tax deeds; joinder of defendants; pleading; decree; rights of assignee of tax deed.

When a drainage or irrigation district is the plaintiff in any suit brought under the provisions hereof, it may join all owners of real estate covered by its tax sale certificates of purchase or tax deeds as defendants, whether jointly or separately interested in the real estate, or any part thereof, and may unite in such action any persons having or claiming to have any interest in the real estate described in the petition. The defendants may plead jointly or separately to the petition and the court shall try and determine all issues between the plaintiff and each and all of the defendants, and shall, in its decree, ascertain and determine the amount of taxes, interest and costs chargeable to each particular tract or

lot of real estate, and state the name or names of all defendants who have an interest in each tract or lot of real estate upon which the lien is fixed by its decree. The fact that the owners of separate or different lots of real estate are joined as defendants in one (1) action shall not constitute a defense on the part of any one (1) or more of the defendants, or misjoinder of defendants, or causes of action, and like rights shall be extended to any assignee of said drainage or irrigation district, tax certificate or tax deeds.

41-6-505. Foreclosure of tax deeds; sale procedures generally; redemption.

In pursuance of said order of sale, whether contained in said decree or issued thereafter, the sheriff of said county shall immediately advertise the property for sale, and shall sell the same at public auction, without appraisement, to the highest bidder for cash, and shall make a return of his proceedings thereunder within sixty (60) days from the date thereof; and said lands shall be sold in tracts or parcels with reference to the rights of all parties therein, as the court in said order of sale may direct; at which sale said lienholder may bid as any other person, but, in the event of becoming the purchaser thereof, he shall not be required to pay any money, except such sum only as his bid may exceed the amount due him under said decree; and, upon confirmation of said sale by the court, the said sheriff shall execute a deed as nearly as may be in cases of mortgage foreclosure, conveying to the purchaser of said property, his heirs and assigns, all the right, title, estate, claim and interest, both at law and in equity, of all parties to said action in and to said land, subject only to subsequent taxes; and, upon request of the purchaser thereof, a writ of assistance shall issue to place said purchaser in possession of said land; provided, that any person having an interest in said land, may redeem the land in which he is interested at any time before the confirmation of such sale by the court, by paying into court a sum of money sufficient to discharge the lien thereon, for the use of the lienholder, and upon such terms as to the payment of the costs as the court may direct.

41-6-506. Foreclosure of tax deeds; disposition of sale proceeds.

(a) Upon the confirmation of such sale, the proceeds arising therefrom shall be delivered by the sheriff to the clerk of said court to be applied by him as follows:

(i) To the payment of all costs of such action and sale, including an attorney fee to the lienholder's attorney to be allowed by the court;

(ii) To the payment of all sums due the lienholder, including the value of all improvements placed on said land by said lienholder and those under whom he holds;

(iii) The balance, if any, to be paid to the prior owners of said land and those having an interest therein, as their interests may appear.

41-6-507. Remedy cumulative.

The right and remedy herein provided for shall be cumulative and in addition to the right of any purchaser at tax sale to acquire tax deed in the manner and time now provided by law.

CHAPTER 7
IRRIGATION DISTRICTS

ARTICLE 1
IN GENERAL

41-7-101. Waiver of defect of service.

In case of failure to serve any notice of any proceeding or hearing in this chapter [§§ 41-7-101 through 41-7-415] provided for upon any person or corporation, such persons or corporation may appear in open court and waive such defect of service, or may waive it by filing in court or delivering to the commissioners of the irrigation district to be filed in court a written waiver of such defect, in which waiver said defect shall be described, which waiver shall be signed by such party and witnessed and acknowledged before a proper officer having power to take acknowledgments of deeds.

41-7-102. Construction; generally.

The provisions of this chapter [§§ 41-7-101 through 41-7-415] shall be liberally construed to promote the public welfare by reclaiming and irrigating lands, constructing and completing reservoirs, canals, ditches, or other works specified in the petition and the preservation or operation of any irrigation system heretofore or hereafter constructed according to law.

41-7-103. Construction; formerly organized districts; pending liens, actions.

Nothing in this act [§§ 41-7-101 through 41-7-401, 41-7-403 through 41-7-412, 41-7-414, 41-7-415] shall be construed as to affect the validity of any district heretofore organized under the laws of this state, or its rights in or to property, or any of its rights or privileges of whatsoever kind or nature; but said districts are hereby made subject to the provisions of this act so far as practicable; nor shall it affect, impair, or discharge any contract, obligations, lien, or charge for, or upon which it was or might become liable or chargeable had not this act been passed; nor shall it affect the validity of any bonds which have been issued; nor shall it affect any action which now may be pending.

41-7-104. Construction; existing water rights.

Nothing in this act [§§ 41-7-101 through 41-7-401, 41-7-403 through 41-7-412, 41-7-414, 41-7-415] shall be so construed as to in any manner impair existing water rights, appropriations or priorities within said district.

ARTICLE 2
ORGANIZATION GENERALLY

41-7-201. Filing of landowners' petition; contents; amendments; multiple petitions.

(a) Whenever a majority of the freeholders owning lands and the entrymen upon public lands in any district who shall represent one-third the area of lands within said district, or whenever the freeholders owning lands and the entrymen upon public lands who shall represent more than one-half the area of lands within said district, desire to provide for the irrigation of the same; or to improve the existing water supply for said lands; or to purchase, extend, operate or maintain constructed irrigation works; or to cooperate with the United States under the federal reclamation laws heretofore or hereafter enacted, or for the assumption as principal or guarantor of indebtedness to the United States on account of district lands, they may file in the district court of the county which embraces the largest acreage of the district, a petition, hereinafter referred to as the "petition", which shall include:

(i) The name of the proposed irrigation district;

(ii) The necessity of the proposed work describing the necessity;

(iii) The object and purpose of the system proposed to be constructed, together with a general description thereof;

(iv) A general description of the lands proposed to be included in said district. Accompanying said petition shall be a preliminary engineering report on the feasibility of the project, including a report on the sufficiency of its water supply; the approximate area of irrigable land within the district, including an estimate of the cost of construction; all of which shall be approved by the state engineer;

(v) The names of all freeholders owning lands and the entrymen on public lands in said district, when known;

(vi) Whether or not the petitioners desire and propose to cooperate with the United States;

(vii) A general prayer for the organization of the district.

(b) No petition having as many signers as are required by this section shall be declared void, but the court may at any time permit the petition to be amended in form and substance to conform to the facts, if the facts justify the organization of an irrigation district. Several similar petitions for the organization of the same district may be circulated, and when filed, shall together be regarded as one petition having as many signers as there are separate signers on the several petitions filed. All petitions for the organization of said district filed prior to the hearing on said petition shall be considered by the court, the same as if filed with the first petition placed on file, and the signatures thereon contained shall be counted in determining whether sufficient persons have signed said petition.

41-7-202. Petitioner's affidavit.

The affidavit of any three (3) or more of the signers of said petition stating that they have examined it and are acquainted with the locality of said district and that said petition is signed by a sufficient number of corporations and adult persons owning lands in said district, to satisfy W.S. 41-7-201, may be taken by the court or judge as sufficient evidence of the facts therein stated.

41-7-203. Land that may be included in proposed district.

The lands proposed to be included in any irrigation district, need not be contiguous provided that the benefit of the proposed work in each part will exceed the damages from costs of said proposed work in each part; and provided further that the court shall be satisfied that said proposed work can be more cheaply done if in a single district than otherwise; and provided further that lands within a town or city may be included within the limits of any irrigation district, if the creation of such irrigation district will benefit such town or city in any amount equal to or in excess of the amount of assessment for construction against the lands therein.

41-7-204. Hearings; service of notice generally; contents.

(a) On such petition being filed the court or judge thereof shall make an order fixing the time and place of the hearing thereon and ordering notice; thereupon the clerk of said circuit court, for the county in which the proceedings are instituted, shall cause twenty (20) days notice of the filing of such petition to be given:

(i) By serving or causing to be served a copy of such notice on each person owning, or entitled to possession by virtue of public land filing, of land within said proposed district, residing in any county in which any lands in said proposed district are situated, either personally or by leaving a copy thereof at his last usual place of abode, with a person of suitable age and discretion, and by registered mail to any mortgagee, mortgagees or judgment lienholder whose address is of record in the record of said lien in the county or counties in which said district is situated; and

(ii) By publishing a copy thereof at least once a week for three (3) consecutive weeks in some newspaper published in each county within which any of the lands of the district are situated. If there be no newspaper in any such county, such notice may be published in a newspaper published in an adjoining county.

(b) Such notice shall state:

(i) In what court said petition is filed;

(ii) Give a general description of the proposed work;

(iii) Give the proposed boundaries of said district (or a general description of all the lands in said proposed district);

(iv) Give the name proposed for said irrigation district; and

(v) Shall also state the time and place by the court fixed, when and where the petitioners will ask a hearing on said petition;

(vi) Shall also direct all persons owning or having an interest in any lands within the boundary of the proposed district, to appear at the time and place stated, then and there to show cause why their land should not be included in said district.

41-7-205. Hearings; notification of nonresidents; personal service in lieu of posting for all persons.

If any of the persons owning or entitled to possession of land in said district are nonresidents of the county or counties in which the proposed district lies, the petition shall be accompanied by an affidavit giving the names and post office address of each such nonresident, if such are known, and if unknown shall state that, upon diligent inquiry their names or post office addresses (whichever may be the fact) cannot be ascertained. The clerk of the court shall mail a copy of the notice aforesaid to each of said nonresident owners whose post-office address is known, within six (6) days after the first publication of the same. The certificate of the clerk of the court, or other public officer, or the affidavit of any other person who knows the facts, affixed to a copy of said notice, shall be sufficient evidence of the posting, serving, mailing or publication thereof. Personal service of said notice on (or service by leaving at the last usual place of abode of) all persons owning or entitled to possession of lands or interest in lands within said district, shall give the court complete jurisdiction, without posting, publication or mailing of said notice.

41-7-206. Hearings; adjournment to serve persons not served.

If it shall be found before the hearing on the petition for the organization of an irrigation district, that one (1) or more of the persons owning or entitled to possession of land in said district have not been duly served with notice of hearing on said petition, the court or presiding judge shall not thereby lose jurisdiction. The court or presiding judge in such case shall adjourn the hearing, make an order directing the serving of said notice upon said person or persons, and fixing the time and manner of service of such notice, which notice shall notify him to appear at said adjourned time and place and be heard on said petition. Said notice shall be served personally or by leaving at the last usual place of abode of said unserved persons, as in W.S. 41-7-204 provided, not less than eight (8) days before said adjourned hearing, or published not less than fourteen (14) days before said adjourned hearing, in some newspaper published in the county in which said persons' lands lie, or if no newspaper may be published in said county, then in some newspaper published in an adjoining county. Upon the adjourned day the same proceedings, adjournments, trial, findings and orders may be had as in case

of complete service of notice in the first instance. In case of failure to mail said notice as herein required, the court or judge may order the same mailed later and shall adjourn said hearing so that said notice shall be mailed at least fourteen (14) days before said adjourned hearing. In case of failure to publish or post notice, as in this act required, the court or judge may adjourn said hearing for sufficient time to permit the due posting and publication of said notice, and order said notice posted or published as in section 4 [§41-7-204] hereof directed. In case of adjournment to permit notice to be given, the notice shall state the fact of such adjournment and the time and place of hearing pursuant to said adjournment.

41-7-207. Hearings; contests; grounds; notice of objections to be in writing; filing of objections.

(a) On the day fixed for hearing on such petition, all persons owning or entitled to the possession of lands, or any interest or easement in land, within said proposed district, or who may be affected thereby, may appear and contest or object to:

(i) The sufficiency of the petition;

(ii) The sufficiency of the signers of the petition;

(iii) The sufficiency of the notice;

(iv) The constitutionality of the law;

(v) The inclusion or exclusion of any lands in the district, or any other material issue raised by the petition;

(vi) The jurisdiction of the court, specifying their objections to such jurisdiction; and the petitioners and contestants may, on the trial, offer any competent evidence in regard thereto.

(b) All notices of contests or objection shall be in writing and shall clearly specify the grounds of contest or objection and shall be filed in the office of the clerk of court wherein such petition is filed at least five (5) days prior to the day set for the hearing. The court shall on the day fixed for said hearing, hear and determine all issues provided in this section and may adjourn said hearing from time to time, for good and sufficient reason shown.

41-7-208. Hearings; dismissal of petition improperly signed; inclusion or exclusion of land from district.

If the court or presiding judge thereof, after hearing any and all competent evidence that may be offered for and against the said petition, shall find that the same has not been signed as herein required, the said petition shall be dismissed at the cost of the petitioners, and judgment shall be entered against said petitioners for the amount of said costs. The court shall upon proper showing include or exclude any land from the district.

41-7-209. Fraudulent deeds for establishment or defeat of petition.

All deeds made for the purpose of establishing or defeating the prayer of said petition, and not made in good faith and for a valuable consideration, shall be taken and held to be a fraud, and the holders thereof shall not be considered as the owners of the lands described therein; and the filing of said petition shall constitute a lis pendens against all lands described therein from and after the filing thereof.

41-7-210. Court's order.

(a) If the issues at this hearing are decided in favor of the petitioners, the court shall make an order:

(i) Approving and confirming the petition;

(ii) Defining the boundaries of the district;

(iii) Dividing the district into three (3) or five (5) subdivisions as the court may consider appropriate, which subdivisions shall be as nearly equal in size as may be practicable and which shall be designated as commissioner districts, and each district shall be numbered consecutively. Should the district be first divided into three (3) subdivisions the same shall be thereafter increased to five (5) subdivisions, and the number of commissioners increased to five (5), provided a majority of the qualified electors voting, vote in favor of such increase at an election called for the purpose. Said election for the increased number of districts and commissioners shall be called upon the order of the district commissioners upon receipt by them of a petition requesting such an election signed by at least thirty percent (30%) of the qualified electors of the district. If a majority of the qualified electors voting should vote in favor of such an increase the district commissioners shall forthwith proceed to redivide the district into five (5) subdivisions as nearly equal in size as may be practicable, and commissioners shall be elected to represent all districts, as redivided, at the next general election of the district, and the terms of such commissioners and the order of their retirement shall be as provided for in the case of first election of commissioners after the formation of the district;

(iv) Establishing said district as a corporation by the name proposed with powers:

(A) To sue and be sued;

(B) To adopt and use a corporate seal;

(C) To have perpetual succession;

(D) To file on and acquire the right to use of water for domestic and irrigation purposes; to acquire sites for reservoirs, and rights of way for ditches, canals and laterals;

(E) To exercise the power of eminent domain under chapter 316 (C.S. 1920), and all acts or parts of acts amendatory thereto;

(F) To contract with the state of Wyoming for the reclamation and segregation of public lands pursuant to the laws of the United States and the state of Wyoming and to contract for the sale of water rights by it acquired pursuant to said laws, and to purchase and acquire state lands;

(G) To acquire by purchase or otherwise irrigation works, water rights, land and other property and to sell, lease or otherwise dispose of the same, to buy, develop, sell and distribute electrical energy as an incident to the ownership, control and operation of irrigation works of the district or the cooperative works of the district and the United States as the district may deem expedient or suitable for the development of the district.

(v) Shall appoint one (1) commissioner from each commissioner district, who shall be a freeholder or entryman upon public lands, in said district, provided, however, if the majority of the irrigable area of the district is unentered public land, a majority of the commissioners shall be appointed by the secretary of the interior, who shall be residents of the state. The commissioners appointed by the court shall at all times be under the direction of the court and may be removed from

office by the court upon good cause shown; provided, however, no commissioner shall be removed until written charges specifying the ground upon which such removal is sought are filed, and an opportunity given such commissioner to be heard at a hearing provided. In case a commissioner has been removed under this provision the court shall immediately appoint a successor. All findings and order of the court made at the hearing herein provided for shall be final and conclusive unless appealed from to the supreme court within thirty (30) days after filing thereof.

ARTICLE 3
DISTRICT COMMISSIONERS GENERALLY

41-7-301. To be public officers; presumption in favor of validity of official acts.

Commissioners of irrigation districts are hereby declared to be public officers. The presumption shall be in favor of the regularity and validity of all their official acts. Whenever any report of the commissioners of any irrigation district or any part of any such report is contested, remonstrated against or called in question, the burden of proof shall rest upon the contestant, remonstrant or questioner.

41-7-302. Oath and bond; quorum; term; removal; vacancies.

Before entering upon their duties, commissioners shall take and subscribe an oath to support the constitution of the United States and the constitution of the state of Wyoming, to faithfully and impartially discharge their duties as commissioners and to render a true account of their doing to the court by which they are appointed whenever required by law or the order of the court. Commissioners shall execute a bond running to the clerk of court and his successors in office as obligees, to be filed with the clerk for the benefit of the parties interested, in an amount to be fixed by the court or presiding judge, and with sureties to be approved by the court or presiding judge, conditioned for the faithful discharge of their duties as commissioners and the faithful accounting of all monies which shall come into their hands as commissioners. A majority shall constitute a quorum and a concurrence of a majority in any matter within their duties shall be sufficient to its determination. The commissioners appointed shall hold their office until the first regular meeting of the commissioners following the date of the order organizing the district and until their respective successors are qualified under the provisions of W.S. 41-7-316. The commissioners appointed by the secretary of the interior shall be subject to removal from office and any commissioner appointed by the secretary of the interior to fill a vacancy shall hold office until less than a majority of the lands within the district are unentered public lands, after which the commissioners shall be elected as otherwise provided in this chapter. If the office of any commissioner so appointed shall become vacant by reason of death, or other cause, the court or judge thereof shall appoint a qualified person to fill the vacancy.

41-7-303. Organization as board; officers; powers and duties generally; contracts and cooperation with United States generally.

The commissioners appointed as aforesaid, and their successors in office, shall, from the entry of such order of confirmation, constitute the corporate authority of said irrigation district, and shall exercise the functions conferred on them by law. They shall organize as a board, elect a president from their number and appoint a secretary-treasurer who may or may not be a member of the board. The board shall have power, and it shall be their duty, to adopt bylaws, manage and conduct the affairs and business of the district, make and execute all necessary contracts, employ such agents, attorneys, officers and employees as may be required, and prescribe their duties, establish equitable rules and regulations for the distribution and use of water to and upon the lands of the district; provided, always, that such rules shall not be in conflict with or contrary to any statute of this state relative to such matters; and generally to perform all such acts as shall be necessary to fully carry out the purposes of this article [chapter]. Said board shall have the power in addition to the means to

supply water to said district proposed by the petition submitted for the formation of said district, to construct, acquire or purchase any and all canals, ditches, reservoirs, reservoir sites, water rights, rights of way, or other property necessary for the use of the district. In case of the purchase of any property by such district the bonds of the district hereinafter provided for may be used at their par value in payment without previous offer of such bonds for sale. For the purpose of acquiring control over government land within the district and complying with the provisions of the act of congress of August 11, 1916 [43 U.S.C. §§ 621 through 630], the board shall have authority to make such investigation, and based thereon, such representation and assurances to the secretary of the interior as may be requisite; and the board may contract with the United States for the construction, operation and maintenance of the necessary works for the delivery and distribution of water therefrom under the provisions of the federal reclamation act, and all acts amendatory thereof and supplementary thereto and the rules and regulations established thereunder, or for the assumption, as principal or guarantor of the indebtedness to the United States on account of district lands. The board may contract with the United States for a water supply under any act of congress providing for or permitting such contract and in case any contract has been or may thereafter be made with the United States as herein provided, bonds of the district may be deposited with the United States at ninety percent (90%) of their par value, to the amount to be paid by the district to the United States under any such contract, the interest on said bonds, if bearing interest, to be provided for by assessment and levy as in case of other bonds of the district and regularly paid to the United States to be applied as provided in such contract; and if bonds of the district are not so deposited it shall be the duty of the board to include as part of any levy or assessment provided for herein, an amount sufficient to meet each year all payments accruing under the terms of any such contract; and the board may accept on behalf of the district, appointment of the district as a fiscal agent of the United States, or authorization of the district by the United States to make collection of moneys for or on behalf of the United States, in connection with any federal reclamation project, whereupon the district shall be authorized to so act and to assume the duties and liabilities incident to such action, and the said board shall have full power to do any and all things required by the federal statutes now or hereafter enacted in connection therewith, and all things required by the rules and regulations now or that may hereafter be established by any department of the federal government in regard thereto. The board shall have the power to buy, develop, sell and distribute electrical energy as an incident to the ownership, control and operation of the irrigation works of the district or the cooperative works of the district and the United States and to use, sell and distribute the same. The said rules and regulations shall be printed in convenient form as soon as the same are adopted, for the distribution in the district; provided, however, that the commissioners of the district shall not contract with the United States for the construction, operation or maintenance of the necessary works for the delivery and distribution of water to district lands, or for the drainage of district lands, under the provisions of the federal reclamation act and any act or acts amendatory thereof or supplementary thereto, or the rules and regulations established thereunder, or for the assumption as principal or guarantor, of indebtedness to the United States on account of district lands, or for a water supply or drainage incident to irrigation under any act of congress providing for or permitting such contract, or for acceptance by the district of appointment or authorization as fiscal agent of the United States to make collections of moneys for or on behalf of the United States in connection with any federal reclamation project, until there has been an election duly held at which a majority of the qualified electors present and voting have voted in favor of making any such contract.

41-7-304. Financial records and reports; compensation and expenses; suit on bonds.

The commissioners shall keep an accurate record of all monies collected on account of the work under their charge and of all payments made by them, and shall take vouchers for payments and shall keep full, accurate and true minutes of all their proceedings. On or before the tenth day of January each year in a district which uses a calendar year for elections under W.S. 41-7-316, and on or before the tenth day of July each year in a district which uses a fiscal year for elections under W.S. 41-7-316, the commissioners shall file in the office of the clerk of the court having jurisdiction in the matter, an

itemized statement of all their receipts and disbursements, for the preceding fiscal year, and leave the report in the office for examination by parties interested at all times, and include a copy thereof in the regular call for the annual meeting hereinafter provided. They shall receive for their services compensation as the court or presiding judge thereof may determine. They shall also be reimbursed for their actual reasonable expenses. Suit may also be brought upon their bonds, and the amount recovered shall be applied to the construction of the work or to the party injured, as justice may require.

41-7-305. Maps and plans of proposed work; reports to court generally.

(a) As soon as may be after the organization of said district, or within such time as the court may direct, said commissioners shall proceed to have all necessary levels taken and surveys made, and shall lay out said proposed work, make a map thereof and plans, profiles and other specifications thereof, and report in writing to the court:

(i) The extent and character of the proposed work and the sufficiency of the water supply;

(ii) What lands within the district, as by them reported will be injured by the proposed work, if any, and they shall therein award to each tract, lot, easement or interest by whomsoever held, the amount of damages which they shall determine will be caused to the same by the proposed work;

(iii) All lands within the district as by them reported will be benefited by the proposed work and they shall assess against such lands by whomsoever held the amount of benefits which they determine will be caused to the same by the proposed work, and in case of lands having appurtenant thereto a partial water right or partial rights in a system of irrigation the assessment shall be according to benefits making due allowance for existing rights. The benefits so assessed are herein referred to as "the assessment roll".

(b) If it be found necessary to change the boundaries of said proposed district, previously fixed, they shall report said proposed change, and, if possible, shall report the names, the residence and post-office addresses of the owners or persons entitled to possession of all lands affected by said change in boundaries, but no such change in boundaries shall be made as to deprive the court of jurisdiction; provided, however, that the owners and those entitled to possession, by virtue of public land filing, of lands adjacent to the district, petition to have their lands brought into the district such petitioners may be considered the same as the original petitioners in making changes of boundaries.

(c) They shall also determine and report to the court the total itemized amount as near as they can determine, that said proposed work will cost, including organization expenses and the unit cost upon which the assessments are based, which shall be designated as "cost of construction".

(d) If the cost of construction of any particular part of the work so proposed to be done shall be assessed upon any particular tract or tracts, lot or lots of land, the commissioners shall so specify, and in their report they shall fix and determine the sums which should be assessed against said tracts and lots, and assess such sum against said tracts and lots.

(e) They shall apportion and assess the part of this "cost of construction" not assessed as above, against the several benefited tracts and lots in said irrigation district, in proportion to the benefits which they have assessed against the same, by setting down opposite each tract or lot the sum which they assess against the same for construction. The assessments which together make up the cost of construction, as above defined, as herein referred to as "assessments for construction".

(f) They shall set forth in their report the amount of water by them apportioned to each separate tract or lot of land in said district, to be assessed.

(g) The commissioners shall further report to the court the probable cost of keeping said proposed work in repair after it is completed.

(h) They shall include in their said report, said map, plans and other specifications, and file the same with their report.

41-7-306. Power to alter location of irrigation works; power of court to alter plans proposed by commissioners.

The commissioners shall not be confined to the points of location, commencement, routes or termini of the reservoirs, canals, ditches or other work, or the number, extent or size of the same, as proposed by the petitioners, but shall locate, design, lay out and plan same in such manner as to them shall seem best to promote the public welfare, and to reclaim or benefit the lands of the parties interested with the least damage and greatest benefit to all lands affected thereby. And any plan proposed by the commission, may, on the application of any person interested, on the hearing hereinafter provided for, or on the application of the commissioners, be altered by the court, by written order, in such manner as shall appear to the court to be just.

41-7-307. Exclusion or inclusion of lands in district; review of report by court generally.

If the commissioners find that the proposed district, as described in the petition filed, will not embrace all of the lands that will be benefited by the proposed work, or that it will include lands that will not be benefited and are not necessary to be included in said district for any purpose, they shall extend or contract the boundaries of the proposed district so as to include or exclude all such lands, as the case may be; and the boundaries adopted and reported by them, may upon the hearing of their report, as hereinafter provided, upon their application, be altered by the court in such manner as shall appear to be just; provided, that the alteration of boundaries as aforesaid shall not have the effect of so far enlarging or contracting the proposed district as to render such petition void or dismissible. Said report shall be filed with the clerk of the court.

41-7-308. Hearings on commissioners' report; filing of objections; notice generally.

Upon the filing of the said report, the court or judge thereof, shall make and enter an order fixing the time and place when and where all persons interested may appear and object to the confirmation thereof. All objections shall be in writing and shall clearly specify the grounds of objection and shall be filed in the office of the clerk of court wherein said report is filed at least five (5) days prior to the date set for the hearing. The clerk of said court shall cause notice of the time and place of such hearing to be given to all parties interested, which notice shall contain a brief description of the lands benefited and damaged, together with the net damage awarded the several tracts, parcels, easements and corporations to which damages are awarded, and the sum in each case assessed for benefits and cost of construction against the several benefited parcels, tracts, easements and corporations, and the amount of water apportioned to each acre of land in the district. Said notice shall be published for at least three (3) consecutive weeks, prior to the day set for the hearing, in one (1) newspaper published in each county in which said lands, or any part thereof within said district are situate (and if no newspaper is published in said county, in some newspaper in an adjoining county), and by serving a copy of such notice on each of the persons or corporations by said report recommended to be assessed, or whose lands are by said report recommended to be included in said district, and who resides in any of the counties in which any lands of the proposed district are situated, at least twelve (12) days before the day of hearing in the same manner that a summons is required to be served; provided, absence from the county of such person, or corporation shall excuse personal service, whereupon due publication of such notice shall be sufficient service.

41-7-309. Hearings on commissioners' report; notice when land situated in more than 1 county.

In case the lands are situated in more than one (1) county the notice published in the county wherein the court having jurisdiction is situated shall contain a description of all the lands in said proposed district, the damages awarded to the several parcels thereof and the amounts assessed for benefits against the several parcels thereof, but the notice published in any other county or counties may contain a description of only the lands situate in said county for which said publication is made, together with the damages awarded to and assessments for benefits against the several tracts, parcels, easements and interests situate in said county for which publication is made. In case of service of said notice personally or the acceptance and waiver thereof of all the owners of the lands within the district, said service shall be sufficient and give the court jurisdiction without said publication.

41-7-310. Hearings on commissioners' report; procedure when report requires modification.

If the court finds that the report requires modification, the same may by order of the court be referred back to the commissioners, who may be required to modify it in any respect.

41-7-311. Hearings on commissioners' report; confirmation of report.

If there be no remonstrance, or if the finding be in favor of the validity of the proceedings, or after the report shall have been modified to conform to the findings, the court shall confirm the report and the order of the confirmation shall be final and conclusive, the proposed work shall be established and authorized, and the proposed assessments approved and confirmed unless within thirty (30) days an appeal be taken to the supreme court, and the said order of confirmation shall also fix the commissioners' bond.

41-7-312. Hearings on commissioners' report; revision of confirmation.

Said order of confirmation may, at the same or at any subsequent term of said court be revised, modified or changed, in whole or in part, on petition of the commissioners, after such notice as the court may require to parties interested. At any time prior to making the order confirming said report or thereafter, the court may permit the commissioners to present and file a supplemental report, or amend their report, as to any matter which, pursuant to the provisions hereof, was or might have been included in the original report presented by them, and after reasonable notice given to all parties interested, in such manner as the court shall direct, the court may, upon the hearing in said matter, make such order as the case may require.

41-7-313. Hearings on commissioners' report; payment of costs when objections dismissed.

In case the petition or proceedings are dismissed as provided herein, a judgment shall be entered against the petitioners and in favor of the commissioners for the costs, expenses, and liabilities incurred in said proceedings, for the benefit of those who have rendered services or advanced money in the prosecution of said proceedings, or have recovered costs on successful contests therein. Before any such judgment is entered, said commissioners shall file with the clerk of the district court, in which said proceedings were instituted, an itemized statement of such costs and expenses, duly verified, upon which an order shall issue, requiring said petitioners to show cause before said court, at a time and place named, why judgment should not be entered against said petitioners for the amount of said costs and expenses. Notice of the hearing on said order, to show cause, shall be given to said petitioners, by mailing to each a copy thereof, to their last known post office address, at least twenty

(20) days prior to the time set for hearing, and by publication of the same in one (1) or more newspapers, published in the county, where the proceedings are pending, at least three (3) successive weeks prior to the day set for such hearing. Said motion need not contain an itemized statement of said account. All petitioners shall, among themselves, contribute in the payment of said judgment, in proportion to the number of acres of land they have within the boundaries of the proposed district at the time of filing said petition.

41-7-314. Power to enter land to repair irrigation works; construction of ditches across railway rights-of-way.

(a) The commissioners, their agents, servants, and employees shall have the right to go upon all lands along any reservoirs, ditch, canal, or embankment in their district, to inspect, deepen, widen and repair the same whenever necessary, doing no unnecessary damage, and shall not be liable for trespass therefor.

(b) Said commissioners shall have the right to lay out and construct all necessary canals, ditches, drains and embankments across any railway right-of-way or yard within their district, and any railway company whose right-of-way or yard is crossed by the line of any proposed canal, ditch, drain or embankment shall open its right-of-way or yard and permit such canal, ditch, drain or embankment to cross the same as soon as such canal, ditch, drain or embankment is constructed to such right-of-way. Upon receiving fifteen (15) days notice in writing any railway company across whose right-of-way or yard any such canal, ditch, drain or embankment is laid out, shall open its right-of-way or yard and permit said commissioners and their contractors, agents and employees to construct such canal, ditch, drain or embankment across said right-of-way or yard. For every day that such railway company fails, after the end of said fifteen (15) days to open its right-of-way or yard as hereinbefore required, it shall forfeit twenty-five dollars ($25.00) to said irrigation district to be collected in an action as other forfeitures are collected, or to be set off against any damages that have been awarded to such railway company. If such railway company fails to open its right-of-way or yard along the line of any such canal, ditch, drain or embankment, the commissioners may at any time after the expiration of said fifteen (15) days open such right-of-way or yard along the line of such canal, ditch, drain or embankment and construct the same. Every irrigation district shall be liable to the railway company whose right-of-way or yard is crossed by any canal, ditch, drain or embankment of the district, for the reasonable cost of any culverts or bridges for railway purposes made necessary by the crossing of such right-of-way or yard by any such canal, ditch, drain or embankment, but the cost so entailed shall not be greater than the average cost of other culverts and bridges of similar size installed on the same division of the railway, and crossing streams, canals, ditches or drains of approximately the same width and depth within a distance of one hundred (100) miles of the canals, ditches or drains of said district.

41-7-315. Sale of water rights.

Whenever any of the lands embraced within said district have been or are to be reclaimed by the work done or proposed to be done by said district and the segregation of said lands has been secured by said district, it shall be competent for the commissioners of said district, in the name of said district, to contract with any person competent to make entry upon said lands for the sale of water rights thereto, and any and all payments by such contracts provided to be paid to the district shall be and are a lien upon said lands and water rights until paid, and such lien may be foreclosed in the manner provided by law for the foreclosure of such liens.

41-7-316. Election; when held; term of office; exception.

(a) At any annual meeting of the irrigation district, the district may elect to adopt either a calendar year basis for their district elections or a fiscal year basis for their district elections. If the

district elects a calendar year basis, on or after the first day of February and before the last day in March next preceding the expiration of the terms of office of any irrigation district commissioner appointed in any irrigation district, organized under the provisions of this chapter, and on or after the first day of February and before the last day in March of each year thereafter, an election shall be held to elect a commissioner or commissioners for the district, in the manner prescribed by this section.

(b) If the district elects a fiscal year basis for their district elections similar to that of the county in which they are located, then on or after the first day of August and before the last day of September next preceding the expiration of the terms of office of any irrigation district commissioner appointed or elected in any irrigation district organized under the provisions of this chapter, and on or after the first day of August and before the last day in September of each year thereafter, an election shall be held to elect a commissioner or commissioners for the district, in the manner prescribed in this section.

(c) At the first election held in any district, one (1) commissioner shall be elected from each commissioner district who shall be a landowner thereof. Where the irrigation district is divided into three (3) subdivisions, the commissioner from district number 1 shall serve as a commissioner for a term of one (1) year, the commissioner from district number 2 shall serve as a commissioner for a term of two (2) years, and the commissioner from district number 3 shall serve as a commissioner for a term of three (3) years. Where the district is divided into five (5) subdivisions, the commissioners from districts numbers 1 and 2 shall serve as commissioners for a term of one (1) year, commissioners from districts numbers 3 and 4 shall serve as commissioners for a term of two (2) years, and the commissioner from district number 5 shall serve as a commissioner for a term of three (3) years. Thereafter, all commissioners elected shall serve for a term of three (3) years, and until their successors are elected and qualified, except commissioners elected to fill an unexpired term.

(d) The term of an elected commissioner shall commence upon the date of the next regular meeting of the commissioners held after his election. If a majority of the commissioners are appointed by the secretary of the interior as provided for in this chapter, then the remaining commissioners shall be elected at large within the entire irrigation district for terms of three (3) years each. The terms however, shall be limited to and expire on the date of the next regular meeting of the commissioners held following the date when the unentered public lands within the district constitute less than the majority of the total acreage within the district. After the expiration of these terms, the commissioners shall be elected in the same manner and for the same terms as provided for herein in the case of first election of commissioners.

41-7-317. Election; where held; notice to voters; qualifications of voters; recording vote; proxies.

The commissioners of the district shall fix the hour and place, within the boundaries of or at a place convenient to the landowners within the irrigation district, of each election and preside at the same. It shall be the duty of the commissioners, at least twenty (20) days prior to the date of an election, to mail to each person or corporation entitled to vote thereat, at his or its last known place of residence or business, a notice stating the time, place and purpose of such elections. Every person or corporation owning or entitled by virtue of public land filing to the possession of land situated within and being a part of any commissioner district in which an election for commissioner is being held, and upon which land no assessment for operation, maintenance or repairs is delinquent for more than four (4) years, shall be entitled to cast, for the commissioner to be elected, for the commissioner district wherein such land is situated, one (1) vote for each irrigable acre of such land assessed upon the last annual assessment of said district upon or against which land no assessment for operation, maintenance or repairs is delinquent for more than four (4) years. At the hour and place of such election the commissioners shall call the roll of those entitled to vote, and the number of votes each is entitled to cast. They shall make a record of the qualified voters present, receive all proxies and

prescribe the manner of canvassing votes. All proxies shall be in writing and signed by the person or corporation entitled to vote.

41-7-318. Election; validity; qualifications of candidates; vacancies in office; duties of elected commissioners.

No person shall be declared elected as a commissioner who shall not be a landowner in said commissioner district and who shall not have received a majority of all votes cast by the qualified voters of said commissioner district. No election shall be invalid by reason of the fact that a majority of the acreage within the district was not represented at such election. Whenever the office of any elected commissioner shall become vacant by reason of death, resignation or other cause, the vacancy shall be filled by the surviving commissioners for the unexpired term. In case such vacancy is not so filled within thirty (30) days, the court shall fill such vacancy. All elected commissioners shall have the same qualifications and duties as herein prescribed for appointed or elected commissioners.

ARTICLE 4
ASSESSMENTS

41-7-401. Payment in installments; construction contracts with United States generally; default in payments as lien; exception; power of commissioners to enforce payment.

At the time of the confirmation of any assessment provided for in this article, it shall be competent for the court to order the same to be paid in installments of such amount and at such time as will be convenient for the accomplishment of the purposes for which such assessment was made, and the payment of the principal and interest of such notes or bonds of said district as the court shall grant authority to issue, such installments to become delinquent on the same date or dates as may be fixed by law for state and county taxes to become delinquent, and such installments shall draw interest from the date of any notes or bonds issued by the district and for the payment of which said assessments are pledged at such rates not to exceed seven percent (7%) per annum, as may be fixed by the court; provided, however, that it shall be competent for the court, in case a contract is made between the United States of America and an irrigation district for the construction or sale of irrigation works and water rights, to order the charges to be paid in accordance with the provisions of an act of congress approved December 5, 1924, entitled: "An act making appropriations to supply deficiencies in certain appropriations for the fiscal year ended June 30, 1924, and prior fiscal years; to provide supplemental appropriations for the fiscal year ending June 30, 1925; and for other purposes," and all acts that may be hereafter enacted as amendatory thereof or supplemental thereto, and in such installments as fixed by contract between the district and the United States. The annual levy for payment of construction charges on the basis herein authorized shall continue to be made each year against each tract of land in the district against which benefits under such contract with the United States have been apportioned, until the full amount apportioned against the same has been paid; such installments to become delinquent on the same date or dates as may be fixed by law for state and county taxes to become delinquent and such installments, after they become due, shall draw interest at six percent (6%) per annum. All assessments provided for in this article, together with all interest thereon and all penalties for default in payment of same, and all costs of collecting the same shall, from the date of the order of court confirming such assessments until paid, constitute a perpetual lien in an amount not in excess of the benefits severally assessed, upon all the land and other property against which such assessments shall be levied, superior to all liens of every kind and nature whatsoever except the paramount lien of the state for the general state, county, city, town or school taxes, and no sale of such property to enforce any general state, county, municipal, or school tax, or other lien shall extinguish the perpetual lien of such assessments; and such assessments shall also be a lien upon all equities or interests in existing water appropriations for the irrigation of said lands when the title to said lands is vested in the United States, and when said water appropriations have attached to said lands. The commissioner shall have the power to enforce payment of such

assessments, and all assessments by them duly levied and confirmed, by shutting off the supply of water to any and all lands upon which assessments are due and unpaid, and may refuse to deliver water to such lands until such assessments are paid. Any person having an interest in land assessed for construction may at any time within thirty (30) days after the confirmation of said report, pay to the court the amount of the assessment against his land or any tract thereof. Said payment shall relieve said land and water rights from the lien of said assessments for the cost of construction; provided, however, that any district organized within a federal irrigation project for co-operation between such districts and the United States, may contract and agree in connection with the acquisition of irrigation works and water rights and the taking over of the care, operation and control of the same from the United States, that each tract or parcel of land shall pay the charges conformed in the assessments against such tract or parcel of land, and that liability for charges thus assessed may by contract be conformed and limited to the particular tract or parcel of land in question and if so contracted, shall not be imposed as a charge or incumbrance upon other parcels or tracts of land within the district.

41-7-402. Due dates; annual budget of district; hearings on budget; petition for additional funds; hearings on petition.

(a) Assessments to meet expenses of any current year of any district shall become due, payable and delinquent at such time or times each year as may be fixed by law for state and county taxes to become due, payable and delinquent. Commissioners having charge of any irrigation district shall on or before the first Tuesday of June of each year file with the clerk of the court having jurisdiction of such district, a report showing an itemized estimate of the money to be raised by assessment within the district for the purpose of constructing new work, maintenance and to meet the yearly current expenses of the district. In addition to the amount above provided, the commissioners may add a sum which in their judgment shall be sufficient to provide for possible delinquencies. Within thirty (30) days after filing such annual report, at a time and place to be fixed by the court or a judge thereof, the judge shall examine such report, hear all objections thereto, fix and determine the amount to be raised by assessments for the current year and cause such adjudication to be entered of record in said court and a certified copy thereof to be delivered to the commissioners of such district. The commissioners shall add thereto such amount as may be necessary to meet the principal and interest on lawful indebtedness of the district maturing during the current year, together with a sum which in their judgment shall be sufficient to provide for possible delinquencies. When thus completed it shall be known as "the budget of .... district for the year (year)" and also be verified under oath by any one (1) of the commissioners.

(b) The commissioners of any irrigation district within the state of Wyoming are hereby forbidden to incur any indebtedness for current expenses of the district in excess of the amount provided in the budget. Provided, however, in case a greater sum than that provided in the budget is required, the commissioners may file a petition setting forth the causes therefor, with the clerk of the court having jurisdiction of said district. Immediately upon the filing of said petition the court shall make an order fixing the time and place of hearing and directing the form and manner of notice thereof to be given if the court deem such hearing advisable. If the court shall authorize the expenditure of a greater sum of money the commissioners shall be authorized to incur indebtedness equal to the amount of the additional sum authorized by the court, and in case the expenditure occurs at a time when it is too late to place the amount upon the assessment roll for the current year such amounts may be added to the budget of ensuing years. All debts contracted in contravention of this section shall be void.

41-7-403. Preparation of assessment roll; contents; how apportioned; certification by county commissioners; delivery to county assessors.

It shall be the duty of the commissioners of each irrigation district, on or before the third Monday in July in each year to prepare an assessment roll of said district, which shall contain the name of the

owner, together with a description of each lot, tract and easement of land within said district and the aggregate assessments of benefits confirmed by the court against the same; the name of all corporations assessed together with the aggregate assessment levied against such corporations respectively. The assessment roll shall also show the amount assessed against each lot, tract and easement of land, and against each corporation in the district, for current expense and to meet the principal and interest on the indebtedness of the district for the current year. All such assessments to meet the principal and interest on the indebtedness of the district for the current year, shall be apportioned on the aggregate assessment of benefits last confirmed by the court. All such assessments for current expenses shall be based upon irrigable acreage and shall be uniform as to irrigable lands receiving the maximum apportionment of water from said district, and as to irrigable lands receiving less than such maximum apportionment such assessment shall bear the same proportion as the amount of water apportioned to such lands bears to the maximum apportionment of water to other lands in such district. Provided however, that the commissioners of any irrigation district may, in their discretion, provide for a minimum annual assessment for current expense. When such assessment roll is completed it shall be signed by the commissioners of said district, and verified by any one (1) of them. On or before the third Monday in July of each year the commissioners of the irrigation district shall deliver to the county commissioners of the county having jurisdiction of such irrigation district the assessment roll of such district. The county commissioners of said county, immediately upon the receipt of the assessment roll of such district and at the time of making the requisite tax levy for county purposes, shall levy and assess against each lot, tract and easement of land and against each corporation, the respective amounts levied and assessed against the same on said assessment roll. Thereupon the county commissioners shall certify to and deliver said assessment roll to the county assessor of such county, and in case the territory embraced in such district is located in two (2) or more counties a copy of the assessment roll as certified to by the county commissioners of the county having jurisdiction of such district shall be delivered to the assessor of each county in which any of the land of the district is located. Upon receipt of such assessment roll the assessors of the counties embracing any of the lands of such district, shall extend upon the tax roll of such county the respective amounts levied and assessed against each lot, tract and easement of land, and against each corporation as shown by said assessment roll of said districts.

41-7-404. Collection; disposition; enforcement.

(a) All irrigation district assessments, except as provided by W.S. 41-7-413, shall be collected by the same officer and in the same manner and at the same time as state and county taxes are collected and when collected shall be paid to the treasurer of the district, except such assessments, together with interest, penalty and costs thereon, as are collected upon assessments levied for the payment of principal and interest of bonded indebtedness of said district; which funds shall be retained by the county treasurer of the county in which such district is organized, and the principal and interest of all bonded indebtedness of such district shall be paid by such county treasurer from such fund at the place of payment designated in said bonds and interest coupons; provided, that when all bonded indebtedness of any irrigation district is fully paid and retired such funds remaining in the hands of the county treasurer shall be paid to the treasurer of such district, for the benefit of the district; provided, however, the county treasurer, in case of taxes heretofore or hereafter levied, as herein provided, shall receive, in payment of the district bond taxes above mentioned for the year in which said taxes were levied, interest coupons or bonds of said irrigation district, maturing within said year the same as so much lawful money of the United States. Provided, however, that in the case of the nonpayment of any taxes which have heretofore or may hereafter be levied, as above provided, the board of county commissioners, upon application made, shall have the power and it shall be the duty, upon written request of the board of such irrigation district, to order the said treasurer to receive in full payment of the bond fund portion of said taxes the principal amount of said tax levies, payable in bonds or bond interest coupons of said irrigation district at their face value, and maturing within the year in which said tax levies were made, as so much lawful money of the United States and in full

payment of the maintenance, operating and current expense portion of any such taxes, such an amount, payable in cash or in warrants of said irrigation district at their face value, as the board of said irrigation district may authorize or approve, and to direct the cancellation and remission of all penalties and interests on such delinquent taxes, except, however, that the cost of any advertising shall be paid in cash. And provided further, that in case of any tax sales heretofore had for the nonpayment of any such taxes, the tax sale certificates of which are held by the county, the board of county commissioners of the county holding such tax sale certificates shall have the power, and it shall be its duty upon the written request of the board of such irrigation district, to sell and assign such tax sale certificates and all its interest in said property represented thereby or acquired therethrough, for the amount of the original tax levy on which said sale was based, and to receive in payment therefor for the bond fund portion thereof, bonds or interest coupons of said irrigation district at the face value thereof maturing within the year in which said tax levies were made, as so much lawful money of the United States, and for the maintenance, operating and current expense portion thereof, such an amount in cash or in warrants of said irrigation district at their face value as the board of said irrigation district may authorize or approve; and to cancel and remit all interest and penalties that may have accrued on said tax certificates, except that the cost of advertising shall be paid in cash. Any bonds, bond interest coupons or warrants of any such irrigation district used in payment of taxes or in the purchase of tax sale certificates, as herein provided, shall together with any interest on such bonds, coupons or warrants, be deemed fully paid and satisfied, and the irrigation district relieved from all obligations thereunder. The commissioners of any irrigation district may elect the treasurer of the county having jurisdiction of such district, treasurer of such district.

(b) The revenue laws of this state for the collecting of taxes on real estate for county purpose, except as herein modified, shall be applicable for the purposes of this act [§§ 41-7-101 through 41-7-401, 41-7-403 through 41-7-412, 41-7-414, 41-7-415], including the payment of interest and enforcement of penalties and forfeitures for delinquent taxes; all penalties and interest on assessments of an irrigation district collected by the county treasurer shall be the property of such district, and shall be turned into the bond interest fund, and all interest and penalties collected on assessments of such district levied for purposes other than bonded indebtedness shall be paid to the treasurer of the district levying such assessment; such payments to be made on or before the fifth day of the month following the date of such collection. In advertising property for sale for delinquent taxes the county treasurer shall show in a separate column in such advertisement the amount of unpaid assessments levied against each lot, tract and easement of land in said district. The county treasurer of any county in which any portion of the land of any irrigation district is located, and at the time of advertising real property for sale for state and county taxes shall include in such advertisement the amount of delinquent irrigation district assessments against each lot, tract or easement of land. At the time and place of sale of real property for state and county taxes the county treasurer shall also separately sell the land for delinquent irrigation district assessments and shall issue separate certificates of sale therefor. In offering such real estate for sale for irrigation district assessments, the county treasurer shall offer the entire tract assessed, and the first bid received in an amount sufficient to pay such assessment, together with interest, penalty and costs, shall be accepted and the treasurer shall not attempt to secure a higher bid. In case no purchaser appears to purchase the land offered for sale for such delinquent assessments the county treasurer shall make an entry on his delinquent tax roll "sold to .... District of .... County, Wyoming", and shall issue a certificate of purchase to such district. The owner of any tract, lot or easement of land in an irrigation district shall have the right to redeem the said land at any time within eighteen (18) months from the date of sale thereof by the county treasurer, as shown on said certificate by paying therefor the amount for which said land was sold by the county treasurer, together with such penalties and interest as may be provided by law relative to sales of land for delinquent state and county taxes, and in case the owner of any lot, tract or easement of land in any district shall fail to redeem said land from said sale for such assessment, the county treasurer shall issue a deed therefor to the purchaser at said sale, his heirs or assigns. The irrigation district purchasing such land at said tax sale shall have all the rights of natural persons in regard to owning, holding and selling such certificate and including the receipt of a deed,

holding the title to real estate and selling and disposing of the same. The commissioners shall in no case sell said land or certificate of purchase for an amount less than the amount for which said land was sold to said district, including interest thereon, unless authorized so to do by the court. The procedure for the issuing of tax deed, including the form of the deed, time of publication and service of notice of intention to apply for deed, shall be the same as is now or may hereafter be provided by law for the issuances of tax deeds by the county treasurer upon the sale of land for state and county taxes, except as herein modified.

41-7-405. Additional assessments generally.

If any assessment for construction, operation, maintenance or repair that the commissioners shall have reported to the court is a smaller sum than is needed to carry out the purpose for which said assessment has been made, or if in any year an additional sum is necessary to pay the principal or interest on lawful indebtedness of the said irrigation district, further or additional assessments on the lands and persons benefited shall be made by the commissioners of said irrigation district under the order of the court, or presiding judge thereof, upon such notice as the court may direct, which further or additional assessment may be made payable in installments as specified herein, and shall be treated and collected in the same manner as the original assessments confirmed by the court in said irrigation district.

41-7-406. Omissions; effect on other lands; duty of commissioner.

Omission to assess benefits, or to assess for construction, or to make additional assessment, or to make assessment for operation, maintenance or repairs against any land or person which should have been assessed, or to award damages to any one (1) or more tracts of lands or easements in an irrigation district shall neither affect the jurisdiction of the court to confirm the report nor to render the benefits assessed, or the assessments for construction, or additional assessments, or assessments for operation, maintenance, or repairs against other lands, or assessments against any person voidable, but the commissioners of said irrigation district shall thereafter, as soon as they discover the omission, or receive notice thereof, either agree with the omitted parties upon the proper award or assessments and award the damages or make such assessment of benefits or assessments for construction, operation, maintenance or repair, and make such additional assessments against the omitted lands and corporations, and award such damages as shall be just, and report the facts, together with such assessments and awards, to the court.

41-7-407. Omissions; procedures generally.

In case of omission to assess any person or land that should be assessed for benefits, or additional assessment, or to award damages, said omitted party and the owners or person entitled to the possession of omitted land may, in writing, agree with the commissioners of said district that the assessment should be against said land, or against said person, or what said damage should be, and such agreement shall be acknowledged and witnessed as provided above for waivers, and be filed in the court.

41-7-408. Borrowing money; bonds as security; indebtedness as lien on assessments.

The commissioners may borrow money, not exceeding the amount of "assessment for construction," as herein provided, unpaid at the time of borrowing for such purposes, or for the payment of indebtedness they may have lawfully incurred, and may secure the same by notes or bonds bearing interest and not running beyond one (1) year after the last installment of the assessment, on the account of which the money is borrowed, shall fall due, which notes or bonds shall not be sold at less than ninety percent (90%) of their face value, which bonds shall be transferable by delivery to the same extent as negotiable paper of the highest character, and may deliver notes or bonds to the

United States to be held and when deemed desirable or when the appraised value of the land in the district is double the bonded indebtedness, sold by it, and the net proceeds received from the notes or bonds applied to the liquidation of contract indebtedness of the district to the United States. Notes or bonds shall be in a form, terms and denominations as may be fixed by the secretary of the interior in carrying out the provisions of the act of congress of June 17, 1902 (32 Stat. 388) and all acts amendatory thereof or supplementary thereto, or that may be hereafter enacted as amendatory thereof or supplementary thereto, or other acts of congress heretofore or hereafter enacted providing for or permitting the acceptance of the bonds, and which notes or bonds shall not be held to make the commissioners personally liable, but constitute a lien upon the assessments for the repayment of the principal and interest of the notes or bonds. In case any monies derived from bonds sold to pay for the construction, as herein provided, now or hereafter, remains on hand after the work is completed and paid for, and not raised for damages unpaid for, the residue may be used in the maintenance and repair, as in this chapter provided, before making assessment for maintenance and repair.

41-7-409. Bonds; refunding procedures.

The court may, upon the petition of the commissioners, authorize them to refund a lawful indebtedness of the district now existing or which may hereafter be incurred by taking up and canceling all or a part of its outstanding notes and bonds, as fast as they come due or before, if the holders thereof will surrender the same, and issue in lieu thereof new notes or bonds of the district, payable in a time as the court deems proper, in an amount sufficient to retire all notes and bonds of the district then outstanding and the unpaid accrued interest thereon, together with an amount as the commissioners of the district deem necessary to provide for possible future defaults and delinquencies in the payment of assessments, and bearing interest. For the purpose of providing funds to pay the refunding bonds with interest thereon, the commissioners may levy assessments against the land in the district, but not in excess of the benefits assessed. In the alternative the commissioners may issue refunding bonds in an amount sufficient only to retire all notes and bonds of the district then outstanding and the unpaid accrued interest thereon, and may, if they desire to provide a fund to provide for possible defaults and delinquencies in the payment of assessments, levy from year to year assessments against the land in the district for such purposes, but not in excess of the benefits assessed against the same.

41-7-410. Bonds; effect of change in assessments.

No bonds or other money obligations issued by any irrigation district shall be adversely affected by any subsequent change in assessment of benefits.

41-7-411. Damages to landowners to be paid before entry for construction; exceptions; when entry prior to assessment authorized.

The damages allowed to the owners of lands shall be paid or tendered before the commissioners shall be authorized to enter upon the lands, for damage to which the award is made, for the construction of any reservoirs, canals, ditches, or other work proposed thereon. If the owner is unknown or there shall be a contest in regard to the ownership of the lands, or the owner will not receive payment, or there exists a mortgage or other lien against the same, or the commissioners cannot for any other reason pay him, they may deposit the said damages with the clerk of the court, for the benefit of the owner, or parties interested, to be paid or distributed as the court shall direct, and such payment shall have the same effect as the tender to and acceptance of the damages awarded by the true owners of the land. This section shall not, however, prevent said commissioners, their agents, servants, and employees from going upon said lands to do any and all work found necessary prior to making their assessment of benefits and award of damages, and the trial on their report thereof.

41-7-412. Advertisement for bids on work exceeding $7,500.00.

In all cases where the work to be done at any one (1) time under the direction of the commissioners will, in their opinion, cost to exceed seven thousand five hundred dollars ($7,500.00), the same shall be let to the lowest responsible bidder, and the commissioner shall advertise for sealed bids, by notice published in some newspaper published in the county in which the petition is filed, and may advertise in one (1) or more newspapers published elsewhere. If there be no newspaper published in the county in which the petition is filed, they shall advertise in some newspaper published in an adjoining county, which said notice shall particularly set forth the time and place when and where the bids advertised will be opened, the kind of work to be let and the terms of payment. Said commissioners may continue the letting from time to time, if in their judgment the same shall be necessary, and shall reserve the right to reject any and all bids. This section shall not be construed to apply to the employment of superintendent, engineer, attorney or other employee engaged in the general work of the district.

41-7-413. Application of provisions; districts organized under federal reclamation projects.

The provisions of this article, relative to the levy and collection of payments, charges or assessments in irrigation districts shall not apply to any district which may be organized within a federal reclamation project for the purpose of cooperation between such district and the United States; provided, a different method for the levy and collection of payments, charges or assessments be agreed upon between such district and the United States; and they shall apply only with the modifications hereinafter set forth to an irrigation district which may have been organized within a federal reclamation project when the board of commissioners of such irrigation district by unanimous vote decide to make collection of their taxes or assessments through their own treasurer's office. Whenever the board of commissioners of an irrigation district, organized within a United States reclamation project by unanimous vote of said board decide to make collection of their taxes and assessments through their own office, they shall certify their action to the board of county commissioners of each county in which their district is situated, by a written certificate, which shall be over the signatures of its president and secretary. Such certificate shall be filed in the office of the county clerk of such county not later than July first of the year in which the change of place of payment is desired to be effective and thereafter all taxes or assessments levied or assessed for such district shall be collected by, and payable to the treasurer of the irrigation district, at the office designated by such district at the time and in the manner now fixed by statute. When a certificate is filed as hereinbefore provided, then and thereafter the county commissioners of the county having jurisdiction of such irrigation district shall not be required to certify and deliver said assessment roll to the county assessor of such county or counties as otherwise provided by law, but shall certify and deliver said assessment roll to the treasurer of said district who shall act in lieu of and in place of the county treasurer in sending notices and collecting and receipting for such taxes or assessments. It shall be the duty of the treasurer of any irrigation district, following the method provided herein for collection of taxes or assessments to certify to the county treasurer of the county in which the land is situated the amount of any delinquent taxes or assessments on or before the 25th of May of each and every year and the county treasurer shall enter the same upon his delinquent tax list and make sale thereof as now provided by law. Any district which may or shall choose to make collection of its taxes or assessments as provided herein may revert back to the method of collection through the county treasurer's office by filing with the county clerk of the county or counties within which such district is located, a certificate showing the desire of a majority of its board of commissioners to change. Thereupon beginning with the first of July of the year in which the change is desired to be made, all the requirements of collection through the county treasurer's office shall be complied with.

41-7-414. When assessments to be judgments against land; manner of collection.

Each and every sum assessed in any irrigation district organized in the manner herein provided, as soon as such assessment is confirmed by the court, shall be and is declared to be a judgment of the district court in favor of said irrigation district and against the land so assessed, and unless some other method of collection is herein provided, shall be collected in the same manner as any other money judgment, provided, that whenever said assessment is a lien upon land it shall only be collected on said land on which it is a lien.

41-7-415. Order approving contract deemed conclusive; appeals.

The order confirming the assessments of benefits shall be conclusive as to the regularity of all proceedings relating to the assessments of benefits unless appealed from within thirty (30) days after the entry of such order.

ARTICLE 5
ORGANIZATION EXPENSES

41-7-501. Warrants for expense of survey authorized.

The duly appointed, qualified and acting commissioners of an irrigation district, having complied with the provisions of W.S. 41-7-302, are hereby authorized to issue warrants of said district bearing interest at the rate of six percent (6%) per annum up to the amount set by the judge of the district court of the judicial district wherein such district was organized for the purpose of making the surveys necessary to present their first report as provided in W.S. 41-7-305, and to defray other necessary expenses of the district, prior to the said first report and the assessment of benefits, upon complying with the procedure set out hereinafter.

41-7-502. Petition for authority to issue warrants; notice of hearing; objections.

Whenever the commissioners of an irrigation district, after their appointment and qualification, shall wish to avail themselves of the provisions of W.S. 41-7-501, they shall file in the district court wherein such district was organized, a petition for authority to issue interest-bearing warrants, setting out the necessity for such issuance, the amounts of warrants to be issued and the purpose thereof; the judge of said court shall thereupon, by order, set a date for hearing said petition and notice of such hearing, setting out briefly the purpose thereof, shall be published for one (1) consecutive week in a newspaper of general circulation in the county wherein the district or the greater portion thereof is situate, the last publication of said notice shall be at least ten (10) days prior to the date set for said hearing and any protests or objections to the said petition must be in writing, setting out the grounds of such protest or objection, signed and verified by the protestant or objector, and filed in the proceeding at least five (5) days prior to the date set for said hearing.

41-7-503. Petition for authority to issue warrants; hearing generally; decree generally; appeal.

Upon the date set for the hearing of said petition, the judge shall hear evidence in support thereof and in support of any protests or objections properly filed and shall hear and determine all proper issues presented by said petition and any protests or objections which there may be and the judge shall enter his order in accord with such evidence; if, in the discretion of the court the petition should be granted he shall make his order authorizing the issuance of such interest-bearing warrants, setting the amount of such warrants which may be issued and the purpose for which such warrants may be used; such order will become final and conclusive unless appealed from within thirty (30) days of the date of its entry.

41-7-504. Effect of decree; reference to be made on warrants.

Said order shall be the authority of the said commissioners and reference shall be made thereto on all warrants issued showing the amount so authorized and the total issued to the time thereof.

41-7-505. Assessment roll when assessments not yet approved or confirmed; equalization of assessments; levy.

It shall be the duty of the commissioners of each irrigation district in which an assessment for benefits and construction has not theretofore been approved or confirmed by the court to prepare an assessment roll of said district which shall contain the name of the owner, together with a description of each tract, lot and easement of land within said district, together with the aggregate assessment levied or assessed against each lot, tract and easement of land therein. All such assessments to meet the authorized expenditures of said district shall be apportioned among the various landowners owning lands within said irrigation district in such manner that each irrigable acre of land, as returned for assessment purposes by the county assessor, and as thereafter amended or confirmed by the county board of equalization, shall bear an equal part or portion of the total of said assessments as its assessed irrigable area, as returned by the county assessor, bears to the total irrigable area of land, returned by the county assessor, within said irrigation district. Such assessment roll of the district shall be signed by the commissioners thereof and verified by any one (1) of them. On or before the fourth Monday in May of each year the commissioners of any such irrigation district shall deliver to the county commissioners of the county having jurisdiction of such irrigation district, the assessment roll of said district by filing the same in the office of the proper county clerk. The county commissioners of said county, acting as a board of equalization shall proceed to hear any and all complaints or objections thereto and correct, equalize and complete the same in such manner that said assessments listed in said assessment roll shall be equitably and ratably apportioned equally among the various irrigable lands included within said irrigation district. At the time of making the requisite tax levy for county purposes, the county commissioners of said county shall levy and assess against each tract, lot and easement of land, the respective amounts levied and assessed against the same upon said assessment roll as revised and corrected by them. Thereupon the county commissioners shall certify to and deliver said assessment roll to the county assessor of said county and in case the territory embraced in said district is located in two (2) or more counties, separate assessment rolls and proceedings shall be had and taken in each separate county, as required herein, but the assessment rate per irrigable acre as determined by the county commissioners having jurisdiction in the county in which the court proceedings are handled for said district shall be the rate per irrigable acre used by the county commissioners in all other counties in said district. Upon receipt of said assessment roll, the assessor of the county embracing any of the lands of said district shall extend upon the tax rolls of such county, the respective amounts levied against each lot, tract and easement of land as shown by said assessment roll of said district.

ARTICLE 6
CONSTRUCTION CONTRACTS WITH UNITED STATES

41-7-601. Inclusion of provisions for maintenance and reclamation of injured lands; costs.

The board of commissioners of any irrigation district, in contracting with the United States for the construction, operation and maintenance of its necessary works for the delivery and distribution of water therefrom under the provisions of the federal reclamation act and acts amendatory thereto and supplementary thereof, and the rules and regulations established thereunder, may include in said contract with the United States, a provision or provisions for the construction, operation and maintenance of any necessary drainage works which they may reasonably contemplate to be necessary for the reclamation and drainage of lands of the district affected injuriously by the seepage or percolation of waters from the irrigation works of the district or from the highlands in the district

irrigated or to be irrigated, and said commissioners shall include the costs of such drainage in the "cost of construction" as defined by W.S. 41-7-305.

41-7-602. Petition for contract and assessments; hearings generally.

Whenever any contract between the United States and an irrigation district so provides, the assessment or assessments for benefits and construction against the individual tracts of land in the district, as now required under W.S. 41-7-401, may be dispensed with, and in such case the board of commissioners of the district, at any time, or after an election as provided by law has resulted in the approval of such contract, may file in the district court of the county embracing the largest acreage of the district, a petition praying in effect, that the contract and the proceedings leading up to the execution of same and the assessment for benefits and construction as requested therein may be examined, approved and confirmed by the court. The petition shall state generally that the irrigation district was duly authorized, that due and lawful proceedings were taken to execute a contract with the United States which incurred a district indebtedness for construction charges to the United States in a maximum amount to be stated, and that the assessments to be levied against the individual tracts of land under the contract do not exceed the benefits to accrue to such tracts of land, respectively, by reason of such contract. The court shall, upon presentation of such a petition, fix a time for the hearing of said petition and shall order the clerk of the court to give and publish notice of the filing of the said petition, and of the time and place fixed for the hearing thereon. The notice of such hearing shall be published three (3) consecutive weeks in a newspaper of general circulation in each county in which such district is located and shall state the time and place fixed for the hearing of the petition, the prayer thereof, and that any person interested in the subject matter of the petition may, on or before three (3) days prior to the day fixed for the hearing thereof, answer or otherwise plead thereto, and no other notice shall be required to be given of the time and place of the hearing thereon. Upon the hearing on such proceedings, the court shall disregard every error, irregularity, or omission which does not affect the substantial rights of any party, and the court may make an order confirming and approving the proceedings taken to ratify and confirm such contract and the assessments for benefits and construction as required therein. The costs of the proceedings may be allowed and apportioned among the parties thereto in the discretion of the court.

41-7-603. Order approving contract deemed conclusive; appeal.

The order confirming and approving the proceedings taken to ratify and confirm such contract and the assessment for benefits and construction as provided therein, shall be conclusive as to the regularity of all proceedings relating thereto, unless appealed from within thirty (30) days after the entry of such order.

ARTICLE 7
POWER PROJECTS

41-7-701. Irrigation districts may undertake power projects.

Any irrigation district heretofore organized and existing under and by virtue of the provisions of chapter 2, Session Laws of Wyoming, Special Session, 1920, as amended, codified and compiled in W.S. 41-7-101 through 41-7-603 [§§41-7-101 through 41-7-415], as now amended, is hereby authorized and given the power to provide for the construction, building and development of suitable works and structures, and to purchase, extend, enlarge, operate and maintain constructed works and structures suitable for the operation, maintenance, development and distribution of hydroelectric energy and power.

41-7-702. Resolution of commissioners.

Whenever the commissioners of any duly organized and existing irrigation district, heretofore or hereafter organized under the laws of the state of Wyoming, shall determine by a majority vote thereof that it is and would be beneficial and for the best interest of the landowners and entrymen therein that the development and distribution of hydroelectric energy and power is feasible, necessary and required for the complete and full construction and building of appropriate irrigation works necessary and required for the improvement of the water supply for the landowners and entrymen therein, they may adopt and approve an appropriate resolution stating their determination thereof.

41-7-703. Report made to district court.

Upon the adoption of such a resolution, the said commissioners shall file an appropriate report with the district court of the county having jurisdiction of said irrigation district proceeding of the same nature and kind as provided in W.S. 41-7-305 through 41-7-307, for the construction of irrigation works.

41-7-704. Hearing on objections to report.

Upon the filing of the said report, the court or judge thereof shall make an order fixing the time and place when and where all persons interested may appear and object to the confirmation thereof and all of the provisions of W.S. 41-7-308 through 41-7-314, shall be followed and be applicable thereto.

41-7-705. Notices; how given and served.

All required notices shall be given and served in the same manner as provided in the said Irrigation District Law [§§ 41-7-101 through 41-7-415] of the state of Wyoming.

41-7-706. Notices; contents.

Such notice shall show the court in which said petition is filed, give a general description of the proposed works, state the time and place fixed by the court when and where the hearing on said petition will be had, and it shall require all persons interested to appear at the time and place therein stated, then and there to show cause if any they have, why said irrigation district should not proceed with plans and specifications for the construction or purchase as need be of the incidental necessary and required works for the development, distribution and sale of hydroelectric energy and power.

41-7-707. Order of court authorizing project; procedure commissioners to follow.

If the court at the hearing so petitioned for, noticed and held shall decide the issues in favor of the petitioners the court shall enter an order approving and confirming the petition and authorize the commissioners of said district to proceed as provided in the irrigation district laws of the state of Wyoming, and in particular as provided in W.S. 41-7-305 through 41-7-315, and the amendments thereof, to make investigations, surveys and lay out said proposed work, to make maps, plans and profiles and other specifications thereof and to negotiate for the purchase of needed works and equipment as is required and report their findings to the court for a hearing thereon which said plans, proposals, etc. shall be subject to change and amendments as might be beneficial and as provided in said irrigation district laws of the state of Wyoming.

41-7-708. Approved project may proceed as incident to existing system; disposition of excess energy.

After the approval of the court the board of commissioners of said irrigation district shall be authorized to proceed with the construction, acquisition or purchase of all works and equipment required to provide for the generation, distribution and sale of hydroelectric energy and power as an incident to its

existing or proposed water storage and distribution system and that it shall have the power to sell, distribute or otherwise dispose of hydroelectric energy not necessary for the uses and purposes of the district.

41-7-709. Determination and apportionment of cost of power portion of project.

That if any project or amended project includes plans for the generation of electric energy and power, the board of commissioners shall ascertain the total cost of all of the property and works which are necessary to be used in connection with the generation, sale and distribution of electric energy and power as set forth in the plans of the district, and shall also ascertain what portion of the assessment of benefit to accrue to each tract or parcel of land embraced or to be included within said irrigation district consists of the properties and works which are necessary and required to be so used.

41-7-710. Costs of irrigation works and power project separately apportioned.

It shall be the duty of the board of commissioners to apportion the respective costs of irrigation works as distinguished from the property and works required and necessary for the generation, distribution and sale of electrical energy and power to each of said units of construction.

41-7-711. Assessments for power project to be determined; reported to court.

The commissioners shall likewise determine the portion of assessments, if any, which is attributable to the cost of the properties and works which are necessary to be used in connection with the generation, distribution and sale of electric energy and power and the same shall be reported to and be one (1) of the items for determination and confirmation of the court.

41-7-712. Determination of rate of assessment.

The commissioners shall also determine the rate per acre of the assessment upon each tract or parcel of land assessed, for the costs of construction or acquisition of the properties and works which are necessary to be used in connection with the generation of electric energy or power, and if no assessment of such costs is made upon any tract or parcel a statement of that fact shall be made.

41-7-713. Provisions governing levying, approving and collecting assessments.

Upon the filing by the commissioners of a report to construct the initial unit or units pursuant to an original plan of construction or for any subsequent changes therein, the same proceedings shall be had and taken as required in the Wyoming Irrigation District Law [§§ 41-7-101 through 41-7-415] and herein for levying, approving and collecting assessments to meet the costs of the units to be constructed, erected or purchased as was required to provide for an assessment to meet the cost of irrigation works or of the power unit or units first constructed.

41-7-714. Plan may be divided; procedure.

Any approved plan may be divided by amendment into smaller parcels or units after notice and hearing on a report and petition for supplemental or amended assessment rolls and proposals.

41-7-715. Additions to projects; amended or supplemental petitions.

If in the judgment of the board of commissioners additional properties or works are necessary and required at any time for the development and sale of electric energy and power, the same may be petitioned for, authorized and made or acquired, as provided herein, by amended or supplemental petition as provided herein for the original construction or acquisitions thereof.

41-7-716. Revenue from sale of power to be determined.

Upon the levy of any assessment to a person thereof, as provided in this act [§§ 41-7-701 through 41-7-718], the board of commissioners shall ascertain the total net revenue which has been derived by the district from the generation and sale and distribution of electric power since the levy of the last previous assessment or portion thereof.

41-7-717. Power revenue to be deducted from assessments.

From the assessments required upon each tract or parcel of land that has been assessed for the cost of the property comprising the portion of the project used or to be used for the generation, sale and distribution of electric energy and power there shall be deducted by the commissioners of the district and all officials making the levy against each separately owned tract or parcel of land within said irrigation district an amount equal to said portion of the total net revenue ascertained to have been derived from generation, development and sale of electric energy and power as the portion of the cost assessed under this act [§§ 41-7-701 through 41-7-718] against each separate taxpayer bears to the total of said costs. In making such deduction, fractions of cents upon each tract shall be disregarded and no error in the computation of said deductions shall invalidate any such assessment or levy.

41-7-718. Liberal construction; restrictions; regulation by public service commission.

(a) This act [§§ 41-7-701 through 41-7-718] shall be construed liberally for the purpose of making it possible for irrigation districts by the development and sale of hydroelectric energy and power through the construction or purchase of necessary and required properties and works to create sufficient income to make said works in connection with their irrigation works a feasible project, to save, conserve and preserve their full water rights under the laws of Wyoming.

(b) The generation of electric energy and power under the provisions of this act shall be restricted to the generation of hydroelectric energy and power for wholesale transmission and sale and such irrigation and public power districts established under the provisions of said act shall be subject to the regulation of the public service commission of Wyoming in the establishment of wholesale rates and transmission facilities, applicable to any other public utility generating electric energy and power for wholesale transmission and sale.

ARTICLE 8
PUBLIC IRRIGATION AND POWER DISTRICTS

41-7-801. Declaration of policy.

Conservation of the state's water resources is hereby declared to be a state function, and the public interest, welfare, convenience and necessity require the creation of public irrigation districts and the construction of a system of works, in the manner hereinafter provided, for the conservation, storage, distribution and utilization of water. The construction of said system of works by such districts, as herein provided for, is hereby declared to be in all respects for the welfare and benefit of the people of the state.

41-7-802. Definitions.

(a) "Public irrigation district", "Public irrigation and power district", or "district", means a district organized under this act [§§ 41-7-801 through 41-7-819], either as originally organized or as the same may be from time to time altered or extended.

(b) The word "board" shall mean the board of directors of a district organized under this act.

(c) The words "works" and "system" shall be deemed to include all property, rights, easements, and franchises relating thereto and deemed necessary or convenient for their operation, and all water rights acquired or exercised by the board in connection with such works, and shall embrace all means of conserving, controlling and distributing water, including, without limiting the generality of the foregoing, reservoirs, dams, diversion canals, distributing canals, lateral ditches and pumping units, mains, pipelines and water works systems, and shall include all such works for the conservation, development, storage, distribution and utilization of water, including, without limiting the generality of the foregoing, works for the purpose of irrigation, flood control, development, sale and distribution of power, watering of stock, supplying of water for public, domestic, industrial and other uses, whether such works be operated in conjunction with or separately from electric power plants or systems.

(d) The word "project" shall mean any one (1) of the works hereinabove defined or any combination of such works which are physically connected or jointly managed and operated as a single unit.

41-7-803. Creation; as corporate entity; district within district.

A district may be created as provided in this act [§§ 41-7-801 through 41-7-819] and may sue and be sued in its corporate name. Nothing in this act shall be construed to prevent the organization of a district hereunder within, or partly within, the territorial boundaries of another district organized hereunder, so long as the works, systems or power plants, the operation of the same, the exercise of powers and the assumption of duties and responsibilities hereunder, of or in part of one such district, do not nullify, conflict with, or materially affect those of or on the part of another such district.

41-7-804. Creation; procedures generally.

(a) The procedure for creating and incorporating a district under the provisions of this act [§§ 41-7-801 through 41-7-819] shall be in accordance with the following method, to wit:

(i) A public irrigation district may be organized under the provisions of this act by filing in the office of the state engineer a petition in compliance with the requirements hereinafter set forth, and the approval of said petition by the state engineer of Wyoming as hereinafter provided. Said petition shall be addressed to said state engineer and state in substance that it is the intent and purpose of the petitioners by said petition to create a district under the provisions of this act, subject to approval by said state engineer. Said petition must contain: (A) the name of the proposed district. If the proposed district is to engage in the business of owning or operating irrigation works, such name shall include the words "public irrigation district." If the proposed district is also to engage in the business of acquiring, manufacturing or selling or distributing electric power, the name of the proposed district shall include the words "public irrigation and power district"; (B) the object and purpose of the system proposed to be constructed, together with a general description of the nature, location and method of operation of proposed irrigation works, and of proposed power systems if owning and operating power plants or systems is to be a part of the business of the proposed district; (C) a description of the lands constituting the proposed district and of the boundaries thereof; (D) the location of the principal place of business of the proposed district; (E) a statement that the proposed district shall not have the power to levy taxes; (F) the names and addresses of the members of the board of directors of the proposed district (not less than five (5) nor more than thirteen (13)) who shall serve until their successors are elected and qualified as provided for in this act. In the petition, the directors named shall be divided as nearly as possible into three (3) equal groups, the members of the first group to hold office until their successors, elected at the first district election thereafter, shall have qualified; the members of the second group to hold office until their successors, elected at the second district election thereafter, shall have qualified, and the members of the third group to hold office until their

successors, elected at the third district election thereafter, shall have qualified. Thereafter all directors elected shall serve for a term of three (3) years and until their successors are elected and qualified. After the name of each director shall be stated to which of said three (3) groups he belongs. Said petition must be signed by twenty-five percent (25%) of the freeholders or entrymen of the area constituting said proposed district, or by their duly authorized representatives. On each petition, set opposite the signature of each petitioner, shall be stated his or her name and post-office address. To each sheet for petitioners' signatures shall be attached a full and correct copy of the petition. Every sheet of every such petition containing signatures shall have upon it and below the signatures an affidavit by the circulator in substantially the following form:

State of Wyoming)
) ss
County of ....)

...., being first duly sworn, deposes and says, that he is the circulator of the foregoing petition containing .... signatures; that each person whose name appears on said petition sheet personally signed said petition in the presence of affiant; that he believes that each of said signers is a freeholder of land to be included within the proposed district residing at the address written opposite his or her name, and that affiant stated to every petitioner before he or she affixed his or her signature the legal effect and nature of said petition.

.....
Circulator

Subscribed and sworn to before me this .... day of ...., (year).

.....
Notary Public;

(ii) Upon receipt of such petition it shall be the duty of said state engineer to make an immediate investigation of the proposed district and of its proposed works, systems or plans, and, if deemed by said state engineer feasible and conforming to public convenience and welfare, the state engineer shall thereupon and within ninety (90) days from the receipt of such petition execute a certificate, in duplicate, setting forth a true copy of said petition and declaring that said petition has been approved. Said state engineer shall immediately cause said certificate to be forwarded to and filed in the office of the secretary of state and a copy thereof certified by him in the office of the county clerk of the county in which the principal place of business of the district is to be located. Thereupon, said district, under its designated name, shall be and constitute a body politic and corporate under the provisions of this act, and shall be a public corporation of the state of Wyoming. Immediately upon the filing of said certificate in the office of the secretary of state and a certified copy thereof in the office of said county clerk the members of the board of directors named in the petition shall qualify as provided for in this act and immediately assume the duties of their office. Failure or refusal to qualify within a period of fifteen (15) days thereafter shall be deemed to create a vacancy which shall be filled as in this act provided. The first meeting of the board of directors shall be called by the director first named in the petition who qualifies.

41-7-805. Board of directors; election; term; vacancies; bond; removal; conduct of election.

(a) After the election of the original board of directors of a district as provided in W.S. 41-7-804 members of the board to succeed those in the three (3) groups provided for in said section 4 of this act, respectively, and to fill unexpired terms shall be nominated and elected and shall take office, subject to the provisions of this act [§§ 41-7-801 through 41-7-819] in the following manner, to wit: upon the first Tuesday in February next following the qualification of the original board of directors and upon the first Tuesday in February of each year thereafter, an election shall be held to elect directors to succeed those whose terms are about to expire. The term of each director thus elected shall

commence upon the third Tuesday in February next ensuing after his election and shall continue for a period of three (3) years thereafter and until his successor is duly elected and qualified. Vacancies on the board by reason of death, disability, removal from the district or otherwise shall be filled by the board of directors and the members thus elected to fill vacancies shall serve until members to fill out the remainder of such terms respectively may be elected at the next succeeding district election. Each director before entering upon the duties of his office shall file with the secretary of state a bond in the penal sum of one thousand dollars ($1,000.00) with good and sufficient surety to be approved by the secretary of state. Such bond shall be conditioned for the faithful performance of his duty as director. Members of the board may be removed from office for the same reasons and in the same manner as provided by law for the removal of county officers. All costs incident to the nomination and election of directors shall be paid by the district.

(b) Election of directors shall be conducted in the following manner, to wit: the board of directors of the district shall fix the hour and place within the boundaries of the district, of each election and shall preside at the same. It shall be the duty of the board at least twenty (20) days prior to the date of election, to mail to each person or corporation entitled to vote thereat, at his or its last known place of residence or business, a notice stating the time, place and purpose of such elections. Every freeholder and entryman within the district and every person or corporation which is a party to a contract with the district for the purchase of water, electric power or other service or facility to be furnished by the district shall be entitled to cast one (1) vote at such election for each director to be elected thereat. At the hour and place of such election the board shall call the roll of those entitled to vote, and the number of votes to which each is entitled. They shall make a record of the qualified voters present, receive all proxies and prescribe the manner of canvassing votes. All proxies shall be in writing and signed by the person entitled to vote. Such number of candidates for directors required to fill existing vacancies or to succeed outgoing directors receiving the highest number of votes cast shall be declared elected.

41-7-806. Board of directors; qualifications; officers; treasurer's bond; adoption of rules and regulations; audit department report; compensation.

The corporate powers of the district shall be vested in and exercised by the board of directors of the district. No person shall be qualified to hold office as a member of the board of directors of any district unless he or she shall be a freeholder or entryman of the district. The board of directors shall elect the officers of the district who shall be a president, a vice-president, a secretary and a treasurer, and the board shall appoint such executive committee and other officers, agents, servants and employees as shall be deemed necessary in transacting the business of the district. The president, vice-president and treasurer shall be elected from the membership of the board of directors. The treasurer shall furnish and maintain a corporate surety bond in an amount sufficient to cover all moneys coming into his possession or control, which bond shall be satisfactory in form and with sureties approved by the board. The bond, as approved, shall be filed with the secretary of state. The board of directors may adopt rules and regulations or bylaws, not inconsistent with the provisions of this act [§§ 41-7-801 through 41-7-819], for the conduct of the business and affairs of the district. The board of directors shall cause to be kept accurate minutes of their meetings and accurate records and books of account, conforming to methods of bookkeeping approved by the director of the department of audit, clearly setting out and reflecting the entire operation, management, and business of the district. The books and records shall be kept at the principal place of business of the district and at reasonable business hours always open to public inspection. The fiscal year of the district shall coincide with the calendar year. The board of directors, at the close of each year's business, shall file a report of the books, records and financial affairs of the district with the department of audit as required by W.S. 9-1-507. A copy of the report shall be placed and kept on file at the principal place of business of the district and shall be filed with the secretary of state. Members of the board of directors shall be paid their actual expenses while engaged in performing the duties of their office or otherwise engaged upon the business of the district, and in addition thereto they each shall receive as compensation for services a

sum of not exceeding six dollars ($6.00) per day for a total working period not more than ten (10) days in each month.

41-7-807. Powers; generally.

(a) A public irrigation district or a public irrigation and power district, organized under the provisions of this act [§§ 41-7-801 through 41-7-819] shall have the following powers and shall be entitled to own, have, or exercise the following rights, privileges and franchises:

(i) Such district shall have all the usual powers of a corporation for public purposes and may purchase, hold, sell and lease personal property and real estate reasonably necessary for the conduct of its business;

(ii) Such districts shall have the right and power to own, construct, reconstruct, improve, purchase, lease, or otherwise acquire, extend, manage, use or operate any "irrigation works", as defined in this act, and any and every kind of property, personal or real, necessary, useful or incident to such acquisition, extension, management, use and operation, whether the same be independent of or separated from the power, business or functions of the district or in connection or conjunction therewith, in whole or in part. In connection with the aforesaid powers, such district shall have the right and power to enter into any contract, lease, agreement or arrangement with any state, county, city, village, governmental or public corporation or association, or with any person, firm or corporation, public or private, or with the government of the United States, or with any officer, department, bureau or agency thereof, or with any corporation organized under federal law, for the purpose of exercising or utilizing any one (1) or more of the above enumerated powers, or for the sale, leasing, or otherwise furnishing or establishing water rights, electric power, water supply, conveyance and distribution of water, water service, or water storage, for irrigation or flood control or for the financing or payment of the cost and expenses incident to the construction, acquisition or operation of such irrigation works, or incident to any obligation or liability entered into or incurred by such district;

(iii) Such district shall have the right, power and authority to exercise any of the powers enumerated in subsection 2 [paragraph (ii)], either within or beyond or partly within and partly beyond the boundaries of the district and of the state of Wyoming if not otherwise prohibited by the law of such area, state or the United States of America;

(iv) Such district shall have the right to appropriate the waters of the state in the same manner as other appropriators in accordance with the general provisions of chapter 122, Wyoming Revised Statutes, 1931, and other laws and regulations of the state of Wyoming, so far as the same may be applicable; provided, that such district shall, in the exercise of the powers conferred by this act, not interfere with, injure or otherwise damage or affect existing water rights.

41-7-808. Powers; eminent domain; application of provisions.

All provisions of law now applicable to irrigation districts, privately owned irrigation corporations, ditch companies, or power districts or power corporations, as regards the exercise of the power of eminent domain, the use and occupation of state and other public lands and highways, the appropriation, or other acquisition or use of water, waterpower, water rights, or water diversion or storage rights, for any of the purposes contemplated in this act [§§ 41-7-801 through 41-7-819], the manner or method of construction and physical operation of irrigation works, storage dams, distribution systems, power plants, transmission lines and power systems, as herein contemplated, shall be applicable as nearly as may be, and insofar as not in conflict with the provisions of this act, to districts organized under this act in their exercise of the rights, powers and franchises and in the performance of the duties conferred or imposed upon them under the provisions of this act. In addition to any other rights and powers hereinabove conferred upon any district organized under the provisions of this act, such

district shall have and exercise the power of eminent domain for the purposes and after the manner provided for in sections 38-401 to 38-416, inclusive, of chapter 38 [§§ 1-26-401, 1-26-403, 1-26-404] and in chapter 122, Wyoming Revised Statutes, 1931, or in any one (1) or more of said sections or other applicable sections in said statutes made and provided. If any such district shall condemn private property or interests therein, the appraisement shall include such amount of damage as will accrue to the owner of the condemned property through severance thereof from other property of said owner, previously operated with that so condemned, as a unit.

41-7-809. Powers; incurring indebtedness; security for loans; limitations; agreements.

(a) A district organized hereunder may borrow money and incur indebtedness for a corporate use or purpose in this act authorized, provided, every indebtedness, liability or obligation of the district for the payment of money in whatever manner entered into or incurred, and whether arising from contract, implied contract, or otherwise, shall be payable solely, (i) from revenues, income, receipts and profits derived by the district from its operation and management of power plants, systems and irrigation works as in this act provided, or (ii) from the issuance or sale by the district of its warrants, notes, revenue bonds, debentures or other evidences of indebtedness (hereinafter referred to in this section as "district obligations"), payable solely from such revenues, income, receipts and profits. The maximum maturity of district obligations so issued shall be forty (40) years.

(b) Any such district may pledge and put up as collateral security for a loan any district obligations. Any district issuing district obligations under the provisions of this act [§§ 41-7-801 through 41-7-819] is hereby specifically authorized and empowered to pledge all or any part of the revenues which the district may derive from the sale, conveyance and distribution of water for irrigation, storage of water, electrical energy, or other service, as security for the payment of the principal and interest thereon. Any such pledge of revenues shall be made by the directors of the district by resolution or by agreement with the purchasers or holders of such district obligations. Any such resolution or agreement may specify the particular revenues that are pledged and the terms and conditions to be performed by the district and the rights of the holders of such district obligations, and may provide for priorities of liens in any such revenues as between the holders of district obligations issued at different times or under different resolutions or agreements.

(c) Such resolution or agreement may further provide for the refunding of any such district obligation through the issuance of other district obligations, entitled to rights and priorities similar in all respects to those held by the district obligations that are refunded and for the issuance of such refunding district obligations, either in exchange for district obligations then outstanding, or the sale thereof and the application of the proceeds of such sale to the retirement of the district obligations then outstanding.

(d) Any such resolution or agreement may provide that all or any part of the revenues of the district shall be paid into a special fund and may set forth all the terms and conditions on which such special fund is to be collected, held and disposed of, whether partly or wholly for the benefit of the holders of such district obligations. Provisions may be made that such special fund shall be held by depositories designated or described in such resolution or agreement.

(e) The directors of any district organized under the provisions of this act are authorized to agree with the holders of any such district obligations as to the maximum or minimum amounts which such district shall charge and collect for water, electrical energy, or other service sold by the district.

41-7-810. Powers; obtaining federal grants or loans; acceptance of gifts.

Any district organized hereunder shall have and exercise any power conferred by this act [§§ 41-7-801 through 41-7-819] for the purpose of obtaining grants or loans or both from any federal

agency pursuant to or by virtue of any and all acts of congress, independently or in conjunction with any other power or powers conferred by this act, or heretofore or hereafter conferred by any other law, and shall have power to accept from private owners or other sources, gifts, deeds or instruments of trust or title relating to land, water rights and any other form of property.

41-7-811. Powers; purchase or conveyance of water rights.

Such district shall have power to purchase and acquire lands, water rights, rights of way, and real and personal properties of every nature in cooperation with the United States under such conditions as may to the board seem advisable, and to convey the same under such conditions, terms and restrictions as may be approved by the board of directors and the federal government or any of its agencies and to pay the purchase price and any and all construction costs or other necessary expenses and costs in connection with any works contemplated by this act [§§ 41-7-801 through 41-7-819] either from its own funds, or cooperatively with the federal government.

41-7-812. Powers; taxation generally; liability of district for indebtedness.

The district shall have no power of taxation and no governmental authority shall have the power to levy or collect taxes for the purpose of paying, in whole or in part, any indebtedness or obligation of or incurred by the district as such or upon which the district may be or become in any manner liable, nor shall any privately owned property in such district, or the owner thereof, be directly or indirectly liable for any such district indebtedness or obligation beyond liability to perform any express contract, if any, between such owner and said district. No person, irrigation district, or irrigation company, shall be liable for the payment of any rent or charge for water storage, electric power, water supply or service unless a contract therefor has been entered into between such person, irrigation district, or irrigation company and the public irrigation district or public irrigation and power district furnishing such water storage, electric power or such water service.

41-7-813. Construction of irrigation works; cost estimates; advertisement for bids; contracts.

Before any district shall enter into any contract for the construction, building, alteration, extension, or improvement of any irrigation works, power plant or system, or any part or section thereof for the use of the district, or for the purchase of any materials, machinery, or apparatus, such district shall cause estimates of the cost thereof to be made by some competent engineer or engineers and if such estimated cost shall exceed the sum of one thousand dollars ($1,000.00) no such contract shall be entered into for a price, cost or consideration exceeding such estimate nor without advertising for sealed bids. Prior to such advertisement, plans and specifications for the proposed construction work or materials shall be prepared and filed at the principal office or place of business of the district. Such advertisement shall be inserted for three (3) consecutive issues, with not less than twenty (20) days intervening between the first and last publication dates, in one (1) or more newspapers of general circulation in the district and, in the discretion of the board of directors of the district, in such additional newspapers or trade or technical periodicals as may be selected by the board in order to give proper notice of the receiving of bids. Such advertisement shall designate the nature of the construction work proposed to be done or materials proposed to be purchased; that the plans and specifications therefor may be inspected at the office of the district, giving the location thereof, and shall designate the time within which bids shall be filed and the date, hour and place the same shall be opened. The board of directors of the district, with the assistance of the state engineer, whose duty it shall be to supervise such lettings, may let the contract for such work or materials to the lowest responsible bidder, or, in the sole discretion of the board, all bids tendered may be rejected and readvertisement for bids made in the manner, form and time in this section provided. No such contract shall be valid nor shall any money of the district be expended thereunder unless advertisement and letting shall have been had as in this section provided. Such contract shall provide that wherever possible workmen who are

citizens of Wyoming shall be employed by the contractor. All provisions of W.S. 16-6-112 through 16-6-115, with reference to contractor's bonds, shall be applicable and effective as to any contract let pursuant to the provisions of this act [§§ 41-7-801 through 41-7-819]; provided further, that if all or a portion of the cost of the proposed works is to be met by grant of labor or a grant in aid from a federal or state agency, the rules and regulations of which agency provide that work shall not be done by contract, the board may proceed with the necessary construction or other work without first complying with any of the foregoing provisions of this section.

41-7-814. Expenditures.

Money of the district shall be paid out or expended only upon approval of the board of directors and by warrant or other instrument in writing signed by the president and by the treasurer of the district. In case of the death, absence or other disqualification of the president, the vice-president shall sign warrants or other instruments.

41-7-815. Sale or mortgage of irrigation works.

Any project created under the provisions of this act [§§ 41-7-801 through 41-7-819] shall not be sold to private interests. No irrigation works, power plant, or system owned by the district shall be sold, alienated or mortgaged by the district, except under the following circumstances, to wit: if, in order to borrow money from the federal government or from any of its agencies or from the state of Wyoming, it shall become necessary that the district mortgage or otherwise hypothecate any or all its said property or assets to secure the payment of a loan or loans made to it by or from such source or sources, the district is hereby authorized and empowered to mortgage or hypothecate such property and assets for such purpose. Nothing in this section contained shall prevent the district from assigning, pledging, or otherwise hypothecating its revenues, incomes, receipts or profits to secure the payment of indebtedness to the federal government or any agency thereof, or the state of Wyoming, provided, that the state of Wyoming shall never pledge its credit or funds, or any part thereof, for the payment or settlement of any indebtedness or obligation whatsoever of any district created under the provisions of this act; and provided further, that if any district created under this act shall execute and deliver a mortgage or trust deed to secure the payment of any moneys borrowed by it for the purposes herein authorized, it may be provided in such mortgage or trust deed that the same may be foreclosed upon default and that a receiver may be appointed by any court of competent jurisdiction with such authority as may be provided for in such mortgage or trust deed.

41-7-816. Keeping funds; fixing prices, rates and charges.

(a) The board shall create three (3) separate funds, one (1) fund to be known as the construction fund, another fund to be known as the water fund, and another fund to be known as the sinking fund, each such fund to be identified by the same series letter or letters as the bonds, warrants, notes, debentures, or other evidences of indebtedness of such series. A separate account shall be kept of each construction fund and of each water fund and of each sinking fund for each project.

(b) The proceeds of the sale of the bonds and other evidences of indebtedness of each series issued under the provisions of this act [§§ 41-7-801 through 41-7-819] shall be placed to the credit of the appropriate construction fund, which fund shall at all times be kept segregated and set apart from all other funds. There shall also be credited to the appropriate construction fund the interest received upon the deposits of moneys in such fund and moneys received by way of gift or grant from the United States or from any other source for the construction of the works. The moneys in each construction fund shall be paid out or disbursed in such manner as may be determined by the board, subject to the provisions of this act, to pay the cost of the works as hereinabove defined. Any surplus

which may remain in any construction fund after providing for the payment of the cost of the works shall be added to and become a part of the appropriate sinking fund hereinafter provided for.

(c) (i) The board is hereby authorized and empowered, subject to the provisions of this act, to fix and establish the prices, rates and charges at which any and all the resources and facilities made available under the provisions of this act shall be sold and disposed of; to enter into any and all contracts and agreements, and to do any and all things which in its judgment are necessary, convenient or expedient for the accomplishment of any and all the purposes and objects of this act, under such general regulations and upon such terms, limitations and conditions as it shall prescribe; and it is and shall be the duty of the board to enter into such contracts and fix and establish such prices, rates and charges so at to provide at all times funds which will be sufficient to pay all costs of operation and maintenance of any and all of the works authorized by this act, together with necessary repairs thereto, and which will provide at all times sufficient funds to meet and pay the principal and interest of all bonds, warrants, notes, debentures and other evidences of indebtedness as they severally become due and payable; provided, that nothing contained in this act shall authorize any change, alteration or revision of any such rates, prices or charges as established by any contract entered into under authority of this act except as provided by any such contract.

(ii) Every contract made by the board for the sale, conveyance and distribution of water, use of water, water storage, electric power or other service, or for the sale of any property or facilities, shall provide that in the event of any failure or default in the payment of any moneys specified in such contract to be paid to the board, the board may, upon such notice as shall be prescribed in such contract, terminate such contract and all obligations thereunder. The act of the board in ceasing on any such default to furnish or deliver water, use of water, water storage, electric power or other service under such contract shall not deprive the board of, or limit any remedy provided by such contract or by law for the recovery of any and all moneys due or which become due under such contract.

(iii) All income or profit and revenue of the works and all moneys received from the sale, conveyance, distribution or disposal of water, use of water, water storage, electric power or other service, and from the operation, lease, sale or other disposition of the works, property and facilities acquired under the provisions of this act shall be paid to the credit of the appropriate water fund.

(d) The board shall provide in the proceedings authorizing the issuance of each series of bonds, warrants, notes, debentures, or other evidences of indebtedness or in the trust indenture securing the same, for paying into the appropriate sinking fund at stated intervals all moneys then remaining in the water fund, after paying all costs of operation, maintenance and repairs of the works. All moneys in each sinking fund shall be pledged for the payment of and used for the purpose of paying the interest, principal, and the necessary fiscal agency charges upon the bonds, warrants, notes, debentures or other evidences of indebtedness as the same shall fall due.

41-7-817. Dissolution.

Any district organized under this act [§§ 41-7-801 through 41-7-819] may, at any regular or called meeting of the board of directors, be dissolved by a majority vote of a quorum present at such meeting; provided, such district shall not at the time of such dissolution own any property or rights or have outstanding any contract or contracts or obligations of any kind; provided further, that in case of such dissolution all applications for appropriation of water shall be, by the state engineer of the state of Wyoming, cancelled and all rights of said district therein and thereunder shall thereupon cease and determine.

41-7-818. Construction; generally.

This act [§§ 41-7-801 through 41-7-819] shall not be construed as repealing, limiting, or in any way affecting the provisions of chapter 122, Wyoming Revised Statutes, 1931, with reference to irrigation districts, and the provisions of W.S. 37-7-101 through 37-7-136, with reference to power districts, or any other laws of the state of Wyoming.

41-7-819. Construction; cities and towns.

This act [§§ 41-7-801 through 41-7-819] shall not be construed as restraining any city or town, within the state of Wyoming, located either wholly or partially within, or outside of any irrigation or power district from constructing or maintaining power plants for the purpose of manufacturing electricity for light and power purposes. Provided, that any district formed under the provisions of this act, in which may be included a city or town shall not be permitted to assess any such city or town with any part of the debt of such district which would in itself exceed the constitutional limitations. Provided, however, that any such city or town may purchase electric current for resale from any such district whenever deemed advisable.

41-7-830. Authority.

The landowners in a public irrigation and power district organized under W.S. 41-7-801 through 41-7-819 shall have the right to convert such district into an irrigation district as provided for in chapter 122, article 7, Wyoming Revised Statutes 1931, having all the rights and powers as though originally created under the provisions of said chapter 122, article 7, Wyoming Revised Statutes 1931.

41-7-831. Resolution of board of directors.

In order to effect such change the board of directors shall pass a resolution stating that it is the desire of the board to transform said district into an irrigation district as provided in chapter 122, article 7, Wyoming Revised Statutes 1931 and said resolution shall fix the time and place of holding an election within the district to determine whether or not the transformation shall be made.

41-7-832. Election; notice.

(a) Immediately after the adoption of the resolution by the board the secretary of the district shall proceed to give notice of the time and place of holding such election in the manner following:

(i) By serving or causing to be served a copy of the notice stating the time, place and object of the election on each person owning or entitled to possession by virtue of public filing of land within the district residing in any county in which any lands of the district are situated either personally or by leaving a copy thereof at his usual place of abode, with a person of suitable age and discretion, and by registered mail to any mortgagee, mortgagees or judgment lien holder whose mortgage or judgment lien and address is of record in the record of said liens in the county or counties in which said district is situated; and

(ii) By publishing a copy of said notice at least once a week for three (3) consecutive weeks in some newspaper published in each county within which any of the lands of the district are situated, giving the time, place and object of said election;

(iii) If any of the persons owning or entitled to possession of land in said district are nonresidents of the county or counties in which the district lies, such notice of time, place and object of the election shall be sent by registered mail to such nonresidents if their addresses are known and if unknown the secretary shall make an affidavit so stating. Such notice to be mailed within two (2) days after the first publication. Notice of the time, place and object of the election must be given at least twenty (20) days before the date of election.

41-7-833. Election; procedure.

At the time and place for holding the election, the president of the district board shall read the notice of election and call the roll of those entitled to vote and the number of votes to which each is entitled. Every person owning or entitled to possession by virtue of public filing of land within the district shall be entitled to cast one (1) vote for each acre of land held within the district at such election. The board of directors shall keep a record of all qualified voters present, receive all proxies and prescribe the manner of canvassing votes. All proxies shall be in writing and signed by the person entitled to vote. The vote of a majority of the owners of land or persons entitled to possession of land in the district by virtue of public filing of land and representing at least one-third of the lands within the district shall be necessary to make effective the transformation of the district to a district under chapter 122, article 7, Wyoming Revised Statutes 1931.

41-7-834. Filing of certificate of change.

If the vote shows that the transformation has been authorized by the district, the secretary shall file a certificate to that effect in the office of the clerk of court in the counties embraced within the district and a duplicate copy with the state engineer; thereafter said district shall proceed to act under the provisions of chapter 122, article 7, Wyoming Revised Statutes 1931, and any and all acts supplementary thereto or amendatory thereof and shall have all of the rights, powers and obligations as if originally organized under said chapter and article.

41-7-835. Construction.

This act [§§ 41-7-830 through 41-7-835] shall not be construed as repealing or in any way affecting the provisions of W.S. 41-7-801 through 41-7-819.

41-7-850. Irrigation district may assume status of public power district.

Any irrigation district heretofore organized and existing under and by virtue of the provisions of chapter 2, Session Laws of Wyoming, Special Session, 1920, as amended, codified and compiled in W.S. 41-7-101 through 41-7-603 [§§ 41-7-101 through 41-7-415], as now amended, shall have and receive all of the rights, powers and authority which it would have and enjoy if it had been created and formed as a public power district under the provisions of chapter 137, Session Laws of Wyoming, 1937, as amended, codified and compiled in W.S. 41-7-801 through 41-7-835, and any existing amendments thereof, by taking proceedings in the manner as hereinafter set forth and provided.

41-7-851. Resolution of commissioners.

Whenever the commissioners of any duly organized and existing irrigation district, heretofore organized under the laws of the state of Wyoming, shall determine by a majority vote thereof that it is or would be beneficial to and for the best interest of the landowners and entrymen therein either to use any or a part of its irrigation works theretofore constructed as a part of the necessary works required for the construction and development of a complete electric power plant or system for the production, distribution and sale of electric energy, or that it is for the best interest of the landowners and entrymen in said district that it should add thereto or to construct a complete new system of works for the development, sale and distribution of electric energy they may adopt and approve an appropriate resolution stating their determination thereof.

41-7-852. Report made to district court; contents.

(a) Upon the adoption of such a resolution, the said commissioners shall file an appropriate report with the district court of the county having jurisdiction of said irrigation district proceeding, stating in general the desirability of said district to have and obtain the rights, powers and authority of an irrigation and public power district, which report shall include:

(i) The name of the proposed irrigation and public power district to include the words "public power" therein;

(ii) The general necessity for the proposed works;

(iii) The object and purpose of the system proposed to be constructed together with a general description thereof;

(iv) A general prayer for an order to obtain all the rights, powers and authority of a "public power district".

41-7-853. Hearing on proposal.

Upon such petition being filed the court or judge thereof shall make an order fixing a time and place of hearing thereon and require notice of the time and place of such hearing to be given thereon by the clerk of said court.

41-7-854. Notice of hearing; publication.

The clerk of said court shall give notice of the filing of said petition and of the time and place of hearing thereon to any and all persons interested therein by publishing a copy of said order at least once a week for three (3) consecutive weeks in a newspaper published in each county within which any of the lands of the said irrigation district is situated. If there be no newspaper in any such county, such notice may be published in a newspaper published in an adjoining county.

41-7-855. Notice of hearing; contents.

(a) Such notice shall disclose:

(i) In what court said petition is filed;

(ii) A general description of the proposed work;

(iii) The name proposed for said combined irrigation and public power district;

(iv) The time and place fixed by the court, when and where the hearing on said petition will be heard;

(v) It shall also require all persons interested to appear at the time and place stated, then and there to show cause why said irrigation district should not receive and have the rights, powers and authority of a public power district.

41-7-856. Order of court authorizing change.

If the court at the hearing so petitioned for, noticed, and held, shall decide the issues in favor of the petitioners, the court shall enter an order approving and confirming the petition, amend the name of said irrigation district to show that it is also a public power district, and authorize said district to have and receive all of the rights, powers and authority of a "public power district" in addition to all of the

rights, powers and authority given to and enjoyed by it as an irrigation district under the laws of the state of Wyoming.

41-7-857. Submission of proposal to vote of landowners and entrymen.

In the event the board of commissioners by a majority vote, or the court by an appropriate order, shall request or determine that a vote should be had of the landowners and entrymen within the district on the question of whether or not the said irrigation district should acquire the rights, powers and authority of a "public power district", then the matter shall be submitted to the landowners and entrymen of the district at either a regular or special election, at a time and place or places, to be designated by the commissioners of the district under the order of the court to be held under the same rules and in the same manner as elections are held for commissioners within an irrigation district.

41-7-858. Effect of vote on court.

In the event such an election be had the result thereof shall be certified to the court and shall be advisory and determinative of the final order to be presented on the question of whether or not said irrigation district should receive all of the rights, powers and authority of a public power district.

41-7-859. Court order vests powers.

Upon the entry of an order of the court authorizing or approving the receipt by an existing irrigation district of the rights, powers and authority of a public power district, then it shall have and receive all of said rights, powers and authority as are given and granted to a public power district by the provisions of chapter 123, Session Laws of Wyoming, 1937 and the amendments thereof as now codified and compiled in W.S. 41-7-101 through 41-7-1006 and any existing amendments thereof.

41-7-860. Construction and application of Public Irrigation and Power District Law.

(a) In applying and adapting the public power district law to the existing irrigation district law, organization and procedures, the Public Irrigation and Power District Law [§§ 41-7-801 through 41-7-819] of the state of Wyoming as aforesaid shall be and the same is hereby construed in the following specific manner, when applied to a regularly organized irrigation district which assumes and receives the rights, powers and authority of a "public power district", as follows, to wit:

(i) The word "board" shall mean the board of commissioners of the existing irrigation district;

(ii) Whenever the phrase, "members of the board of directors" appears in the existing Public Irrigation and Power District Law, the same shall be read as "members of the board of commissioners";

(iii) The requirements and limitations as to number, terms of office, vacancies, election, qualifications, and compensation of commissioners shall be governed by the Irrigation District Law [§§ 41-7-101 through 41-7-415] of the state of Wyoming and not by the Public Irrigation and Power District Law of the state.

41-7-861. Irrigation and power funds to be kept in separate accounts.

The board of commissioners of any irrigation district which shall have and receive the rights, powers and authority of a public power district under and pursuant to the provisions of this act [§§ 41-7-850 through 41-7-865], shall keep separate accounts for all money received from assessments for construction and for the operation and maintenance of the irrigation works portion thereof from the

funds received or accumulated from the power works and system thereof; and none of said funds shall ever be commingled or diverted from their proper uses as fixed by law.

41-7-862. Different laws to apply to additions to irrigation works and power works.

In the construction of additional irrigation works or features or of needed or required works or features for the power portion of said project, all irrigation works thereof shall be constructed, built and financed under the provisions of the Irrigation District Law [§§ 41-7-101 through 41-7-415] of the state of Wyoming and the power works and system shall be built, financed and paid for following the public power district portion of the Wyoming law.

41-7-863. Report of proposed construction to court; apportionment of irrigation and power costs.

Prior to the starting of any construction work thereon, the commissioners shall report the purpose, whether for irrigation or power for which any of said works is to be constructed; and shall recommend to the court an equitable and fair division and distribution of the cost thereof as between irrigation and power; and the court upon the hearing for the authorization thereof, shall fix and determine the proportionate amount as between the irrigation and power works or features which shall be beneficial and chargeable to the irrigation portion and the power portion thereof and the order of the court thereon shall be determinative and final thereon.

41-7-864. Rights and powers preserved.

An irrigation district receiving the rights, power and authority of a public power district as aforesaid, shall not lose any of its rights and powers under and by virtue of the provisions of chapter 2, Session Laws of Wyoming, Special Session, 1920, as amended, codified and compiled in W.S. 41-7-101 through 41-7-603 [§§ 41-7-101 through 41-7-415], as now amended.

41-7-865. Liberal construction; restrictions; regulation by public service commission.

(a) This act [§§ 41-7-850 through 41-7-865] shall be construed liberally for the purpose of making it possible for irrigation districts by the development and sale of hydroelectric energy and power through the construction or purchase of necessary and required properties and works to create sufficient income to make said works in connection with their irrigation works a feasible project to save, conserve and preserve their full water rights under the laws of Wyoming.

(b) The generation of electric energy and power under the provisions of this act and under the provisions of chapter 137, Session Laws of Wyoming 1937, as amended, codified and compiled in W.S. 41-7-801 through 41-7-835, shall be restricted to the generation of hydroelectric energy and power for wholesale transmission and sale and such irrigation and public power districts established under the provisions of said acts shall be subject to the regulations of the public service commission of Wyoming in the establishment of wholesale rates and transmission facilities, applicable to any other public utility generating electric energy and power for wholesale transmission and sale.

ARTICLE 9
REVENUE BONDS

41-7-901. "Revenue" defined.

As used in this act [§§ 41-7-901 through 41-7-935] the word "revenue" means all or any part of any source or sources of payment excluding assessments upon or against the lands and property of the

landowners and entrymen therein, but including the proceeds of or income from any existing or proposed contract or contracts.

41-7-902. Revenue bonds of irrigation and irrigation and power districts authorized.

Any irrigation district or combined irrigation and public power district created or organized under the laws of the state of Wyoming shall have the power and authority to issue its revenue bonds, the principal and interest of which shall be payable from designated revenues and sources of payment, including the proceeds of any existing or proposed construction work, contract or contracts, but excluding assessments upon and against the lands and property of the landowners and entrymen therein.

41-7-903. Designation of revenue from which principal or interest payable.

If in the judgment of the board of commissioners of any irrigation district or combined irrigation and public power district it is desirable that the principal or interest or both, of any of its bonds or any part of the principal or interest thereof be payable solely from revenue designated by the board of commissioners, it, with the approval of the court after a hearing thereon may so provide by resolution adopted at or prior to the time of the issuance of such bonds.

41-7-904. Statement on bonds of limitations on payment of principal.

If any or all of the principal or interest of any bonds be made payable only from revenue, the board of commissioners shall cause a brief statement of the limitations upon the payment of principal or portion thereof to be set forth in the bonds.

41-7-905. Statement on bonds and coupons of limitations affecting interest payments.

If the limitations affect the payment of the interest of the bonds or any part thereof, a brief statement of the limitations shall be set forth in the interest coupons representing the interest and also in the bonds to which the interest coupons are appurtenant.

41-7-906. Statement on bonds and coupons of limitations affecting interest payments; portion of interest affected; separate coupons.

(a) If the limitations affect the payment of only a portion of the interest which will accrue on any bond, the board of commissioners may provide either that:

(i) The entire installment of interest payable on any interest payment date shall be represented by a single coupon which shall contain a brief statement as to the portion of interest subject to the limitations; [or]

(ii) The portion of interest not subject to the limitations and the portion of interest subject to the limitations shall be represented by separate interest coupons, the coupons representing the portion of the interest as to which limitations exist containing a brief statement of the limitations.

41-7-907. Designation of revenue releases district and officers from payment otherwise.

If any board of commissioners with the approval of the court provides that the principal or interest or both of any bonds or any portion of the principal or interest or both shall be payable solely from designated revenue, neither the district nor any officer thereof shall be held for payment otherwise.

41-7-908. Allocation of designated revenue; resolution.

Any designated revenue may by resolution of the board of commissioners be allocated to the payment of the whole or any portion of the principal or interest or both of any bonds.

41-7-909. Allocation of designated revenue; for bonds payable from revenue or assessments.

(a) The allocation may be for either or both:

(i) Payment of the whole or any part of the principal or interest or both of any bonds payable solely from revenue;

(ii) As additional security for the payment of the whole or any part of the principal or interest or both of any bonds payable from assessments.

41-7-910. Allocation of designated revenue; application.

Until the payment or retirement of the bonds for the benefit of which an allocation was made, the revenue allocated shall be applied solely to the payment of the obligation specified in the allocating resolution.

41-7-911. Allocation of designated revenue; bonds benefited by allocation.

An allocation may be made for the exclusive benefit of any one (1) or more issues or portions of issues of bonds of a district designated in the allocating resolutions or in the discretion of its board for the benefit of any bonds of the district at any time issued or outstanding.

41-7-912. Allocation of designated revenue; irrevocability.

Any allocation shall be irrevocable until all of the bonds for which the allocation was made and their appurtenant coupons have been paid or retired.

41-7-913. Allocation of revenue to reserve fund.

Any sources of revenue of any district may by order of its board of commissioners with the approval of the court be irrevocably allocated to a reserve fund established to pay the interest or principal of any bonds.

41-7-914. Bonds may be made redeemable before maturity.

With the approval of the court a district may by resolution of its board of commissioners adopted at or prior to the time of issuing any bonds then proposed to be issued, provide for the call and redemption prior to their fixed maturity of any of the bonds.

41-7-915. Manner of redeeming.

(a) Callable bonds may be redeemed in addition to other methods permitted in the following manner:

(i) In numerical order or by lot as prescribed in the resolution;

(ii) On any interest payment date prior to their affixed maturity;

(iii) At not exceeding their par value and accrued interest or on the terms provided in the resolution.

41-7-916. Publication of notice of redemption.

Notice designating the bonds called for redemption shall be published once a week for three (3) successive weeks in a newspaper of general circulation printed and published in the office county.

41-7-917. Publication of notice of redemption; time for publication.

The first publication of the redemption notice shall be not less than thirty (30) days nor more than ninety (90) days prior to the date fixed for redemption.

41-7-918. Interest ceases on redemption date.

If on the date fixed for redemption the district has provided funds available for the payment of the principal and interest of the bonds called, interest on them ceases.

41-7-919. When bonds may be sold.

A district may sell any bonds from time to time in such quantities as may be necessary and most advantageous to raise money for the purpose for which they were authorized.

41-7-920. Resolution as to sale.

(a) Before any sale the board of commissioners shall by resolution entered on its minutes set forth all of the following:

(i) Its intention to sell a specified amount of the bonds;

(ii) The day, hour, and place of sale.

41-7-921. Publication of notice of sale.

The board of commissioners shall give notice of the sale by publication for at least three (3) weeks in some newspaper published in the office county and in any other newspaper at its discretion.

41-7-922. Contents of notice of sale.

The notice shall state that sealed proposals will be received by the board of commissioners at the district office for the purchase of bonds until the day and hour specified in the resolution.

41-7-923. Sale made to highest responsible bidder.

At the time specified the board of commissioners shall open the proposals and award the purchase of the bonds or any portion of them to the highest responsible bidder or bidders.

41-7-924. Certified check to accompany bid; forfeiture.

No proposal shall be accepted which is not accompanied by a certified check for a reasonable percentage of the amount of the bid as determined by the board of commissioners, but in no event less than two percent (2%), to apply on the purchase price of the bonds. The amount of the check

shall be forfeited if after the acceptance of his proposal the bidder refuses to complete his purchase on the terms stated in his proposal.

41-7-925. Board may reject bids.

The board of commissioners may reject any or all bids.

41-7-926. Readvertisement or private sale.

In case no award is made, the board of commissioners thereafter may either readvertise the bonds or any part of them for sale or sell them at private sale.

41-7-927. Approval of private sale required.

No sale of bonds at private sale shall be valid unless approved by the court, or public service commission.

41-7-928. Exchange of construction bonds for property or stock.

A district may exchange its construction bonds for any property or interest in property which the district might acquire with the proceeds of the bonds, if sold, or for the capital stock of any corporation owning the property, upon terms the board of commissioners deem best.

41-7-929. Refunding bonds sold or exchanged for bonds or warrants.

(a) Any refunding bonds may be either:

(i) Sold from time to time in the same manner as other bonds of the district; [or]

(ii) Exchanged for other bonds or warrants of the district upon terms approved by the court.

41-7-930. Immediate cancellation of refunded or exchanged bonds.

Any outstanding bonds refunded or exchanged shall be immediately canceled by the treasurer.

41-7-931. Cancellation of unissued bonds; resolution of board.

Whenever the whole or any portion of any issue of bonds of any district remains unissued for more than one (1) year after the date of the election at which the bonds were authorized, the board of commissioners, by a resolution adopted by a two-thirds vote of the membership of the board of commissioners, may cancel all or any of those bonds and all coupons appurtenant to them.

41-7-932. Fixing time for consideration of resolution of cancellation.

Whenever a resolution to cancel bonds is offered, its consideration shall be postponed to a date fixed by the board of commissioners which is subsequent to final publication of the resolution.

41-7-933. Publication of cancellation resolution and notice of time for consideration.

The resolution together with a notice stating that the time fixed by the board of commissioners for the consideration of the resolution shall be published once a week for at least two (2) successive weeks in a newspaper published in the office county.

41-7-934. No bonds issued after cancellation resolution adopted.

After the adoption of a resolution to cancel bonds no other bonds shall be issued in pursuance of the proceedings taken in relation to the issuance of the bonds so canceled.

41-7-935. Destruction of canceled bonds and coupons.

Any bonds and coupons so canceled shall be destroyed under the direction of the board of commissioners.

ARTICLE 10
DISSOLUTION

41-7-1001. Petition of landowners.

When the commissioners of an irrigation district by unanimous vote of the total membership thereof shall determine to call an election or whenever a majority of the landowners in any irrigation district in this state, who shall represent one-half of the irrigable lands within such district, shall file with the commissioners of such district a petition praying for the dissolution thereof, it shall be the duty of the commissioners of such district to forthwith call an election of all the landowners of said district to determine whether or not such district shall be dissolved.

41-7-1002. Election; notice.

Notice of such election shall be published for four (4) successive weeks in one (1) or more newspapers published in each county in which such district is situated, stating the time and place of said meeting and the object thereof, and in addition thereto, the commissioners of the district shall give the same notice as is required in case of annual elections in irrigation districts.

41-7-1003. Election; conduct; certification of result; report of district indebtedness.

If at any such election which shall be conducted in the same manner as is now provided by law for the conduct of annual elections in irrigation districts, a majority of all the qualified votes in the district shall be in favor of the dissolution of such district, the commissioners of such district shall forthwith certify to the district court having jurisdiction of such district the result of such election, and at the same time shall report to the court the amount and character of the then existing indebtedness of the district. In the event the question of the dissolution of such district does not carry at such election the question shall not again be raised for a period of one (1) year.

41-7-1004. Order for hearing on results of election; generally.

Upon the filing of the commissioner's report and return of election, an order shall be made and entered by the court fixing the time and place for a hearing thereon, at which time and place all creditors and other persons interested may appear and show cause why said district should not be dissolved.

41-7-1005. Order for hearing on results of election; publication.

A copy of such order to show cause shall be published for four (4) successive weeks prior to said hearing in a newspaper published in each county in which said district is situated.

41-7-1006. Hearings; final settlement.

Upon said hearing, the court must find, on the evidence submitted, if the district be ordered dissolved, that the best interests of all parties interested will be served by the proposed dissolution, and shall determine the amount of the existing indebtedness of such district, if any, and shall make an order requiring the payment of the same. Upon the filing by the commissioners of proper receipts, showing payment of all indebtedness against the district, the court shall thereupon make a final order dissolving such district, and in said order the court may provide for a receiver who shall have full authority to collect and distribute any assets of property formerly belonging to said district, and who shall be guided by and shall comply with the provisions of W.S. 1-33-101 through 1-33-110, in the performance of his duties.

CHAPTER 8
WATERSHED IMPROVEMENT DISTRICTS

41-8-101. Definitions.

(a) "Director" means a director of a watershed improvement district, and "board of directors" means the governing body of a watershed improvement district.

(b) "Supervisor" means a supervisor of the soil and water conservation district in which a watershed improvement district is situated; and "board of supervisors" means the governing body of the soil and water conservation district in which a watershed improvement district is situated.

(c) "Landowner" means any person, or group of persons, firm or corporation holding title to, or occupying under a contract of purchase, any land lying within a watershed improvement district organized or proposed to be organized under the provisions of this act.

(d) "Due notice", for provisions other than election and referendum provisions, means notice published at least twice, with an interval of at least six (6) days between the two (2) publication dates, in a newspaper of general circulation within the boundaries of the proposed or organized district. The notice of any hearing required to be held under this act shall fix the time, place and purpose thereof, which time shall be not less than ten (10) or more than fifteen (15) days after the first publication or first posting of such notice. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates. Notice for any election or referendum required by this act shall be as specifically provided in this act, or if not specifically provided in this act, as required in the Special District Elections Act of 1994.

(e) Repealed by Laws 1998, ch. 115, § 5.

(f) "Written authorization" means an affidavit filed with the election official conducting the election setting forth a general legal description of the property owned, the street or common name address for the property, the name or names of all owners of the property described, and a statement that the person signing the written authorization is the only person having authority to act on behalf of the owner or owners of the property.

41-8-102. Purposes.

The purposes of this act [§§ 41-8-101 through 41-8-126] are to provide for the prevention and control of erosion, floodwater and sediment damages, for agricultural uses, and the storage, conservation development, utilization and disposal of water, and thereby to preserve and protect land and water resources, and protect and promote the health, safety and general welfare of the people of this state. Recreational use may be included in conjunction with projects developed in compliance with the purposes of this act, but nothing in this act shall be interpreted to give initial power of condemnation

for recreational purposes. The watershed improvement district may enter into agreement with the owner for the maintenance of industrial development and domestic supply reservoirs.

41-8-103. Formation.

Watershed improvement districts may be formed as subdistricts of conservation districts as herein provided for the development and execution of plans and projects relating to any of the purposes set forth in W.S. 41-8-102. The conservation district in which such subdistricts are formed shall cooperate, advise and consult with the state conservation commission in matters pertaining to the organization, operation and maintenance of the watershed improvement district.

41-8-104. Area.

The land area embraced in a watershed improvement district must lie within the same or adjoining watershed or subwatershed areas. A watershed improvement district may embrace land lying in one (1) or more soil and water conservation districts. Land lying within the boundaries of one (1) watershed improvement district shall not be included in another watershed improvement district.

41-8-105. Petition for establishment; filing generally; contents; copy to be furnished conservation commission.

A petition to establish a watershed improvement district shall be filed with the board of supervisors of the conservation district in which the proposed watershed improvement district is situated asking that a watershed improvement district be organized to function in the area described in the petition. The petition shall comply with the requirements of W.S. 22-29-105. A copy of the petition shall be furnished to the state conservation commission.

41-8-106. Petition for establishment; establishment in more than 1 soil and water conservation district.

If a proposed watershed improvement district is situated in more than one (1) conservation district, copies of such petition shall be presented to the board of supervisors of all the conservation districts in which any part of the proposed watershed improvement district is situated, and the supervisors of all the conservation districts shall act jointly as a board of supervisors with respect to all matters concerning the watershed improvement district, including its organization. The watershed improvement district shall be organized in like manner and shall have the same powers and duties as a watershed improvement district situated entirely in one (1) conservation district.

41-8-107. Petition for establishment; hearing; notice.

(a) The board of supervisors shall act upon the petition for formation in the same manner as set forth in W.S. 22-29-109 for county commissioners in determining if a petition for district formation shall be voted upon.

(b) If it appears upon the hearing that any land included in the petition will not be benefited by its inclusion within the proposed watershed improvement district, the board of supervisors shall exclude such land from the proposed watershed improvement district.

(c) If it appears upon the hearing that it may be desirable to include within the proposed watershed improvement district territory outside of the area described in the petition, the hearing shall be adjourned and due notice of a further hearing shall be given throughout the entire area considered for inclusion in the district, and a further hearing shall be held. After final hearing, if the board of supervisors determines, upon the facts presented at the hearing and upon other available information,

that there is need, in the interest of the public health, safety and welfare for such a district to function in the territory considered at the hearing, it shall make and record such determination and shall define by metes and bounds or by legal subdivisions, the boundaries of the district. The board of supervisors, in making the determination, may advise and consult with the state conservation commission.

(d) If the board of supervisors determines after the hearing that there is no need for such a district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition.

41-8-108. Referendum prerequisite to establishment; generally.

After the board of supervisors has made and recorded a determination that there is a need, in the interest of the public health, safety and welfare, for the creation of the proposed watershed improvement district, it shall consider the question whether the operation of a district within the proposed boundaries with the powers conferred upon the district in this act is administratively practicable and feasible. To assist the board of supervisors in this determination, the board shall, by mail ballot or at the next election date authorized under W.S. 22-21-103 which is at least sixty (60) days after entry of the finding that there is need for the organization of a district and the determination of the boundaries of the district, hold a referendum within the proposed district upon the proposition of the creation of the district. Notice of the referendum shall be given by the board of supervisors as provided in the Special District Elections Act of 1994.

41-8-109. Referendum prerequisite to establishment; voting; ballots; right of landowners to vote; proxies.

(a) Repealed by Laws 1998, ch. 115, § 5.

(b) All qualified electors of the district and owners of land lying within the boundaries of the proposed district, as determined by written authorizations as specified in W.S. 41-8-101(f) and subsections (c) and (d) of this section, shall be eligible to vote in the referendum. In applying provisions of the Special District Elections Act of 1994 to this act, the terms "elector" or "voter" shall include qualified electors and landowners.

(c) A written authorization for voting purposes shall be filed with the election official conducting the special district election not later than thirty (30) days prior to the election.

41-8-110. Referendum prerequisite to establishment; counting and recording votes; action upon results; certification of fact when created.

The votes cast in the referendum shall be counted by the polling officers at the close of the polls and a report of the results, along with the ballots, shall be delivered to the polling superintendent, who shall certify the results to the board of supervisors; and the board shall then consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the board of supervisors shall determine that the operation of the watershed improvement district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the board of supervisors shall determine that the operation of the watershed improvement district is administratively practicable and feasible, it shall declare the watershed improvement district to be created; provided, however, that the board of supervisors shall not have authority to determine that the operation of the watershed improvement district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum, which affirmative votes represent a majority of the acreage contained in the proposed watershed improvement district, favor creation of the watershed improvement district. Upon declaring the watershed improvement district to be created,

the board of supervisors shall certify the fact of the creation of the district to the county clerk of the county or counties in which the district is situated, for recordation; and the watershed improvement district shall thereupon constitute a governmental subdivision of this state and public body corporate and politic. After being recorded, the certificate of the board of supervisors shall be filed with the secretary of state, and a copy thereof shall be filed with the state conservation commission.

41-8-111. Inclusion of additional land; detaching land; change of boundaries; change of name.

(a) Petitions for including additional territory within an existing watershed improvement district may be filed with the board of supervisors, and in such cases the proceedings herein provided for with respect to petitions to organize watershed improvement districts shall be observed to the extent deemed practicable in acting upon petitions for the inclusion. In determining whether the operation of a watershed improvement district, including such additional territory, will be administratively practicable and feasible, the board of supervisors shall advise and consult with the directors of the existing watershed improvement district. Where the total number of owners of land in the area proposed for inclusion shall be less than ten (10), the petition may be filed when signed by a majority of the owners of land in the area, representing a majority of the acreage contained in the area, and in such case no referendum need be held. If the board of supervisors make a determination in favor of the inclusion of additional territory, it shall certify the fact of the inclusion of additional territory to the county clerk of the county or counties in which the watershed improvement district is situated. After being recorded, the certificate of the board of supervisors shall be filed with the secretary of state and a copy thereof shall be filed with the state conservation commission.

(b) The owner or owners of land which has not been, is not, and cannot be benefited by its inclusion in the watershed improvement district may petition the board of supervisors to have the land withdrawn. The petition shall describe the land and state the reasons why it should be withdrawn. A hearing shall be held within thirty (30) days after the petition is received. Due notice of the hearing shall be given by the board of supervisors. If it is determined by the board of supervisors that the land has not been, is not, and cannot be benefited by its inclusion in the watershed improvement district, the land shall be withdrawn from the district. A copy of such determination and withdrawal shall be certified to the county clerk of each county in which any portion of the withdrawn land is situated. After being recorded, the certification shall be filed with the secretary of state and a copy thereof shall be filed with the state conservation commission.

(c) Petitions for a change in the boundaries of watershed improvement districts may be filed with the board or boards of supervisors of the conservation district or districts to be affected. The board of supervisors of the conservation district or joint board of supervisors if more than one (1) conservation district is affected may require the hearings or referenda as it deems appropriate to enable it to make a determination as to the desirability of the proposed change. If the board of supervisors or joint board of supervisors makes a determination in favor of the change in boundaries, it shall certify the fact of such change to the county clerk of the county or counties in which the watershed improvement district is situated and shall notify the board of directors of the watershed improvement district, setting out in the notice the new boundaries of the district. After being recorded, the certificate of the board of supervisors shall be filed with the secretary of state and a copy thereof shall be filed with the state conservation commission.

(d) Petitions for a change of name of a watershed improvement district may be submitted to the board or board of supervisors of the conservation district or districts in which the watershed improvement district is situated. If the board of supervisors approves the change of name, it shall certify the fact of the change of name to the county clerk of the county or counties in which the watershed improvement district is situated and shall notify the board of directors of the watershed

improvement district of the change. After being recorded, the certificate shall be filed with the secretary of state and a copy thereof shall be filed with the state conservation commission.

41-8-112. Board of directors; eligibility; election; terms; officers.

(a) Within thirty (30) days after a watershed improvement district is created, the board of supervisors shall conduct an election to be held for the election of a board of directors of the watershed improvement district. Notice of the election shall be given by the board of supervisors as provided in the Special District Elections Act of 1994. The board of directors shall consist of five (5) members. The first board of directors shall determine by lot from among its membership, two (2) members to serve terms of one (1) year, two (2) members to serve terms of two (2) years, and one (1) member to serve a term of three (3) years and until their successors are elected at a regular subsequent director election. Thereafter, as these initial terms expire, the members of the board of directors shall be elected for terms of three (3) years. The board of supervisors of the conservation district shall conduct these elections annually. These elections shall be in accordance with the Special District Elections Act of 1994. Vacancies occurring before the expiration of a term shall be filled for the unexpired term by appointment by the remaining members of the board of directors with the approval of the board of supervisors. The board of directors shall, under the supervision of the board of supervisors, be the governing body of the watershed improvement district.

(b) The board of directors shall annually elect from its membership a chairman, secretary and treasurer. The treasurer shall execute a surety bond for the faithful performance of the duties of his office, which bond shall be approved by the board of directors. Any premium for the bond shall be paid by the watershed improvement district. The district shall be subject to oversight of its accounts by the director of the state department of audit or his designee, in accordance with W.S. 9-1-507(a)(iii) or 16-4-121(f), as applicable. The board of directors shall file an annual report with the board of supervisors before the first day of March containing a financial statement, operation and maintenance activities for the preceding year and their proposed developments for the current year. A copy of the annual report shall be filed in the state conservation commission by the board of supervisors.

(c) Applications for election may be filed with the board of supervisors by candidates for directors of the watershed improvement district as provided in the Special District Elections Act of 1994. No person shall be eligible to be a director of a watershed improvement district who is not an owner of land within the watershed improvement district in which he seeks election, or who is a supervisor on the conservation district board.

(d) The board of directors shall hold joint quarterly meetings with the governing board of supervisors to consult and advise upon the activities of the watershed improvement district, one of such quarterly meetings shall consist of an inspection tour of the district by the boards jointly.

41-8-113. Board of directors; powers generally.

(a) Under the supervision of the board of supervisors, the board of directors of a watershed improvement district shall have power to:

(i) Levy and collect assessments for special benefits accruing to land, as hereinafter provided;

(ii) Acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein; maintain, administer, and improve any such property; and sell, lease, or otherwise dispose of any such property in furtherance of the purposes and provisions of this act [§§ 41-8-101 through 41-8-126];

(iii) Exercise the power of eminent domain and in the manner provided by law for the condemnation of private property for public use;

(iv) Construct, improve, operate and contract for the maintenance of such structures as may be necessary for the performance of any authorized function of the watershed improvement district;

(v) Borrow such money as is necessary to carry out any of the purposes and provisions of this act, and issue, negotiate, sell its bonds or other evidence of indebtedness as provided in W.S. 41-8-114;

(vi) Cooperate with, and receive from or grant assistance to, towns, cities, counties, and state and federal agencies in carrying out the purposes and provisions of this act.

41-8-114. Board of directors; issuance of bonds.

(a) Bonds authorized by W.S. 41-8-113 shall not be issued until proposed by order or resolution of the board of directors specifying the purpose for which the funds are to be used, the rate of interest the bonds are to bear, the amount of the proposed bond issue, terms of the bonds, and the proposed method of payment and redemption of the bonds prior to maturity. A copy of the order or resolution shall be certified to the board of supervisors.

(b) The board of directors shall conduct a hearing on such proposal after due notice of such hearing has been given. If it appears that the proposal is within the scope and purpose of this act [§§ 41-8-101 through 41-8-126] and meets all other requirements of the law, the proposal shall be submitted to the landowners of the watershed improvement district by a referendum held under the supervision of the board of supervisors.

(c) The provisions of W.S. 41-8-107 through 41-8-110, as to notice and manner of holding a referendum in organizing a watershed improvement district shall be applicable to the referendum held under this section. Any referendum held under this section shall be held by mail ballot or on an election date authorized under W.S. 22-21-103.

(d) If two-thirds (2/3) of the votes cast, which votes represent a majority of the acreage contained in the watershed improvement district, are in favor of the proposed bond issue, such bonds shall be authorized and may be issued.

(e) Bonds authorized and issued shall bear interest payable annually, and shall be due and payable not more than fifty (50) years from their dates. The form, terms and provisions of the bonds, provision for their payment and provisions for their retirement and calling not inconsistent with law, shall be determined by the board of supervisors. The bonds are exempt from all state, county, municipal, school and other taxes imposed by a taxing authority of this state.

41-8-115. Board of directors; per diem and mileage.

Members of the board of directors shall receive no salaries, but such members may be entitled to expenses for meetings and travel in the performance of their duties as approved by the board of supervisors.

41-8-116. Hearing on proposed projects.

(a) Before any contract shall be let or work begun upon any improvement or project within the watershed improvement district, the cost of which cannot be exclusively financed by funds on hand, grants in aid, or financial assistance or gifts to the district, or before any contract may be entered into

by the district with any governmental agency or body which will obligate the district to contribute financially beyond the extent of funds of the district then on hand, it shall be the duty of the board of directors to set a time and place within the district for a public hearing upon such proposal. Due notice of such hearing shall be given by the board of directors.

(b) At the time and place fixed for such hearing any owner of land situated within the watershed improvement district, or any other interested person, may appear and be heard as to his objections to such proposal.

(c) Following the public hearing the board of directors shall, by order or resolution, either affirm the proposal with or without modification or amendments, or disapprove the proposal. If the board of directors affirms the proposal, it shall determine the probable cost of and the proposed method of financing the improvement or project, the benefits to be derived therefrom, and whether the benefits will be conferred upon all land within the watershed improvement district or upon only certain land within the district, in which latter case the land to be benefited shall be described as to boundaries, ownership, and approximate acreage.

41-8-117. Appointment of appraisers and appraisal of benefited property.

If the board of directors determines that the proposed improvement or project should be constructed and that the costs thereof should be paid by special assessment against the land benefited by such improvement or project, it shall appoint three (3) qualified and disinterested residents of the state to act as appraisers. The appraisers shall inspect the plans and specifications of the proposed improvement or project and examine all land likely to be benefited thereby. The appraisers shall make and file with the board of directors a detailed report showing all tracts of land within the watershed improvement district found to be benefited, together with the acreage thereof, the name of the record owner of each tract, the amount each tract will be benefited, and the amount of assessment to be levied against each tract, which assessment against each tract shall be in proportion to the benefits accruing to such tract. Any necessary expenses connected with making the appraisal by the three (3) appraisers shall be paid by the watershed improvement district.

41-8-118. Hearing on report of appraisers.

Upon receiving the report of the appraisers the board of directors shall fix a time and place within the watershed improvement district for hearing any complaint that may be made regarding the benefits appraised to any tract of land or the assessment proposed to be levied against any tract of land. Due notice of such hearing shall be given by the board of directors. At the time and place fixed for such hearing the board of directors shall consider the report of the appraisers and consider and hear any objections filed or voiced thereto. The board of directors shall, by order or resolution, reject the report of the appraisers or accept the report and ratify it with or without modification or amendments.

41-8-119. Appeal from approval of project or determination of benefits or assessments.

(a) Any owner of land or person having an interest therein upon which an assessment is proposed to be levied may, within thirty (30) days from such order or resolution of the board of directors accepting the report of the appraisers, file with the clerk of the district court a written notice making demand for trial by the court. The notice shall state definitely from what part of such order or resolution the appeal is taken and shall set forth any other objections of the appellant. In case more than one (1) appeal is taken, the court may, upon finding that the appeals may be consolidated without injury to the interests of anyone, consolidate and try the appeals together. Any hearing on appeal provided for herein in the district court shall be de novo, and the district court shall consider not only the question of procedure but also the merits of the point or points appealed from, including

but not limited to eminent domain proceedings. Any appeal from a decision of the district court shall follow the usual rules of civil procedure.

(b) If no appeal is taken within the time prescribed in this section from such order or resolution of the board of directors accepting the report of the appraisers, or after the finding of the court in case an appeal is taken from such order or resolution of the board of directors, then such assessments shall be final and conclusive and shall constitute perpetual liens upon the land so assessed until they are fully paid.

41-8-120. Assessment of benefits against land of state and its subdivisions.

In case land belonging to the state, or a county, school district, or other public corporation is benefited by any improvement or project constructed under the provisions of this act [§§ 41-8-101 through 41-8-126], all of such benefits shall be assessed against such land and the assessments shall be paid by the proper authorities at the same time as the assessments are called and paid in the cases of private persons.

41-8-121. Assessments generally.

(a) The board of directors shall, on or before the third Monday in July of each year, certify to the board of county commissioners of the county within the watershed improvement district in which assessed land is located the amount of the annual installments of assessments against the land, together with a fair proportionate amount of the estimated operating and maintenance charges apportioned to the land for the next succeeding year. Thereupon the county commissioners shall certify to and deliver the assessment roll to the county assessor of the county and the county assessor shall extend the amounts so certified on the tax roll as a flat special assessment against the land benefited. The assessments shall be subject to the same interest and penalties in case of delinquency as in the case of general taxes, and shall be collected at the same time and in the same manner as in the case of general taxes; provided, that the assessments shall become due and payable only at the times and in the amounts as may be determined by the board of directors.

(b) The board of directors 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, the maturing of bonds and interests on all bonds, and deficiencies and defaults of prior years, and shall make ample provisions for the payment thereof; provided however, that no one (1) yearly call for assessment by the board of directors shall be in an amount to exceed ten percent (10%) of the actual amount necessary to defray the cost of the construction of the improvement or project.

41-8-122. Levy, collection and disposition of taxes and special assessments; expenditure of funds.

It shall be the duty of the officer or body having authority to levy taxes within each county, to levy the taxes and special assessments as provided in this act [§§ 41-8-101 through 41-8-126] and it shall be the duty of all county officials, charged with the duty of collecting taxes, to collect the taxes and special assessments as provided in this act in the time, form and manner and with like interest and penalties as city or county taxes are collected, and when collected to pay the same to the board of directors of the watershed improvement district ordering their levy and collection and the payments of such collections shall be made through the treasurer of the watershed improvement district and deposited in the depository thereof to the credit of such district. All expenditures of such funds shall be made by the board of directors upon order of the board, under the supervision of the board of supervisors.

41-8-123. Lien of assessment; collection of delinquent assessments.

All taxes and assessments levied against any land under this act [§§ 41-8-101 through 41-8-126] together with all interest thereon and penalties for default in payment thereof, and all costs of collecting the same, shall, until paid, constitute a perpetual lien upon such land on a parity with the tax lien of general, state, county, city, town or school taxes and no sale of such land to enforce any general, state, county, city, town or school tax or other liens shall extinguish the perpetual lien of such taxes and assessments. If the taxes and assessments levied are not paid as herein provided, then such land shall be sold at the regular tax sale for the payment of said taxes and assessments, interest and penalties, in the manner provided by the statutes of this state for selling real property for nonpayment of general taxes.

41-8-124. Repealed by Laws 1998, ch. 115, § 5.

41-8-125. Supervision upon discontinuance.

If any soil and water conservation district in which a watershed improvement district is situated is discontinued, the state soil and water conservation committee [conservation commission] shall thereafter serve in the same supervising capacity over the watershed improvement district as was theretofore served by the board of supervisors of such soil and water conservation district.

41-8-126. Existing water rights preserved.

Nothing in this act [§§ 41-8-101 through 41-8-126] shall be so construed as to in any manner impair existing water rights, appropriations or priorities.

CHAPTER 9
DRAINAGE DISTRICTS

ARTICLE 1
ORGANIZATION AND PRELIMINARY REPORT OF COMMISSIONERS

41-9-101. Petition for organization; when filed; contents; service of notice or petitions generally.

(a) Whenever a majority of the adult owners of lands within any district of land, who shall represent one-third in area of the lands within said district to be reclaimed or benefited, or whenever the adult owners of more than one-half of the lands within such district desire to construct one (1) or more drains, ditches, levees, or other works across the lands of others, for the promotion of the public health or welfare, and the drainage of said lands, or desire to maintain and keep in repair any such drain, ditch or levee heretofore constructed under any law of this state, such owners may file in the district court of any county in which the lands, or any part of them, shall lie, a petition setting forth:

(i) The proposed names of said drainage district;

(ii) The necessity of the proposed work, describing the necessity;

(iii) A general description of the proposed starting points, routes and termini of the proposed drains, ditches, and levees;

(iv) A general description of the lands proposed to be included in said district;

(v) The names of the owners of all lands in said district when known.

(b) If the purpose of said petitioners is the enlargement, repair and maintenance of a ditch, levee or other work heretofore constructed under any law of this state, said petition shall give a general description of the same, with such particulars as may be deemed important.

(c) Said petition shall pray for the organization of a drainage district by the name and within the boundaries proposed, and for the appointment of commissioners for the execution of such proposed work, according to the provisions of this and the following sections.

(d) Any lands, the title to which is in the state of Wyoming, and which are within the boundaries of any drainage district heretofore created, or which may be hereafter created, may be included in any such drainage district in the same manner as is by law provided for adding other lands to drainage districts whenever it is found necessary to include lands in drainage districts, as by the preceding paragraphs provided.

(e) Any and all copies of petitions, or notices, required by law to be served on account of such lands being included in such drainage districts, shall be served on the president of the board having control of such lands in the same manner as is hereinafter provided for the service of petitions and notices on other owners of lands in the district in which said lands are situated.

41-9-102. Petition for organization; amendment; multiple petitions.

No petition having as many signers as are required by this section shall be declared void, but the court may at any time permit the petition to be amended in form and substance to conform to the facts, if the facts justify the organization of a drainage district. Several similar petitions for the organization of the same district may be circulated, and when filed, shall together be regarded as one (1) petition having as many signers as there are separate adult signers on the several petitions filed, who own lands within said proposed drainage district. All petitions for the organization of said district filed prior to the hearing on said petition shall be considered by the court, the same as is filed with the first petitions placed on file, and the signatures thereon contained shall be counted in determining whether sufficient landowners have signed said petition.

41-9-103. What lands may be included.

Said territory need not be contiguous, provided, that it be so situated that the public health or welfare will be promoted by such drainage of each part thereof, and the benefits of the proposed work in each part will exceed the damages from and costs of said proposed work in each part; and provided, further, that the court shall be satisfied that said proposed work can be more cheaply done if in a single district than otherwise.

41-9-104. Notice of hearing; service generally; contents.

(a) On such petition being filed the court or judge thereof shall make an order fixing a time and place of hearing thereon and ordering notice; thereupon the clerk of said court, for the county in which the proceedings are instituted, shall cause twenty (20) days notice of the filing of such petition to be given:

(i) By serving or causing to be served a copy of such notice on each owner of land within said proposed district, residing in any county in which any lands in said proposed district are situated, either personally or by leaving a copy thereof at his last usual place of abode, with a person of suitable age and discretion, and by registered mail to any mortgagee, mortgagees or judgment lienholder whose address is of record in the records of said liens in the county or counties in which said district is situated; and

(ii) By publishing a copy thereof at least once a week for three (3) successive weeks in some newspaper published in each county from which any part of the district is proposed to be taken. If there be no newspaper in any such county, such notice may be published in a newspaper published in an adjoining county.

(b) Such notice shall state:

(i) In what court said petition is filed;

(ii) State briefly the starting points, routes and termini of said drains, ditches and levees;

(iii) Give a general description of the proposed work;

(iv) Give the proposed boundaries of said district (or a general description of all of the lands in said proposed district);

(v) Give the name proposed for said drainage district; and

(vi) Shall also state the time and place by the court fixed, when and where the petitioners will ask a hearing on said petition.

41-9-105. Notice of hearing; nonresidents.

If any of the owners of land in said district are nonresidents of the county or counties in which the proposed district lies, the petition shall be accompanied by an affidavit giving the names and post-office address of such nonresidents, if such are known, and if unknown shall state that, upon diligent inquiry their names or post-office addresses (whichever may be the fact) cannot be ascertained. The clerk of the court shall mail a copy of the notice aforesaid to each of said nonresident owners whose post-office address is known, within six (6) days after the first publication of the same.

41-9-106. Notice of hearing; proof of service.

The certificate of the clerk of the court or other public officer, or the affidavit of any other person who knows the facts, affixed to a copy of said notice, shall be sufficient evidence of the posting, serving, mailing or publication thereof.

41-9-107. Notice of hearing; effect of personal service.

Personal service of said notice on (or service by leaving at the last usual place of abode of) all owners of lands or easements or interest in lands within said district, shall give the court complete jurisdiction, without posting, publication or mailing of said notice.

41-9-108. Notice of hearing; adjournment of hearings when notice not fully served.

If it shall be found, before the hearing on a petition for the organization of a drainage district, that one (1) or more owners of land in said district have not been duly served with notice of hearing on said petition, the court, or presiding judge, shall not thereby lose jurisdiction. The court, or presiding judge, in such case shall adjourn the hearing, make an order directing the serving of said notice upon said landowner, and fixing the time and manner of service of such notice, which notice shall notify him to appear at said adjourned time and place and be heard on said petition.

41-9-109. Notice of hearing; service after adjournment.

Said notice shall be served personally or by leaving at the last usual place of abode of said unserved owners, as in W.S. 41-9-104; provided, not less than eight (8) days before said adjourned hearing, or published not less than fourteen (14) days before said adjourned hearing, in some newspaper published in the county in which said owners' lands lie, or if no newspaper be published in said county, then in some newspaper published in an adjoining county.

41-9-110. Notice of hearing; defective service generally.

Upon the adjourned day the same proceedings, adjournments, trial findings and orders may be had as in case of complete service of notice in the first instance. In case of failure to mail said notice as herein required, the court or judge may order the same mailed later and shall adjourn said hearing so that said notice shall be mailed at least fourteen (14) days before said adjourned hearing. In case of failure to publish or post notice, as in this act required, the court or judge may adjourn said hearing for sufficient time to permit the due posting and publication of said notice, and order said notice posted or published as in W.S. 41-9-104 hereof directed. In case of adjournment to permit notice to be given the notice shall state the fact of such adjournment and the time and place of hearing pursuant to said adjournment.

41-9-111. Hearings; grounds for contesting.

On the day fixed for hearing on such petition all parties owning lands, or any interest or easement in land, within said proposed district, or who would be affected thereby, may appear and contest (a) the sufficiency of the petition, (b) the sufficiency of the signers of the petition, (c) the sufficiency of the notice, (d) the constitutionality of the law, and (e) the jurisdiction of the court, specifying their objections to such jurisdiction; and the petitioners and contestants may, on the trial, offer any competent evidence in regard thereto. All notices of contest shall be in writing and shall clearly specify the grounds of contest.

41-9-112. Hearings; procedure generally.

The court shall hear and determine whether or not the petition contains the signatures of a majority of the adult owners of lands within the said proposed district who are of lawful age, and who represent one-third in area of the lands proposed to be affected by said work, or the signatures of the adult owners of more than one-half of such lands and shall determine all questions of law arising on said contest. The district court in which such petition shall be filed or the judge thereof may adjourn the hearing on said petition from time to time for want of sufficient notice, or to give time to prepare for trial, or for other good cause.

41-9-113. Hearings; affidavits of petitioners as evidence.

The affidavit of any three (3) or more of the signers of said petition stating that they have examined it and are acquainted with the locality of said district and that said petition is signed by a sufficient number of adult owners of lands in said district, to satisfy W.S. 41-9-101, may be taken by the court or judge as prima facie evidence of the facts therein stated. And the affidavit of any petitioner or other landowner before such court, or represented before the court, giving the age of such affiant and his or her ownership of such lands, to be named therein by proper description, shall be sufficient evidence to the court of such facts.

41-9-114. Hearings; dismissal of defective petition.

If the court or presiding judge thereof, after hearing any and all competent evidence that may be offered for and against the said petition, shall find that the same has not been signed as herein required, the said petition shall be dismissed at the cost of the petitioners, and judgment shall be entered against said petitioners for the amount of said costs.

41-9-115. Fraudulent conveyances to defeat or establish petition.

All deeds made for the purpose of establishing or defeating the prayer of said petition, and not made in good faith and for a valuable consideration, shall be taken and held to be a fraud and the holders thereof shall not be considered as the owners of the land described therein.

41-9-116. District commissioners; number; appointment; preliminary bond; qualifications; petition for election; election decree; election procedures; modification of decree.

If it shall appear that the petition has so been signed, the court or judge shall so find, and order any necessary amendments thereto, and shall appoint three (3) suitable, competent persons as commissioners, and fix their preliminary bond. If the district is situated in two (2) or more counties, not more than two (2) of said commissioners shall reside in any one (1) of said counties. Ownership of land within the district shall not disqualify a person from acting as a commissioner. Provided, however, after the appointment of the first board of commissioners a majority of the owners of land within said district who own one-third in area of the lands within said district, shall petition the court asking that the commissioners of said district be elected by vote of the owners of land assessed in said district, the court shall make and enter an order fixing the time of the annual election for said district, prescribing the manner of giving notice of such election, and the manner in which such election shall be conducted, and may provide for cumulative voting; said order may provide for the election of one (1) commissioner for one (1) year and two (2) commissioners for two (2) years at the first election, succeeding commissioners to be elected for two (2) years; at such election every person, company or corporation owning land assessed for benefits within such district shall be entitled at such election to cast one (1) vote for each acre of land, or fraction thereof, owned by such person, company or corporation within said district and assessed for benefits therein; such order shall provide for voting by proxy, and such order may be modified from time to time upon petition as herein provided for the election of commissioners, and upon like petition such order may be revoked and thereafter such commissioners shall be appointed by the court.

41-9-117. District commissioners; oath; bond generally; quorum.

Before entering upon their duties such commissioners shall take and subscribe an oath to support the constitution of the United States and the constitution of the state of Wyoming, to faithfully and impartially discharge their duties as such commissioners and to render a true account of their doings to the court by which they are appointed whenever required by law or the order of the court, and shall execute a bond running to the clerk of said court and his successors in office as obligees, to be filed with said clerk for the benefit of the parties interested, in an amount to be fixed by the court or presiding judge, and with sureties to be approved by the court or presiding judge, conditioned for the faithful discharge of their duties as such commissioners and the faithful accounting for and application of all moneys which shall come into their hands as such commissioners. A majority shall constitute a quorum and a concurrence of a majority in any matter within their duties shall be sufficient to its determination.

41-9-118. District commissioners; term.

The commissioners first appointed shall hold their office until the first Tuesday in the second succeeding July following the date of the order organizing such district and until their respective successors are qualified. All commissioners appointed after the first board, excepting those appointed

to fill vacancies, shall hold their respective offices for the term of two (2) years and until their respective successors are qualified.

41-9-119. District commissioners; new appointments.

Appointments to fill expired terms in the office of drainage commissioner shall be made by the presiding judge of the district court of the county having jurisdiction of the drainage district at the courthouse therein on the first Tuesday of July in each succeeding year or as soon thereafter as possible.

41-9-120. District commissioners; vacancies.

Vacancies in the board may be filled by such judge at any time, the commissioners appointed to hold for the residue of the unexpired term. The removal of any commissioner from the county or counties in which lands of such district are situated shall render his office vacant.

41-9-121. District commissioners; financial records, minutes of meetings to be kept.

The commissioners shall keep an accurate record of all moneys collected on account of the work under their charge and of all payments made by them, and shall take vouchers for such payments and shall keep full, accurate and true minutes of all their proceedings.

41-9-122. District commissioners; filing of annual financial report.

On the first Tuesday of July each year they shall file in the office of the clerk of the court having jurisdiction in the matter an itemized statement of all their receipts and disbursements, and leave said report in such office for examination by parties interested at all times.

41-9-123. District commissioners; compensation and expenses.

They shall receive for their services such compensation as the court or presiding judge thereof may determine. They shall also receive their actual reasonable expenses.

41-9-124. District commissioners; under control and direction of court; failure to obey.

They shall at all times be under the control and direction of the court or presiding judge, and shall obey its or his directions; for failure so to do they shall forfeit their compensation and be dealt with summarily as for contempt.

41-9-125. Suit on bond of commissioners.

Suit may also be brought upon their bonds, in the name of the clerk of the court, and the amount recovered shall be applied to the construction of the work or to the party injured, as justice may require.

41-9-126. Organization of commission; examination of lands; contents of preliminary report.

(a) Within ten (10) days after said commissioners shall be appointed and qualified they shall meet and organize by electing one (1) of their number secretary, and as soon as may be thereafter, they shall personally examine the lands in said district and make a preliminary report to the court, which report shall state:

(i) Whether said proposed work is necessary, or would be of utility in carrying out the purposes of the petition;

(ii) Whether the proposed work would promote the public health;

(iii) Whether the proposed work would promote the public welfare;

(iv) Whether the total benefits from said proposed work will exceed the cost thereof together with the damages resulting therefrom; and in arriving at this they shall include all benefits and all damages resulting therefrom both within and without said district;

(v) Said commissioners shall in said report fix as near as may be and report to the court the boundaries of said proposed drainage district. Said boundaries shall not be so changed from those in the petition described as to deprive the court of jurisdiction by reason of not having on the petition the required number of signers owning land within said changed boundaries.

41-9-127. Change of plan proposed in petition.

If said proposed work as in the petition described, is not best suited to carry out the purposes of the petition the commissioners shall consider and base their report upon the one (1) best suited to carry out those purposes and propose to the court the one (1) by them considered.

41-9-128. Hearings on report; notice generally.

Upon the filing of the preliminary report the court or the presiding judge thereof shall by order fix a time and place when and where the same shall be heard at some general or special term of said court, not less than thirty (30) days from the filing of said report. Notice of the time and place of hearing upon said preliminary report shall be given to all interested persons by publishing a brief notice of the filing of said report, including a brief statement of the substance of said report, in one (1) or more newspapers published in each county in which any land in said proposed drainage district shall be situated (or if no newspaper is published in said county, in one (1) or more newspapers in an adjoining county) once in each week for three (3) successive weeks prior to the day appointed for hearing thereon. Said notice shall describe all lands by said report included in said district, which were not included therein by the petition, and state that such lands are to be included in said district, and shall describe all lands excluded from said district which were by the petition included therein and shall state that such lands are to be excluded from said district.

41-9-129. Hearings on report; notice to owners of added lands.

When lands are added to the district the owners thereof shall be served with said notice as provided for serving of notice of hearing on the petition.

41-9-130. Hearings on report; adjournment.

Upon the day fixed for hearing upon said report, said court may adjourn said hearing for good cause or may proceed to hear, try and determine all issues arising upon said report.

41-9-131. Hearings on report; remonstrances.

Any interested party may appear and remonstrate against said report or any material part thereof. All remonstrances shall be in writing, be verified on oath, be filed at least five (5) days before the day fixed for hearing, and shall set forth the facts upon which they are based.

41-9-132. Hearings on report; trial; when petition for organization dismissed.

All issues arising upon said preliminary report shall be tried by the court without a jury. If the court shall find in favor of the remonstrance, or if said report be that the proposed work will not promote the public health, and will not promote the public welfare, or that the benefits from said proposed work will not exceed the damages and cost of construction, and no remonstrance against said report is filed, the petition shall be dismissed and the costs taxed against the petitioners, and judgment entered therefor, as in W.S. 41-9-231 hereinafter provided.

41-9-133. Hearings on report; when report confirmed.

But if the preliminary report be that the benefits of said proposed work (or work by the commissioners proposed) will exceed the damages and the cost of construction and that the public health will be promoted thereby, or that the public welfare will be promoted thereby, and no remonstrance thereto is filed, or if on trial of the issues made on said report the court finds that the benefits will exceed the damages and cost of construction, and that the public health or the public welfare will be promoted by said proposed work, the court shall make and file such findings in writing and make an order confirming said report, or directing amendment of the report to conform to the findings of said court. And when so amended the court shall by order confirm the same, and direct said commissioners to proceed with said work with all convenient speed.

41-9-134. Hearings on report; findings conclusive; appeal.

Such findings and order shall be final and conclusive unless appealed from to the supreme court within thirty (30) days after filing thereof.

41-9-135. Creation of corporate entity upon confirmation of report.

Upon entering of such order of confirmation of said preliminary report of record, such drainage district shall be, and is thereby declared to be organized as a drainage district, by the name mentioned in said petition, or such other name as the court shall fix, with the boundaries fixed by the order confirming the report of said commissioners, to be a body corporate by said name fixed in said order, with the right to sue and be sued, to adopt and use a seal, and to have perpetual succession.

41-9-136. Corporate authorities.

The commissioners appointed as aforesaid and their successors in office shall, from the entry of such order of confirmation, constitute the corporate authority of said drainage district, and shall exercise the functions conferred on them by law, and do all things and perform all acts necessary to the construction and preservation of the proposed work.

41-9-137. All proceedings deemed necessary.

All proceedings herein required, prior to the entry of such order of confirmation of record, shall be deemed to be and are hereby declared to be necessary to the formation of said body corporate.

ARTICLE 2
OPERATION AND ADMINISTRATION

41-9-201. Authority of commissioners to enter lands for repairs.

The commissioners, their agents, servants and employees shall have the right to go upon all lands along any drain, ditch, levee or embankment in their district, to inspect, deepen, widen and repair the

same whenever necessary, doing no unnecessary damage, and shall not be liable for trespass therefor.

41-9-202. Power of eminent domain.

Any drainage district created and existing under W.S. 41-9-101 through 41-9-278 may, whenever it shall require a way of necessity outside its boundaries for any of its work or works theretofore authorized by the court, proceed to procure the same by the exercise of the power of eminent domain.

41-9-203. Presumption of validity of acts of commissioners.

Commissioners of drainage districts are hereby declared to be public officers. The presumption shall be in favor of the regularity and validity of all their official acts. Whenever any report of the commissioners of any drainage district or any part of any such report is contested, remonstrated against or called in question, the burden of proof shall rest upon the contestant, remonstrant or questioner.

41-9-204. Commissioners under supervision of court; removal; new bonds.

The court shall at all times have supervision of said commissioners, and may at any time require them to make a report on any matter or matters connected with their duties as commissioners, and after due hearing may remove from office any or all of said commissioners for neglect of duty or malfeasance in office or for other good cause. The court may at any time require the commissioners to give new bonds to the clerk of the court and may fix the amount thereof, and said bonds shall be submitted to the court or the presiding judge thereof for approval.

41-9-205. Waiver of notice.

In case of failure to serve any notice of any proceeding or hearing in this chapter provided for, upon any person or corporation, such person or corporation, may appear in open court and waive such defect of service, or may waive it by filing in court or delivering to the commissioners of the drainage district to be filed in court a written waiver of such defect, in which waiver said defect shall be described; which waiver shall be signed by such party and witnessed and acknowledged before a proper officer having power to take acknowledgments of deeds.

41-9-206. Liberal construction.

The provisions of this act shall be liberally construed to promote the public health and welfare by reclaiming wet or overflowed lands, building embankments or levees and the preservation of any system of drainage heretofore constructed according to law.

41-9-210. Levels, surveys and maps to be made; report to court required.

As soon as may be after the confirmation of the said preliminary report, or within such time as the court may direct, said commissioners shall proceed to have all necessary levels taken and surveys made, and shall lay out said proposed work, make a map thereof and plans, profiles and other specifications thereof, and report in writing to the court.

41-9-211. Contents; starting points, routes and termini.

The commissioners shall report whether the starting point, routes and termini of the proposed work and the proposed location thereof, as in the petition contained, are in all respects proper and feasible, and, if not, shall report such as are most proper and feasible.

41-9-212. Contents; change of boundaries generally.

If it be found necessary to change the boundaries of said proposed district, as by them previously fixed, they shall report said proposed change, and, if possible, shall report the names, residence and post-office addresses of the owner or owners of all lands affected by said change in boundaries, but no such change in boundaries shall be made as to deprive the court of jurisdiction; provided, however, that if the owners of lands adjacent to the district petition to have their lands brought into the district such may be considered the same as original petitioners in making changes of boundaries.

41-9-213. Contents; assessment of damages.

The commissioners shall report what lands within the district will be injured by the proposed work, if any, and they shall therein award to each tract, lot, easement or interest by whomsoever held, the amount of damages which they shall determine will be caused to the same by the proposed work.

41-9-214. Contents; assessment of benefits.

The commissioners shall report what lands within the district will be benefited by the proposed work and they shall assess against each tract, lot and easement by whomever held the amount of benefits which they determine will be caused to the same by the proposed work. The benefits so assessed are herein referred to as "assessment of benefits".

41-9-215. Contents; cost of construction.

The commissioners shall also determine and report to the court the total amount, as near as they can determine, what said proposed work will cost, which cost shall include all incidental expenses, the reasonable cost of organizing said district, the costs of proceeding, and all probable damage to lands, both within and without the district, together with a reasonable sum for attorney fees for the petitioners, and such sum as the commissioners may deem necessary to provide for possible defaults and delinquencies in payment of assessments, which cost will hereinafter be referred to as "cost of construction".

41-9-216. Contents; assessments upon particular tracts, lots and corporations.

If the cost of construction of any particular part of the work so proposed to be done should be assessed upon any particular tract or tracts, lot or lots of land, or upon any corporation or corporations, the commissioners shall so specify, and in their report shall fix and determine the sums which should be assessed against said tracts, lots and corporations, and assess such sum against said tracts, lots and corporations.

41-9-217. Contents; assessments for construction generally.

They shall apportion and assess the part of this "cost of construction," not assessed as above, against the several benefited tracts, lots and easements in said drainage district, in proportion to the benefits which they have assessed against the same, by setting down opposite each tract, lot or easement, the sum which they assess against the same for construction. The assessments which together make up the cost of construction, as above defined, are herein referred to as "assessments for construction".

41-9-218. Contents; special benefits to corporations.

(a) If any corporation would, in the judgment of said commissioners, derive special benefits from the whole or any part of such proposed work, the commissioners shall so report and assess those benefits, and assess against the same its proportionate share of the costs of said proposed work. The word "corporation" wherever in this act contained, shall be construed to include:

(i) Railroad companies;

(ii) Other private corporations of all kinds;

(iii) Towns;

(iv) Cities;

(v) Villages; and

(vi) Other drainage districts.

41-9-219. Contents; costs of repairs.

The commissioners shall further report to the court the probable cost of keeping said proposed work in repair after it is completed.

41-9-220. Contents; maps and plans.

They shall include in their said report, said map, plans and other specifications, and file the same with their report.

41-9-221. Commissioners not to be confined to plans in petition.

The commissioners shall not be confined to the points of commencement, routes or termini of the drains or ditches, or the number, extent or size of the same, or the location, plan or extent of any levee, ditch or other work, as proposed by the petitioners, but shall locate, design, lay out and plan the same in such manner as to them shall seem best, to promote the public health or welfare, and to drain, or to protect the lands of the parties interested with the least damage and the greatest benefit to all lands affected thereby. And any plan proposed by the commissioners, may, on the application of any person interested, on the hearing hereinafter provided for, or on the application of the commissioners, be altered by the court, by written order, in such manner as shall appear to the court to be just.

41-9-222. Changing boundaries upon application to court; filing of report.

If the commissioners find that the proposed district, as described in the petition filed, will not embrace all of the lands that will be benefited by the proposed work, or that it will include lands that will not be benefited and are not necessary to be included in said district for any purpose, they shall extend or contract the boundaries of the proposed district so as to include or exclude all such lands, as the case may be; and the boundaries adopted and reported by them, may, upon the hearing of their report, as hereinafter provided, upon their application, or that of any person interested, be altered by the court in such manner as shall appear to be just; provided, that the alteration of boundaries as aforesaid shall not have the effect of so far enlarging or contracting the proposed district as to render such petition void or dismissible. Said report shall be filed with the clerk of the court.

41-9-223. Notice of hearings on report; contents; order for hearing.

Upon the filing of said report, the court shall make and enter an order fixing the time and place when and where all persons interested may appear and remonstrate against the confirmation thereof, and the clerk of said court shall cause notice of the time and place of such hearing to be given to all parties interested, which notice shall contain a brief description of the lands benefited and damaged, together with the net damage awarded to the several tracts, parcels, easements and corporations to which damages are awarded, and the sum in each case assessed for construction against said several benefited parcels, tracts, easements and corporations.

41-9-224. Notice of hearings on report; publication and service generally.

Said notice shall be published for at least three (3) successive weeks, prior to the day set for the hearing in one (1) newspaper published in each county in which said lands, or any part thereof within said district are situate (and if no newspaper is published in said county, in some newspaper in an adjoining county), and by serving a copy of such notice on each of the persons or corporations, by said report recommended to be assessed, or whose lands are by said report recommended to be included in said district, and who resides in any of the counties out of which the proposed district is formed, at least twenty (20) days before the day of hearing in the same manner that a summons is required to be served; provided, absence from the county of such person or corporation shall excuse personal service, whereupon due publication of such notice shall be sufficient service.

41-9-225. Notice of hearings on report; when land situated in several counties.

In case the lands are situated in more than one (1) county the notice published in the county wherein the court having jurisdiction is situated shall contain a description of all the lands in said proposed district, the damages awarded to the several parcels thereof and amounts assessed for construction against the several parcels thereof, but the notice published in any other county or counties may contain a description of only the lands situate in said county for which said publication is made, together with the damages awarded to and assessments for construction against the several tracts, parcels, easements and interests situate in said county for which publication is made.

41-9-226. Notice of hearings on report; effect of personal service.

In case of service of said notice personally, or the acceptance and waiver thereof on all the owners of the lands within the district, said service shall be sufficient and give the court jurisdiction without said publication.

41-9-227. Hearings; modification of report generally.

If the court finds that the report requires modification the same may by order of the court be referred back to the commissioners, who may be required to modify it in any respect.

41-9-228. Hearings; confirmation order generally; appeal.

If there be no remonstrance, or if the finding be in favor of the validity of the proceedings, or after the report shall have been modified to conform to the findings, the court shall confirm the report and the order of confirmation shall be final and conclusive, the proposed work shall be established and authorized, and the proposed assessments approved and confirmed unless within thirty (30) days an appeal be taken to the supreme court, the said order of confirmation shall also fix the commissioners' bond.

41-9-229. Hearings; modification of combination order.

Said order of confirmation may, at the same or at any subsequent term of said court, be revised, modified or changed, in whole or in part, on petition of the commissioners, after such notice as the court may require, to parties adversely interested.

41-9-230. Hearings; supplemental report; amending original report.

At any time prior to making the order confirming said report or thereafter the court may permit the commissioners to present and file a supplemental report, or amend their report, as to any matter which, pursuant to the provisions hereof, was or might have been included in the original report presented by them, and after reasonable notice given to all parties interested, in such manner as the court shall direct, the court may, upon the hearing in said matter make such order as the case may require.

41-9-231. Judgment; entry when petition on proceedings dismissed.

(a) In case the petition or proceedings are dismissed as provided in W.S. 41-9-132, a judgment shall be entered against the petitioners and in favor of the commissioners for the costs, expenses, and liabilities incurred in said proceedings, but for the benefit of those who have rendered services or advanced money in the prosecution of said proceedings, or have recovered costs on successful contests therein.

(b) In case the proceedings are dismissed at any time, or the district is discontinued for any cause subsequent to the time provided in W.S. 41-9-132, a judgment shall be entered against the owners of all the lands then within the boundaries of said drainage district and in favor of the commissioners for all costs, expenses and liabilities incurred in said proceedings up to and including the time of said dismissal or said discontinuance, but for the benefit of those who have rendered service, or advanced money in connection with said drainage district, or have recovered costs on successful contests herein.

41-9-232. Judgment; filing of statement of costs; hearing.

Before any judgment is entered, said commissioners shall file with the clerk of the district court, in which said proceedings were instituted, an itemized statement of such costs and expenses, duly verified, upon which an order shall issue, requiring said petitioners to show cause before said court, at a time and place named, why judgment should not be entered against said petitioners for the amount of said costs and expenses. Notice of the hearing on said order to show cause, shall be given to said petitioners, by mailing to each a copy thereof, to their last known post-office address, at least twenty (20) days prior to the time set for hearing, and by publication of the same in one (1) or more newspapers, published in the county, where the proceedings are pending, at least three (3) successive weeks prior to the day set for such hearing. Said notice need not contain an itemized statement of said account.

41-9-233. Judgment; contributions for payment prorated.

All petitioners shall, among themselves, contribute in the payment of said judgment, in proportion to the number of acres of land they have within the boundaries of the proposed district at the time of the filing of said petition.

41-9-240. Payment generally; unpaid assessments as liens; duty of clerk of court; state lands.

Unless otherwise provided by said order, such assessment shall be payable at once; and from the time of the entry of said order, assessments for construction of new work and additional assessments

and interest thereon, shall be a lien upon the lands assessed, until paid. Any owner of land, or any corporation assessed for construction, may at any time within thirty (30) days after the confirmation of said report, pay into court, the amount of the assessment against his land or any tract thereof, or against any such corporation. Said payment shall relieve said lands from the lien of said assessment, and said corporation from all liability on said assessment. The clerk of said court shall collect no fees or commissions for collecting or disbursing such payments, and shall on demand of the commissioners of the district pay over to them all sums thus coming into his hands. Upon presentation to the state auditor of an order of the district court having jurisdiction of such drainage district, properly certified, the auditor shall draw his warrant on the treasurer on the common school account within the permanent land income fund in favor of the commissioners of such drainage district for the total amount that may be assessed against any lands included in such district, the title to which is in the state of Wyoming, and upon the payment of such warrants such lands shall thereby be relieved from the lien theretofore created for such costs of construction.

41-9-241. Payment in installments.

At the time of confirmation of any assessment provided for by chapter 76, Wyoming Compiled Statutes 1920, or acts amendatory thereof or supplemental thereto, it shall be competent for the court to order the same to be paid in installments of such amount and at such time as will be convenient for the accomplishment of the purposes for which such assessment was made, and the payment of the principal and interest of such notes or bonds of said district as the court shall grant authority to issue, such installments to become delinquent on the same date or dates as may be fixed by law for state and county taxes to become delinquent, and such installments shall draw interest from the date of any notes or bonds issued by the district and for the payment of which said assessments are pledged, at such rate, not to exceed seven percent (7%) per annum, as may be fixed by the court.

41-9-242. Current expenses; annual budget generally.

Assessments to meet expenses of any current year of any district shall become due, payable and delinquent at such time or times each year as may be fixed by law for state and county taxes to become due, payable and delinquent. Commissioners having charge of any drain shall on or before the first Tuesday of June of each year file with the clerk of the court having jurisdiction of such district, a report showing an itemized estimate of the money to be raised by assessment within the district for the purpose of constructing new work, maintenance and to meet the yearly current expenses of the district. In addition to the amount above provided, the commissioners may add a sum which in their judgment shall be sufficient to provide for possible delinquencies. Within thirty (30) days after filing such annual report, at a time and place to be fixed by the court or a judge thereof, the judge shall examine such report, hear all objections thereto, fix and determine the amount to be raised by assessments for the current year and cause such adjudication to be entered of record in said court and a certified copy thereof to be delivered to the commissioners of such district. The commissioners shall add thereto such amount as may be necessary to meet the principal and interest on lawful indebtedness of the district maturing during the current year, together with a sum which in their judgment shall be sufficient to provide for possible delinquencies. When thus completed it shall be known as "The budget of .... Drainage District for the year (year)" and also be verified under oath by any one (1) of the commissioners.

41-9-243. Assessment roll generally.

It shall be the duty of the commissioners of each drainage district, on or before the first Monday of August of each year to prepare an assessment roll of said district, which shall contain the name of the owner, if known, together with a description of each lot, tract and easement of land within said district, and the aggregate assessments of benefits confirmed by the court against the same; and the name of all corporations assessed, together with the aggregate assessment levied against such corporations

respectively. The assessment roll shall also show the amount assessed against each lot, tract and easement of land, and against each corporation in the district, for current expense and to meet the principal and interest on the indebtedness of the district for the current year. All such assessments shall be apportioned on the aggregate assessment of benefits last confirmed by the court. When such assessment roll is completed it shall be signed by the commissioners of said district and verified by any one of them. On or before the first Monday in August, of each year the commissioners of the drainage district shall deliver to the county commissioners of the county having jurisdiction of such drainage district the assessment roll of such district. The county commissioners of said county immediately upon the receipt of the assessment roll of such district and at the time of making the requisite tax levy for county purposes, shall levy and assess against each lot, tract and easement of land and against each corporation, the respective amounts levied and assessed against the same on said assessment roll. Thereupon the county commissioners shall certify to and deliver said assessment roll to the county assessor of such county, and in case the territory embraced in such district is located in two (2) or more counties a copy of the assessment roll as certified to by the county commissioners of the county having jurisdiction of such district shall be delivered to the assessor of each county in which any of the land of the district is located. Upon receipt of such assessment roll the assessors of the counties embracing any of the lands of such district shall extend upon the tax roll of such county the respective amounts levied and assessed against each lot, tract and easement of land, and against each corporation as shown by said assessment roll of said district.

41-9-244. Certification procedure.

When the commissioners shall fail to certify to the county commissioners of the proper county, any one (1) or more drainage assessments for construction, reconstruction, enlargement, extension, improvement, or repair, against any lands in said district, at the proper time, they may certify the same to the county commissioners of the proper county at any time thereafter, whether in the same or any subsequent year, as an additional assessment roll of said district for the then current year, and upon receipt of such additional assessment roll by such county commissioners it shall be the duty of such commissioners to make a levy therefor and to certify the same to the county assessor in the manner hereinbefore provided, and it shall then be the duty of the county assessor to add the said levy to the tax roll for the then current calendar year.

41-9-245. Additional assessments; generally.

If in the first assessment for construction the commissioners shall have reported to the court a smaller sum than is needed to complete the work of construction, or if in any year an additional sum is necessary to pay the principal of or interest on lawful indebtedness of said drainage district, further or additional assessments on the lands and corporations benefited, proportioned on the last assessment of benefits which has been approved by the court, shall be made by the commissioners of said drainage district under the order of the court or presiding judge thereof. Notice of hearing of the application for such additional assessment shall be published at least once each week for three (3) consecutive weeks in one (1) newspaper published in each county in which said lands, or any part thereof, within said district are situated which further or additional assessments may be made payable in installments, as specified in W.S. 41-9-241, and shall be treated and collected in the same manner as the original assessments for construction confirmed by the court, in said drainage district.

41-9-246. Additional assessments; commissioner's petition; hearings; modification of budget.

The commissioners of any drainage district within the state of Wyoming shall not incur any indebtedness for current expenses of the district in excess of the amount provided in the budget: provided, however, in case a greater sum than that provided in the budget is required the commissioners may file a petition setting forth the causes therefor, with the clerk of the court having

jurisdiction of said district. Immediately upon the filing of said petition the court shall make an order fixing the time and place of hearing and directing the form and manner of notice thereof to be given if the court deem such hearing advisable. If the court shall authorize the expenditure of a greater sum of money the commissioners shall be authorized to incur indebtedness equal to the amount of the additional sum authorized by the court, and in case the expenditure occurs at a time when it is too late to place the amount upon the assessment roll for the current year, such amounts may be added to the budget of ensuing years. All debts contracted in contravention of this section shall be void.

41-9-247. Omissions; generally.

Omission to assess benefits, or to assess for construction, or to make additional assessment, or to make assessment for repairs, or to award damages to any one (1) or more tracts of land or easements in a drainage district, or to assess benefits, or to assess for construction, or to assess for repairs, or to make additional assessments against any corporation which should have been assessed, shall neither affect the jurisdiction of the court to confirm the report nor to render the benefits assessed, or the assessments for construction, or additional assessments, or assessments for repairs against other lands, or assessments against any corporation voidable, but the commissioners of said drainage district shall thereafter, as soon as they discover the omission, or as soon as notice thereof, either agree with the omitted parties upon the proper assessments and award the damages or assess such benefits, make such assessments for construction and make such additional assessments against the omitted lands and corporations, and award such damages as shall be just, and report the facts, together with such assessments and awards, to the court.

41-9-248. Omissions; agreement between landowner and commissioners.

In case of omission to assess any corporation or land that should be assessed for benefits, or construction, or repair, or additional assessment, or to award damages, said omitted party and the owner of omitted land may in writing agree with the commissioners of said district what the assessment should be against said land, or against said corporation, or what said damages should be and such agreement shall be acknowledged and witnessed as provided above for waivers, and be filed in the court.

41-9-249. Application of state revenue laws; tax sale for delinquent assessments.

The revenue laws of this state for the collecting of taxes on real estate for county purposes, except as herein modified, shall be applicable for the purposes of this act, including the payment of interest and enforcement of penalties and forfeitures for delinquent taxes. All penalties and interest on assessments of a drainage district collected by the county treasurer shall be the property of such district, and all interest and penalties collected on assessments of such district levied for purposes other than bonded indebtedness shall be paid to the treasurer of the district levying such assessment; such payments to be made on or before the fifth day of the month following the date of such collection. In advertising property for sale for delinquent taxes the county treasurer shall show in a separate column in such advertisement the amount of unpaid drainage assessment levied against each lot, tract and easement of land in said district. The county treasurer of any county in which any portion of the land of any drainage district is located, and at the time of advertising real property for sale for state and county taxes shall include in such advertisement, the amount of delinquent drainage assessments against each lot, tract or easement of land. At the time and place of sale of real property for state and county taxes the county treasurer shall also separately sell the land for delinquent drainage district assessments and shall issue separate certificates of sale therefor. In offering such real estate for sale for drainage assessments the county treasurer shall offer the entire tract assessed and the first bid received in an amount sufficient to pay such assessment, together with interest, penalty and costs, shall be accepted and treasurer shall not attempt to secure a higher bid. In case no purchaser appears to purchase the land offered for sale for delinquent drainage assessments the

treasurer shall make an entry on his delinquent tax roll "Sold to .... Drainage District of .... County, Wyoming" and shall issue a certificate of purchase to such district. The owner of any tract, lot or easement of land in a drainage district shall have the right to redeem the said land at any time within eighteen (18) months from the date of sale thereof by the county treasurer as shown on said certificate by paying therefor the amount for which said land was sold by the county treasurer, together with such penalties and interest as may be provided by law relative to sales of land for delinquent state and county taxes, and in case the owner of any lot, tract or easement of land in any district shall fail to redeem said land from said sale for drainage assessment, the county treasurer shall issue a deed therefor to the purchaser at said sale, his heirs or assigns. The drainage district purchasing such land at said sale shall have all the right of natural persons in regard to owning, holding and selling such certificate and including the receipt of a deed, holding the title to real estate and selling and disposing of the same. The commissioners shall in no case sell said land or certificate of purchase for an amount less than the amount for which said land was sold to said district, including interest thereon, unless authorized so to do by the court. The procedure for the issuing of the deed, including the form of the deed, time of publication and service of notice of intention to apply for deed, shall be the same as is now or may hereafter be provided by law for the issuances of tax deeds by the county treasurer upon the sale of land for state and county taxes, except as herein modified.

41-9-250. Objections; landowners to show cause; presumption of validity of assessments.

Any owner of land, or any interest in land, within a drainage district, who claims that his land in said district is exempt from liability for, or lien of any assessment for construction or repairs, or any additional assessment by said commissioners levied against the same whether said assessments be the first or any subsequent assessment or questions the legality of such assessment, may at any time, on ten (10) days notice, or order to show cause, be brought before the court having jurisdiction and required to show cause why said land should not be bound by all drainage district assessments in any report or reports of the commissioners of said district assessed against the same. The presumption shall be in favor of the regularity of such assessments, and they shall stand as valid assessments unless the owner of such land, or some interest therein shall show that said assessment is inequitable, or is void because the lands were not subject to assessment in the first instance.

41-9-251. Objections; statement of owner; default; decrees; appeal; adjournment of hearing; trial.

On the return day of said notice, or order to show cause, the said owner shall in writing, verified on oath, state the facts on which his claim is based. If he fails to appear and set forth such facts, upon the filing of the proof of service of such notice, or order to show cause upon him when notice is necessary, an order shall be made by the court confirming such assessment or assessments, which order shall be final and conclusive unless appealed from to the supreme court within thirty (30) days. The court may adjourn the hearing on said return day and thereafter, and if on the return day, or adjourned day, a trial is found necessary, the court shall fix the time and place of trial, and frame all necessary issues as provided in W.S. 41-9-104.

41-9-252. Objections; procedure when assessments declared void.

In case the court decides that such lands could not, at the time said assessment or assessments were made, be assessed for drainage purposes, and that said assessment or assessments, are void, the commissioner shall levy an additional assessment on all of the assessable lands and corporations in said district based on the last assessment of benefits approved by the court, to pay the sum lost to the district by reason of the void assessment, or shall pay said sum out of the general funds of the district.

41-9-253. Assessments as liens generally.

All assessment provided for in chapter 76, Wyoming Compiled Statutes 1920, and acts amendatory thereto and supplemental thereof, together with all interest thereon, and all penalties for default in the payment of same, and all costs of collecting the same shall, from the date of the order of court confirming such assessments until paid, constitute a perpetual lien in amount not in excess of the benefits severally assessed, upon all the land and other property against which such assessments shall be levied, as provided in this act, to which only the lien of the state for general state, county, city, town or school taxes, shall be paramount, and no sale of such property to enforce any general state, county, municipal, or school tax, or other lien shall extinguish the lien of such assessments.

41-9-254. Assessment as court judgment.

Each and every sum assessed for construction, for additional assessment or for repairs against any land or against any corporation, as soon as such assessment is confirmed by the court, shall be and is declared to be a judgment of the district court in favor of said drainage district and against said land or corporation, and unless some other method of collection is herein provided, shall be collected in the same manner as any other money judgment is collected, provided that whenever said assessment is a lien upon land it shall only be collected out of said land on which it is a lien.

41-9-255. Conclusiveness of order; appeals generally.

The collection of any assessments made by the commissioners for construction and confirmed by the court, shall not be restrained or obstructed by reason of any omission, imperfection or defect in the organization of any district or in any proceedings occurring prior to the order confirming the assessments of benefits, but such order shall be conclusive as to the regularity of all proceedings relating to the assessments of the benefits unless appealed from within thirty (30) days after the entry of such order.

41-9-256. Notes and bonds generally.

(a) The commissioners may borrow money, not exceeding the amount of assessment for construction, additional assessments and assessments for repairs, reconstruction, enlargement, extension and improvement, unpaid at the time of borrowing for the construction, repair, reconstruction, enlargement, extension or improvement of a work which they shall be authorized to construct, repair, reconstruct, enlarge, extend or improve, or for the payment of indebtedness they may have lawfully incurred, and may secure the same by notes or bonds, bearing interest and not running beyond one (1) year after the last installment of the assessment, on the account of which the money is borrowed, shall fall due, which notes or bonds shall not be sold at less than ninety percent (90%) of their face value, which bonds are transferable by delivery to the same extent as negotiable paper of the highest character. The notes or bonds shall not be held to make the commissioners personally liable, but shall be held to be the lawful indebtedness of the district and constitute a lien upon the assessments for the repayment of the principal and interest of the notes or bonds.

(b) In case any monies derived from bonds sold to pay for the original construction of said drainage system, or for the reconstruction, enlargement, extension or improvement thereof, now or hereafter, remains on hand after such work is completed and paid for, and not raised for damages unpaid for, such residue may be used in maintenance and repair work, as in this act provided before making assessments for such maintenance and repair.

41-9-257. Refunding of indebtedness.

The court may, upon the petition of the commissioners, authorize them to refund any lawful indebtedness of the district now existing or which may hereafter be incurred by taking up and

canceling all or a part of its outstanding notes and bonds, as fast as they become due or before, if the holders thereof will surrender the same, and issue in lieu thereof new notes or bonds of the district, payable in a time as the court deems proper, in an amount sufficient to retire all notes and bonds of the district then outstanding and the unpaid accrued interest thereon, together with an amount as the commissioners of the district deem necessary to provide for possible future defaults and delinquencies in the payment of assessments. For the purpose of providing funds to pay the refunding bonds with interest thereon, the commissioners may levy assessments against the land in the district, but not in excess of the benefits assessed. In the alternative the commissioners may, if they deem it advisable, issue refunding bonds in an amount sufficient only to retire all notes and bonds of the district then outstanding and the unpaid accrued interest thereon, and may, if they desire to provide a fund to provide for possible defaults and delinquencies in the payment of assessments, levy from year to year assessments against the land in the district for these purposes, but not in excess of the benefits assessed against the same.

41-9-258. Effect of change in assessments upon existing bonds.

No bonds or other obligations issued by any drainage district shall be adversely affected by any subsequent change in assessments of benefits.

41-9-259. Collection generally.

All drainage assessments shall be collected by the same officer and in the same manner and at the same time as state and county taxes are collected and when collected shall be paid to the treasurer of the district, except such assessments, together with interest, penalty and costs thereon, as are collected upon assessments levied for the payment of principal and interest of bonded indebtedness of said district, which funds shall be retained by the county treasurer of the county in which such district is organized, and the principal and interest of all bonded indebtedness of such district shall be paid by such county treasurer from such fund, at the place of payment designated in said bonds and interest coupons; provided, that when all bonded indebtedness of any drainage district is fully paid and retired such funds remaining in the hands of the county treasurer shall be paid to the treasurer of such district, for the use of the district. The commissioners of any drainage district may elect the treasurer of the county having jurisdiction of such district treasurer of such district.

41-9-260. Bidding procedure when cost over $500.00.

In all cases where the work to be done at any one time under the direction of the commissioners shall, in their opinion, cost to exceed five hundred dollars ($500.00), the same shall be let to the lowest responsible bidder, and the commissioner shall advertise for sealed bids, by notice published in some newspaper published in the county in which the petition is filed, and may advertise in one (1) or more newspapers published elsewhere. If there be no newspaper published in the county in which the petition is filed, they shall advertise in some newspaper published in an adjoining county, which said notice shall particularly set forth the time and place when and where the bids advertised will be opened, the kind of work to be let and the terms of payment. Said commissioners may continue the letting from time to time, if in their judgment the same shall be necessary, and shall reserve the right to reject any and all bids.

41-9-261. Commissioners not to have financial interest in construction contracts.

And they [the commissioners] shall not during their term of office, be interested directly or indirectly in any contract for the construction of any drain, ditch, levee or other work in such drainage district, or in the sale of materials therefor, or in the wages of or supplies for men or teams employed on any such work in said district.

41-9-262. Entry of commissioners on land; payment of damages to owner.

The damages allowed to the owners of lands shall be paid or tendered before the commissioners shall be authorized to enter upon the lands, for damage to which the award is made, for the construction of any drains, ditches or levees proposed thereon. If the owner is unknown or there shall be a contest in regard to the ownership of the lands, or the owner will not receive payment, or there exists a mortgage or other lien against the same, or the commissioners cannot for any other reason pay him, they may deposit the said damages with the clerk of the court, for the benefit of the owner, or parties interested, to be paid or distributed as the court shall direct, and such payment shall have the same effect as the tender to and acceptance of the damages awarded by the true owner of the land. This section shall not, however, prevent said commissioners, their agents, servants and employees going upon said lands to do any and all work found necessary prior to making their assessment of benefits and award of damages, and the trial on their report thereof.

41-9-263. Location of drains.

When practicable said drains herein provided for shall be laid out and constructed on the side of public highways.

41-9-264. Drained lands outside of district; commissioners' report requesting assessments.

Whenever any drained lands outside a drainage district are receiving the benefits of the drains of said district, by direct or indirect, natural or artificial connection therewith, the commissioners of said district may report said facts to the court and ask that said lands, describing them, be brought into said district and assessed for the benefits by them received from the drains, ditches or levees of said district.

41-9-265. Drained lands outside of district; court order to landowners to show cause.

Upon the filing of said report the court shall order the owners of such lands to be notified of the filing of said report and the contents thereof, and shall require such owners to show cause at a time and place therein fixed, not less than twenty (20) days thereafter, why their said lands should not be brought into said district and assessed for said benefits.

41-9-266. Drained lands outside of district; hearings; remonstrances; trial on issues.

At the time and place fixed for hearing said report any of said landowners may appear and remonstrate against the confirmation of said report. All remonstrances shall be in writing, verified and shall set forth the facts on which they are based. All issues arising on said report shall be tried by the court without a jury.

41-9-267. Drained lands outside of district; hearings; findings; annexation to district.

If the court shall find that said lands or any of them are receiving the benefits of any such drain, ditch or levee, the court shall so find in writing and shall order said lands to be annexed to and made a part of said district and benefits to be assessed against the same by the commissioners of said district.

41-9-268. Drained lands outside of district; effect of court order; appeal.

Said order shall be final and conclusive unless appealed from the supreme court within thirty (30) days from the date of entry thereof.

41-9-269. Drained lands outside of district; levy of assessments by commissioners.

Said commissioners shall, after the time for appeal is past, assess against each parcel, tract and easement of and in said annexed lands reasonable and just benefits, and shall assess against said lands for construction and repairs such sum as shall be just. If lands similarly situated and benefited are found in said district the annexed lands shall be assessed a like sum of benefits and damages as said lands in the said district to which they are sought to be annexed, and a sum for construction of said work which shall be equal to all sums assessed for the complete construction of the drainage system in the district to which they are sought to be annexed against lands having the same assessment of benefits in said district.

41-9-270. Drained lands outside of district; filing of commissioners' assessment report; hearing; trial; amendment or confirmation of report.

The commissioners shall file their said report and assessments in court. The court shall by order require said owners to show cause at a time and place therein fixed, not less than twenty (20) days after the service of said order, why said report and assessments should not be confirmed. And on the hearing on said order to show cause if a jury trial is demanded the court shall frame issues on benefits and damages and empanel a jury or adjourn the hearing thereon until some term of court when a jury is in attendance and take the verdict of a jury on such issues. All other issues arising on said report shall be tried by the court. The court shall order all necessary amendments of said report and make written findings of fact and when said report is amended shall by order confirm the same.

41-9-271. Drains across railroad rights-of-way; generally.

Said commissioners shall have the right to lay out and construct all necessary drains, ditches and levees across any railway right-of-way or yards in their district, and any railway company, whose right-of-way or yards crosses the line of any proposed drain, ditch or levee, shall open its right-of-way or yards and permit such drain, ditch or levee to cross the same, as soon as said drain, ditch or levee is constructed to such right-of-way.

41-9-272. Drains across railroad rights-of-way; liability of district to railroad.

Every drainage district shall be liable to the railway company, whose right-of-way or yard any of its drains, ditches or levees crosses, for the reasonable cost of the culverts and bridges, made necessary by said drain, ditch or levee, crossing said right-of-way or yards, but of not more expensive character than the average other culverts and bridges on said division of railway, crossing streams or ditches of approximately the same width and depth, and within a hundred (100) miles of said district ditches.

41-9-273. Drains across railroad rights-of-way; railroads to grant free access; failure to comply.

Upon receiving fifteen (15) days notice in writing, any railway company, across whose right-of-way or yard any such drain, ditch or levee is laid out shall open its right-of-way or yards, and permit said commissioners and their contractors, agents and employes to construct said drain, ditch or levee, across said right-of-way or yards. For every day that said railroad company fails, after the end of said fifteen (15) days, to open their said right-of-way or yard, as hereinbefore required, it shall forfeit twenty-five dollars ($25.00) to said drainage district, to be collected in an action, as other forfeitures are collected, or set off against any damages that have been awarded to such company. If said railway company fails to open its right-of-way or yard along the line of said drainage district, drain, ditch or levee, the commissioners may, at any time after the expiration of said fifteen (15) days, open such right-of-way and yard along the line of said drains, ditches and levees, and construct the same.

41-9-274. Petition for reconstruction, enlargement, extension or improvement; filing by commissioners; contents.

(a) If, after the completion of work on any drainage system under the provisions of this act, it shall become necessary to reconstruct, enlarge, extend or improve the said system in order to protect or reclaim any part of the district from waste or seepage water, the commissioners of said district may file in the court, in which the original proceedings were had, a petition setting forth:

(i) The necessity for the proposed work describing the necessity;

(ii) A general description of the proposed work;

(iii) A general description of the starting point routes and termini of any new ditches, drains, levees or other work proposed to be constructed;

(iv) The names of owners of all lands through or over which any such ditch, drain, levee or other work is proposed to be constructed, so far as such names are known to the petitioners;

(v) That the proposed work will promote public health and welfare;

(vi) That the total benefit from the proposed work will exceed the cost, together with the damages resulting therefrom, taking into consideration all benefits and all damages resulting therefrom both within and without said district;

(vii) A prayer that the commissioners be authorized to proceed with the proposed work.

41-9-275. Petition for construction; filing by landowners in lieu of commissioners.

If, in any such case, the commissioners fail or refuse to file such petition, the same may with like effect be signed and filed by not less than fifty percent (50%) of the owners of land within the district, or by the owners representing not less than fifty percent (50%) in area of the lands therein.

41-9-276. Petition; hearing procedures generally.

Upon the filing of such petition like proceedings shall be had as in the case of the filing of the preliminary report of the commissioners, except that the boundaries and organization of the district shall in no way be affected by the proceeding and except that in the notice of hearing shall state the names of the owners of lands over or through which any ditch, drain, levee or other work is proposed to be constructed as stated in the petition, which owners shall be served with said notice as provided for serving of notice of hearing on the petition for organization of the district and if the petition is filed by landowners, the commissioners also shall be served with notice in like manner.

41-9-277. Petition; procedure when petition granted.

If, upon the hearing, the prayer of the petition shall be granted, like proceedings shall be had in all respects as in case of the confirmation of the preliminary report of the commissioners, except that the boundaries and organizations of the district shall not be affected by the proceedings and any costs taxed against the petitioners therein shall be paid by the district, if the petition was filed by the commissioners. If, upon the hearing of the final report of the commissioners, the proposed work or any part thereof is by the court ordered to be done, all subsequent proceedings with respect to the doing thereof and the payment therefor shall be governed by the provisions of the statute applicable in cases of original construction work.

41-9-278. Petition; assessments.

In making their assessments of benefits and for the work to be done under the provisions of this amendment, the commissioners shall regard the proposed work as an integral part of an entire system, and shall take into consideration all assessments of benefits and for construction previously made, in order that, insofar as practicable, no part of the district shall bear an unjust portion of the total cost of the entire system.

ARTICLE 3
DIVISION

41-9-301. Authorized.

Any drainage district now or hereafter organized under the provisions of chapter 76, Wyoming Compiled Statutes, 1920 and acts amendatory thereof and supplemental thereto, may be divided into two (2) or more districts in the manner provided in this chapter.

41-9-302. Contents of petition.

(a) Whenever a majority of the adult owners of lands within any portion of an organized drainage district, who shall represent more than one-half in area of the lands within said portion which it is proposed shall be cut off and divided from the drainage district as organized, desire to effect such division, they may file in the district court of the county having jurisdiction over the original district, a petition setting forth:

(i) The proposed name of the new drainage district to be formed by such division;

(ii) The necessity of the proposed work, if any, and the necessity and reasons for division, describing the same;

(iii) A general description of the proposed starting points, routes and termini of the proposed drains, ditches and laterals;

(iv) A general description of the lands proposed to be included in said district;

(v) The names of the owners of all lands in said proposed district, when known;

(vi) The names of the owners of all other lands in the district proposed to be divided, when known;

(vii) A detailed statement of the existing indebtedness of the original drainage district and the proposed apportionment of said indebtedness as between the remaining portion of the original district and the proposed new district based upon the assessments for benefits against the lands contained therein, as last confirmed by the court.

(b) If the purpose of said petition, in addition to a division of the district, is the enlargement, repair and maintenance of a ditch, or other work heretofore constructed under any law of the state, said petition shall give the general description of the same, with such particulars as may be deemed important.

(c) Said petition shall pray for the organization of a drainage district by name, and with the boundaries proposed, and for the appointment of commissioners for the execution of any proposed

work according to the general provisions of chapter 76, Wyoming Compiled Statutes, 1920, as amended.

41-9-303. Order for hearing on petition; notice generally.

(a) On such petition being filed, the court or judge thereof shall make an order fixing the time and place for a hearing thereon, and ordering notice; thereupon the clerk of said court shall cause twenty (20) days notice of the filing of said petition to be given:

(i) By posting notice thereof in at least five (5) public places in said proposed new district, and in at least five (5) public places in the remainder of the district proposed to be divided;

(ii) By serving or causing to be served a copy of such notice on each owner of land within said district, proposed to be divided, either personally or by registered mail to his last known address at least twenty (20) days prior to the hearing; and by serving in like manner a similar notice on each of the commissioners of the drainage district proposed to be divided; and

(iii) By publishing a notice thereof at least once a week for three (3) successive weeks in some newspaper published in the county in which any part of the district is located. If there be no newspaper in any such county, such notice shall be published in a newspaper published in the adjoining county nearest the land in said district.

(b) Such notice shall state:

(i) In what court said petition is filed;

(ii) A brief description of any proposed new work, with the starting points, routes and termini of new drains and ditches;

(iii) The boundaries of the proposed district;

(iv) The name proposed for such district;

(v) The proposed apportionment of the existing indebtedness as between the remaining portion of the original district and said proposed new district;

(vi) The time and place as fixed by the court for the hearing on said petition.

41-9-304. Manner of service.

Service of said notice, and proof of service thereof, shall be made in the same manner as is now provided by law in the case of the organization of new districts under chapter 76, Wyoming Compiled Statutes, 1920, as amended.

41-9-305. Hearing.

Upon the day fixed for the hearing on such petition, all parties owning lands, or any interest or easement in land, within said district, proposed to be divided, or whomsoever would be affected thereby, or the commissioners of the original district, may appear and contest the granting of said petition on the grounds that said proposed division will not serve the best interests of all parties interested, and the grounds specified in W.S. 41-9-111.

41-9-306. Court order; creation of new district as corporate entity; apportionment of indebtedness; proration of maintenance expenses of existing works in both districts.

If it shall appear to the court upon said hearing that the requisite number of signers appear on said petition, as required herein; that due and proper service has been had upon all parties interested as herein provided; and that the best interests of all parties interested will be served by the proposed division, he shall so find, and enter an order creating said new district, appointing commissioners therefor, apportioning the indebtedness of the original district as between the remaining portion of the original district and the proposed new district organized therefrom based upon the assessments for benefits last confirmed by the court against the lands embraced in each, and determining the proportionate amount, if any, of the annual operation and maintenance expense the new district shall bear of and for maintaining the drainage system constructed by the original district, and thereupon such new drainage district shall be, and thereby declared to be organized as an independent drainage district by the name fixed by court, with the boundaries as therein fixed, and with the indebtedness as apportioned to it, to be a body corporate, with the right to sue and be sued, adopt a corporate seal, and have perpetual succession the same as if organized as an original drainage district under the statute in such case provided; provided, however, that no such order shall be effective for the apportionment of indebtedness as herein provided unless and until the owners and holders of the evidences of indebtedness against the original district, whether bonds or otherwise, shall have filed in said court a written consent and approval of the apportionment thereof, as made by the court.

ARTICLE 4
JOINT OPERATION WITH MUNICIPALITIES

41-9-401. Agreement generally; apportionment of maintenance expenses; municipal assessments generally.

Whenever any incorporated town, city or village lies in whole or in part within the boundaries of any drainage district now organized, or which may hereafter be organized in the state of Wyoming, the commissioners of said district may enter into an agreement with said town, city or village under the terms of which said agreement, said town, city or village may agree to operate, maintain, repair or extend any drainage works lying wholly or in part within said town, city or village; and when such agreement has been entered into, said drainage district shall be relieved from the expense of operation, maintenance, extension or repairs of such drains except where any portion of the district discharges its water through the outlets diverted through said town, city or village in which case the drainage district shall assist in maintaining the said drain on a basis of land drained into said drain and said town, city or village and the individual freeholders within said town, city or village shall be relieved from the payment of assessments for operation, maintenance, repairs or extension levied by said drainage district during the life of said agreement. Such town, city or village shall thereafter levy each year, as a part of its assessment for city purposes, such amount as shall be found necessary to operate, maintain, extend or repair said drains in the same manner as is now provided for assessments for sewerage; provided, however, that any drain lying partly within said town, city or village and partly without may, by agreement between said commissioners by and with the consent of the bondholders and said town, city or village, be jointly maintained by the parties to such agreement.

41-9-402. Assessments for bond principal and interest; levy and collection.

The commissioners of said drainage district, the holders of any bond or bonds of the said district and the authorities of any such town, city or village shall also enter into an agreement whereby all assessments for bond principal and interest shall be collected by such town, city or village in the same manner as is now provided by law for the collection of sewerage taxes. Upon such agreement being reached, the commissioners and bondholders of such drainage district shall furnish to said town, city or village a roll showing the lots, tracts or parcels of land within said town, city or village

assessed for drainage, the assessment for benefits thereon and the assessment for construction thereon. Said town, city or village shall thereupon proceed to levy and collect such amounts as may be necessary for the payment of said assessment for construction in the same manner as is now provided by law for the levy and collection of sewerage assessments, and shall remit payments to the bondholders entitled to receive such payments upon such drainage bonds semi-annually upon the first day of January and the first day of July of each year.

41-9-403. Mill levy and indebtedness of town not to be affected.

The provisions in this act [§§ 41-9-401 through 41-9-403] contained for levy, assessment and collection of drainage taxes shall not limit the mill levy of said town, city or village and the portion of said bonded debt of said drainage district assumed for collection by said town, city or village shall not be counted as a portion of the town's indebtedness when computing whether or not the debt limit of said town, city or village has been reached.

ARTICLE 5
CONTRACTS WITH UNITED STATES

41-9-501. Qualifications of districts as prerequisites to contracting.

Except as otherwise provided in this act [§§ 41-9-501 through 41-9-504], drainage districts organized under the provisions of chapter 76, Wyoming Compiled Statutes, 1920, and contracting with the United States under authority of this act, shall be organized, administered and have the same powers, duties and obligations as provided for in said chapter 76, Wyoming Compiled Statutes, 1920 and all acts amendatory thereof or supplementary thereto.

41-9-502. When district authorized to enter into contract.

Any drainage district organized under the provisions of chapter 76, Wyoming Compiled Statutes, 1920, and all acts amendatory thereof or supplementary thereto, through its commissioners, shall have power to enter into contracts with the United States for the construction, operation and maintenance of any drainage or other works authorized to be done under the provisions of said statutes and authorized under any act of congress heretofore or hereafter enacted, providing for or permitting such a contract on the part of the United States, after said contract has been first submitted to the qualified electors of said district at an election held for that purpose, and at which a majority of the qualified electors present and voting has voted in favor of making such a contract.

41-9-503. Securing of district indebtedness due to contract.

The commissioners may secure the indebtedness incurred by the district in such contract as provided for in W.S. 41-9-502, by issuing bonds of the district in such form, terms and denominations as may be fixed by the secretary of the interior in carrying out the provisions of any act of congress heretofore or hereafter enacted providing for or permitting such a contract on the part of the United States and the acceptance and deposit or sale of bonds of the district by the United States; said bonds may be delivered to the United States and held by it or, when deemed desirable or when the appraised value of the land in the district is double the bonded indebtedness, sold by the United States, and the net proceeds received from the sale of said bonds applied to the liquidation of the contract indebtedness of the district to the United States.

41-9-504. Unentered public lands as majority of district; appointment of commissioners; term; removal; subsequent appointment or election.

When a majority of the lands within the district are unentered public lands, a majority of the commissioners of the district, who shall be residents of the state, may be appointed by the secretary of the interior, and shall be subject to removal from office by him and any vacancy so created may be filled by further appointment by the secretary of the interior. Commissioners thus appointed by the secretary of the interior shall hold office until such time that the unentered public lands within the district constitute a minority of the total area, after which they shall be appointed or elected as otherwise provided by this chapter 76, Wyoming Compiled Statutes, 1920, and all acts amendatory thereof or supplementary thereto; if a majority of the commissioners of the district are so appointed by the secretary of the interior, then the remaining commissioners shall be appointed or elected at large within the entire drainage district for terms of two (2) years each, which terms, however, shall be limited to and expire on the first Tuesday in July next following the date when the unentered public lands within the district constitute less than a majority of the total acreage within the district, after which the commissioners shall be appointed or elected in the same manner and for the same terms as provided for in the case of first appointment or election of commissioners under the said statutes.

ARTICLE 6
DISSOLUTION

41-9-601. Petition of landowners.

When the commissioners of a drainage district by unanimous vote of the total membership thereof shall determine to call an election or whenever a majority of the landowners in any drainage district in this state, who shall represent one-half of the ownership of the lands theretofore assessed for benefits and construction within said drainage district, shall file with the commissioners of such district a petition praying for the dissolution thereof, it shall be the duty of the commissioners of such district to forthwith call an election of all of the landowners of said district to determine whether or not such district shall be dissolved.

41-9-602. Election; notice.

Notice of such election shall be published for four (4) successive weeks in one (1) or more newspapers published in each county in which any portion of the lands embraced within such district is situated, stating the time and place of said election and the object thereof, and in addition thereto, the commissioners of said district shall give the same notice as is required in case of annual elections in drainage districts.

41-9-603. Election; conduct; certification of result; report of district indebtedness.

If at any such election which shall be conducted in the same manner as is now provided by law for the conduct of annual elections in drainage districts, a majority of all of the qualified voters owning a majority in acreage of the lands assessed for benefits in the district, shall be in favor of the dissolution of such district, the commissioners of such district shall forthwith certify to the district court having jurisdiction of such district the result of such election, and at the same time shall report to the court the amount and character of the then existing indebtedness of the district. In the event the question of the dissolution of such district does not carry at such election the question shall not again be raised for a period of one (1) year from the date of such election.

41-9-604. Order for hearing on results of election; generally.

Upon the filing of the commissioners' report and return of election, an order shall be made and entered by the court fixing the time and place for a hearing thereon, at which time and place all creditors and other persons interested may appear and show cause why said district should not be dissolved.

41-9-605. Election hearing results; publication.

A copy of such order to show cause shall be published for four (4) successive weeks prior to said hearing in a newspaper published in each county in which lands embraced in said district be situated.

41-9-606. Hearing; final settlement.

Upon said hearing, the court must find, on the evidence submitted, if the district be ordered dissolved, that the best interests of all parties interested shall be served by the proposed dissolution, and shall determine the amount of the existing indebtedness of such district, if any, and shall make an order requiring the payment of the same. Upon the filing by the commissioners of proper receipts, showing payment of all indebtedness against the district, the court shall thereupon make a final order dissolving the district, and in said order the court may provide for a receiver who shall have full authority to collect and distribute any assets or property formerly belonging to said district, who shall be guided by and shall comply with the provisions of W.S. 1-33-101 through 1-33-110, and the amendments thereof in the performance of his duties.

CHAPTER 10
WATER AND SEWER DISTRICT LAW

41-10-101. Definitions.

(a) As used in this act [§§ 41-10-101 through 41-10-151] the following words or phrases shall be defined as follows:

(i) "District" shall mean any district organized or proposed to be organized in the case of organizational provisions pursuant to this act;

(ii) "Water district" shall mean any district organized to acquire any water project for the purpose of supplying water for domestic purposes by any available means, the treatment of such water, and its distribution, for which purposes the district shall have power to acquire water rights, treatment facilities and lines for a water system, and appurtenant facilities, within and without its corporate limits;

(iii) "Sewer district" shall mean any district organized to acquire any sewer project for the purpose of providing sanitary sewers, treatment facilities, disposal plant or other treatment and disposal works, and appurtenant facilities, or storm sewers, flood and surface drainage works, and appurtenant facilities, or providing both such sanitary and storm sewers, works and facilities, and providing all necessary, proper or desirable equipment and appurtenances incident thereto;

(iv) "Water and sewer district" shall mean any district organized to acquire any such water and sewer project. A district may or may not be created for a combination of water and sewer purposes;

(v) "Board" shall mean the board of directors of a district and shall be the governing legislative body thereof. The board shall act whenever any other relevant act empowers or requires action by the city council, town council or other governing body of a municipality;

(vi) "Directors" shall mean the members of a board;

(vii) "Acquisition" or "acquire" shall mean the acquisition by purchase, construction, installation, reconstruction, condemnation, lease, rent, gift, grant, bequest, devise, contract or other acquisition as may be deemed necessary or desirable by the board, or any combination thereof;

(viii) "Improvement" or "improve" shall mean the extension, betterment, alteration, reconstruction, repair or other improvement as may be deemed necessary or desirable by the board, or any combination thereof;

(ix) "Equipment" or "equip" shall mean furnishing all necessary or desirable, related or appurtenant, facilities, or any combination thereof;

(x) "Project" shall mean any structure, facility, undertaking or system which a district is authorized to acquire, improve, equip, maintain or operate. A project may consist of all kinds of personal and real property, including but not limited to land, improvements and fixtures thereon, property of any nature appurtenant thereto or used in connection therewith, and every estate, interest and right therein, legal or equitable, including terms for years, or any combination thereof;

(xi) Repealed by Laws 1998, ch. 115, § 5.

(xii) Repealed by Laws 1998, ch. 115, § 5.

(xiii) An "election" authorized under this act shall be held, conducted and governed as nearly as practicable according to the Special District Elections Act of 1994 as supplemented by this act.

(A) Repealed by Laws 1998, ch. 115, § 5.

(B) Repealed by Laws 1998, ch. 115, § 5.

(C) Repealed by Laws 1998, ch. 115, § 5.

(D) Repealed by Laws 1998, ch. 115, § 5.

(E) Repealed by Laws 1998, ch. 115, § 5.

(F) Repealed by Laws 1998, ch. 115, § 5.

(G) Repealed by Laws 1998, ch. 115, § 5.

(H) Repealed by Laws 1998, ch. 115, § 5.

(J) Repealed by Laws 1998, ch. 115, § 5.

(xiv) "Publication" or "publish" for provisions other than election provisions, shall mean publication for at least once a week for three (3) consecutive weeks by three (3) weekly insertions in at least one (1) newspaper of general circulation in the district, the first publication in the district being at least fifteen (15) days prior to the designated time or event. It shall not be necessary that publication be made on the same day of the week in each of the three (3) calendar weeks, but not less than fourteen (14) days shall intervene between the first publication and the last publication, and publication shall be complete on the day of the last publication. Publication requirements for any election under this act shall be as specifically provided in this act, or if not specifically provided in this act, as required in the Special District Elections Act of 1994;

(xv) A "resolution" adopted by at least a majority of the directors present constituting a quorum in meeting duly assembled, unless the bylaws of the district require a greater number, shall constitute the formal written instrument by which a board shall act in the exercise of any legislative power or upon a permanent matter, or both. Otherwise a board may act by resolution or verbal motion so adopted. Whenever any other relevant act empowers or requires action by ordinance of the city council, town council or other governing body of a municipality, the board shall act by resolution;

(xvi) Repealed by Laws 1998, ch. 115, § 5.

(xvii) Repealed by Laws 1998, ch. 115, § 5.

41-10-102. Lands included in district.

(a) A district may include all or a portion of the unincorporated area in a county in the state of Wyoming.

(b) No lands included in any city or town shall be included in any district without the written consent of the governing body of the city or town.

(c) No tract of twenty (20) acres or more shall be included in any district without the written consent of each person having legal (as distinguished from equitable) title to the tract.

(d) A district may consist of noncontiguous tracts or parcels of land.

(e) No area within a district may be annexed to a city or town, but nothing herein contained shall be construed as preventing the dissolution of a district or the exclusion therefrom of any land therein as herein authorized for the purpose of permitting such an annexation, or as prohibiting an annexation in accordance with the provisions of W.S. 41-10-152 through 41-10-157.

(f) No two (2) districts created under this act [§§ 41-10-101 through 41-10-151] for the same purpose may overlap each other, but nothing herein contained shall be construed as preventing any tract or parcel of land being simultaneously situate in a water district and in a separate sewer district.

41-10-103. Establishment of districts; jurisdiction of board of county commissioners.

(a) The board of county commissioners for any county in this state is hereby vested with the jurisdiction, power and authority to establish districts.

(b) The board of county commissioners in which the petition for the organization of a district has been filed shall thereafter for all purposes of this act [§§ 41-10-101 through 41-10-151] maintain and have original and exclusive jurisdiction as to any and all proceedings concerning the district coextensive with the boundaries of the district and of the territory which may be proposed to be included in the district and of the property proposed to be included in the district or affected by the district.

(c) Repealed by Laws 1983, ch. 176, § 2.

41-10-104. Organization of districts; information required in the petition.

(a) Repealed by Laws 1998, ch. 115, § 5.

(b) Repealed by Laws 1998, ch. 115, § 5.

(c) A petition to establish a district under this act shall conform to the requirements in the Special District Elections Act of 1994. The petition for organization shall also set forth:

(i) The name of the proposed district, consisting of a chosen name preceding the words "water district," or "sewer district," or "water and sewer district";

(ii) Repealed by Laws 1998, ch. 115, § 5.

(iii) Repealed by Laws 1998, ch. 115, § 5.

(iv) The source of water to be used within the proposed district including an estimate of the amount to be used based upon a measurement in gallons of water use per day and a showing that the source is adequate to meet the projected needs of the district;

(v) A detailed description of proposed water service mains, sewer service mains, pump and lift stations servicing mains, distribution or treatment facilities for water or sewer or both and method and place of discharge of wastewater, sewage or both. The board of county commissioners may waive this requirement pending the approval of the remainder of the petition by the commissioners. However, no construction may begin until the detailed description required by this paragraph has been submitted to and approved by the board of county commissioners;

(vi) A showing that the proposed improvement or improvements or service or services is compatible with any adopted area-wide facilities plan or intergovernmental agreement in effect at the time of such petition;

(vii) In the event the proposed district or a portion thereof is located within two (2) miles of any city or town the standards to be used in the construction of the facilities of the proposed district shall also be included. These standards shall be no less stringent than the most stringent standards of the nearest local government entity which is within the two (2) mile limitation.

(d) Repealed by Laws 1998, ch. 115, § 5.

(e) The provisions of the petition seeking the establishment of the district shall not be considered to be a limitation on the rights of the board to submit a bond issue in whatever amount and for whatever improvement or to take any other action authorized herein which the board may find necessary or desirable after the district is organized.

(f) Repealed by Laws 1998, ch. 115, § 5.

(g) Repealed by Laws 1998, ch. 115, § 5.

41-10-105. Bond or cash deposit required at time of filing of petition; authority of board to require additional bond or deposit.

At the time of filing the petition or at any time subsequent thereto, and prior to the time of hearing on the petition a bond shall be filed, with security approved by the board of county commissioners, or a cash deposit made 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 board of county commissioners shall be satisfied that the bond first executed or the amount of cash deposit is insufficient in amount, it may require the execution of an additional bond or the deposit of additional cash within a time to be fixed, not less than ten (10) days distant, and upon failure of the petitioner to execute or deposit the same, the petition shall be dismissed.

41-10-106. Repealed by Laws 1998, ch. 115, § 5.

41-10-107. Election in connection with establishment.

(a) Repealed by Laws 1998, ch. 115, § 5.

(b) Repealed by Laws 1998, ch. 115, § 5.

(c) Repealed by Laws 1998, ch. 115, § 5.

(d) At the formation election the voters shall vote for or against the formation of the district, and for five (5) taxpaying electors of the district, who shall constitute the board of directors of the district, if organized, to serve until the next regular subsequent director election.

(e) Repealed by Laws 1998, ch. 115, § 5.

(f) The canvassing board shall certify the returns of the election to the board of county commissioners. If a majority of the votes cast at the election are in favor of the formation, the board of county commissioners shall declare the district organized and give the district the corporate name designated in the petition, by which it shall thereafter be known in all proceedings, and shall designate the first board of directors elected. Thereupon the district shall be a governmental subdivision of the state of Wyoming and a body corporate with all the powers of a public or quasi-municipal corporation.

(g) A resolution of the board of county commissioners establishing the district shall be considered final and no petition in error nor other appeal shall lie therefrom. The resolution of the board of county commissioners shall finally and conclusively establish the regular organization of the 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 thirty (30) days after the resolution declaring the district as organized and not otherwise. The organization of the district shall not be directly or collaterally questioned in any suit, action or proceeding except as expressly authorized in this subsection.

41-10-108. Copy of resolution establishing district to be transmitted to secretary of state by the county clerk; filing; fee.

Within thirty (30) days after the district has been declared established by the board of county commissioners, the resolution shall be recorded by the county clerk in the county where the district lies and the county clerk shall transmit to the secretary of state a copy of the resolution establishing the district. The resolution shall be filed in the same manner as articles of incorporation are now required to be filed under the general laws concerning corporations. The secretary of state shall receive a fee of three dollars ($3.00) for filing and preserving the same.

41-10-109. Members of original board of directors to qualify by filing oath of office and bond with county clerk.

Whenever a district has been declared organized, the members of the board shall qualify by filing with the county clerk their oaths of office, and corporate surety bonds at the expense of the district in an amount not to exceed one thousand dollars ($1,000.00) each, the form thereof to be fixed and approved by the board of county commissioners, conditioned for the faithful performance of their duties as directors.

41-10-110. Original board generally.

(a) After taking oath and filing bonds, the board shall choose one (1) of its members as chairman of the board, and president of the district, another member as vice-chairman and vice-president; and the board shall elect a secretary and a treasurer of the board and of the district, who may, or may not, be members of the board. The secretary and the treasurer may be one (1) person.

(b) Such board shall adopt a seal and the secretary 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 real property in the district, as well as to all other interested parties.

(c) The treasurer shall maintain accurate records of all money received by and disbursed for the district. These records may be accumulated and disposed of according to W.S. 9-2-411 and 9-2-412. The treasurer shall file with the county clerk at the expense of the district, a corporate fidelity bond in an amount not less than five thousand dollars ($5,000.00), conditioned on the faithful performance of the duties of his office.

(d) The chairman in addition to his duties as a member of the board shall:

(i) Preside at all meetings of the board;

(ii) Sign all resolutions adopted by the board;

(iii) Appoint all committees;

(iv) Sign, acknowledge and execute all instruments authorized by the board to be executed by the district.

(e) In absence of the chairman or in case of his inability to act, the vice-chairman shall perform the duties of the chairman.

(f) Each member of the board shall receive as compensation for his service a sum fixed by the board not in excess of twenty-five dollars ($25.00) for actual attendance at each regular or special meeting of the board or attendance upon any committee meeting, payable monthly. No member of the board shall receive any compensation as an employee of the district whenever the board has determined that a manager should be obtained and has employed such manager as a full-time employee to manage the affairs of and operate the business of the district, but until the services of a full-time manager are required and obtained, any board member may be engaged from time to time or as a part-time employee, and the compensation paid therefor shall not exceed the established prevailing rate of pay for equivalent work. No member of the board shall be interested in any other contract or transaction with the district except in his official representative capacity, and except it be by competitive bidding. If any contract or agreement shall be made in violation of the provisions of this subsection it shall be voidable, and no action shall be maintained thereon by any party thereto against the district. To the extent the district makes any payment thereunder, such contract or agreement shall be valid, and any such payments may be included in any cost defrayed by the levy of special assessments, unless theretofore, the district elects to void the contract or agreement in its entirety and to recover any such payment from the party to whom made.

(g) The district shall be subject to an audit or oversight of its accounts by the director of the state department of audit or his designee as required by W.S. 9-1-507(a)(iii) or 16-4-121(f), as applicable. The board of directors shall cause an audit or other oversight to be made of all financial affairs of the district during each fiscal year ending June 30, during the next succeeding six (6) months. If an audit is required, a summary of the financial statement shall be certified by the person

making the audit, which shall be published in a newspaper of general circulation in the district, one (1) issue during the next succeeding two (2) weeks following the audit. Except as provided in W.S. 9-1-507(d), the audit, if required, shall be made by a certified public accountant, who is not otherwise employed by the district.

(h) The board of county commissioners having jurisdiction of the district may remove directors for cause shown, on petition and after notice and hearing.

41-10-111. Regular and special meetings of board; quorum; majority present required to exercise power; filling of vacancies.

The board shall meet regularly at least once a month at a time and in a place to be designated by the board. Special meetings called by the chairman or any two (2) other directors may be held as often as the needs of the district require, on personal notice to each member of the board or by mail with postage prepaid, at least three (3) days prior to the meeting and addressed at the last known residence of the member as indicated by the records of the district. Three (3) members of the board constitute a quorum at any meeting. A majority of those present is required to perform any duty authorized by this act except if the bylaws require a larger number. Any vacancy on the board shall be filled until the next subsequent director election as provided in the Special District Elections Act of 1994.

41-10-112. Subsequent elections of members of board of directors of district.

(a) Repealed by Laws 1998, ch. 115, § 5.

(b) District board members shall serve for a term of four (4) years, except that at the first regular subsequent director election following the formation of the district there shall be elected by the voters of the district two (2) members of the board to serve for a term of two (2) years and three (3) members to serve for terms of four (4) years. Thereafter elections shall be held every two (2) years. Each director shall be a taxpaying voter of the district.

(c) Repealed by Laws 1998, ch. 115, § 5.

41-10-113. Powers of district board.

(a) For and on behalf of the district the board of any district shall have the following powers:

(i) To have perpetual existence;

(ii) To have and use a corporate seal;

(iii) To sue and be sued, and be a party to suits, actions and proceedings;

(iv) In the case of a sewer district or water and sewer district, to prepare or cause to be prepared and to revise and adopt plans, designs, and estimates of costs, of a system or systems of outfall sewers, trunks, mains, submains, interceptors, lateral sewers, outlets for sewerage, storm water drains, pumping and ventilating stations, disposal and treatment plants and works, and any and all other structures, systems, works, and things, which, in the judgment of the board, will provide an effective and advantageous means for insuring the area within such district of adequate sanitary disposal and treatment of the sewage thereof, or such section or parts of such system or systems as the board may from time to time deem proper or convenient to construct, consistent with the purposes of this act [§§ 41-10-101 through 41-10-151], and to take any and all such steps as the board may deem proper and necessary to effect the purposes hereof;

(v) In the case of a sewer district or water and sewer district, to establish, own, construct, improve, lease, operate, and maintain, as part of the sewer and drainage system or systems of the district, sewage treatment and disposal plants and systems and all appurtenances and appliances thereunto belonging, and to sell any product or by-product manufactured in the course of sewage treatment;

(vi) In the case of a sewer district or water and sewer district, to enter into and perform contracts, whether long-term or short-term, with any establishment, whether within or without the district, for the provision and operation by the district of sewerage facilities to abate or reduce the pollution of waters caused by discharges of wastes by such establishment, and the payment periodically by such establishment of the district of amounts at least sufficient to compensate the district for the cost of providing (including payment of principal and interest charges, if any) and operating and maintaining the sewerage facilities serving such establishment;

(vii) In the case of a sewer district or water and sewer district, to acquire an appropriate outlet within or without the district and to extend its sewer lines thereto;

(viii) In the case of a water district or water and sewer district, to prepare or cause to be prepared and to revise and adopt plans, designs, and estimates of costs, of a system or systems of raw and clear water and distribution storage reservoirs, deep and shallow wells, pumping and gauging stations, tunnels, flumes, conduits, canals, infiltration galleries, hydrants, meters, filtration and treatment plants and works, and any and all other structures, systems, works and things which, in the judgment of the board, will provide an effective and advantageous means for insuring the territory within such district of an adequate supply of domestic water, or such sections or parts of such system or systems as the board may from time to time deem proper or convenient to construct, consistent with the purposes of this act, and to take any and all such steps as the board may deem proper and necessary to effect the purposes hereof consistent with the appropriation laws and the uses prescribed by statute;

(ix) In the case of a water district or water and sewer district, to establish, own, construct, improve, lease, operate and maintain, as part of the water system or systems of the district, water treatment plants and systems and all appurtenances and appliances thereunto belonging;

(x) In the case of a water district or water and sewer district, to appropriate and otherwise acquire sources of supply of water within and without the district and to extend its water lines thereto;

(xi) Except as otherwise provided in this act, to enter into contracts and agreements affecting the affairs of the district, including but not limited to contracts with the United States of America and any of its agencies or instrumentalities, and contracts with any municipality or district for the operation of a common or jointly owned project. Any improvement or improvements of any nature made in any district where the entire cost, value or amount of such work including labor and materials shall exceed seven thousand five hundred dollars ($7,500.00), except such work done by employees of the district with supplies and materials purchased by it as hereinafter provided or except by labor or supplies and materials, or all of such, supplied under agreement with the United States of America, the state of Wyoming, or any federal or state agency, instrumentality or corporation, or other political subdivision, shall be done only under independent contract to be entered into by the district with the lowest responsible bidder submitting the lowest and best bid upon proper terms after due public notice by publication has been given asking for competitive bids. The district shall have the right to reject any and all bids and to waive any irregularity in any bid. Any contract may be let on a lump sum or unit basis. No contract shall be entered into for such work unless the contractor shall give an undertaking with a sufficient surety or sureties approved by the board and in an amount fixed by the board for the faithful performance of the contract. Upon default in the performance of any contract, the

proper official may advertise and relet the remainder of the work without further resolution and deduct the cost from the original contract price and recover any excess cost by suit on the original bond, or otherwise. The district shall have the power to make any improvement, or portion thereof, in any district, directly by the officers, agents and employees of the district, with supplies and materials purchased or otherwise acquired therefor. All supplies, materials, equipment, machinery and apparatus purchased by the board for any district (but not by a contractor) costing seven thousand five hundred dollars ($7,500.00) or more shall be purchased only after notice by publication for competitive bids. The district shall accept the lowest bid, kind, quality and material being equal, but the district shall have the right to reject any and all bids, to waive any irregularity in any bid, and to select a single item from any bid. The provision as to bidding shall not apply to the purchase of patented and manufactured products offered for sale in a noncompetitive market or solely by a manufacturer's authorized dealer;

(xii) To borrow money and incur indebtedness and other obligations and evidence the same by certificates, notes or debentures, and to issue bonds, in accordance with the provisions of this act;

(xiii) To acquire, dispose of and encumber real and personal property, water, water rights, water and sewer works and plants, and any interest therein, including leases, easements, and revenues derived from the operation thereof. The constitutional and inherent powers of the legislature are hereby delegated to the board for the acquisition, disposal and encumbrance of property provided that the board shall in no case receive title to property already devoted to public purpose or use, except with the consent of the owners of such property, and except upon approval of a majority of the board;

(xiv) To enter on any lands, waters and premises for the purposes of making surveys, soundings, examinations, tests and inspections;

(xv) To consult with the state department of health about any system or proposed system of water supply, drainage or sewage, as to the most appropriate source of water supply and the best method of assuring its purity, or as to the best method of disposing of the district's drainage or sewage with reference to the existing and future needs of other cities, towns, districts or other persons which may be affected thereby; and to submit to the department of health for its advice and approval the district's proposed system of water supply or of the disposal of drainage or sewage. No district shall proceed to acquire or improve any system of water supply, drainage or sewage disposal without first obtaining the approval of the state department of health. In this subsection the term "drainage" means rainfall, surface and subsoil water only, and "sewage" means domestic and industrial filth and waste;

(xvi) To have the management, control and supervision of all the business and affairs of the district, and the acquisition, improvement, equipment, operation and maintenance of any district project;

(xvii) To hire and retain agents, employees, servants, engineers and attorneys, and any other persons necessary or desirable to effect the purposes of this act;

(xviii) To prescribe the duties of officers, agents, employees and servants, and fix their compensation provided that the compensation of district employees and officers shall be established as prevailing rates of pay for equivalent work;

(xix) To have and exercise the power of eminent domain and dominant eminent domain and in the manner provided by law for the condemnation by a city of private property for public use to take any property necessary to the exercise of the powers granted, both within and without the district;

(xx) To construct and maintain works and establish and maintain facilities across or along any public street and in, upon, or over any vacant public lands which 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 watercourse. The district shall promptly restore the street to its former state of usefulness as nearly as possible, and shall not completely or unnecessarily impair its usefulness. Whenever it is necessary, in making any improvements under the provisions of this act, to enter upon or cross any property of the state acquired for and utilized in the operation and maintenance of a state highway, the district shall have the right-of-way over the same by filing a plat of the lands and of its proposed improvements with the state department of transportation and acquiring a license from the department. The license shall provide that the utility facility will be constructed in a manner to conform with applicable federal, state or local laws, codes and ordinances and as directed by the state department of transportation;

(xxi) To fix and from time to time to increase or decrease water and sewer rates, tolls or charges, including but not necessarily limited to use charges, connection fees and standby charges, for services or facilities furnished by the district, and to pledge such revenue for the payment of any indebtedness of the district. Until paid, all rates, tolls or charges shall constitute a perpetual lien on and against the property served, and any such lien may be foreclosed in the same manner as provided by the laws of the state of Wyoming for the foreclosure of mechanics' liens. Before any such lien is foreclosed the district shall hold a hearing thereon after notice thereof by publication and by registered first class mail, postage prepaid, addressed to the last known owner at his last known address according to the records of the district and the real property assessment roll in the county in which the property is located. The board shall shut off or discontinue service for delinquencies in the payment of such rates, tolls or charges, or in the payment of taxes or assessments levied pursuant to this act, and prescribe and enforce rules and regulations for the connection with and the disconnection from properties of the facilities of the district. For health and sanitary purposes the board shall have the power to compel the owners of inhabited property within a sewer district to connect their property with the sewer system of such district and upon a failure so to connect within sixty (60) days after such written, mailed notice by the board so to do the board may cause such connection to be made and a lien to be filed against the property for the expense incurred in making such connection. No owner shall be compelled to connect his property with such system unless a service line is brought, by the district, to a point within four hundred (400) feet of his dwelling place;

(xxii) To adopt and amend 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. These bylaws shall be filed with the county clerk for each county in which the district is located;

(xxiii) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this act. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this act;

(xxiv) When a district abuts a city or town and when all of its indebtedness has been fully paid or satisfied, to convey to such city or town with the consent of the governing authority thereof, all of the property of such district upon the condition that such city or town will operate and maintain such property regardless of whether the area comprising the district is annexed to the municipality. Upon such conveyance the district shall be dissolved and a certificate to such effect shall be signed by the clerical officer of the city or town and filed with the secretary of state and any county clerk and recorder of any county in which the order establishing the district is filed;

(xxv) When two (2) or more districts are using the same or joint facilities and when the obligations of each district are fully paid or satisfied, to consolidate such districts into one (1). In such an event the consolidated district shall be under the control of a joint board consisting of the members of each board, until by the occurrence of vacancies or expiration of terms of office the board is

reduced to five (5) members. Thereafter the members of the board shall be elected as provided in W.S. 41-10-112;

(xxvi) If a boundary of a district is contiguous with the corporate boundary of a city or town, a district may contract with a city or town to supply water or to provide sanitary sewer or other services for which the district was organized to property within the city or town, if it is economically feasible in the opinion of the board. Any water service shall be accomplished in strict adherence with the water rights held by the district, or as such rights may be amended or enlarged under procedures of law provided in title 41 of the Wyoming statutes through the state engineer. The board may finance the extension and maintenance of the water or sewer system through revenue bonds or other means granted by law for financing the service. A one-time connection fee or system investment fee reasonably calculated to permit recovery of a proportionate share of the system infrastructure cost necessary to treat, deliver or transport the water or sewer may also be charged. A one-time fee may also be charged to recover reasonable expenses incurred by the district in determining the actual costs necessary to treat, deliver or transport the water or sewer to the point of connection. The district board may establish one (1) or more service areas outside the district in each of which an average rate may be used for all customers. Charges for special services such as line installation and maintenance shall be in addition to the water or sewer rate. The rate established for use of water or sewer pursuant to this section is as follows:

(A) A district which at any time after April 1, 1999, enters into a contract to serve property within a contiguous city or town outside of its district boundaries shall establish rates, tolls and charges that are no less than the rates, tolls and charges charged for the same or similar service within the district and that do not exceed the actual costs of treating, delivering or transporting the water or sewer to the point of connection. As used in this paragraph, "actual costs" of treating, delivering or transporting water or sewerage shall include a proportionate share of the following costs related to the water or sewer system:

(I) Fees, interest charges and principal payments on all bonds issued and other indebtedness incurred to construct, purchase or improve the system;

(II) Salaries and wages of employees;

(III) The cost of materials, supplies, utilities and outside services;

(IV) Other costs directly related to the water delivery or sewer system;

(V) The cost for providing and maintaining a depreciation fund, a fund for emergencies and a fund for acquisition and development of new water rights and water sources;

(VI) Administrative and overhead expenses; and

(VII) The cost of acquiring, treating, delivering or transporting water or sewer.

41-10-114. Authority of board to levy and collect taxes generally; maximum levy.

In addition to the other means providing revenue for such districts, the board shall have power and authority to levy and collect general (ad valorem) taxes on and against all taxable property within the district. No district shall levy a tax to exceed eight (8) mills on the dollar in any one (1) year, except for the payment of its public debt and the interest thereon.

41-10-115. Annual determination by board of amount of money necessary to be raised by taxation; fixing annual tax levy; certification of rate fixed and determined to county commissioners and clerks.

To levy and collect taxes, the board shall determine, in each year, 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 taxable property within the district, and together with other revenues, will raise the amount required by the district annually to supply funds for paying expenses of organization and the costs of acquiring, operating and maintaining the works and equipment of the district, and promptly to pay in full, when due, all interest on and principal of general obligation bonds and other such obligations of the district, and in the event of accruing defaults or deficiencies, an additional levy may be made as provided in section 16 [§ 41-10-116]. The secretary of the district pursuant to resolution of the board shall on or before the fourth Monday in May of each year, certify to the board of county commissioners of each county within the district, or having a portion of its territory within the district, and file with the county clerk thereof, the rate so fixed with directions that at the time and in the manner required by law for levying taxes for county purposes, such board of county commissioners shall levy such tax upon the assessed valuation of all taxable 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.

41-10-116. Matters to be considered in certifying annual levies; additional levies.

The board, in certifying annual levies, shall take into account the maturing indebtedness for the ensuing year as provided in its contracts, maturing general obligation bonds and interest on such bonds, and deficiencies and defaults of prior years, and shall make ample provision for the payment thereof. In case the moneys produced from such levies, together with other revenues of the district, are not sufficient punctually to pay the annual installments on its contracts or bonds, and interest thereon, and to pay defaults and deficiencies, the board shall make such additional levies of taxes as may be necessary for such purposes, and notwithstanding any limitations, such taxes shall be made and continue to be levied until the indebtedness of the district shall be fully paid.

41-10-117. Duty of county officials to levy and collect tax; monthly payment of collections to treasurer of district; taxes to constitute perpetual lien; lien to be on parity with general tax lien.

It shall be the duty of the body having authority to levy taxes within each county to levy the taxes provided in this act [§§ 41-10-101 through 41-10-151]. It shall be the duty of all officials charged with the duty of assessing property and collecting taxes to assess property and to collect such taxes at the time and in the form and manner with like interest and penalties as property is assessed and other taxes are collected and when collected to pay the same to the district ordering its levy and collection. The payment of such collections shall be made monthly to the treasurer of the district and paid into the depository thereof to the credit of the district. For any district the area of which is in more than one (1) county, the officials of each county shall perform said duties for the area and property therein. All taxes levied under this act, together with interest thereon and penalties for default in payment thereof, and all costs of collecting the same, shall constitute, until paid, a perpetual lien on and against the property taxed, and such lien shall be on a parity with the tax lien of other general taxes.

41-10-118. Sale of real and personal property for nonpayment of taxes.

If the taxes levied are not paid, then delinquent real property shall be sold at the regular tax sale for the payment of said taxes, interest and penalties, in the manner provided by the statutes of the state of Wyoming for selling real property for the nonpayment of general taxes. If there are not bids at said tax sale for the property so offered, 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. Delinquent personal property shall be distrained and sold as provided by law.

41-10-119. Authority of board to levy taxes and collect revenue for purpose of creating a reserve fund.

Whenever any indebtedness has been incurred by a district, it shall be lawful for the board to levy taxes and collect revenue for the purpose of creating a reserve fund in such amount as the board may determine, which may be used to meet the obligations of the district, for maintenance and operating charges and depreciation, and provide extension of and betterments to the improvements of the district.

41-10-120. Change in boundaries of districts; generally.

(a) The boundary of any district organized under the provisions of this act may be changed in the manner prescribed in the Special District Elections Act of 1994, but the change of boundaries of the district shall not impair nor affect its organization, nor shall it affect, impair or discharge any contract, obligation, lien or charge on which it might be liable or chargeable had such change of boundaries not been made.

(b) Property included within or annexed to a district shall be subject to the payment of taxes and charges, as provided in the Special District Elections Act of 1994. Real property excluded from a district shall thereafter be subject to the levy of taxes for the payment of its proportionate share of any indebtedness of the district outstanding at the time of such exclusion. Personal property may be excluded from a district on such terms and conditions as may be prescribed by the board of the district involved.

41-10-121. Repealed by Laws 1998, ch. 115, § 5.

41-10-122. Repealed by Laws 1998, ch. 115, § 5.

41-10-123. Repealed by Laws 1998, ch. 115, § 5.

41-10-124. Authority of district to borrow money; types of securities permitted to evidence borrowing; exemption of securities from taxation.

(a) A district may borrow money and issue the following securities to evidence such borrowing:

(i) Short-term notes;

(ii) General obligation bonds and other like securities;

(iii) Revenue bonds and other like securities; and

(iv) Special assessment bonds and other like securities.

(b) Any such securities of a district shall be exempt from taxation when owned by actual residents of the state, provided, that the owner or owners thereof shall list the same annually on their assessment schedule, as from time to time amended and supplemented.

41-10-125. Borrowing money without election in anticipation of collection of taxes; issuance of short-term notes.

A district, upon the affirmative vote of four (4) directors, is hereby authorized to borrow money without an election in anticipation of the collection of taxes or other revenues and to issue short-term notes to evidence the amount so borrowed. Such short-term notes shall be payable from the fund for which the money was borrowed; shall mature before the close of the fiscal year in which the money is so borrowed; and shall not be extended or funded except in compliance with section 26, "general obligation bonds" of this act [§ 41-10-126].

41-10-126. Resolution and election prerequisite to issuance of general obligation bonds.

No bonds or other evidences of indebtedness payable in whole or in part from the proceeds of general (ad valorem) property taxes or to which the full faith and credit of a district are pledged, shall be issued, except in pursuance of a resolution, nor until the question of their issuance shall be submitted to a vote of the electors and approved by a majority of the qualified taxpaying electors voting on the question and by a majority of other qualified electors voting thereon, or, if no ballots are cast in one (1) of the ballot boxes and a majority of the ballots in the other ballot box favor the issuance of the bonds or other evidences of indebtedness, approved either by a majority of the qualified taxpaying electors voting thereon or by a majority of the other qualified electors voting thereon at an election held as provided for bond elections by the Political Subdivision Bond Election Law, W.S. 22-21-101 through 22-21-112.

41-10-127. Maximum aggregate amount of bonds or other evidences of indebtedness.

The aggregate amount of bonds or other evidences of indebtedness shall not exceed six percent (6%) of the assessed value of the taxable property within the district as shown by the last preceding general assessment; provided, however, that in determining the amount of indebtedness, there shall not be included within the computation, bonds or other evidences of indebtedness outstanding or authorized to be issued for supplying water to the district, short-term notes, special assessment securities, or securities payable solely from the net revenues of an income-producing system or other project.

41-10-128. Borrowing money and issuing bonds for purpose of acquiring or improving water or sewer system or other income-producing project.

A district in pursuance of a resolution may borrow money, issue bonds, or otherwise extend its credit for the purpose of acquiring or improving a water or sewer system, or other income-producing project; provided that the bonds or other obligations shall be made payable solely out of the net revenues derived from the operation of the system or other such project; and the systems and projects may be combined, operated and maintained as joint systems or projects, in which case the bonds or other obligations shall be made payable solely out of the net revenues derived from the operation of the joint systems or projects. No revenue bonds or other like securities shall be issued unless the issuance thereof has been submitted to a vote of the electors and approved by a majority of the qualified taxpaying electors voting on the question and by a majority of other qualified electors voting thereon, or, if no ballots are cast in one (1) of the ballot boxes and a majority of the ballots in the other ballot box favor the issuance of such bonds or other like securities, approved either by a majority of the qualified taxpaying electors voting thereon or by a majority of the other qualified electors voting thereon, as the case may be, at an election held as provided for bond elections by the Political Subdivision Bond Election Law, W.S. 22-21-101 through 22-21-112.

41-10-129. Power to create local improvement districts vested in board.

The power to create local improvement districts in a district organized pursuant to this act [§§ 41-10-101 through 41-10-151], to assess the cost of the construction of public improvements of a local and municipal character or a part thereof against benefited property therein, and to issue special

assessment bonds is vested in the board, and the districts shall be created, local improvements acquired, special assessments levied and collected and special assessment bonds issued, as provided in W.S. 15-6-101 through 15-6-448, except as herein otherwise provided.

41-10-130. Submission of question of creating indebtedness to voters upon determination by resolution that interest of district and public interest or necessity demand the acquisition or improvement of projects, making of contracts.

Whenever any board shall determine, by resolution, that the interest of said district and the public interest or necessity demand the acquisition or improvement of any project, or the making of any contract with the United States or other persons, to carry out the objects or purposes of said district, requiring the creation of an indebtedness or the issuance of securities herein required to be authorized by the electors of the district, said board shall order the submission of the proposition of creating such indebtedness or securities to the qualified electors of the district at an election. Any such election shall be held as provided for bond elections by the Political Subdivision Bond Election Law, W.S. 22-21-101 through 22-21-112 and may be held separately or may be consolidated or held concurrently with any other election authorized by this act. The declaration of public interest or necessity 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 or the bonds are proposed to be issued, the estimated cost of the project, the amount of principal of the indebtedness to be incurred or of the bonds to be issued therefor, and the maximum rate of interest to be paid on the indebtedness or bonds. 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 or bonds. The board shall direct the publication of the notice of election, the first publication of said notice to be not less than twenty (20) days prior to the election.

41-10-131. Principal and interest to be paid solely from net revenues; pledging surplus and unpledged revenues as additional security; bonds not issued payable from revenues or special assessments to be general obligations of district.

The principal of and interest on revenue bonds herein authorized to be issued, and any prior redemption premium or premiums, shall be payable solely from the net revenues derived from the operation of the project for the acquisition or improvement of which the bonds are issued, including, without limiting the generality of the foregoing, revenues of a prior existing project which is improved by the expenditure of the bond proceeds, and revenues of improvements theretofore or thereafter acquired to such project which are not acquired by the expenditure of such bond proceeds; and the principal of and interest on special assessment bonds herein authorized to be issued, and any prior redemption premium or premiums, shall be payable solely out of moneys collected on account of the assessments, principal, interest and any penalties, levied for the project for the acquisition or improvement of which the bonds are issued; provided, however, that the payment of such special assessment bonds may at the board's option be additionally secured as herein provided. The board may ascertain and determine in a resolution authorizing the issuance of the bonds that the district has, or will have during the term of the bonds, or has and so will have, designated surplus and unpledged revenues derived from the operation of any income-producing project, or special assessments or excise tax or taxes which the district is herein authorized to levy, fix or charge, or from any combination thereof, and the board in said resolution may pledge all or a portion of such surplus and unpledged revenues as additional security for such payment of said bonds, and at its option may deposit such revenues in a fund created to pay the bonds or created to secure additionally their payment. Any such revenue pledged directly or as additional security for the payment of bonds of any one issue or series which revenues are not exclusively pledged therefor, may subsequently be pledged directly or as additional security for the payment of the bonds of one or more issues or series subsequently authorized. All bonds of the same issue or series shall, subject to the prior and superior

rights of outstanding bonds, claims and other obligations, have a prior, paramount and superior lien on the revenues pledged for the payment of the bonds over and ahead of any other claims or obligations thereagainst subsequently incurred; provided, however, the resolution authorizing the issuance of any bonds may provide for the subsequent authorization of bonds or other obligations the lien for the payment of which on such revenues is on a parity with the lien thereon of the bonds therein authorized upon such conditions and subject to such limitations as said resolution may provide. All bonds not issued payable solely from such revenues or special assessments (with or without such additional security) shall be the general obligations of the district, and the full faith and credit of the district shall be pledged for the payment thereof. All bonds of the same issue or series shall be equally and ratably secured without priority by reason of number, date of maturity, date of bonds, of sale, of execution, or of delivery, by a lien on said revenues in accordance with the provisions of this act [§§ 41-10-101 through 41-10-151] and the resolution authorizing said bonds, except to the extent such resolution shall otherwise specifically provide.

41-10-132. Bonds not to be debt of district; exception as to general obligation bonds; bonds to recite that principal and interest payable solely from revenues.

Except for general obligation bonds, bonds issued pursuant to this act [§§ 41-10-101 through 41-10-151] shall not be a debt of the district, and the district shall not be liable thereon, nor shall it thereby pledge its full faith and credit for their payments, nor shall the bonds be payable out of any funds other than the revenues, special assessments, or other moneys pledged to the payment thereof. Each such bond issued under this act shall recite in substance that said bond and the interest thereon are payable solely from the revenues, special assessments or other moneys pledged to the payment thereof. The payment of bonds shall not be secured by an encumbrance, mortgage or other pledge of property of the district, except for revenues, income, tax proceeds and other moneys pledged for the payment of bonds. No property of the district, subject to said exceptions, shall be liable to be forfeited or taken in payment of the bonds.

41-10-133. Resolution may provide that bonds shall recite that they are issued under authority of act; effect of recital.

It may be provided in any resolution authorizing any bonds hereunder that such bond shall recite that it is issued under authority of this act [§§ 41-10-101 through 41-10-151]. Such recital shall conclusively impart full compliance with all of the provisions of this act, and all bonds issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value.

41-10-134. Date of bonds; maturity; payment and rate of interest; when and where payable; privileges for registration; prerequisite to reissuance upon loss.

General obligation bonds, revenue bonds or special assessment bonds herein authorized to be issued shall bear a date or dates, shall mature in a denomination or denominations at the time or times not exceeding the estimated life of the improvements acquired with the bond proceeds and in no event not more than thirty (30) years from their date, shall bear interest payable annually, or at a lesser interval or intervals as may be prescribed by resolution, shall be payable in a medium of payment at the place or places within or without the state of Wyoming, and at the option of the board may be in one (1) or more series, may be made subject to prior redemption in advance of maturity at the time or times without or with the payment of the premium or premiums not exceeding five percent (5%) of the principal amount of the bond so redeemed, may provide for the payment of interest thereon from the proceeds thereof for a period not to exceed three (3) years from the date thereof, may be issued with privileges for registration for payment as to principal or interest, or both, and generally shall be issued in a manner, in a form, with recitals, terms, covenants and conditions, and with other details as may be provided by the board in the resolution or resolutions authorizing the bonds, except as herein otherwise provided. Pending preparations of the definite bonds, interim

receipts or certificates in a form and with such provisions as the board determines may be issued. Except for payment provisions herein specifically provided, the bonds, interest coupons thereto attached, and interim receipts or certificates shall be fully negotiable within the meaning of and for all the purposes of the Uniform Commercial Code - Investment Securities [§§ 34.1-8-101 through 34.1-8-408]. If lost or completely destroyed, a bond may be reissued in the form and tenor of the lost or destroyed bond upon the owner furnishing, to the satisfaction of the governing body, (a) proof of ownership, (b) proof of loss or destruction, (c) a surety bond in twice the face amount of the bond and coupons, and (d) payment of the cost of preparing and issuing the new bond.

41-10-135. Execution of bonds; signature by chairman of board to appear on bonds and coupons attached; legal effect of signature.

Any such general obligation bonds, revenue bonds or special assessment bonds shall be executed in the name of and on behalf of the district and signed by the chairman of the board with the seal of the district affixed thereto and attested by the secretary of the board. Except for such bonds which are registerable for payment of interest, interest coupons payable to bearer shall be attached to the bonds and shall bear the original or facsimile signature of the chairman of the board. The bonds and coupons, bearing the signatures of the officers in office at the time of the signing thereof, shall be the valid and binding obligations of the district, notwithstanding that before the delivery thereof and payment therefor, any or all of the persons whose signatures appear thereon shall have ceased to fill their respective offices.

41-10-136. Sale of bonds at public or private sale; price; delivery of bonds to and acceptance by contractors in payment of contract price; interest rate on special assessment bonds.

General obligation bonds, revenue bonds or special assessment bonds shall be sold at public or private sale for not less than the principal amount thereof and accrued interest, or at the board's option below par at a discount not exceeding five percent (5%) of the principal amount thereof, for the payment of the contractor or contractors, for the acquisition of property and rights thereto, including but not limited to labor, supplies and materials acquired by the district or supplied under agreement with the United States of America, the state of Wyoming, or a federal or state agency, instrumentality or corporation or other political subdivision and for all proper incidental expenses; provided, however, the bonds may be delivered to the contractor or contractors. If delivered to the contractor or contractors, the bonds shall be accepted for the principal amount thereof, plus interest due thereon to the date of their delivery, in payment of the amounts due under the contract or contracts, and the contractor or contractors may be required to accept delivery of all or a part of the remainder of the authorized issue of bonds and to pay therefor the principal amount thereof and accrued interest to the date of delivery, so that money will be available to the board to be expended in the payment of the incidental expenses for the payment of which the bonds were in part authorized. No special assessment bond interest rate shall at one (1) time exceed the interest rate (or lower or lowest rate if more than one (1)) borne by the special assessments, but a bond interest rate may be the same as or less than an assessment interest rate, subject to the aforesaid limitation, as the board may determine. In advertising for construction bids, the board may stipulate that the contractor must accept bonds in payment of the contract price.

41-10-137. Moneys received from issuance of bonds to be used solely for purpose for which issued; disposition of unexpended balance; validity of bonds not dependent upon validity of proceedings relating to project.

All monies received from the issuance of any bonds herein authorized shall be used solely for the purpose (or purposes) for which issued, including, without limiting the generality of the foregoing, if so authorized the payment of preliminary expenses; provided, however, that any unexpended balance of

such bond proceeds remaining after the completion of the acquisition or improvement of the project or service for which such bonds were issued shall be paid immediately into the fund created for the payment of the principal of said bonds and shall be used therefor. The validity of said bonds shall not be dependent on nor affected by the validity or regularity of any proceedings relating to the acquisition or improvement of the project for which the bonds are issued; and the purchaser or purchasers of the bonds shall in no manner be responsible for the application of the proceeds of the bonds by the district or any of its officers, agents and employees.

41-10-138. Covenants in resolution authorizing issuance of bonds.

(a) Any resolution authorizing the issuance of bonds under this act may contain covenants (notwithstanding such covenants may limit the exercise of powers conferred by this act [§§ 41-10-101 through 41-10-151]) as to any one (1) or more of the following:

(i) The tolls, fees, rates, rentals, charges, special assessments, and general taxes to be fixed, charged or levied and the collection, use and disposition thereof, including but not limited to joint billing for and the discontinuance of facilities, commodities or projects, the foreclosure of liens for delinquencies and the collection of penalties;

(ii) The creation and maintenance of reserves or sinking funds and the regulation, use and disposition thereof;

(iii) A fair and reasonable payment by the district from its general fund or other available moneys to the account of a designated project for the facilities or commodities furnished or services rendered thereby to the district or any of its departments, boards or agencies;

(iv) The purpose or purposes to which the proceeds of the sale of bonds may be applied and the use and disposition thereof;

(v) The issuance of other or additional bonds payable from or constituting a charge against or lien upon any revenues pledged for the payment of bonds and the creation of future liens and encumbrances thereagainst;

(vi) The operation and maintenance of any project;

(vii) The insurance to be carried thereon and use and disposition of insurance moneys;

(viii) Books of account and the inspection and audit thereof;

(ix) Events of default, rights and liabilities arising therefrom, and the rights, liabilities, powers and duties arising upon the breach by the district of any covenants, conditions, or obligations;

(x) The vesting in a trustee or trustees, and the limitation of liabilities thereof, and as to the terms and conditions upon which the holders of the bonds or any portion, percentage or amount of them may enforce any covenants made under this act or duties imposed thereby;

(xi) The terms and conditions upon which the holders of the bonds or of a specified portion, percentage or amount thereof, or any trustee therefor, shall be entitled to the appointment of a receiver, which receiver may enter and take possession of any project or service, operate and maintain the same, prescribe tolls, fees, rates, rentals, charges and taxes, and collect, receive and apply all revenues thereafter arising therefrom in the same manner as the district itself might do;

(xii) A procedure by which the terms of any resolution authorizing bonds, or any other contract with any holders of bonds, including but not limited to an indenture of trust or similar instrument, may be amended or abrogated, and as to the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given;

(xiii) The terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived; and

(xiv) All such acts and things as may be necessary or convenient or desirable in order to secure the district's bonds, or in the discretion of the board tend to make the bonds more marketable, notwithstanding that such covenant, act or thing may not be enumerated herein, it being the intention hereof to give a district power to do all things in the issuance of bonds and for their security except as herein specifically limited.

41-10-139. Rights and powers of holders of bonds.

(a) Subject to any contractual limitations binding upon the holders of any issue or series of bonds, or trustee therefor, including but not limited to the restriction of the exercise of any remedy to a specified proportion, percentage or number of such holders, any holder of bonds, or trustee therefor, shall have the right and power, for the equal benefit and protection of all holders of bonds similarly situated:

(i) By mandamus or other suit, action or proceeding at law or in equity to enforce his rights against the district and its board and any of its officers, agents and employees and to require and compel the district or its board or any such officers, agents, or employees to perform and carry out its and their duties, obligations or other commitments under this act [§§ 41-10-101 through 41-10-151] and its and their covenants and agreements with the bondholders;

(ii) By action or suit in equity to require the district and its board to account as if they were the trustee of an express trust;

(iii) By action or suit in equity to have appointed a receiver, which receiver may enter and take possession of any projects and services revenues from which are pledged for the payment of the bonds, prescribe sufficient tolls, fees, rates, rentals and charges derived from the operation thereof, and collect, receive and apply all revenues or other moneys pledged for the payment of the bonds in the same manner as the district itself might do;

(iv) By action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders; and

(v) Bring suit upon the bonds.

(b) No right or remedy conferred by this act upon any holder of bonds or any trustee therefor is intended to be exclusive of other right or remedy, but each such right or remedy is cumulative and in addition to every other right or remedy and may be exercised without exhausting and without regard to any other remedy conferred by this act or by any other law. The failure of any bondholder so to proceed as herein provided shall not relieve the district, its board, or any of its officers, agents and employees of any liability for failure to perform or carry out any duty, obligation or other commitment.

41-10-140. Publication of resolution or other proceedings relative to issuance of bonds; right of interested person to contest legality within 30 days; incontestable thereafter.

The board may provide for the publication once in a newspaper of general circulation in the district of any resolution or other proceedings adopted by the board ordering the issuance of any bonds. For a period of thirty (30) days after the date of such publication, any person in interest shall have the right to contest the legality of any bond which may be authorized thereby (except for any bond delivered for value, containing a recital therein that it is issued under authority of this act [§§ 41-10-101 through 41-10-151], and thus being incontestable for any cause whatsoever, as herein provided), and of the provisions made for the security and payment of any such bonds, and of any other provisions in such resolution or proceedings; and after the expiration of such thirty (30) day period no one shall have any cause of action to contest the regularity, formality, or legality thereof for any cause whatsoever.

41-10-141. Payment of preliminary expenses incurred in making surveys, estimates of costs and revenues prior to issuance of bonds.

The district may provide for the payment of all necessary preliminary expenses actually incurred in the making of surveys, estimates of costs and revenues, the employment of engineers, architects, fiscal agents, attorneys-at-law, clerical help, other agents or employees, the making of notices, taking of options, and all other expenses necessary or desirable to be made and paid prior to the authorization for or the issuance of such bonds; provided, no such expenditures shall be made or paid unless an appropriation has been budgeted and made therefor in the same manner as is required by law, or unless the proceeds of bonds or other moneys are available to defray such expenses. Any funds so expended by the district for preliminary expenses incurred in connection with the same purpose as that for which bonds are issued may be fully reimbursed and repaid to the district out of the proceeds derived from the sale of such bonds. The amount so advanced by the district to pay such preliminary expenses may by a resolution authorizing the issuance of such bonds be made a first charge against such bond proceeds until the same has been repaid as herein provided, and in such event said amount shall be paid therewith before any other disbursements are made therefrom.

41-10-142. Refunding bonds.

Any bonds issued under this act [§§ 41-10-101 through 41-10-151] may be refunded without an election pursuant to a resolution or resolutions to be adopted by the board in the manner herein provided for the issuance of other bonds, subject to any contractual limitations. Refunding bonds so issued may be secured in such manner and may be made payable from such sources as was provided in the resolution or resolutions authorizing their issuance; provided, however, that the security for the payment of the refunding bonds shall not be greater than the security for the payment of the bonds refunded, nor shall there be pledged for the payment of the refunding bonds revenues which are not pledged for the payment of the bonds refunded. Refunding bonds so issued may be sold at public or private sale or may be exchanged dollar for dollar for the bonds to be refunded. If sold, the proceeds of sale may be escrowed for the payment of the bonds to be refunded in such manner as may be provided in resolution authorizing the refunding bonds.

41-10-143. Duty of board to impose tolls, fees and charges sufficient to pay cost of operating project and pay principal and interest on revenue bonds.

Whenever revenue bonds are issued hereunder, it shall be the duty of the board to impose, in connection with the project for which the bonds are issued, for the services rendered or facilities furnished thereby, tolls, fees, rates, rentals and charges fully sufficient to pay the cost of operating and maintaining the project, including but not limited to betterments or replacements to keep the same in good repair and working order (which cost shall be a first lien and charge upon the revenues or income to be derived from the operation of the project or service), and to pay the principal of and interest on the bonds, and to carry out all commitments made in the resolution or resolutions authorizing the bonds.

41-10-144. Exemption of property and bonds from taxation.

The effectuation of the authorized purposes of districts organized under this act [41-10-101 through 41-10-151] shall and will be in all respects for the benefit of the people of the state of Wyoming residing within the district, for the increase of their commerce and prosperity and for the improvement of their health and living conditions; and since the districts will be performing essential governmental functions in effectuating those purposes, the districts shall not be required to pay any general (ad valorem) taxes upon any property acquired or used by them within the boundaries of the district. The bonds issued by any district, their transfer and the income therefrom shall be free from taxation within the state, except for estate taxes.

41-10-145. Authority of municipalities, counties and special districts to transfer projects and property to district with or without consideration.

Any municipality, county, special district or owner may and is hereby authorized to sell, lease, grant, convey, transfer, or pay over to any district with or without consideration any project or any part or parts thereof or any interest in real or personal property or any funds available for construction or improvement purposes, including the proceeds of bonds previously or hereafter issued for construction or improvement purposes which may be used by the district in the construction, improvement, maintenance or operation of any project. Any municipality, county or special district is also authorized to transfer, assign and set over to any district any contracts which may have been awarded by the municipality, county or special district for the construction of projects not begun or if begun, not completed. The territory being served by any project or the territory within which the project is authorized to render service at the time of the acquisition of the project by a district shall include the area served by the project and the area in which the project is authorized to serve at the time of acquisition and any other area into which the service may be extended within the district, provided however, that where an election is required either by general law or charter provision to authorize such transfer, such election shall be forthwith called and shall be conducted as provided by law.

41-10-146. Questions of validity to be given preference on court docket.

All cases in which there may arise a question of validity of the organization of the district, or a question of the validity of any provision of this act [§§ 41-10-101 through 41-10-151] shall be advanced as a matter of immediate public interest and concern and heard at the earliest practicable moment. The court shall be open at all times for the purposes of this act.

41-10-147. Effect of failure to give notice; board of county commissioners to direct notice be given and continue hearing.

If notice is provided for in this act [§§ 41-10-101 through 41-10-151], and the board of county commissioners finds for any reason that due notice was not given, the board of county commissioners shall not lose jurisdiction and the proceeding in question shall not be void or abated. The board of county commissioners shall then direct due notice be given, continue the hearing until notice is properly given and shall proceed as though notice was properly given in the first instance.

41-10-148. Reorganization of sanitary and improvement districts as sewer district or water and sewer district.

Any sanitary and improvement district organized pursuant to the provisions of W.S. 35-3-101 through 35-3-124 may effect its reorganization as a sewer district or water and sewer district pursuant to the provisions of this act. Upon filing of a petition for reorganization of a district by its governing body with the board of county commissioners having jurisdiction as provided in W.S. 41-10-103, the board of

county commissioners, by resolution duly entered, shall declare the district organized as a district pursuant to the provisions of this act and shall give the district the corporate name designated in the petition by which it shall be known in all proceedings. The board of county commissioners shall then designate as the first board of directors of the district the five (5) trustees of the sanitary and improvement district, each of which shall serve as a director until the expiration of his term as trustee and until a successor is elected at the next subsequent director election pursuant to W.S. 22-29-112. At the next subsequent director election following organization of the district directors shall be elected for staggered terms as provided by W.S. 41-10-112(b). After entry of the resolution, the district shall be a governmental subdivision of the state of Wyoming and a body corporate with all the powers of a public or quasi-municipal corporation organized pursuant to this act. The validity of the organization may not be questioned directly or indirectly in any suit, action or proceeding except as provided in the Special District Elections Act of 1994. After entry of the resolution, the district shall comply with W.S. 41-10-108 through 41-10-110 and all other relevant provisions of this act.

41-10-149. Full authority for authorization and issuance of bonds; effect on other statutes.

This act [§§ 41-10-101 through 41-10-151], without reference to other statutes of the state, except as herein specifically provided, shall constitute full authority for the authorization and issuance of bonds hereunder. No other act or law with regard to the authorization or issuance of bonds that provides for an election, requires an approval, or in any way impedes or restricts the carrying out of the acts herein authorized to be done shall be construed as applying to any proceedings taken hereunder or acts done pursuant hereto, it being intended that this act shall provide a separate method of accomplishing its objectives, and not an exclusive one, and this act shall not be construed as repealing, amending or changing any such other act or law.

41-10-150. Liberal construction.

This act [§§ 41-10-101 through 41-10-151] being necessary to secure the public health, safety, convenience and welfare, it shall be liberally construed to effect its purposes.

41-10-151. Finances administered according to the Municipal Budget Act.

The board of directors of the water and sewer districts shall administer the finances of such districts according to the provisions of the Wyoming Municipal Budget Act.

41-10-152. City or town may annex areas within sewer or water district.

Any city or town may annex areas to its corporate limits in accordance with the statutes governing annexation of territories to cities and towns which territories fall within existing water, sewer, or water and sewer districts, hereinafter referred to as "districts", whether singular or plural.

41-10-153. Obligations and authority remain with district.

Upon the annexation of such territory the securities of the district, including but not limited to short-term notes, general obligation bonds and other like securities, revenue bonds and other like securities, special assessment bonds and other like securities shall remain the obligations of the districts and the districts shall remain in possession, ownership and operation of its equipment, plant and facilities. The subscribers of the services of such district shall continue to be served by the districts. The taxing power and authority of the districts shall continue and shall be in addition to any taxing authority of the annexing city or town.

41-10-154. Administration may be transferred to city or town by agreement.

Concurrently with the annexation of such territory the city or town and districts may by agreement provide that the administration of any outstanding indebtedness of the district may be taken over by the city or town but neither the city or town nor any agent or employee thereof shall be liable for the payment of the indebtedness. The city or town and districts may further provide that the city or town may take over the operation and management of the plant facilities or equipment of the district, the operation, maintenance and expense of operations to be paid for out of revenue derived by the districts.

41-10-155. Obligation to provide services remains with district; limitation.

The territory and inhabitants of the annexed area have all rights, privileges and duties set forth in W.S. 15-1-410 except the city or town shall have no obligation to furnish water or sewerage services to the inhabitants and annexed area. The duty to provide water or sewerage services and facilities to the territory shall remain the obligation of the district until such time as the plant facility and equipment of the districts have been acquired by the city.

41-10-156. Bonding authority of city or town to acquire district facilities; limitations; administration of indebtedness.

(a) Any city or town may acquire by purchase, gift or otherwise the plant facility and equipment of such district and incorporate the plant facility and equipment into its municipally owned water works or sewerage system. The city or town may finance the purchase of the plant facility and equipment by issuing its general obligation bonds or other like securities, or revenue bonds or other like securities payable solely from the revenues derived from the operation of the water or sewerage districts. The bonds may be issued in accordance with the provisions of law. The revenues produced by the bonds issued by the city or town shall be placed in escrow and used to retire the obligations of the district in accordance with the terms and conditions thereof.

(b) Upon the acquisition of such territory by the city the existing bonded indebtedness of the district shall remain a superior obligation to any other bonded indebtedness of the city or town, with respect to such land only, and the bonded indebtedness of the district shall in no way affect the bonded indebtedness or limitations on the bonding capacity of the city or town.

(c) When the governing body of the city or town determines to acquire by purchase, gift or otherwise the plant facilities and equipment of a district, it shall adopt an ordinance describing in a general manner the assets of the districts to be acquired, the purchase price thereof, the amount of revenue bonds proposed to be issued, the maturity or maturities, the interest rate and other details in connection with the bonds. The ordinance may provide that the bonds or those specified shall be to the extent and in the manner prescribed in the ordinance subordinated to any other bonds payable from the revenue of the water or sewerage system of the city or town. The ordinance may contain such covenants and restrictions upon the issuance of additional revenue bonds which share equally from the revenues of the system as may be necessary or advisable to assure the payment of the bonds hereby authorized. The ordinance may provide the revenue bonds or any part thereof may be sold to the state of Wyoming or the United States of America or any agency or instrumentality thereof at private sale without advertisement for not less than par and accrued interest. The ordinance may provide that the bonds be redeemable with or without premium at the time or place the governing body provides.

41-10-157. Application.

The provisions of this act [§§ 41-10-152 through 41-10-157] shall not be effective unless a majority of landowners owning more than half of the land sought to be annexed under this act approve the annexation and the nonassumption of indebtedness by the municipality.

CHAPTER 11
INTERSTATE STREAMS COMMISSION

ARTICLE 1
IN GENERAL

41-11-101. Duties of attorney general.

The attorney general shall be the legal advisor to the commission and it shall be his duty to defend any suit or suits that may be instituted against the state of Wyoming, or against the water users and appropriators from this state, by the United States government, or by any other state, involving the question of priorities and rights of interstate streams; or if advisable to prosecute any suit necessary to properly safeguard the interests of the state or its citizens, in such interstate streams.

ARTICLE 2
COMMISSIONERS

41-11-201. Appointment of commissioners to serve on joint commission; ratification of compacts; governor may serve as commissioner.

(a) The governor of the state of Wyoming shall appoint any commissioners necessary to represent Wyoming on any joint commission to be composed of commissioners from Wyoming and one (1) or more adjoining states and an authorized representative of the United States for the purpose of negotiating compacts or agreements between those states, or between those states and the United States, respecting the equitable division, use and distribution of the waters of any interstate stream and its tributaries flowing from or into Wyoming. However, any such compact or agreement so entered into by the specified states, or between those states and the United States, is not binding or obligatory upon any of the compacting parties thereto unless it has been ratified and approved by the legislature of each of the party states and consented to by the congress of the United States.

(b) At his option, the governor may serve as one (1) of the commissioners for Wyoming in negotiating any compact or agreement respecting the equitable division, use and distribution of the waters of any interstate stream and its tributaries flowing from or into Wyoming.

(c) The governor may remove any commissioner he appoints under this section as provided in W.S. 9-1-202.

41-11-202. Designation of commissioners to represent state on all interstate compacts; service of governor on compact commission.

The governor of Wyoming shall appoint and designate such commissioners as may be necessary to represent the state of Wyoming on all negotiated interstate compacts, unless the compacts by their terms otherwise provide. The governor of Wyoming, at his option, may serve as a commissioner for Wyoming on any compact commission, if permitted under the terms of the compact. The governor may remove any commissioner he appoints as provided in W.S. 9-1-202.

41-11-203. Authority of commissioners; investigations.

Any commissioner appointed to serve under the provisions of any interstate water compact or in the negotiation of an interstate water compact or any other person designated by the governor to do so, shall have full authority to make any and all investigations of such interstate streams and the drainage area thereof which may become necessary in order to sufficiently advise him of the physical

conditions obtaining upon such system, and of the present and future needs of the state of Wyoming, and its citizens to the use and benefits of the waters of such stream. To that end the governor or any commissioner or other person designated by the governor to conduct such investigation, shall have authority to administer oaths, examine and require the attendance of witnesses, and to perform such other duties as may be necessary to sufficiently apprise him of the facts and furnish him with adequate information in order that he may properly perform his duties as the representative of the state of Wyoming or to fully inform the designated representative of Wyoming.

41-11-204. Assistant commissioners.

The governor may appoint assistant commissioners to aid and assist him, or any interstate streams commissioner appointed by him, in the negotiations for determination of the equitable division of the waters of all Wyoming interstate streams, to serve only on call of the governor.

41-11-205. Mileage, per diem and compensation for commissioners and assistant commissioners.

Each and every commissioner and assistant commissioner appointed to represent the state of Wyoming on an interstate compact or in the negotiation thereof shall be paid per diem and compensation in the same amount as provided for members of the Wyoming legislature and mileage at the rate set in W.S. 9-3-103 for each mile actually and necessarily traveled in the performance of his duties except state of Wyoming officers and employees shall only be reimbursed for mileage and per diem while away from their regular stations, as in other cases provided. The state engineer is charged with the responsibility for expenditure of such sums as are necessary under this act [§§ 41-11-201 through 41-11-206].

41-11-206. Depository of records relating to interstate streams and water compacts.

The office of the state engineer is hereby designated as the depository of all records, reports and materials relating to interstate streams and water compacts and the activities of all commissioners, administrators and other persons appointed by the governor to conduct investigations of any Wyoming interstate streams or water.

CHAPTER 12
INTERSTATE COMPACTS

ARTICLE 1
BEAR RIVER COMPACT

41-12-101. Generally.

Ratification and approval is hereby given to the Bear River Compact as signed at Salt Lake City, in the state of Utah, on the 22nd day of December, A.D., 1978, by George L. Christopulos, the state engineer of the state of Wyoming, and others, which compact was also signed by the duly authorized commissioners of the states of Idaho and Utah, and approved by the representative of the United States, which Bear River Compact is in full as follows:

BEAR RIVER COMPACT

The state of Idaho, the state of Utah, and the state of Wyoming, acting through their respective commissioners after negotiations participated in by a representative of the United States of America appointed by the president, have agreed to an amended Bear River Compact as follows:

ARTICLE I

A. The major purposes of this compact are to remove the causes of present and future controversy over the distribution and use of the waters of the Bear River; to provide for efficient use of water for multiple purposes; to permit additional development of the water resources of Bear River; to promote interstate comity; to accomplish an equitable apportionment of the waters of the Bear River among the compacting states.

B. The physical and all other conditions peculiar to the Bear River constitute the basis for this compact. No general principle or precedent with respect to any other interstate stream is intended to be established.

ARTICLE II

As used in this compact the term

1. "Bear River" means the Bear River and its tributaries from its source in the Uinta Mountains to its mouth in Great Salt Lake;

2. "Bear Lake" means Bear Lake and Mud Lake;

3. "Upper division" means the portion of Bear River from its source in the Uinta Mountains to and including Pixley Dam, a diversion dam in the southeast quarter of section 25, township 23 north, range 120 west, sixth principal meridian, Wyoming;

4. "Central division" means the portion of the Bear River from Pixley Dam to and including Stewart Dam, a diversion dam in section 34, township 13 south, range 44 east, Boise base and meridian, Idaho;

5. "Lower division" means the portion of the Bear River between Stewart Dam and Great Salt Lake, including Bear Lake and its tributary drainage;

6. "Upper Utah section diversions" means the sum of all diversions in second-feet from the Bear River and the tributaries of Bear River joining the Bear River upstream from the point where the Bear River crosses the Utah-Wyoming state line above Evanston, Wyoming; excluding the diversions by the Hilliard East Fork Canal, Lannon Canal, Lone Mountain Ditch, and Hilliard West Side Canal;

7. "Upper Wyoming section diversions" means the sum of all diversions in second-feet from the Bear River main stem from the point where the Bear River crosses the Utah-Wyoming state line above Evanston, Wyoming, to the point where the Bear River crosses the Wyoming-Utah state line east of Woodruff, Utah, and including the diversions by the Hilliard East Fork Canal, Lannon Canal, Lone Mountain Ditch, and Hilliard West Side Canal;

8. "Lower Utah section diversions" means the sum of all diversions in second-feet from the Bear River main stem from the point where the Bear River crosses the Wyoming-Utah state line east of Woodruff, Utah, to the point where the Bear River crosses the Utah-Wyoming state line northeast of Randolph, Utah;

9. "Lower Wyoming section diversions" means the sum of all diversions in second-feet from the Bear River main stem from the point where the Bear River crosses the Utah-Wyoming state line northeast of Randolph to and including the diversion at Pixley Dam;

10. "Commission" means the Bear River commission, organized pursuant to article III of this compact;

11. "Water user" means a person, corporation, or other entity having a right to divert water from the Bear River for beneficial use;

12. "Second-foot" means a flow of one cubic foot of water per second of time passing a given point;

13. "Acre-foot" means the quantity of water required to cover one acre to a depth of one foot, equivalent to 43,560 cubic feet;

14. "Biennium" means the 2-year period commencing on October 1 of the first odd numbered year after the effective date of this compact and each 2-year period thereafter;

15. "Water year" means the period beginning October 1 and ending September 30 of the following year;

16. "Direct flow" means all water flowing in a natural watercourse except water released from storage or imported from a source other than the Bear River watershed;

17. "Border gauging station" means the stream flow gauging station in Idaho on the Bear River above Thomas Fork near the Wyoming-Idaho boundary line in the northeast quarter of the northeast quarter of section 15, township 14 south, range 46 east, Boise base and meridian, Idaho;

18. "Smiths Fork" means a Bear River tributary which rises in Lincoln County, Wyoming and flows in a general southwesterly direction to its confluence with Bear River near Cokeville, Wyoming;

19. "Grade Creek" means a Smiths Fork tributary which rises in Lincoln County, Wyoming and flows in a westerly direction and in its natural channel is tributary to Smiths Fork in section 17, township 25 north, range 118 west, sixth principal meridian, Wyoming;

20. "Pine Creek" means a Smiths Fork tributary which rises in Lincoln County, Wyoming, emerging from its mountain canyon in section 34, township 25 north, range 118 west, sixth principal meridian, Wyoming, and in its natural channel is tributary to Smiths Fork in section 36, township 25 north, range 119 west, sixth principal meridian, Wyoming;

21. "Bruner Creek" and "Pine Creek Springs" means Smiths Fork tributaries which rise in Lincoln County, Wyoming, in sections 31 and 32, township 25 north, range 118 west, sixth principal meridian, and in their natural channels are tributary to Smiths Fork in section 36, township 25 north, range 119 west, sixth principal meridian, Wyoming;

22. "Spring Creek" means a Smiths Fork tributary which rises in Lincoln County, Wyoming, in sections 1 and 2, township 24 north, range 119 west, sixth principal meridian, Wyoming, and flows in a general westerly direction to its confluence with Smiths Fork in section 4, township 24 north, range 119 west, sixth principal meridian, Wyoming;

23. "Sublette Creek" means the Bear River tributary which rises in Lincoln County, Wyoming and flows in a general westerly direction to its confluence with Bear River in section 20, township 24 north, range 119 west, sixth principal meridian, Wyoming;

24. "Hobble Creek" means the Smiths Fork tributary which rises in Lincoln County, Wyoming and flows in a general southwesterly direction to its confluence with Smiths Fork in section 35, township 28 north, range 118 west, sixth principal meridian, Wyoming;

25. "Hilliard East Fork Canal" means that irrigation canal which diverts water from the right bank of the east fork of Bear River in Summit County, Utah, at a point west 1,310 feet and north 330 feet from the southeast corner of section 16, township 2 north, range 10 east, Salt Lake base and meridian, Utah, and runs in a northerly direction crossing the Utah-Wyoming state line into the southwest quarter of section 21, township 12 north, range 119 west, sixth principal meridian, Wyoming;

26. "Lannon Canal" means that irrigation canal which diverts water from the right bank of the Bear River in Summit County, Utah, east 1,480 feet from the west quarter corner of section 19, township 3 north, range 10 east, Salt Lake base and meridian, Utah, and runs in a northerly direction crossing the Utah-Wyoming state line into the south half of section 20, township 12 north, range 119 west, sixth principal meridian, Wyoming;

27. "Lone Mountain Ditch" means that irrigation canal which diverts water from the right bank of the Bear River in Summit County, Utah, north 1,535 feet and east 1,120 feet from the west quarter corner of section 19, township 3 north, range 10 east, Salt Lake base and meridian, Utah, and runs in a northerly direction crossing the Utah-Wyoming state line into the south half of section 20, township 12 north, range 119 west, sixth principal meridian, Wyoming;

28. "Hilliard West Side Canal" means that irrigation canal which diverts water from the right bank of the Bear River in Summit County, Utah, at a point north 2,190 feet and east 1,450 feet from the south quarter corner of section 13, township 3 north, range 9 east, Salt Lake base and meridian, Utah, and runs in a northerly direction crossing the Utah-Wyoming state line into the south half of section 20, township 12 north, range 119 west, sixth principal meridian, Wyoming;

29. "Francis Lee Canal" means that irrigation canal which diverts water from the left bank of the Bear River in Uinta County, Wyoming, in the northeast quarter of section 30, township 18 north, range 120 west, sixth principal meridian, Wyoming, and runs in a westerly direction across the Wyoming-Utah state line into section 16, township 9 north, range 8 east, Salt Lake base and meridian, Utah;

30. "Chapman Canal" means that irrigation canal which diverts water from the left bank of the Bear River in Uinta County, Wyoming, in the northeast quarter of section 36, township 16 north, range 121 west, sixth principal meridian, Wyoming, and runs in a northerly direction crossing over the low divide into the Saleratus drainage basin near the southeast corner of section 36, township 17 north, range 121 west, sixth principal meridian, Wyoming and then in a general westerly direction crossing the Wyoming-Utah state line;

31. "Neponset Reservoir" means that reservoir located principally in sections 34 and 35, township 8 north, range 7 east, Salt Lake base and meridian, Utah, having a capacity of 6,900 acre-feet.

ARTICLE III

A. There is hereby created an interstate administrative agency to be known as the "Bear River Commission" which is hereby constituted a legal entity and in such name shall exercise the powers hereinafter specified. The commission shall be composed of nine commissioners, three commissioners representing each signatory state, and if appointed by the president, one additional commissioner representing the United States of America who shall serve as chairman, without vote.

Each commissioner, except the chairman, shall have one vote. The state commissioners shall be selected in accordance with state law. Six commissioners who shall include two commissioners from each state shall constitute a quorum. The vote of at least two-thirds of the commissioners when a quorum is present shall be necessary for the action of the commission.

B. The compensation and expenses of each commissioner and each adviser shall be paid by the government which he represents. All expenses incurred by the commission in the administration of this compact, except those paid by the United States of America, shall be paid by the signatory states on an equal basis.

C. The commission shall have power to:

1. Adopt by-laws, rules, and regulations not inconsistent with this compact;

2. Acquire, hold, convey or otherwise dispose of property;

3. Employ such persons and contract for such services as may be necessary to carry out its duties under this compact;

4. Sue and be sued as a legal entity in any court of record of a signatory state, and in any court of the United States having jurisdiction of such action;

5. Cooperate with state and federal agencies in matters relating to water pollution of interstate significance;

6. Perform all functions required of it by this compact and do all things necessary, proper or convenient in the performance of its duties hereunder, independently or in cooperation with others, including state and federal agencies.

D. The commission shall:

1. Enforce this compact and its orders made hereunder by suit or other appropriate action;

2. Compile a report covering the work of the commission and expenditures during the current biennium, and an estimate of expenditures for the following biennium and transmit it to the president of the United States and to the governors of the signatory states on or before July 1 following each biennium.

ARTICLE IV

Rights to direct flow water shall be administered in each signatory state under state law, with the following limitations:

A. When there is a water emergency, as hereinafter defined for each division, water shall be distributed therein as provided below.

1. Upper division

a. When the divertible flow as defined below for the upper division is less than 1,250 second-feet, a water emergency shall be deemed to exist therein and such divertible flow is allocated for diversion in the river sections of the division as follows:

Upper Utah section diversions - 0.6 percent,
Upper Wyoming section diversions - 49.3 percent,

Lower Utah section diversions - 40.5 percent,
Lower Wyoming section diversions - 9.6 percent.
Such divertible flow shall be the total of the following five items:

(1) Upper Utah section diversions in second-feet,

(2) Upper Wyoming section diversions in second-feet,

(3) Lower Utah section diversions in second-feet,

(4) Lower Wyoming section diversions in second-feet,

(5) The flow in second-feet passing Pixley Dam.

b. The Hilliard East Fork Canal, Lannon Canal, Lone Mountain Ditch, and Hilliard West Side Canal, which divert water in Utah to irrigate lands in Wyoming, shall be supplied from the divertible flow allocated to the Upper Wyoming section diversions.

c. The Chapman, Bear River, and Francis Lee Canals, which divert water from the main stem of Bear River in Wyoming to irrigate lands in both Wyoming and Utah, shall be supplied from the divertible flow allocated to the Upper Wyoming section diversions.

d. The Beckwith Quinn West Side Canal, which diverts water from the main stem of Bear River in Utah to irrigate lands in both Utah and Wyoming, shall be supplied from the divertible flow allocated to the Lower Utah section diversions.

e. If for any reason the aggregate of all diversions in a river section of the upper division does not equal the allocation of water thereto, the unused portion of such allocation shall be available for use in the other river sections in the upper division in the following order: (1) In the other river section of the same state in which the unused allocation occurs; and (2) In the river sections of the other state. No permanent right of use shall be established by the distribution of water pursuant to this paragraph e.

f. Water allocated to the several sections shall be distributed in each section in accordance with state law.

2. Central division

a. When either the divertible flow as hereinafter defined for the central division is less than 870 second-feet, or the flow of the Bear River at Border Gauging Station is less than 350 second-feet, whichever shall first occur, a water emergency shall be deemed to exist in the central division and the total of all diversions in Wyoming from Grade Creek, Pine Creek, Bruner Creek and Pine Creek Springs, Spring Creek, Sublette Creek, Smiths Fork, and all the tributaries of Smiths Fork above the mouth of Hobble Creek including Hobble Creek, and from the main stem of the Bear River between Pixley Dam and the point where the river crosses the Wyoming-Idaho state line near Border shall be limited for the benefit of the state of Idaho, to not exceeding forty-three (43) percent of the divertible flow. The remaining fifty-seven (57) percent of the divertible flow shall be available for use in Idaho in the central division, but if any portion of such allocation is not used therein it shall be available for use in Idaho in the lower division.

The divertible flow for the central division shall be the total of the following three items:

(1) Diversions in second-feet in Wyoming consisting of the sum of all diversions from Grade Creek, Pine Creek, Bruner Creek and Pine Creek Springs, Spring Creek, Sublette Creek, and Smiths Fork and all the tributaries of Smiths Fork above the mouth of Hobble Creek including Hobble Creek, and the main stem of the Bear River between Pixley Dam and the point where the river crosses the Wyoming-Idaho state line near Border, Wyoming.

(2) Diversions in second-feet in Idaho from the Bear River main stem from the point where the river crosses the Wyoming-Idaho state line near Border to Stewart Dam including West Fork Canal which diverts at Stewart Dam.

(3) Flow in second-feet of the Rainbow Inlet Canal and of the Bear River passing downstream from Stewart Dam.

b. The Cook Canal, which diverts water from the main stem of the Bear River in Wyoming to irrigate lands in both Wyoming and Idaho, shall be considered a Wyoming diversion and shall be supplied from the divertible flow allocated to Wyoming.

c. Water allocated to each state shall be distributed in accordance with state law.

3. Lower division

a. When the flow of water across the Idaho-Utah boundary line is insufficient to satisfy water rights in Utah, covering water applied to beneficial use prior to January 1, 1976, any water user in Utah may file a petition with the commission alleging that by reason of diversions in Idaho he is being deprived of water to which he is justly entitled, and that by reason thereof, a water emergency exists, and requesting distribution of water under the direction of the commission. If the commission finds a water emergency exists, it shall put into effect water delivery schedules based on priority of rights and prepared by the commission without regard to the boundary line for all or any part of the division, and during such emergency, water shall be delivered in accordance with such schedules by the state official charged with the administration of public waters.

B. The commission shall have authority upon its own motion (1) to declare a water emergency in any or all river divisions based upon its determination that there are diversions which violate this compact and which encroach upon water rights in a lower state, (2) to make appropriate orders to prevent such encroachments, and (3) to enforce such orders by action before state administrative officials or by court proceedings.

C. When the flow of water in an interstate tributary across a state boundary line is insufficient to satisfy water rights on such tributary in a lower state, any water user may file a petition with the commission alleging that by reason of diversions in an upstream state he is being deprived of water to which he is justly entitled and that by reason thereof a water emergency exists, and requesting distribution of water under the direction of the commission. If the commission finds that a water emergency exists and that interstate control of water of such tributary is necessary, it shall put into effect water delivery schedules based on priority of rights and prepared without regard to the state boundary line. The state officials in charge of water distribution on interstate tributaries may appoint and fix the compensation and expenses of a joint water commissioner for each tributary. The proportion of the compensation and expenses to be paid by each state shall be determined by the ratio between the number of acres therein which are irrigated by diversions from such tributary, and the total number of acres irrigated from such tributary.

D. In preparing interstate water delivery schedules the commission, upon notice and after public hearings, shall make findings of fact as to the nature, priority and extent of water rights, rates of flow, duty of water, irrigated acreages, types of crops, time of use, and related matters; provided that

such schedules shall recognize and incorporate therein priority of water rights as adjudicated in each of the signatory states. Such findings of fact shall, in any court or before any tribunal, constitute prima facie evidence of the facts found.

E. Water emergencies provided for herein shall terminate on September 30 of each year unless terminated sooner or extended by the commission.

ARTICLE V

A. Water rights in the lower division acquired under the laws of Idaho and Utah covering water applied to beneficial use prior to January 1, 1976, are hereby recognized and shall be administered in accordance with state law based on priority of rights as provided in Article IV, paragraph A.3. Rights to water first applied to beneficial use on or after January 1, 1976, shall be satisfied from the respective allocations made to Idaho and Utah in this paragraph and the water allocated to each state shall be administered in accordance with state law. Subject to the foregoing provisions, the remaining water in the lower division, including ground water tributary to the Bear River, is hereby apportioned for use in Idaho and Utah as follows:

(1) Idaho shall have the first right to the use of such remaining water resulting in an annual depletion of not more than 125,000 acre-feet;

(2) Utah shall have the second right to the use of such remaining water resulting in an annual depletion of not more than 275,000 acre-feet;

(3) Idaho and Utah shall each have an additional right to deplete annually on an equal basis, 75,000 acre-feet of the remaining water after the rights provided by subparagraphs (1), and (2) above have been satisfied;

(4) Any remaining water in the lower division after the allocations provided for in subparagraphs (1), (2), and (3) above have been satisfied shall be divided; thirty (30) percent to Idaho and seventy (70) percent to Utah.

B. Water allocated under the above subparagraphs shall be charged against the state in which it is used regardless of the location of the point of diversion.

C. Water depletions permitted under provisions of subparagraphs (1), (2), and (3), and (4) above, shall be calculated and administered by a commission-approved procedure.

ARTICLE VI

A. Existing storage rights in reservoirs constructed above Stewart Dam prior to February 4, 1955 are as follows:

Idaho ..... 324 acre-feet
Utah ..... 11,850 acre-feet
Wyoming ..... 2,150 acre-feet

Additional rights are hereby granted to store in any water year above Stewart Dam, 35,500 acre-feet of Bear River water and no more under this paragraph for use in Utah and Wyoming; and to store in any water year in Idaho or Wyoming on Thomas Fork 1,000 acre-feet of water for use in Idaho. Such additional storage rights shall be subordinate to, and shall not be exercised when the effect thereof will be to impair or interfere with (1) existing direct flow rights for consumptive use in any river division and (2) existing storage rights above Stewart Dam, but shall not be subordinate to any right to store

water in Bear Lake or elsewhere below Stewart Dam. One-half of the 35,500 acre-feet of additional storage right above Stewart Dam so granted to Utah and Wyoming is hereby allocated to Utah, and the remaining one-half thereof is allocated to Wyoming.

B. In addition to the rights defined in paragraph A. of this article, further storage entitlements above Stewart Dam are hereby granted. Wyoming and Utah are granted an additional right to store in any year 70,000 acre-feet of Bear River water for use in Utah and Wyoming to be divided equally; and Idaho is granted an additional right to store 4,500 acre-feet of Bear River water in Wyoming or Idaho for use in Idaho. Water rights granted under this paragraph and water appropriated, including ground water tributary to Bear River, which is applied to beneficial use on or after January 1, 1976, shall not result in an annual increase in depletion of the flow of the Bear River and its tributaries above Stewart Dam of more than 28,000 acre-feet in excess of the depletion as of January 1, 1976. Thirteen thousand (13,000) acre-feet of the additional depletion above Stewart Dam is allocated to each of Utah and Wyoming, and two thousand (2,000) acre-feet is allocated to Idaho.

The additional storage rights provided for in this paragraph shall be subordinate to, and shall not be exercised when the effect thereof will be to impair or interfere with (1) existing direct flow rights for consumptive use in any river division and (2) existing storage rights above Stewart Dam, but shall not be subordinate to any right to store water in Bear Lake or elsewhere below Stewart Dam; provided, however, there shall be no diversion of water to storage above Stewart Dam under this paragraph B. when the water surface elevation of Bear Lake is below 5,911.00 feet, Utah Power & Light Company datum (the equivalent of elevation 5,913.75 feet based on the sea level datum of 1929 through the Pacific Northwest Supplementary Adjustment of 1947). Water depletions permitted under this paragraph B. shall be calculated and administered by a commission-approved procedure.

C. In addition to the rights defined in article VI, paragraphs A. and B., Idaho, Utah and Wyoming are granted the right to store and use water above Stewart Dam that otherwise would be bypassed or released from Bear Lake at times when all other direct flow and storage rights are satisfied. The availability of such water and the operation of reservoir space to store water above Bear Lake under this paragraph shall be determined by a commission-approved procedure. The storage provided for in this paragraph shall be subordinate to all other storage and direct flow rights in the Bear River. Storage rights under this paragraph shall be exercised with equal priority on the following basis: six (6) percent thereof to Idaho; forty-seven (47) percent thereof to Utah; and forty-seven (47) percent thereof to Wyoming.

D. The waters of Bear Lake below elevation 5,912.91 feet, Utah Power & Light Company Bear Lake datum (the equivalent of elevation 5915.66 feet based on the sea level datum of 1929 through the Pacific Northwest Supplementary Adjustment of 1947) shall constitute a reserve for irrigation. The water of such reserve shall not be released solely for the generation of power, except in emergency, but after release for irrigation it may be used in generating power if not inconsistent with its use for irrigation. Any water in Bear Lake in excess of that constituting the irrigation reserve may be used for the generation of power or for other beneficial uses. As new reservoir capacity above the Stewart Dam is constructed to provide additional storage pursuant to paragraph A. of this article, the commission shall make a finding in writing as to the quantity of additional storage and shall thereupon make an order increasing the irrigation reserve in accordance with the following table:

Additional storage acre-feet	Lake surface elevation Utah Power & Light Company Bear Lake datum
5,000	5,913.24
10,000	5,913.56

15,000 ..... 5,913.87
20,000 ..... 5,914.15
25,000 ..... 5,914.41
30,000 ..... 5,914.61
35,500 ..... 5,914.69
36,500 ..... 5,914.70

E. Subject to existing rights, each state shall have the use of water, including ground water, for ordinary domestic, and stock watering purposes, as determined by state law and shall have the right to impound water for such purposes in reservoirs having storage capacities not in excess, in any case, of 20 acre-feet, without deduction from the allocation made by paragraphs A., B. and C. of this article.

F. The storage rights in Bear Lake are hereby recognized and confirmed subject only to the restrictions hereinbefore recited.

ARTICLE VII

It is the policy of the signatory states to encourage additional projects for the development of the water resources of the Bear River to obtain the maximum beneficial use of water with a minimum of waste, and in furtherance of such policy, authority is granted within the limitations provided by this compact, to investigate, plan, construct, and operate such projects without regard to state boundaries, provided that water rights for each such project shall, except as provided in article VI, paragraphs A. and B. thereof, be subject to rights theretofore initiated and in good standing.

ARTICLE VIII

A. No state shall deny the right of the United States of America, and subject to the conditions hereinafter contained, no state shall deny the right of another signatory state, any person or entity of another signatory state, to acquire rights to the use of water or to construct or to participate in the construction and use of diversion works and storage reservoirs with appurtenant works, canals, and conduits in one state for use of water in another state, either directly or by exchange. Water rights acquired for out-of-state use shall be appropriated in the state where the point of diversion is located in the manner provided by law for appropriation of water for use within such state.

B. Any signatory state, any person or any entity of any signatory state, shall have the right to acquire in any other signatory state such property rights as are necessary to the use of water in conformity with this compact by donation, purchase, or, as hereinafter provided through the exercise of the power of eminent domain in accordance with the law of the state in which such property is located. Any signatory state, upon the written request of the governor of any other signatory state for the benefit of whose water users property is to be acquired in the state to which such written request is made, shall proceed expeditiously to acquire the desired property either by purchase at a price acceptable to the requesting governor, or if such purchase cannot be made, then through the exercise of its power of eminent domain and shall convey such property to the requesting state or to the person, or entity designated by its governor provided, that all costs of acquisition and expenses of every kind and nature whatsoever incurred in obtaining such property shall be paid by the requesting state or the person or entity designated by its governor.

C. Should any facility be constructed in a signatory state by and for the benefit of another signatory state or persons or entities therein, as above provided, the construction, repair, replacement, maintenance and operation of such facility shall be subject to the laws of the state in which the facility is located.

D. In the event lands or other taxable facilities are acquired by a signatory state in another signatory state for the use and benefit of the former, the users of the water made available by such facilities, as a condition precedent to the use thereof, shall pay to the political subdivisions of the state in which such facilities are located, each and every year during which such rights are enjoyed for such purposes, a sum of money equivalent to the average of the amount of taxes annually levied and assessed against the land and improvements thereon during the ten years preceding the acquisition of such land. Said payments shall be in full reimbursement for the loss of taxes in such political subdivision of the state.

E. Rights to the use of water acquired under this article shall in all respects be subject to this compact.

ARTICLE IX

Stored water, or water from another watershed may be turned into the channel of the Bear River in one state and a like quantity, with allowance for loss by evaporation, transpiration, and seepage, may be taken out of the Bear River in another state either above or below the point where the water is turned into the channel, but in making such exchange the replacement water shall not be inferior in quality for the purpose used or diminished in quantity. Exchanges shall not be permitted if the effect thereof is to impair vested rights or to cause damage for which no compensation is paid. Water from another watershed or source which enters the Bear River by actions within a state may be claimed exclusively by that state and use thereof by that state shall not be subject to the depletion limitations of articles IV, V and VI. Proof of any claimed increase in flow shall be the burden of the state making such claim, and it shall be approved only by the unanimous vote of the commission.

ARTICLE X

A. The following rights to the use of Bear River water carried in interstate canals are recognized and confirmed.

Name of canal	Date of priority	Primary right second-feet	Lands irrigated Acres	State
Hilliard East Fork	1914	28.00	2,644	Wyoming
Chapman	8-13-86	16.46	1,155	Wyoming
	8-13-86	98.46	6,892	Utah
	4-12-12	.57	40	Wyoming
	5-3-12	4.07	285	Utah
	5-21-12	10.17	712	Utah
	2-6-13	.79	55	Wyoming
	8-28-05	134.00 *		
Francis Lee ..	1879	2.20	154	Wyoming
	1879	7.41	519	Utah

*Under the right as herein confirmed not to exceed 134 second-feet may be carried across the Wyoming-Utah state line in the Chapman Canal at any time for filling the Neponset Reservoir, for irrigation of land in Utah and for other purposes. The storage right in Neponset Reservoir is for 6,900 acre-feet which is a component part of the irrigation right for the Utah lands listed above.

All other rights to the use of water carried in interstate canals and ditches, as adjudicated in the state in which the point of diversion is located, are recognized and confirmed.

B. All interstate rights shall be administered by the state in which the point of diversion is located and during times of water emergency, such rights shall be filled from the allocations specified in article IV hereof for the section in which the point of diversion is located, with the exception that the diversion of water into the Hilliard East Fork Canal, Lannon Canal, Lone Mountain Ditch, and Hilliard West Side Canal shall be under the administration of Wyoming. During times of water emergency these canals and the Lone Mountain Ditch shall be supplied from the allocation specified in article IV for the Upper Wyoming section diversions.

ARTICLE XI

Applications for appropriation, for change of point of diversion, place and nature of use, and for exchange of Bear River water shall be considered and acted upon in accordance with the law of the state in which the point of diversion is located, but no such application shall be approved if the effect thereof will be to deprive any water user in another state of water to which he is entitled, nor shall any such application be approved if the effect thereof will be an increase in the depletion of the flow of the Bear River and its tributaries beyond the limits authorized in each state in articles IV, V and VI of this compact. The official of each state in charge of water administration shall, at intervals and in the format established by the commission, report on the status of use of the respective allocations.

ARTICLE XII

Nothing in this compact shall be construed to prevent the United States, a signatory state or political subdivision thereof, person, corporation, or association, from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under state or federal law or under this compact.

ARTICLE XIII

Nothing contained in this compact shall be deemed:

1. To affect the obligations of the United States of America to the Indian tribes;

2. To impair, extend or otherwise affect any right or power of the United States, its agencies or instrumentalities involved herein; nor the capacity of the United States to hold or acquire additional rights to the use of the water of the Bear River;

3. To subject any property or rights of the United States to the laws of the states which were not subject thereto prior to the date of this compact;

4. To subject any property of the United States to taxation by the states or any subdivision thereof, nor to obligate the United States to pay any state or subdivision thereof for loss of taxes.

ARTICLE XIV

At intervals not exceeding twenty years, the commission shall review the provisions hereof, and after notice and public hearing, may propose amendments to any such provision, provided, however, that the provisions contained herein shall remain in full force and effect until such proposed amendments have been ratified by the legislatures of the signatory states and consented to by congress.

ARTICLE XV

This compact may be terminated at any time by the unanimous agreement of the signatory states. In the event of such termination all rights established under it shall continue unimpaired.

ARTICLE XVI

Should a court of competent jurisdiction hold any part of this compact to be contrary to the constitution of any signatory state or to the constitution of the United States, all other severable provisions of this compact shall continue in full force and effect.

ARTICLE XVII

This compact shall be in effect when it shall have been ratified by the legislature of each signatory state and consented to by the congress of the United States of America. Notice of ratification by the legislature of the signatory states shall be given by the governor of each signatory state to the governor of each of the other signatory states and to the president of the United States of America, and the president is hereby requested to give notice to the governor of each of the signatory states of approval by the congress of the United States of America.

IN WITNESS WHEREOF, the commissioners and their advisers have executed this compact in five originals, one of which shall be deposited with the general services administration of the United States of America, one of which shall be forwarded to the governor of each of the signatory states, and one of which shall be made a part of the permanent records of the Bear River commission.

Done at Salt Lake City, Utah, this 22nd day of December 1978.

For the State of Idaho:

Clifford J. Skinner	/s/ Clifford J. Skinner
J. Daniel Roberts	/s/ J. Daniel Roberts
Don W. Gilbert	/s/ Don W. Gilbert

For the State of Utah:

S. Paul Holmgren	/s/ S. Paul Holmgren
Simeon Weston	/s/ Simeon Weston
Daniel F. Lawrence	/s/ Daniel F. Lawrence

For the State of Wyoming:

George L. Christopulos	/s/ George L. Christopulos
John A. Teichert	/s/ John A. Teichert
J. W. Myers	/s/ J. W. Myers

Approved:	Attest:
/s/ Wallace N. Jibson	/s/ Daniel F. Lawrence
Wallace N. Jibson	Daniel F. Lawrence
Representative of the United States of America	Secretary of the Bear River Compact Commission

41-12-102. When binding; notice of ratification.

Said compact shall not be binding or obligatory upon any of the high contracting parties thereto unless and until the same shall have been ratified by the legislature of each of the said states and approved by the congress of the United States. The governor of Wyoming shall give notice of the ratification and approval of said compact by the Wyoming legislature to the governors of the states of Idaho and Utah and to the president of the United States.

ARTICLE 2
BELLE FOURCHE RIVER COMPACT

41-12-201. Purpose.

(a) The major purposes of this compact [§§ 41-12-201 through 41-12-215] are to provide for the most efficient use of the waters of the Belle Fourche River basin hereinafter referred to as the basin for multiple purposes; to provide for an equitable division of such waters; to remove all causes, present and future, which might lead to controversies; to promote interstate comity; to recognize that the most efficient utilization of the waters within the basin is required for the full development of the basin; and to promote joint action by the states and the United States in the efficient use of water and the control of floods.

(b) The physical and other conditions peculiar to the basin constitute the basis for this compact; and none of the states hereby, nor the congress of the United States by its consent, concedes that this compact establishes any general principle or precedent with respect to any other interstate stream.

(c) Either state and all others using, claiming or in any manner asserting any right to the use of the waters of the Belle Fourche River under the authority of that state, shall be subject to the terms of this compact.

41-12-202. Definitions.

(a) As used in this compact [§§ 41-12-201 through 41-12-215]:

(i) The term "Belle Fourche River" shall mean and include the Belle Fourche River and all its tributaries originating in Wyoming;

(ii) The term "basin" shall mean that area in South Dakota and Wyoming which is naturally drained by the Belle Fourche River, and all its tributaries;

(iii) The term "beneficial use" is herein defined to be that use by which the water supply of a drainage basin is depleted when usefully employed by the activities of man, and includes water lost by evaporation, and other natural causes from streams, canals, ditches, irrigated areas, and reservoirs;

(iv) Where the name of the state or the term "state" or "states" is used, these shall be construed to include any person or entity of any nature whatsoever using, claiming, or in any manner asserting any right to the use of the waters of the Belle Fourche River under the authority of that state.

41-12-203. Administration.

(a) It shall be the duty of the two (2) states to administer this compact [§§ 41-12-201 through 41-12-215] through the official in each state who is now or may hereafter be charged with the duty of administering the public water supplies, and to collect and correlate through such officials the data necessary for the proper administration of the provisions of this compact. Such officials may, by unanimous action, adopt rules and regulations consistent with the provisions of this compact.

(b) The United States geological survey, or whatever federal agency may succeed to the functions and duties of that agency, insofar as this compact is concerned, shall collaborate with the officials of the states charged with the administration of this compact in the execution of the duty of such officials in the collection, correlation, and publication of information necessary for the proper administration of this compact.

41-12-204. Water gauging stations.

Each state shall itself or in conjunction with other responsible agencies cause to be established, maintained, and operated such suitable water gauging stations as it finds necessary to administer this compact [§§ 41-12-201 through 41-12-215].

41-12-205. Allocation of waters.

(a) Wyoming and South Dakota agree that the unappropriated waters of the Belle Fourche River as of the date of this compact [§§ 41-12-201 through 41-12-215] shall be allocated to each state as follows: Ninety percent (90%) to South Dakota Ten percent (10%) to Wyoming; provided, that allocations to Wyoming shall be exclusive of the use of these waters for domestic and stock use, and Wyoming shall be allowed unrestricted use for these purposes, except that no reservoir for such use shall exceed twenty (20) acre-feet in capacity. For storage of its allocated water, Wyoming shall have the privilege of purchasing at cost not to exceed ten percent (10%) of the total storage capacity for any reservoir or reservoirs constructed in Wyoming for irrigation of lands in South Dakota, or may construct reservoirs itself for the purpose of utilizing such water. Either state may temporarily divert, or store for beneficial use, any unused part of the above percentages allotted to the other, but no continuing right shall be established thereby.

(b) Rights to the use of the waters of the Belle Fourche River, whether based on direct diversion or storage, are hereby recognized as of the date of this compact to the extent these rights are valid under the law of the state in which the use is made, and shall remain unimpaired hereby. These rights, together with the additional allocations made under (a) of this section, are agreed to be an equitable apportionment between the states of the waters of the basin.

(c) The waters allocated under subsection (a) of this section and the rights recognized under subsection (b) of this section are hereinafter referred to collectively as the apportioned water. For the purposes of the administration of this compact and determining the apportioned water at any given date within a given calendar year, there shall be taken the sum of:

(i) The quantity of water in acre-feet that passed the Wyoming-South Dakota state line during the period from January 1 of that year to that given date;

(ii) The quantity of water in acre-feet in storage on that date in all reservoirs built in Wyoming on the Belle Fourche River subsequent to the date of this compact.

41-12-206. Acquisition of property in another state.

Any person, entity, or state shall have the right to acquire necessary property rights in another state by purchase or through the exercise of the power of eminent domain for the construction, operation and maintenance of storage reservoirs and of appurtenant works, canals, and conduits required for the enjoyment of the privileges granted by W.S. 41-12-205 and 41-12-207(a); provided, however, that the grantees of such rights shall pay to the political subdivisions of the state in which such works are located, each and every year during which such rights are enjoyed for such purposes, a sum of money equivalent to the average annual amount of taxes assessed against the lands and

improvements thereon during the ten (10) years preceding the use of such lands in reimbursement for the loss of taxes to said political subdivisions of the state.

41-12-207. Construction and use of dams; claims for storage or diversion; appropriations.

(a) Either state shall have the right, by compliance with the laws of the other state, to file applications for and receive permits to construct or participate in the construction and use of any dam, storage reservoir, or diversion works in such state for the purpose of conserving and regulating the apportioned water of the other state; provided, that such right is subject to the rights of the other state to control, regulate, and use water apportioned to it.

(b) Each claim hereafter initiated for storage or diversion of water in one (1) state for use in another state shall be filed in the office of the state engineer of the state in which the water is to be stored or diverted, and a duplicate copy of the application including a map showing the character and location of the proposed facilities and the lands to be irrigated shall be filed in the office of the state engineer of the state in which the water is to be used. If a portion or all the lands proposed to be reclaimed are located in a state other than the one (1) in which the water is to be restored or diverted, then, before approval of the application shall be granted, said application shall be checked against the records of the appropriate office of the state in which the water is to be used, and a notation shall be placed thereon by the officer in charge of such records to the effect that the land description does not indicate a conflict with existing water rights. All endorsements shall be placed on both the original and duplicate copies of all such maps filed to the end that the records in both states may be complete and identical.

(c) Appropriations may hereafter be adjudicated in the state in which the water is stored or diverted, and where a portion or all the lands irrigated are in the other state, such adjudications shall be confirmed in the latter state by the proper authority. Each adjudication is to conform with the laws of the state where the water is stored or diverted and shall be recorded in the county and state where the water is used.

41-12-208. Water for stock water use in South Dakota.

In case any reservoir is constructed in Wyoming to be used principally for irrigation of lands in South Dakota, sufficient water not to exceed ten (10) cubic feet per second shall be released at all times for stock water use.

41-12-209. Size of reservoirs.

No reservoir hereafter built solely to utilize the water allocated to Wyoming shall have a capacity in excess of one thousand (1,000) acre-feet.

41-12-210. Duration of compact.

The provisions of this compact [§§ 41-12-201 through 41-12-215] shall remain in full force and effect until amended by action of the legislature of the states and consented to and approved by the congress of the United States in the same manner as this compact is required to be ratified to become effective.

41-12-211. Termination of compact.

This compact [§§ 41-12-201 through 41-12-215] may be terminated at any time by unanimous consent of the states, and upon such termination, all rights then established hereunder or recognized

hereby shall continue to be recognized as valid by the states notwithstanding the termination of the other provisions of the compact.

41-12-212. Rights of action preserved.

Nothing in this compact [§§ 41-12-201 through 41-12-215] shall be construed to limit or prevent either state from instituting or maintaining any action or proceeding, legal or equitable, in any federal court or the United States supreme court for the protection of any right under this compact or the enforcement of any of its provisions.

41-12-213. Application of compact.

(a) Nothing in this compact [§§ 41-12-201 through 41-12-215] shall be deemed:

(i) To impair or affect any rights or powers of the United States, its agencies, or instrumentalities, in and to the use of the waters of the Belle Fourche River nor its capacity to acquire rights in and to the use of said waters;

(ii) To subject any property of the United States, its agencies, or instrumentalities to taxation by either state or subdivision thereof, or to create an obligation on the part of the United States, its agencies, or instrumentalities, by reason of the acquisition, construction or operation of any property or works of whatsoever kind, to make any payments to any state or political subdivision thereof, state agency, municipality, or entity whatsoever in reimbursement for the loss of taxes;

(iii) To subject any property of the United States, its agencies, or instrumentalities, to the laws of any state to an extent other than the extent to which these laws would apply without regard to the compact.

41-12-214. When compact becomes operative.

(a) This compact [§§ 41-12-201 through 41-12-215] shall become operative when approved by the legislature of each of the states, and when consented to by the congress of the United States by legislation providing, among other things, that:

(i) Any beneficial uses hereafter made by the United States, or those acting by or under its authority, within a state, of the waters allocated by this compact, shall be within the allocations hereinabove made for use in that state and shall be taken into account in determining the extent of use within that state;

(ii) The United States, or those acting by or under its authority, in the exercise of rights or powers arising from whatever jurisdiction the United States has in, over and to the waters of the Belle Fourche River and all its tributaries, shall recognize, to the extent consistent with the best utilization of the waters for multiple purposes, that beneficial use of the waters within the basin is of paramount importance to development of the basin, and no exercise of such power or right thereby that would interfere with the full beneficial use of the waters shall be made except upon a determination, giving due consideration to the objectives of this compact and after consultation with all interested federal agencies and the state officials charged with the administration of this compact, that such exercise is in the interest of the best utilization of such waters for multiple purposes;

(iii) The United States, or those acting by or under its authority, will recognize any established use, for domestic and irrigation purposes, of the apportioned waters which may be impaired by the exercise of federal jurisdiction in, over, and to such waters; provided, that such use is being exercised beneficially, is valid under the laws of the appropriate state and in conformity with this

compact at the time of the impairment thereof, and was validly initiated under state law prior to the initiation or authorization of the federal program or project which causes such impairment.

41-12-215. Severability of provisions.

Should a court of competent jurisdiction hold any part of this compact [§§ 41-12-201 through 41-12-215] to be contrary to the constitution of any state or of the United States, all other severable provisions shall continue in full force and effect.

ARTICLE 3
COLORADO RIVER COMPACT

41-12-301. Generally.

Ratification and approval is hereby given to the Colorado River Compact as signed at the city of Santa Fe, New Mexico, on the twenty-fourth day of November, A.D. 1922, by Frank C. Emerson the duly appointed commissioner for the state of Wyoming, under and in accordance with the authority of the act of the sixteenth Wyoming legislature approved February 22, 1921, entitled: "An act providing for the appointment of a commissioner on behalf of the state of Wyoming to negotiate a compact or agreement between the states of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, and between said states and the United States respecting the use and distribution of the waters of the Colorado River and tributaries, and the rights of said states, and the United States thereto", which compact was also signed by the duly authorized commissioners of the states of Arizona, California, Colorado, Nevada, New Mexico and Utah, and approved by the representative of the United States, which Colorado River Compact is in full as follows:

COLORADO RIVER COMPACT

Signed at Santa Fe, New Mexico,

November 24, 1922

COLORADO RIVER COMMISSION,

Herbert Hoover, chairman.

W. S. Norviel, commissioner for the state of Arizona.
W. F. McClure, commissioner for the state of California.
Delph E. Carpenter, commissioner for the state of Colorado.
J. G. Scrugham, commissioner for the state of Nevada.
Stephen B. Davis, Jr., commissioner for the state of New Mexico.
R. E. Caldwell, commissioner for the state of Utah.
Frank C. Emerson, commissioner for the state of Wyoming.
Clarence C. Stetson, executive secretary, department of commerce, Washington, D.C.

COLORADO RIVER COMPACT

The states of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, having resolved to enter into a compact under the act of the congress of the United States of America, approved August 19, 1921 (42 Statutes at Large, page 171) and the acts of legislatures of the said states, have, through their governors, appointed as their commissioners:

W. S. Norviel for the state of Arizona,

W. F. McClure for the state of California,
Delph E. Carpenter for the state of Colorado,
J. G. Scrugham for the state of Nevada,
Stephen B. Davis, Jr., for the state of New Mexico,
R. E. Caldwell for the state of Utah,
Frank C. Emerson for the state of Wyoming, who, after negotiations participated in by Herbert Hoover, appointed by the president as the representative of the United States of America, have agreed upon the following articles:

Article I

The major purposes of this compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River system; to establish the relative importance of different beneficial uses of water; to promote interstate comity; to remove causes of present and future controversies; and to secure the expeditious agricultural and industrial development of the Colorado River basin, the storage of its waters and the protection of life and property from floods. To these ends the Colorado River basin is divided into two basins, and an apportionment of the use of part of the water of the Colorado River system is made to each of them with the provision that further equitable apportionments may be made.

Article II

(a) As used in this compact:

(i) The term "Colorado River system" means that portion of the Colorado River and its tributaries within the United States of America;

(ii) The term "Colorado River basin" means all of the drainage area of the Colorado River System, and all other territory within the United States of America to which the waters of the Colorado River system shall be beneficially applied;

(iii) The term "states of the upper division" means the states of Colorado, New Mexico, Utah and Wyoming;

(iv) The term "states of the lower division" means the states of Arizona, California and Nevada;

(v) The term "Lee Ferry" means a point in the main stream of Colorado River one mile below the mouth of the Paria River;

(vi) The term "upper basin" means those parts of the states of Arizona, Colorado, New Mexico, Utah and Wyoming within and from which waters naturally drain into the Colorado River system above Lee Ferry, and also all parts of said states located without the drainage area of the Colorado River system which are now or shall hereafter be beneficially served by waters diverted from the system above Lee Ferry;

(vii) The term "lower basin" means those parts of the states of Arizona, California, Nevada, New Mexico and Utah within and from which waters naturally drain into the Colorado River system below Lee Ferry, and also all parts of said states located without the drainage area of the Colorado River system which are now or shall hereafter be beneficially served by waters diverted from the system below Lee Ferry;

(viii) The term "domestic use" shall include the use of water for household, stock, municipal, mining, milling, industrial and other like purposes, but shall exclude the generation of electrical power.

Article III

(a) There is hereby apportioned from the Colorado River system in perpetuity to the upper basin and to the lower basin respectively the exclusive beneficial consumptive use of seven million five hundred thousand (7,500,000) acre-feet of water per annum, which shall include all water necessary for the supply of any rights which may not exist.

(b) In addition to the apportionment in paragraph (a), the lower basin is hereby given the right to increase its beneficial consumptive use of such waters by one million (1,000,000) acre-feet per annum.

(c) If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any waters of the Colorado River system, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then, the burden of such deficiency shall be equally borne by the upper basin and the lower basin, and whenever necessary the states of the upper division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d).

(d) The states of the upper division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of seventy-five million (75,000,000) acre-feet for any period of ten (10) consecutive years reckoned in continuing progressive series, beginning with the first day of October next succeeding the ratification of this compact.

(e) The states of the upper division shall not withhold water, and the states of the lower division shall not require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses.

(f) Further equitable apportionment of the beneficial uses of the waters of the Colorado River system unapportioned by paragraphs (a), (b) and (c) may be made in the manner provided in paragraph (g) at any time after October first, 1963, if and when either basin shall have reached its total beneficial consumptive use as set out in paragraphs (a) and (b).

(g) In the event of a desire for a further apportionment as provided in paragraph (f) any two (2) signatory states, acting through their governors, may give joint notice of such desire to the governors of the other signatory states and to the president of the United States of America, and it shall be the duty of the governors of the signatory states and of the president of the United States of America forthwith to appoint representatives, whose duty it shall be to divide and apportion equitably between the upper basin and lower basin the beneficial use of the unapportioned water of the Colorado River System as mentioned in paragraph (f), subject to the legislative ratification of the signatory states and the congress of the United States of America.

Article IV

(a) Inasmuch as the Colorado River has ceased to be navigable for commerce and the reservation of its waters for navigation would seriously limit the development of its basin, the use of its waters for purposes of navigation shall be subservient to the uses of such waters for domestic, agricultural and power purposes. If the congress shall not consent to this paragraph, the other provisions of this compact shall nevertheless remain binding.

(b) Subject to the provisions of this compact, water of the Colorado River system may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes.

(c) The provisions of this article shall not apply to or interfere with the regulation and control by any state within its boundaries of the appropriation, use and distribution of water.

Article V

(a) The chief official of each signatory state charged with the administration of water rights, together with the director of the United States reclamation service and the director of the United States geological survey shall cooperate, ex officio:

(i) To promote the systematic determination and coordination of the facts as to flow, appropriation, consumption and use of water in the Colorado River basin, and the interchange of available information in such matters.

(ii) To secure the ascertainment and publication of the annual flow of the Colorado River at Lee Ferry.

(iii) To perform such other duties as may be assigned by mutual consent of the signatories from time to time.

Article VI

(a) Should any claim or controversy arise between any two (2) or more of the signatory states: (i) with respect to the waters of the Colorado River system not covered by the terms of this compact; (ii) over the meaning or performance of any of the terms of this compact; (iii) as to the allocation of the burdens incident to the performance of any article of this compact or the delivery of waters as herein provided; (iv) as to the construction or operation of works within the Colorado River basin to be situated in two (2) or more states, or to be constructed in one (1) state for the benefit of another state; or (v) as to the diversion of water in one (1) state for the benefit of another state; the governors of the states affected, upon the request of one (1) of them, shall forthwith appoint commissioners with power to consider and adjust such claim or controversy, subject to ratification by the legislatures of the states so affected.

(b) Nothing herein contained shall prevent the adjustment of any such claim or controversy by any present method or by direct future legislative action of the interested states.

Article VII

Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes.

Article VIII

(a) Present perfected rights to the beneficial use of waters of the Colorado River system are unimpaired by this compact. Whenever storage capacity of five million (5,000,000) acre-feet shall have been provided on the main Colorado River within or for the benefit of the lower basin, then claims of such rights, if any, by appropriators or users of water in the lower basin against appropriators or users of water in the upper basin shall attach to and be satisfied from water that may be stored not in conflict with article III.

(b) All other rights to beneficial use of waters of the Colorado River system shall be satisfied solely from the water apportioned to that basin in which they are situate.

Article IX

Nothing in this compact shall be construed to limit or prevent any state from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under this compact or the enforcement of any of its provisions.

Article X

This compact may be terminated at any time by the unanimous agreement of the signatory states. In the event of such termination all rights established under it shall continue unimpaired.

Article XI

This compact shall become binding and obligatory when it shall have been approved by the legislatures of each of the signatory states and by the congress of the United States. Notice of approval by the legislatures shall be given by the governor of each signatory state to the governors of the other signatory states and to the president of the United States, and the president of the United States is requested to give notice to the governors of the signatory states of approval by the congress of the United States.

IN WITNESS WHEREOF, the commissioners have signed this compact in a single original, which shall be deposited in the archives of the department of state of the United States of America and of which a duly certified copy shall be forwarded to the governor of each of the signatory states.

Done at the city of Santa Fe, New Mexico, this twenty-fourth day of November, A.D. one thousand nine hundred and twenty-two.

W. S. Norviel.
W. F. McClure.
Delph E. Carpenter.
J. G. Scrugham.
Stephen B. Davis, Jr.
R. E. Caldwell.
Frank C. Emerson.

Approved:
(signed) Herbert Hoover.

41-12-302. When binding; notice of ratification.

The said compact shall not be binding or obligatory upon any of the high contracting parties thereto unless and until the same shall have been ratified by the legislature of each of said states and approved by the congress of the United States, and proclamation thereof shall be made by the president of the United States upon receipt by him, from the governors of all the signatory states, of notice of ratification of such compact by the legislatures thereof. The governor of Wyoming shall give notice of the ratification and approval of said compact by the seventeenth Wyoming legislature to the governors of each of the remaining signatory states and to the president of the United States, in conformity with article XI of said compact.

ARTICLE 4
UPPER COLORADO RIVER BASIN COMPACT

41-12-401. Generally.

That ratification and approval is hereby given to the Upper Colorado River Basin Compact as signed at the city of Santa Fe, in the state of New Mexico, on the 11th day of October, A.D. 1948, by L. C. Bishop, the state engineer of the state of Wyoming, under and in accordance with the authority of the act of the twenty-sixth Wyoming legislature approved the 24th day of February, 1941, entitled "An act relating to the appointment of interstate streams commissioner and assistant commissioners to negotiate agreements relative to interstate streams and providing for the governor of Wyoming to notify the governors of other states as to the appointment of said commissioner, detailing the authority of said commissioner", (now section 71-2601, Wyoming Compiled Statutes, 1945) which compact was also signed by the duly authorized commissioners of the states of Arizona, Colorado, New Mexico and Utah and approved by the representative of the United States, which Upper Colorado River Basin Compact is in full as follows:

UPPER COLORADO RIVER BASIN COMPACT

The state of Arizona, the state of Colorado, the state of New Mexico, the state of Utah and the state of Wyoming, acting through their commissioners,

Charles A. Carson for the state of Arizona,
Clifford H. Stone for the state of Colorado,
Fred E. Wilson for the state of New Mexico,
Edward H. Watson for the state of Utah and
L. C. Bishop for the state of Wyoming,

after negotiations participated in by Harry W. Bashore, appointed by the president as the representative of the United States of America, have agreed, subject to the provisions of the Colorado River Compact, to determine the rights and obligations of each signatory state respecting the uses and deliveries of the water of the upper basin of the Colorado River, as follows:

Article I

(a) The major purposes of this compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River system, the use of which was apportioned in perpetuity to the upper basin by the Colorado River Compact; to establish the obligations of each state of the upper division with respect to the deliveries of water required to be made at Lee Ferry by the Colorado River Compact; to promote interstate comity; to remove causes of present and future controversies; to secure the expeditious agricultural and industrial development of the upper basin, the storage of water and to protect life and property from floods.

(b) It is recognized that the Colorado River Compact is in full force and effect and all of the provisions hereof are subject thereto.

Article II

(a) As used in this compact:

(i) The term "Colorado River system" means that portion of the Colorado River and its tributaries within the United States of America;

(ii) The term "Colorado River basin" means all of the drainage area of the Colorado River system and all other territory within the United States of America to which the waters of the Colorado River system shall be beneficially applied;

(iii) The term "states of the upper division" means the states of Colorado, New Mexico, Utah and Wyoming;

(iv) The term "states of the lower division" means the states of Arizona, California and Nevada;

(v) The term "Lee Ferry" means a point in the main stream of the Colorado River one (1) mile below the mouth of the Paria River;

(vi) The term "upper basin" means those parts of the states of Arizona, Colorado, New Mexico, Utah and Wyoming within and from which waters naturally drain into the Colorado River system above Lee Ferry, and also all parts of said states located without the drainage area of the Colorado River system which are now or shall hereafter be beneficially served by waters diverted from the Colorado River system above Lee Ferry;

(vii) The term "lower basin" means those parts of the states of Arizona, California, Nevada, New Mexico and Utah within and from which waters naturally drain into the Colorado River system below Lee Ferry, and also all parts of said states located without the drainage area of the Colorado River system which are now or shall hereafter be beneficially served by waters diverted from the Colorado River system below Lee Ferry;

(viii) The term "Colorado River Compact" means the agreement concerning the apportionment of the use of the waters of the Colorado River system dated November 24, 1922, executed by commissioners for the states of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, approved by Herbert Hoover, representative of the United States of America, and proclaimed effective by the president of the United States of America, June 25, 1929;

(ix) The term "upper Colorado River system" means that portion of the Colorado River system above Lee Ferry;

(x) The term "commission" means the administrative agency created by article VIII of this compact;

(xi) The term "water year" means that period of twelve (12) months ending September 30 of each year;

(xii) The term "acre-foot" means the quantity of water required to cover an acre to the depth of one (1) foot and is equivalent to forty-three thousand five hundred sixty (43,560) cubic feet;

(xiii) The term "domestic use" shall include the use of water for household, stock, municipal, mining, milling, industrial and other like purposes, but shall exclude the generation of electrical power;

(xiv) The term "virgin flow" means the flow of any stream undepleted by the activities of man.

Article III

(a) Subject to the provisions and limitations contained in the Colorado River Compact and in this compact, there is hereby apportioned from the upper Colorado River system in perpetuity to the states of Arizona, Colorado, New Mexico, Utah and Wyoming, respectively, the consumptive use of water as follows:

(i) To the state of Arizona the consumptive use of fifty thousand (50,000) acre-feet of water per annum.

(ii) To the states of Colorado, New Mexico, Utah and Wyoming, respectively, the consumptive use per annum of the quantities resulting from the application of the following percentages to the total quantity of consumptive use per annum apportioned in perpetuity to and available for use each year by upper basin under the Colorado River Compact and remaining after the deduction of the use, not to exceed fifty thousand (50,000) acre-feet per annum, made in the state of Arizona.

(A) State of Colorado .... fifty-one and seventy-five hundredths percent (51.75%),

(B) State of New Mexico .... eleven and twenty-five hundredths percent (11.25%),

(C) State of Utah .... twenty-three percent (23%),

(D) State of Wyoming .... fourteen percent (14%).

(b) The apportionment made to the respective states by paragraph (a) of this article is based upon, and shall be applied in conformity with, the following principles and each of them:

(i) The apportionment is of any and all man-made depletions;

(ii) Beneficial use is the basis, the measure and the limit of the right to use;

(iii) No state shall exceed its apportioned use in any water year when the effect of such excess use, as determined by the commission, is to deprive another signatory state of its apportioned use during that water year; provided, that this subparagraph (b)(iii) shall not be construed as:

(A) Altering the apportionment of use, or obligations to make deliveries as provided in articles XI, XII, XIII or XIV of this compact;

(B) Purporting to apportion among the signatory states such uses of water as the upper basin may be entitled to under paragraphs (f) and (g) of article III of the Colorado River Compact; or

(C) Countenancing average uses by any signatory state in excess of its apportionment.

(iv) The apportionment to each state includes all water necessary for the supply of any rights which now exist.

(c) No apportionment is hereby made, or intended to be made, of such uses of water as the upper basin may be entitled to under paragraphs (f) and (g) of article III of the Colorado River Compact.

(d) The apportionment made by this article shall not be taken as any basis for the allocation among the signatory states of any benefits resulting from the generation of power.

Article IV

(a) In the event curtailment of use of water by the states of the upper division at any time shall become necessary in order that the flow at Lee Ferry shall not be depleted below that required by article III of the Colorado River Compact, the extent of curtailment by each state of the consumptive use of water apportioned to it by article III of this compact shall be in such quantities and at such times as shall be determined by the commission upon the application of the following principles:

(i) The extent and times of curtailment shall be such as to assure full compliance with article III of the Colorado River Compact;

(ii) If any state or states of the upper division, in the ten (10) years immediately preceding the water year in which curtailment is necessary, shall have consumptively used more water than it was or they were, as the case may be, entitled to use under the apportionment made by article III of this compact, such state or states shall be required to supply at Lee Ferry a quantity of water equal to its, or the aggregate of their, overdraft or the proportionate part of such overdraft, as may be necessary to assure compliance with article III of the Colorado River Compact, before demand is made on any other state of the upper division;

(iii) Except as provided in subparagraph (ii) of this article, the extent of curtailment by each state of the upper division of the consumptive use of water apportioned to it by article III of this compact shall be such as to result in the delivery at Lee Ferry of a quantity of water which bears the same relation to the total required curtailment of use by the states of the upper division as the consumptive use of upper Colorado River system water which was made by each such state during the water year immediately preceding the year in which the curtailment becomes necessary bears to the total consumptive use of such water in the states of the upper division during the same water year; provided, that in determining such relation the uses of water under rights perfected prior to November 24, 1922, shall be excluded.

Article V

(a) All losses of water occurring from or as the result of the storage of water in reservoirs constructed prior to the signing of this compact shall be charged to the state in which such reservoir or reservoirs are located. Water stored in reservoirs covered by this paragraph (a) shall be for the exclusive use of and shall be charged to the state in which the reservoir or reservoirs are located.

(b) All losses of water occurring from or as the result of the storage of water in reservoirs constructed after the signing of this compact shall be charged as follows:

(i) If the commission finds that the reservoir is used, in whole or in part, to assist the states of the upper division in meeting their obligations to deliver water at Lee Ferry imposed by article III of the Colorado River Compact, the commission shall make findings, which in no event shall be contrary to the laws of the United States of America under which any reservoir is constructed, as to the reservoir capacity allocated for that purpose. The whole or that proportion, as the case may be, of reservoir losses as found by the commission to be reasonably and properly chargeable to the reservoir or reservoir capacity utilized to assure deliveries at Lee Ferry shall be charged to the states of the upper division in the proportion which the consumptive use of water in each state of the upper division during the water year in which the charge is made bears to the total consumptive use of water in all states of the upper division during the same water year. Water stored in reservoirs or in reservoir capacity covered by this subparagraph (b)(i) shall be for the common benefit of all of the states of the upper division.

(ii) If the commission finds that the reservoir is used, in whole or in part, to supply water for use in a state of the upper division, the commission shall make findings, which in no event shall be contrary to the laws of the United States of America under which any reservoir is constructed, as to the reservoir or reservoir capacity utilized to supply water for use and the state in which such water will be used. The whole or that proportion, as the case may be, of reservoir losses as found by the commission to be reasonably and properly chargeable to the state in which such water will be used shall be borne by that state. As determined by the commission, water stored in reservoirs covered by this subparagraph (b)(ii) shall be earmarked for and charged to the state in which the water will be used.

(c) In the event the commission finds that a reservoir site is available both to assure deliveries at Lee Ferry and to store water for consumptive use in a state of the upper division, the storage of water for consumptive use shall be given preference. Any reservoir or reservoir capacity hereafter used to assure deliveries at Lee Ferry shall by order of the commission be used to store water for consumptive use in a state, provided the commission finds that such storage is reasonably necessary to permit such state to make the use of the water apportioned to it by this compact.

Article VI

The commission shall determine the quantity of the consumptive use of water, which use is apportioned by article III hereof, for the upper basin and for each state of the upper basin by the inflow-outflow method in terms of man-made depletions of the virgin flow at Lee Ferry, unless the commission, by unanimous action, shall adopt a different method of determination.

Article VII

The consumptive use of water by the United States of America or any of its agencies, instrumentalities or wards shall be charged as a use by the state in which the use is made; provided, that such consumptive use incident to the diversion, impounding, or conveyance of water in one state for use in another shall be charged to such latter state.

Article VIII

(a) There is hereby created an interstate administrative agency to be known as the "Upper Colorado River Commission". The commission shall be composed of one (1) commissioner representing each of the states of the upper division, namely, the states of Colorado, New Mexico, Utah and Wyoming, designated or appointed in accordance with the laws of each such state and, if designated by the president, one (1) commissioner representing the United States of America. The president is hereby requested to designate a commissioner. If so designated the commissioner representing the United States of America shall be the presiding officer of the commission and shall be entitled to the same powers and rights as the commissioner of any state. Any four (4) members of the commission shall constitute a quorum.

(b) The salaries and personal expenses of each commissioner shall be paid by the government which he represents. All other expenses which are incurred by the commission incident to the administration of this compact, and which are not paid by the United States of America, shall be borne by the four (4) states according to the percentage of consumptive use apportioned to each. On or before December 1 of each year, the commission shall adopt and transmit to the governors of the four (4) states and to the president a budget covering an estimate of its expenses for the following year, and of the amount payable by each state. Each state shall pay the amount due by it to the commission on or before April 1 of the year following. The payment of the expenses of the commission and of its employees shall not be subject to the audit and accounting procedures of any of the four (4) states; however, all receipt and disbursement of funds handled by the commission shall be audited yearly by a qualified independent public accountant and the report of the audit shall be included in and become a part of the annual report of the commission.

(c) The commission shall appoint a secretary, who shall not be a member of the commission, or an employee of any signatory state or of the United States of America while so acting. He shall serve for such term and receive such salary and perform such duties as the commission may direct. The commission may employ such engineering, legal, clerical and other personnel as, in its judgment, may be necessary for the performance of its functions under this compact. In the hiring of employees, the commission shall not be bound by the civil service laws of any state.

(d) The commission, so far as consistent with this compact, shall have the power to:

(i) Adopt rules and regulations;

(ii) Locate, establish, construct, abandon, operate and maintain water gauging stations;

(iii) Make estimates to forecast water run-off on the Colorado River and any of its tributaries;

(iv) Engage in cooperative studies of water supplies of the Colorado River and its tributaries;

(v) Collect, analyze, correlate, preserve and report on data as to the stream flows, storage, diversions and use of the waters of the Colorado River, and any of its tributaries;

(vi) Make findings as to the quantity of water of the upper Colorado River system used each year in the upper Colorado River basin and in each state thereof;

(vii) Make findings as to the quantity of water deliveries at Lee Ferry during each water year;

(viii) Make findings as to the necessity for and the extent of the curtailment of use, required, if any, pursuant to article IV hereof;

(ix) Make findings as to the quantity of reservoir losses and as to the share thereof chargeable under article V hereof to each of the states;

(x) Make findings of fact in the event of the occurrence of extraordinary drought or serious accident to the irrigation system in the upper basin, whereby deliveries by the upper basin of water which it may be required to deliver in order to aid in fulfilling obligations of the United States of America to the United Mexican States arising under the treaty between the United States of America and the United Mexican States, dated February 3, 1944 (Treaty Series 994) become difficult, and report such findings to the governors of the upper basin states, the president of the United States of America, the United States section of the international boundary and water commission, and such other federal officials and agencies as it may deem appropriate to the end that the water allotted to Mexico under division III of such treaty may be reduced in accordance with the terms of such treaty;

(xi) Acquire and hold such personal and real property as may be necessary for the performance of its duties hereunder and to dispose of the same when no longer required;

(xii) Perform all functions required of it by this compact and do all things necessary, proper or convenient in the performance of its duties hereunder, either independently or in cooperation with any state or federal agency;

(xiii) Make and transmit annually to the governors of the signatory states and the president of the United States of America, with the estimated budget, a report covering the activities of the commission for the preceding water year.

(e) Except as otherwise provided in this compact the concurrence of four members of the commission shall be required in any action taken by it.

(f) The commission and its secretary shall make available to the governor of each of the signatory states any information within its possession at any time, and shall always provide free access to its records by the governors of each of the states, or their representatives, or authorized representatives of the United States of America.

(g) Findings of fact made by the commission shall not be conclusive in any court, or before any agency or tribunal, but shall constitute prima facie evidence of the facts found.

(h) The organization meeting of the commission shall be held within four (4) months from the effective date of this compact.

Article IX

(a) No state shall deny the right of the United States of America and, subject to the conditions hereinafter contained, no state shall deny the right of another signatory state, any person, or entity of any signatory state to acquire rights to the use of water, or to construct or participate in the construction and use of diversion works and storage reservoirs with appurtenant works, canals and conduits in one (1) state for the purpose of diverting, conveying, storing, regulating and releasing water to satisfy the provisions of the Colorado River Compact relating to the obligation of the states of the upper division to make deliveries of water at Lee Ferry, or for the purpose of diverting, conveying, storing or regulating water in any upper signatory state for consumptive use in a lower signatory state, when such use is within the apportionment to such lower state made by this compact. Such rights shall be subject to the rights of water users, in a state in which such reservoir or works are located, to receive and use water, the use of which is within the apportionment to such state by this compact.

(b) Any signatory state, any person or any entity of any signatory state shall have the right to acquire such property rights as are necessary to the use of water in conformity with this compact in any other signatory state by donation, purchase or through the exercise of the power of eminent domain. Any signatory state, upon the written request of the governor of any other signatory state, for the benefit of whose water users property is to be acquired in the state to which such written request is made, shall proceed expeditiously to acquire the desired property either by purchase at a price satisfactory to the requesting state, or, if such purchase cannot be made, then through the exercise of its power of eminent domain and shall convey such property to the requesting state or such entity as may be designated by the requesting state; provided, that all costs of acquisition and expenses of every kind and nature whatsoever incurred in obtaining the requested property shall be paid by the requesting state at the time and in the manner prescribed by the state requested to acquire the property.

(c) Should any facility be constructed in a signatory state by and for the benefit of another signatory state or states or the water users thereof, as above provided, the construction, repair, replacement, maintenance and operation of such facility shall be subject to the laws of the state in which the facility is located, except that, in the case of a reservoir constructed in one state for the benefit of another state or states, the water administration officials of the state in which the facility is located shall permit the storage and release of any water which, as determined by findings of the commission, falls within the apportionment of the state or states for whose benefit the facility is constructed. In the case of a regulating reservoir for the joint benefit of all states in making Lee Ferry deliveries, the water administration officials of the state in which the facility is located, in permitting the storage and release of water, shall comply with the findings and orders of the commission.

(d) In the event property is acquired by a signatory state in another signatory state for the use and benefit of the former, the users of water made available by such facilities, as a condition precedent to the use thereof, shall pay to the political subdivisions of the state in which such works are located, each and every year during which such rights are enjoyed for such purposes, a sum of money equivalent to the average annual amount of taxes levied and assessed against the land and improvements thereon during the ten (10) years preceding the acquisition of such land. Said payments shall be in full reimbursement for the loss of taxes in such political subdivisions of the state, and in lieu of any and all taxes on said property, improvements and rights. The signatory states

recommend to the president and the congress that, in the event the United States of America shall acquire property in one of the signatory states for the benefit of another signatory state, or its water users, provision be made for like payment in reimbursement of loss of taxes.

Article X

(a) The signatory states recognize La Plata River Compact entered into between the states of Colorado and New Mexico, dated November 27, 1922, approved by the congress on January 29, 1925 (43 Stat. 796), and this compact shall not affect the apportionment therein made.

(b) All consumptive use of water of La Plata River and its tributaries shall be charged under the apportionment of article III hereof to the state in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one state for use in the other shall be charged to the latter state.

Article XI

(a) Subject to the provisions of this compact, the consumptive use of the water of the Little Snake River and its tributaries is hereby apportioned between the states of Colorado and Wyoming in such quantities as shall result from the application of the following principles and procedures:

(i) Water Used Under Rights Existing Prior to the Signing of This Compact:

(A) Water diverted from any tributary of the Little Snake River or from the main stem of the Little Snake River above a point one hundred (100) feet below the confluence of Savery Creek and the Little Snake River shall be administered without regard to rights covering the diversion of water from any downstream points.

(B) Water diverted from the main stem of the Little Snake River below a point one hundred (100) feet below the confluence of Savery Creek and the Little Snake River shall be administered on the basis of an interstate priority schedule prepared by the commission in conformity with priority dates established by the laws of the respective states.

(ii) Water Used Under Rights Initiated Subsequent to the Signing of This Compact:

(A) Direct flow diversions shall be so administered that, in time of shortage, the curtailment of use on each acre of land irrigated thereunder shall be as nearly equal as may be possible in both of the states.

(B) The storage of water by projects located in either state, whether of supplemental supply or of water used to irrigate land not irrigated at the date of the signing of this compact, shall be so administered that in times of water shortage the curtailment of storage water available for each acre of land irrigated thereunder shall be as nearly equal as may be possible in both states.

(iii) Water uses under the apportionment made by this article shall be in accordance with the principle that beneficial use shall be the basis, measure and limit of the right to use.

(iv) The states of Colorado and Wyoming each assent to diversions and storage of water in one (1) state for use in the other state, subject to compliance with article IX of this compact.

(v) In the event of the importation of water to the Little Snake River basin from any other river basin, the state making the importation shall have the exclusive use of such imported water

unless by written agreement, made by the representatives of the states of Colorado and Wyoming on the commission, it is otherwise provided.

(vi) Water use projects initiated after the signing of this compact, to the greatest extent possible, shall permit the full use within the basin in the most feasible manner of the waters of the Little Snake River and its tributaries, without regard to the state line; and, so far as is practicable, shall result in an equal division between the states of the use of water not used under rights existing prior to the signing of this compact.

(vii) All consumptive use of the waters of the Little Snake River and its tributaries shall be charged under the apportionment of article III hereof to the state in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one (1) state for use in the other shall be charged to the latter state.

Article XII

(a) Subject to the provisions of this compact, the consumptive use of the waters of Henry's Fork, a tributary of Green River originating in the state of Utah and flowing into the state of Wyoming and thence into the Green River in the state of Utah; Beaver Creek, originating in the state of Utah and flowing into Henry's Fork in the state of Wyoming; Burnt Fork, a tributary of Henry's Fork, originating in the state of Utah and flowing into Henry's Fork in the state of Wyoming; Birch Creek, a tributary of Henry's Fork originating in the state of Utah and flowing into Henry's Fork in the state of Wyoming; and Sheep Creek, a tributary of Green River in the state of Utah, and their tributaries, are hereby apportioned between the states of Utah and Wyoming in such quantities as will result from the application of the following principles and procedures:

(i) Waters diverted from Henry's Fork, Beaver Creek, Burnt Fork, Birch Creek and their tributaries, shall be administered without regard to the state line on the basis of an interstate priority schedule to be prepared by the states affected and approved by the commission in conformity with the actual priority of right of use, the water requirements of the land irrigated and the acreage irrigated in connection therewith.

(ii) Waters used under rights from Henry's Fork, Beaver Creek, Burnt Fork, Birch Creek and their tributaries, initiated after the signing of this compact shall be divided fifty percent (50%) to the state of Wyoming and fifty percent (50%) to the state of Utah and each state may use said waters as and where it deems advisable.

(iii) The state of Wyoming assents to the exclusive use by the state of Utah of the water of Sheep Creek, except that the lands, if any, presently irrigated in the state of Wyoming from the water of Sheep Creek shall be supplied with water from Sheep Creek in order of priority and in such quantities as are in conformity with the laws of the state of Utah.

(iv) In the event of the importation of water to Henry's Fork, or any of its tributaries, from any other river basin, the state making the importation shall have the exclusive use of such imported water unless by written agreement made by the representatives of the states of Utah and Wyoming on the commission, it is otherwise provided.

(v) All consumptive use of waters of Henry's Fork, Beaver Creek, Burnt Fork, Birch Creek, Sheep Creek, and their tributaries shall be charged under the apportionment of article III hereof to the state in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one (1) state for use in the other shall be charged to the latter state.

(vi) The states of Utah and Wyoming each assent to the diversion and storage of water in one (1) state for use in the other state, subject to compliance with article IX of this compact. It shall be the duty of the water administrative officials of the state where the water is stored to release said stored water to the other state upon demand. If either the state of Utah or the state of Wyoming shall construct a reservoir in the other state for use in its own state, the water users of the state in which said facilities are constructed may purchase at cost a portion of the capacity of said reservoir sufficient for the irrigation of their lands thereunder.

(vii) In order to measure the flow of water diverted, each state shall cause suitable measuring devices to be constructed, maintained and operated at or near the point of diversion into each ditch.

(viii) The state engineers of the two (2) states jointly shall appoint a special water commissioner who shall have authority to administer the water in both states in accordance with the terms of this article. The salary and expenses of such special water commissioner shall be paid, thirty percent (30%) by the state of Utah and seventy percent (70%) by the state of Wyoming.

Article XIII

(a) Subject to the provisions of this compact, the rights to the consumptive use of the water of the Yampa River, a tributary entering the Green River in the state of Colorado, are hereby apportioned between the states of Colorado and Utah in accordance with the following principles:

(i) The state of Colorado will not cause the flow of the Yampa River at the Maybell Gaging Station to be depleted below an aggregate of five million (5,000,000) acre-feet for any period of ten (10) consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification and approval of this compact. In the event any diversion is made from the Yampa River or from tributaries entering the Yampa River above the Maybell Gaging Station for the benefit of any water use project in the state of Utah, then the gross amount of all such diversions for use in the state of Utah, less any returns from such diversions to the river above Maybell, shall be added to the actual flow at the Maybell Gaging Station to determine the total flow at the Maybell Gaging Station.

(ii) All consumptive use of the waters of the Yampa River and its tributaries shall be charged under the apportionment of article III hereof to the state in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one (1) state for use in the other shall be charged to the latter state.

Article XIV

(a) Subject to the provisions of this compact, the consumptive use of the waters of the San Juan River and its tributaries is hereby apportioned between the states of Colorado and New Mexico as follows:

(i) The state of Colorado agrees to deliver to the state of New Mexico from the San Juan River and its tributaries which rise in the state of Colorado a quantity of water which shall be sufficient, together with water originating in the San Juan basin in the state of New Mexico, to enable the state of New Mexico to make full use of the water apportioned to the state of New Mexico by article III of this compact, subject however, to the following:

(A) A first and prior right shall be recognized as to:

(I) All uses of water made in either state at the time of the signing of this compact; and

(II) All uses of water contemplated by projects authorized, at the time of the signing of this compact, under the laws of the United States of America whether or not such projects are eventually constructed by the United States of America or by some other entity.

(B) The state of Colorado assents to diversions and storage of water in the state of Colorado for use in the state of New Mexico, subject to compliance with article IX of this compact.

(C) The uses of the waters of the San Juan River and any of its tributaries within either state which are dependent upon a common source of water and which are not covered by (A) hereof, shall in times of water shortages be reduced in such quantity that the resulting consumptive use in each state will bear the same proportionate relation to the consumptive use made in each state during times of average water supply as determined by the commission; provided, that any preferential uses of water to which Indians are entitled under article XIX shall be excluded in determining the amount of curtailment to be made under this paragraph.

(D) The curtailment of water use by either state in order to make deliveries at Lee Ferry as required by article IV of this compact shall be independent of any and all conditions imposed by this article and shall be made by each state, as and when required, without regard to any provision of this article.

(E) All consumptive use of the waters of the San Juan River and its tributaries shall be charged under the apportionment of article III hereof to the state in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one (1) state for use in the other shall be charged to the latter state.

Article XV

(a) Subject to the provisions of the Colorado River Compact and of this compact, water of the upper Colorado River system may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes.

(b) The provisions of this compact shall not apply to or interfere with the right or power of any signatory state to regulate within its boundaries the appropriation, use and control of water, the consumptive use of which is apportioned and available to such state by this compact.

Article XVI

The failure of any state to use the water, or any part thereof, the use of which is apportioned to it under the terms of this compact, shall not constitute a relinquishment of the right to such use to the lower basin or to any other state, nor shall it constitute a forfeiture or abandonment of the right to such use.

Article XVII

The use of any water now or hereafter imported into the natural drainage basin of the upper Colorado River system shall not be charged to any state under the apportionment of consumptive use made by this compact.

Article XVIII

(a) The state of Arizona reserves its rights and interests under the Colorado River Compact as a state of the lower division and as a state of the lower basin.

(b) The state of New Mexico and the state of Utah reserve their respective rights and interests under the Colorado River Compact as states of the lower basin.

Article XIX

(a) Nothing in this compact shall be construed as:

(i) Affecting the obligations of the United States of America to Indian tribes;

(ii) Affecting the obligations of the United States of America under the treaty with the United Mexican States (Treaty Series 994);

(iii) Affecting any rights or powers of the United States of America, its agencies or instrumentalities, in or to the waters of the Upper Colorado River system, or its capacity to acquire rights in and to the use of said waters;

(iv) Subjecting any property of the United States of America, its agencies or instrumentalities, to taxation by any state or subdivision thereof, or creating any obligation on the part of the United States of America, its agencies or instrumentalities, by reason of the acquisition, construction or operation of any property or works of whatever kind, to make any payment to any state or political subdivision thereof, state agency, municipality or entity whatsoever, in reimbursement for the loss of taxes;

(v) Subjecting any property of the United States of America, its agencies or instrumentalities, to the laws of any state to an extent other than the extent to which such laws would apply without regard to this compact.

Article XX

This compact may be terminated at any time by the unanimous agreement of the signatory states. In the event of such termination, all rights established under it shall continue unimpaired.

Article XXI

This compact shall become binding and obligatory when it shall have been ratified by the legislatures of each of the signatory states and approved by the congress of the United States of America. Notice of ratification by the legislatures of the signatory states shall be given by the governor of each signatory state to the governor of each of the other signatory states and to the president of the United States of America, and the president is hereby requested to give notice to the governor of each of the signatory states of approval by the congress of the United States of America.
IN WITNESS WHEREOF, the commissioners have executed six (6) counterparts hereof each of which shall be and constitute an original, one (1) of which shall be deposited in the archives of the department of state of the United States of America, and one (1) of which shall be forwarded to the governor of each of the signatory states.
Done at the city of Santa Fe, state of New Mexico, this 11th day of October, 1948.

/s/ Charles A. Carson
Charles A. Carson
Commissioner for the State of Arizona
/s/ Clifford H. Stone
Clifford H. Stone

Commissioner for the State of Colorado
/s/ Fred E. Wilson
Fred E. Wilson
Commissioner for the State of New Mexico
/s/ Edward H. Watson
Edward H. Watson
Commissioner for the State of Utah
/s/ L. C. Bishop
L. C. Bishop
Commissioner for the State of Wyoming
/s/ Grover A. Giles
Grover A. Giles, secretary

Approved:
/s/ Harry W. Bashore
Harry W. Bashore
Representative of the United States of America.

41-12-402. When binding; notice of ratification.

Said compact shall not be binding or obligatory upon any of the high contracting parties thereto unless and until the same shall have been ratified by the legislature of each of the said states and approved by the congress of the United States. The governor of Wyoming shall give notice of the ratification and approval of said compact by the thirtieth Wyoming legislature to the governors of the states of Arizona, Colorado, New Mexico and Utah, and to the president of the United States.

ARTICLE 5
SNAKE RIVER COMPACT

41-12-501. Generally.

The compact relating to the waters of the Snake River, entered into and duly executed at the city of Cheyenne, Wyoming, on the 10th day of October, 1949, by and between the commissioners of the state of Wyoming acting pursuant to authority granted under section 71-2601, Wyoming Compiled Statutes, 1945, and the commissioners of the state of Idaho acting pursuant to authority granted by chapter 11, Idaho Session Laws of 1949, and approved by the representative of the United States, be, and the same is, hereby ratified and approved and is in full as follows:

SNAKE RIVER COMPACT

The states of Idaho and Wyoming, parties signatory to this compact, have resolved to conclude a compact as authorized by the act of June 3, 1948 (62 Stat. 294), and after negotiations participated in by the following named state commissioners:

For Idaho

Mark R. Kulp, Boise
N. V. Sharp, Filer
Charles H. Welteroth, Jerome
Roy Marquess, Paul
Ival V. Goslin, Aberdeen
R. Willis Walker, Rexburg
Alex O. Coleman, St. Anthony
Leonard E. Graham, Rigby

Charles E. Anderson, Idaho Falls
A. K. Van Orden, Blackfoot

For Wyoming

L. C. Bishop, Cheyenne
E. B. Hitchcock, Rock Springs
J. G. Imeson, Jackson
David P. Miller, Rock Springs
Carl Robinson, Afton
Ciril D. Cranney, Afton
Clifford P. Hansen, Jackson
Clifford S. Wilson, Driggs, Idaho
Lloyd Van Deburg, Jackson

and by R. J. Newell, representative of the United States of America, have agreed upon the following articles, to-wit:

Article I

(a) The major purposes of this compact are to provide for the most efficient use of waters of the Snake River for multiple purposes; to provide for equitable division of such waters; to remove causes of present and future controversies; to promote interstate comity; to recognize that the most efficient utilization of such waters is required for the development of the drainage area of the Snake River and its tributaries in Wyoming and Idaho; and to promote joint action by the states and the United States in the development and use of such waters and the control of floods.

(b) Either state using, claiming or in any manner asserting any right to the use of the waters of the Snake River under the authority of either state shall be subject to the terms of this compact.

Article II

(a) As used in this compact:

(i) The term "Snake River" as distinguished from terms such as "Snake River and its tributaries" shall mean the Snake River from its headwaters to the Wyoming-Idaho boundary and all tributaries flowing into it within the boundaries of Wyoming, and the Salt River and all its tributaries;

(ii) The terms "Idaho" and "Wyoming" shall mean, respectively, the state of Idaho and the state of Wyoming, and, except as otherwise expressly provided, either of those terms or the term "state" or "states" used in relation to any right or obligation created or recognized by this compact shall include any person or entity of any nature whatsoever, including the United States;

(iii) The term "domestic use" shall mean the use of water by an individual, or by a family unit or household for drinking, cooking, laundering, sanitation and other personal comforts and necessities; and for the irrigation of a family garden or orchard not exceeding one-half acre in area;

(iv) The term "stock water use" shall mean the use of water for livestock and poultry;

(v) The term "established Wyoming rights" shall mean Snake River water rights that have been validly established of record in Wyoming prior to July 1, 1949, for use in Wyoming.

Article III

(a) The waters of the Snake River, exclusive of established Wyoming rights and other uses coming within the provisions of (c) of this article III, are hereby allocated to each state for storage or direct diversion as follows:

To Idaho ..... ninety-six percent (96%)

To Wyoming ..... four percent (4%)

subject to the following stipulations and conditions as to the four percent (4%) allocated to Wyoming:

(i) One-half may be used in Wyoming by direct diversion or by storage and subsequent diversion without provision being made for replacement storage space;

(ii) The other one-half may be diverted for direct use or stored for later diversion and use on the condition that there shall have been provided for reimbursement of Idaho users replacement storage space to the extent of one-third of the maximum annual diversion in acre-feet but not in excess, however, of one-third of half the total hereby allocated to Wyoming. Until this total replacement storage space has been made available, provision for meeting its proportionate part of this total shall be a prerequisite to the right to use water in Wyoming for any irrigation project authorized after June 30, 1949, for construction by any federal agency.

(b) The amount of water subject to allocation as provided in (a) of this article III shall be determined on an annual water-year basis measured from October 1 of any year through September 30 of the succeeding year. The quantity of water to which the percentage factors in (a) of this article III shall be applied through a given date in any water year shall be, in acre-feet, equal to the algebraic sum of:

(i) The quantity of water, in acre-feet, that has passed the Wyoming state line in the Snake River to the given date, determined on the basis of gaging stations to be established at such points as are agreed on under the provisions of (b) of article VI;

(ii) The change during that water year to the given date in quantity of water, in acre-feet, in any existing or future reservoirs in Wyoming which water is for use in Idaho;

(iii) The quantity of water, in acre-feet, stored in that water year and in storage on the given date for later diversion and use in Wyoming, under rights having a priority later than June 30, 1949;

(iv) One-third of the quantity of water, in acre-feet, excluding any storage water held over from prior years, diverted, under rights having a priority later than June 30, 1949, in that water year to the given date:

(A) from the Snake River for use that year on lands in Wyoming; and

(B) from tributaries of the Salt River for use that year on lands in Idaho.

(c) (i) There are hereby excluded from the allocations made by this compact:

(A) Existing and future domestic and stock water uses of water; provided, that the capacity of any reservoir for stock water shall not exceed twenty (20) acre-feet;

(B) Established Wyoming rights; and

(C) All water rights for use in Idaho on any tributary of the Salt River heading in Idaho which were validly established under the laws of Idaho prior to July 1, 1949;

(ii) and all such uses and rights are hereby recognized.

Article IV

No water of the Snake River shall be diverted in Wyoming for use outside the drainage area of the Snake River except with the approval of Idaho; and no water of any tributary of the Salt River heading in Idaho shall be diverted in Idaho for use outside the drainage area of said tributary except with the approval of Wyoming.

Article V

Subject to the provisions of this compact, waters of the Snake River may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use of such waters for domestic, stock and irrigation purposes, and shall not interfere with or prevent their use for such preferred purposes. Water impounded or diverted in Wyoming exclusively for the generation of electrical power shall not be charged to the allocation set forth in article III of this compact.

Article VI

(a) It shall be the duty of the two (2) states to administer this compact through the official in each state who is now or may hereafter be charged with the administration of the public water supplies, and to collect and correlate through such officials the data necessary for the proper administration of the provisions of this compact. Such officials may, by unanimous action, adopt rules and regulations consistent with the provisions of this compact.

(b) The states shall in conjunction with other responsible agencies cause to be established, maintained and operated such suitable water gaging stations as they find necessary to administer this compact. The United States geological survey, or whatever federal agency may succeed to the functions and duties of that agency, so far as this compact is concerned, shall collaborate with officials of the states charged with the administration of this compact in the execution of the duty of such officials in the collection, correlation and publication of information necessary for its proper administration.

(c) In the case of failure of the administrative officials of the two (2) states to agree on any matter necessary to the administration of this compact, the director of the United States geological survey, or whatever official succeeds to his duties, shall be asked to appoint a federal representative to participate as to the matters in disagreement, and points of disagreement shall be decided by majority vote.

Article VII

(a) Either state shall have the right to file applications for and receive permits to construct or participate in the construction and use of any dam, storage reservoir or diversion works in the other state for the purpose of conserving and regulating its allocated water and to perfect rights thereto. Either state exercising this right shall comply with the laws of the other state except as to any general requirement for legislative approval that may be applicable to the granting of rights by one (1) state for the diversion or storage of water for use outside of that state.

(b) Each claim or right hereafter initiated for storage or diversion of water in one state for use in the other state shall be filed in the office of the proper official of the state in which the water is to be stored or diverted, and a duplicate copy of the application, including a map showing the character and location of the proposed facilities and the lands to be irrigated, shall be filed in the office of the proper

official of the state in which the water is to be used. If a portion or all the lands proposed to be reclaimed are located in a state other than the one in which the water is to be stored or diverted, then, before approval, said application shall be checked against the records of the office of the state in which the water is to be used, and a notation shall be placed thereon by the officer in charge of such records as to whether or not he approves the application. All endorsements shall be placed on both the original and duplicate copies of all such applications and maps filed to the end that the records in both states may be complete and identical.

Article VIII

(a) Neither state shall deny the right of the United States, and, subject to the conditions hereinafter contained, neither state shall deny the right of the other state to acquire rights to the use of water, or to construct or participate in the construction and use of diversion works and storage reservoirs with appurtenant works, canals and conduits in one (1) state for the purpose of diverting, conveying, storing or regulating water in one (1) state for use in the other state, when such use is within the allocation to such state made by this compact.

(b) Either state shall have the right to acquire such property rights as are necessary to the use of water in conformity with this compact in the other state by donation, purchase or through the exercise of the power of eminent domain. Either state, upon the written request of the governor of the other state, for the benefit of whose water users' property is to be acquired in the state to which such written request is made, shall proceed expeditiously to acquire the desired property either by purchase at a price satisfactory to the requesting state, or, if such purchase cannot be made, then through the exercise of its power of eminent domain and shall convey such property to the requesting state or such entity as may be designated by the requesting state; provided, that all costs of acquisition and expenses of every kind and nature whatsoever incurred in obtaining the requested property shall be paid by the requesting state at the time and in the manner prescribed by the state requested to acquire the property.

(c) Should any facility be constructed in either state by and for the benefit of the other state, as above provided, the construction, repair, replacement, maintenance and operation of such facility shall be subject to the laws of the state in which the facility is located, except that, in the case of a reservoir constructed in either state for the benefit of the other state, the proper officials of the state in which the facility is located shall permit the storage and release of any water to which the other state is entitled under this compact.

(d) Either state having property rights in the other state acquired as provided in (b) of this article VIII shall pay to the political subdivisions of the state in which such property rights are located, each and every year during which such rights are held, a sum of money equivalent to the average annual amount of taxes assessed against those rights during the ten (10) years preceding the acquisition of such rights in reimbursement for the loss of taxes to said political subdivision of the state, except that this provision shall not be applicable to interests in property rights the legal title to which is in the United States. Payments so made to a political subdivision shall be in lieu of any and all taxes by that subdivision on the property rights for which the payments are made.

Article IX

The provisions of this compact shall not apply to or interfere with the right or power of either state to regulate within its boundaries the appropriation, use and control of waters allocated to such state by this compact.

Article X

The failure of either state to use the waters, or any part thereof, the use of which is allocated to it under the terms of this compact, shall not constitute a relinquishment of the right to such use to the other state, nor shall it constitute a forfeiture or abandonment of the right to such use.

Article XI

In case any reservoir is constructed in one (1) state where the water is to be used principally in the other state, sufficient water not to exceed five (5) cubic feet per second shall be released at all times, if necessary for stock water use and conservation of fish and wildlife.

Article XII

The provisions of this compact shall remain in full force and effect unless amended or terminated by action of the legislatures of both states and consented to and approved by the congress of the United States in the same manner as this compact is required to be ratified and approved to become effective; provided, that in the event of such amendment or termination all rights theretofore established hereunder or recognized hereby shall continue to be recognized as valid by both states notwithstanding such amendment or termination.

Article XIII

Nothing in this compact shall be construed to limit or prevent either state from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under this compact or the enforcement of any of its provisions.

Article XIV

(a) Nothing in this compact shall be deemed:

(i) To affect adversely any rights to the use of the waters of the Snake River, including its tributaries entering downstream from the Wyoming-Idaho state line, owned by or for Indians, Indian tribes and their reservations. The water required to satisfy these rights shall be charged against the allocation made to the state in which the Indians and their lands are located;

(ii) To impair or affect any rights or powers of the United States, its agencies or instrumentalities, in and to the use of the waters of the Snake River nor its capacity to acquire rights in and to the use of said waters;

(iii) To apply to any waters within the Yellowstone National Park or Grand Teton National Park;

(iv) To subject any property of the United States, its agencies or instrumentalities to taxation by either state or subdivisions thereof, nor to create an obligation on the part of the United States, its agents or instrumentalities, by reason of the acquisition, construction or operation of any property or works of whatsoever kind, to make any payments to any state or political subdivisions thereof, state agency, municipality or entity whatsoever in reimbursement for the loss of taxes;

(v) To subject any works of the United States used in connection with the control or use of waters which are the subject of this compact to the laws of any state to an extent other than the extent to which these laws would apply without regard to this compact.

(b) Notwithstanding the provisions of (a) of this article, any beneficial uses hereafter made by the United States, or those acting by or under its authority, within either state, of the waters allocated

by this compact shall be within the allocations hereinabove made for use in that state and shall be taken into account in determining the extent of use within that state.

Article XV

This compact shall become operative when approved by legislative enactment by each of the states, and when consented to by the congress of the United States.

Article XVI

Wyoming hereby relinquishes the right to the allocation of stored water in Grassy Lake Reservoir, as set forth in Wyoming's reservoir permit No. 4631 Res. and evidenced by certificate No. R-1, page 318, and all claims predicated thereon.

IN WITNESS WHEREOF the commissioners have signed this compact in quadruplicate, one (1) of which shall be filed in the archives of the department of state of the United States of America and shall be deemed the authoritative original, and of which a duly certified copy shall be forwarded to the governor of each of the states.

Done at the city of Cheyenne, in the state of Wyoming, this 10th day of October, in the year of our Lord, one thousand nine hundred and forty-nine.

Commissioners for Idaho	Commissioners for Wyoming
/s/ Mark R. Kulp	/s/ L. C. Bishop
Mark R. Kulp	L. C. Bishop
/s/ N. V. Sharp	/s/ E. B. Hitchcock
N. V. Sharp	E. B. Hitchcock
/s/ Charles H. Welteroth	/s/ J. G. Imeson
Charles H. Welteroth	J. G. Imeson
/s/ Roy Marquess	/s/ David P. Miller
Roy Marquess	David P. Miller
/s/Ival V. Goslin	/s/ Carl Robinson
Ival V. Goslin	Carl Robinson
/s/ R. Willis Walker	/s/ Ciril D. Cranney
R. Willis Walker	Ciril D. Cranney
/s/ Alex O. Coleman	/s/ Clifford P. Hansen
Alex O. Coleman	Clifford P. Hansen
/s/ Leonard E. Graham	/s/ Clifford S. Wilson
Leonard E. Graham	Clifford W. Wilson
/s/ Chas. E. Anderson	/s/ Lloyd Van Deburg
Charles E. Anderson	Lloyd Van Deburg
/s/ A. K. Van Orden	
A. K. Van Orden	

I have participated in the negotiations of this compact and intend to report favorably thereon to the congress of the United States.

/s/ R. J. Newell
R. J. Newell
Representative of
The United States of America

41-12-502. When binding; notice of ratification.

Said compact shall not be operative unless and until the same shall have been ratified by the legislature of each of the said states and approved by the congress of the United States. The governor of Wyoming shall give notice of the ratification and approval of said compact by the thirtieth Wyoming legislature to the governor of the state of Idaho and to the president of the United States.

ARTICLE 6
YELLOWSTONE RIVER COMPACT

41-12-601. Generally.

Ratification and approval is hereby given to the Yellowstone River Compact as signed at the city of Billings, in the state of Montana, on the 8th day of December, A. D. 1950, by L. C. Bishop, the state engineer of the state of Wyoming, and all of the above named assistant commissioners, under and in accordance with the authority of section 71-2601, Wyoming Compiled Statutes, 1945, which compact was also signed by the duly authorized commissioners of the states of Montana and North Dakota, and approved by the representative of the United States, which Yellowstone River Compact is in full as follows:

YELLOWSTONE RIVER COMPACT

The state of Montana, the state of North Dakota, and the state of Wyoming, being moved by consideration of interstate comity, and desiring to remove all causes of present and future controversy between said states and between persons in one (1) and persons in another with respect to the waters of the Yellowstone River and its tributaries, other than waters within or waters which contribute to the flow of streams within the Yellowstone National Park, and desiring to provide for an equitable division and apportionment of such waters, and to encourage the beneficial development and use thereof, acknowledging that in future projects or programs for the regulation, control and use of water in the Yellowstone River basin the great importance of water for irrigation in the signatory states shall be recognized, have resolved to conclude a compact as authorized under the act of congress of the United States of America, approved June 2, 1949 (Public Law 83, 81st congress, first session), for the attainment of these purposes, and to that end, through their respective governments, have named as their respective commissioners:

For the state of Montana:
Fred E. Buck
A. W. Bradshaw
H. W. Bunston
John Herzog
John M. Jarussi
Ashton Jones
Chris Josephson
A. Wallace Kingsbury
P. F. Leonard
Walter M. McLaughlin
Dave M. Manning
Joseph Muggli
Chester E. Onstad
Ed F. Parriott
R. R. Renne
Keith W. Trout

For the state of North Dakota:
I. A. Acker

Einar H. Dahl
J. J. Walsh

For the state of Wyoming:
L. C. Bishop
Earl T. Bower
J. Harold Cash
Ben F. Cochrane
Ernest J. Goppert
Richard L. Greene
E. C. Gwillim
E. J. Johnson
Lee E. Keith
N. V. Kurtz
Harry L. Littlefield
R. E. McNally
Will G. Metz
Mark N. Partridge
Alonzo R. Shreve
Charles M. Smith
Leonard F. Thornton
M. B. Walker

who, after negotiations participated in by R. J. Newell, appointed as the representative of the United States of America, have agreed upon the following articles, to-wit:

Article I

(a) Where the name of a state is used in this compact, as a party thereto, it shall be construed to include the individuals, corporations, partnerships, associations, districts, administrative departments, bureaus, political subdivisions, agencies, persons, permittees, appropriators, and all others using, claiming, or in any manner asserting any right to the use of the waters of the Yellowstone River system under the authority of said state.

(b) Any individual, corporation, partnership, association, district, administrative department, bureau, political subdivision, agency, person, permittee, or appropriator authorized by or under the laws of a signatory state, and all others using, claiming, or in any manner asserting any right to the use of the waters of the Yellowstone River system under the authority of said state, shall be subject to the terms of this compact. Where the singular is used in this article, it shall be construed to include the plural.

Article II

(a) The state of Montana, the state of North Dakota, and the state of Wyoming are hereinafter designated as "Montana", "North Dakota", and "Wyoming", respectively.

(b) The terms "commission" and "Yellowstone River compact commission" mean the agency created as provided herein for the administration of this compact.

(c) The term "Yellowstone River basin" means areas in Wyoming, Montana, and North Dakota drained by the Yellowstone River and its tributaries, and includes the area in Montana known as Lake Basin, but excludes those lands lying within Yellowstone National Park.

(d) The term "Yellowstone River system" means the Yellowstone River and all of its tributaries, including springs and swamps, from their sources to the mouth of the Yellowstone River near Buford, North Dakota, except those portions thereof which are within or contribute to the flow of streams within the Yellowstone National Park.

(e) The term "tributary" means any stream which in a natural state contributes to the flow of the Yellowstone River, including interstate tributaries and tributaries thereof, but excluding those which are within or contribute to the flow of streams within the Yellowstone National Park.

(f) The term "interstate tributaries" means the Clarks Fork, Yellowstone River; the Bighorn River (except Little Bighorn River); the Tongue River; and the Powder River, whose confluences with the Yellowstone River are respectively at or near the city (or town) of Laurel, Big Horn, Miles City, and Terry, all in the state of Montana.

(g) The terms "divert" and "diversion" mean the taking or removing of water from the Yellowstone River or any tributary thereof when the water so taken or removed is not returned directly into the channel of the Yellowstone River or of the tributary from which it is taken.

(h) The term "beneficial use" is herein defined to be that use by which the water supply of a drainage basin is depleted when usefully employed by the activities of man.

(j) The term "domestic use" shall mean the use of water by an individual, or by a family unit or household for drinking, cooking, laundering, sanitation and other personal comforts and necessities; and for the irrigation of a family garden or orchard not exceeding one-half acre in area.

(k) The term "stock water use" shall mean the use of water for livestock and poultry.

Article III

(a) It is considered that no commission or administrative body is necessary to administer this compact or divide the waters of the Yellowstone River basin as between the states of Montana and North Dakota. The provisions of this compact, as between the states of Wyoming and Montana, shall be administered by a commission composed of one (1) representative from the state of Wyoming and one (1) representative from the state of Montana, to be selected by the governors of said states as such states may choose, and one (1) representative selected by the director of the United States geological survey or whatever federal agency may succeed to the functions and duties of that agency, to be appointed by him at the request of the states to sit with the commission and who shall, when present, act as chairman of the commission without vote, except as herein provided.

(b) The salaries and necessary expenses of each state representative shall be paid by the respective state; all other expenses incident to the administration of this compact not borne by the United States shall be allocated to and borne one-half by the state of Wyoming and one-half by the state of Montana.

(c) In addition to other powers and duties herein conferred upon the commission and the members thereof, the jurisdiction of the commission shall include the collection, correlation, and presentation of factual data, the maintenance of records having a bearing upon the administration of this compact, and recommendations to such states upon matters connected with the administration of this compact, and the commission may employ such services and make such expenditures as reasonable and necessary within the limit of funds provided for that purpose by the respective states, and shall compile a report for each year ending September 30 and transmit it to the governors of the signatory states on or before December 31 of each year.

(d) The secretary of the army; the secretary of the interior; the secretary of agriculture; the chairman, federal power commission; the secretary of commerce, or comparable officers of whatever federal agencies may succeed to the functions and duties of these agencies, and such other federal officers and officers of appropriate agencies of the signatory states having services or data useful or necessary to the compact commission, shall cooperate, ex officio, with the commission in the execution of its duty in the collection, correlation, and publication of records and data necessary for the proper administration of the compact; and these officers may perform such other services related to the compact as may be mutually agreed upon with the commission.

(e) The commission shall have power to formulate rules and regulations and to perform any act which they may find necessary to carry out the provisions of this compact, and to amend such rules and regulations. All such rules and regulations shall be filed in the office of the state engineer of each of the signatory states for public inspection.

(f) In case of the failure of the representatives of Wyoming and Montana to unanimously agree on any matter necessary to the proper administration of this compact, then the member selected by the director of the United States geological survey shall have the right to vote upon the matters in disagreement and such points of disagreement shall then be decided by a majority vote of the representatives of the states of Wyoming and Montana and said member selected by the director of the United States geological survey, each being entitled to one (1) vote.

(g) The commission herein authorized shall have power to sue and be sued in its official capacity in any federal court of the signatory states, and may adopt and use an official seal which shall be judicially noticed.

Article IV

The commission shall itself, or in conjunction with other responsible agencies, cause to be established, maintained, and operated such suitable water gaging and evaporation stations as it finds necessary in connection with its duties.

Article V

(a) Appropriative rights to the beneficial uses of the water of the Yellowstone River system existing in each signatory state as of January 1, 1950, shall continue to be enjoyed in accordance with the laws governing the acquisition and use of water under the doctrine of appropriation.

(b) Of the unused and unappropriated waters of the interstate tributaries of the Yellowstone River as of January 1, 1950, there is allocated to each signatory state such quantity of that water as shall be necessary to provide supplemental water supplies for the rights described in paragraph (a) of this article V, such supplemental rights to be acquired and enjoyed in accordance with the laws governing the acquisition and use of water under the doctrine of appropriation, and the remainder of the unused and unappropriated water is allocated to each state for storage or direct diversions for beneficial use on new lands or for other purposes as follows:

(i) Clarks Fork, Yellowstone River

(A) To Wyoming ..... sixty percent (60%)
To Montana ..... forty percent (40%)

(B) The point of measurement shall be below the last diversion from Clarks Fork above Rock Creek.

(ii) Bighorn River (Exclusive of Little Bighorn River)

(A) To Wyoming ..... eighty percent (80%)
To Montana ..... twenty percent (20%)

(B) The point of measurement shall be below the last diversion from the Bighorn River above its junction with the Yellowstone River, and the inflow of the Little Bighorn River shall be excluded from the quantity of water subject to allocation.

(iii) Tongue River

(A) To Wyoming ..... forty percent (40%)
To Montana ..... sixty percent (60%)

(B) The point of measurement shall be below the last diversion from the Tongue River above its junction with the Yellowstone River.

(iv) Powder River (Including the Little Powder River)

(A) To Wyoming ..... forty-two percent (42%)
To Montana ..... fifty-eight percent (58%)

(B) The point of measurement shall be below the last diversion from the Powder River above its junction with the Yellowstone River.

(c) The quantity of water subject to the percentage allocations, in paragraph (b) (i), (ii), (iii) and (iv) of this article V, shall be determined on an annual water year basis measured from October 1st of any year through September 30th of the succeeding year. The quantity to which the percentage factors shall be applied through a given date in any water year shall be, in acre-feet, equal to the algebraic sum of:

(i) The total diversions, in acre-feet, above the point of measurement, for irrigation, municipal, and industrial uses in Wyoming and Montana developed after January 1, 1950, during the period from October 1st to that given date;

(ii) The net change in storage, in acre-feet, in all reservoirs in Wyoming and Montana above the point of measurement completed subsequent to January 1, 1950, during the period from October 1st to that given date;

(iii) The net change in storage, in acre-feet, in existing reservoirs in Wyoming and Montana above the point of measurement, which is used for irrigation, municipal, and industrial purposes developed after January 1, 1950, during the period October 1st to that given date;

(iv) The quantity of water, in acre-feet, that passed the point of measurement in the stream during the period from October 1st to that given date.

(d) All existing rights to the beneficial use of waters of the Yellowstone River in the states of Montana and North Dakota, below Intake, Montana, valid under the laws of these states as of January 1, 1950, are hereby recognized and shall be and remain unimpaired by this compact. During the period May 1 to September 30, inclusive, of each year, lands within Montana and North Dakota shall be entitled to the beneficial use of the flow of waters of the Yellowstone River below Intake, Montana, on a proportionate basis of acreage irrigated. Waters of tributary streams, having their origin in either

Montana or North Dakota, situated entirely in said respective states and flowing into the Yellowstone River below Intake, Montana, are allotted to the respective states in which situated.

(e) There are hereby excluded from the provisions of this compact:

(i) Existing and future domestic and stock water uses of water: Provided, that the capacity of any reservoir for stock water so excluded shall not exceed twenty (20) acre-feet;

(ii) Devices and facilities for the control and regulation of surface waters.

(f) From time to time the commission shall reexamine the allocations herein made and upon unanimous agreement may recommend modifications therein as are fair, just, and equitable, giving consideration among other factors to:

(i) Priorities of water rights;

(ii) Acreage irrigated;

(iii) Acreage irrigable under existing works; and

(iv) Potentially irrigable lands.

Article VI

Nothing contained in this compact shall be so construed or interpreted as to affect adversely any rights to the use of the waters of Yellowstone River and its tributaries owned by or for Indians, Indian tribes, and their reservations.

Article VII

(a) A lower signatory state shall have the right, by compliance with the laws of an upper signatory state, except as to legislative consent, to file application for and receive permits to appropriate and use any waters in the Yellowstone River system not specifically apportioned to or appropriated by such upper state as provided in article V; and to construct or participate in the construction and use of any dam, storage reservoir, or diversion works in such upper state for the purpose of conserving and regulating water that may be apportioned to or appropriated by the lower state: provided, that such right is subject to the rights of the upper state to control, regulate, and use the water apportioned to and appropriated by it: and provided further, that should an upper state elect, it may share in the use of any such facilities constructed by a lower state to the extent of its reasonable needs upon assuming or guaranteeing payment of its proportionate share of the cost of the construction, operation, and maintenance. This provision shall apply with equal force and effect to an upper state in the circumstance of the necessity of the acquisition of rights by an upper state in a lower state.

(b) Each claim hereafter initiated for an appropriation of water in one (1) signatory state for use in another signatory state shall be filed in the office of the state engineer of the signatory state in which the water is to be diverted, and a duplicate copy of the application or notice shall be filed in the office of the state engineer of the signatory state in which the water is to be used.

(c) Appropriations may hereafter be adjudicated in the state in which the water is diverted, and where a portion or all of the lands irrigated are in another signatory state, such adjudications shall be confirmed in that state by the proper authority. Each adjudication is to conform with the laws of the

state where the water is diverted and shall be recorded in the county and state where the water is used.

(d) The use of water allocated under article V of this compact for projects constructed after the date of this compact by the United States of America or any of its agencies or instrumentalities, shall be charged as a use by the state in which the use is made: provided, that such use incident to the diversion, impounding, or conveyance of water in one (1) state for use in another shall be charged to such latter state.

Article VIII

A lower signatory state shall have the right to acquire in an upper state by purchase, or through exercise of the power of eminent domain, such lands, easements, and rights-of-way for the construction, operation, and maintenance of pumping plants, storage reservoirs, canals, conduits, and appurtenant works as may be required for the enjoyment of the privileges granted herein to such lower state. This provision shall apply with equal force and effect to an upper state in the circumstance of the necessity of the acquisition of rights by an upper state in a lower state.

Article IX

Should any facilities be constructed by a lower signatory state in an upper signatory state under the provisions of article VII, the construction, operation, repairs, and replacements of such facilities shall be subject to the laws of the upper state. This provision shall apply with equal force and effect to an upper state in the circumstance of the necessity of the acquisition of rights by an upper state in a lower state.

Article X

No water shall be diverted from the Yellowstone River basin without the unanimous consent of all the signatory states. In the event water from another river basin shall be imported into the Yellowstone River basin or transferred from one (1) tributary basin to another by the United States of America, Montana, North Dakota, or Wyoming, or any of them jointly, the state having the right to the use of such water shall be given proper credit therefor in determining its share of the water apportioned in accordance with article V herein.

Article XI

The provisions of this compact shall remain in full force and effect until amended in the same manner as it is required to be ratified to become operative as provided in article XV.

Article XII

This compact may be terminated at any time by unanimous consent of the signatory states, and upon such termination all rights then established hereunder shall continue unimpaired.

Article XIII

Nothing in this compact shall be construed to limit or prevent any state from instituting or maintaining any action or proceeding, legal or equitable, in any federal court or the United States supreme court, for the protection of any right under this compact or the enforcement of any of its provisions.

Article XIV

The physical and other conditions characteristic of the Yellowstone River and peculiar to the territory drained and served thereby and to the development thereof, have actuated the signatory states in the consummation of this compact, and none of them, nor the United States of America by its consent and approval, concedes thereby the establishment of any general principle or precedent with respect to other interstate streams.

Article XV

This compact shall become operative when approved by the legislature of each of the signatory states and consented to and approved by the congress of the United States.

Article XVI

(a) Nothing in this compact shall be deemed:

(i) To impair or affect the sovereignty or jurisdiction of the United States of America in or over the area of waters affected by such compact, any rights or powers of the United States of America, its agencies, or instrumentalities, in and to the use of the waters of the Yellowstone River Basin nor its capacity to acquire rights in and to the use of said waters;

(ii) To subject any property of the United States of America, its agencies, or instrumentalities to taxation by any state or subdivision thereof, nor to create an obligation on the part of the United States of America, its agencies, or instrumentalities, by reason of the acquisition, construction, or operation of any property or works of whatsoever kind, to make any payments to any state or political subdivision thereof, state agency, municipality, or entity whatsoever in reimbursement for the loss of taxes;

(iii) To subject any property of the United States of America, its agencies, or instrumentalities, to the laws of any state to an extent other than the extent to which these laws would apply without regard to the compact.

Article XVII

Should a court of competent jurisdiction hold any part of this compact to be contrary to the constitution of any signatory state or of the United States of America, all other severable provisions of this compact shall continue in full force and effect.

Article XVIII

No sentence, phrase, or clause in this compact or in any provision thereof, shall be construed or interpreted to divest any signatory state or any of the agencies or officers of such states of the jurisdiction of the water of each state as apportioned in this compact.

IN WITNESS WHEREOF the commissioners have signed this compact in quadruplicate original, one (1) of which shall be filed in the archives of the department of state of the United States of America and shall be deemed the authoritative original, and of which a duly certified copy shall be forwarded to the governor of each signatory state.

Done at the city of Billings in the state of Montana, this 8th day of December, in the year of our Lord, one thousand nine hundred and fifty.

Commissioners for the state of Montana:

Fred E. Buck /s/ Fred E. Buck
A. W. Bradshaw /s/ A. W. Bradshaw
H. W. Bunston /s/ H. W. Bunston
John Herzog /s/ John Herzog
John M. Jarussi /s/ John M. Jarussi
Ashton Jones /s/ Ashton Jones
Chris Josephson /s/ Chris Josephson
A. Wallace Kingsbury /s/ A. Wallace Kingsbury
P. F. Leonard /s/ P. F. Leonard
Walter M. McLaughlin /s/ Walter M. McLaughlin
Dave M. Manning /s/ Dave M. Manning
Joseph Muggli /s/ Joseph Muggli
Chester E. Onstad /s/ Chester E. Onstad
Ed F. Parriott /s/ Ed F. Parriott
R. R. Renne /s/ R. R. Renne
Keith W. Trout /s/ Keith W. Trout

Commissioners for the State of North Dakota:

I. A. Acker /s/ I. A. Acker
Einar H. Dahl /s/ Einar H. Dahl
J. J. Walsh /s/ J. J. Walsh

Commissioners for the State of Wyoming:

L.C. Bishop /s/ L. C. Bishop
Earl T. Bower /s/ Earl T. Bower
Ben F. Cochrane /s/ Ben F. Cochrane
Ernest J. Goppert /s/ Ernest J. Gopper
Richard L. Greene /s/ Richard L. Greene
E. C. Gwillim /s/ E. C. Gwillim
E. J. Johnson /s/ E. J. Johnson
Lee E. Keith /s/ Lee E. Keith
N. V. Kurtz /s/ N. V. Kurtz
Harry L. Littlefield /s/ Harry L. Littlefield
R. E. McNally /s/ R. E. McNally
Will G. Metz /s/ Will G. Metz
Mark N. Partridge /s/ Mark N. Partridge
Alonzo R. Shreve /s/ Alonzo R. Shreve
Charles M. Smith /s/ Charles M. Smith
Leonard F. Thornton /s/ Leonard F. Thornton
M. B. Walker /s/ M. B. Walker

I have participated in the negotiation of this compact and intend to report favorably thereon to the congress of the United States.

/s/ R. J. Newell
R. J. Newell
Representative of the
United States of America.

41-12-602. When binding; notice of ratification.

Said compact shall not be binding or obligatory upon any of the high contracting parties thereto unless and until the same shall have been ratified by the legislature of each of the said states and approved by the congress of the United States. The governor of Wyoming shall give notice of the ratification and approval of said compact by the Wyoming legislature to the governors of the states of Montana and North Dakota and to the president of the United States.

41-12-603. Diversions from the Yellowstone River Basin; definitions.

(a) Unless the context requires otherwise, in W.S. 41-12-603 through 41-12-607 the following definitions apply:

(i) "Basin" means the Yellowstone River Basin as defined in the Yellowstone River Compact, W.S. 41-12-601;

(ii) "Compact" means the Yellowstone River Compact provided for in W.S. 41-12-601;

(iii) "Compact water" means any water in the basin that is allocated to Wyoming, Montana or North Dakota by the terms of the compact or whose appropriation is in any manner regulated by the terms of the compact.

41-12-604. Diversions from the Yellowstone River Basin; authority to approve.

The state engineer may consent on behalf of the state of Wyoming to diversions of water from the basin pursuant to Article X of the compact, including diversions of water allocated under the terms of the compact to the other signatory states of Montana and North Dakota.

41-12-605. Diversions from the Yellowstone River Basin; application; notice.

(a) Any person proposing to divert compact water allocated to Wyoming from the basin for use in Wyoming, whether the point of diversion is in Wyoming, Montana or North Dakota, shall file an application with the state engineer. The application must state the name and address of the applicant, describe the proposed point of diversion, the point of use, the ultimate use and facts tending to show that:

(i) The diversion and ultimate use of the water is for a beneficial use of water;

(ii) The diversion and ultimate use of water will not adversely affect the water rights of other persons;

(iii) The proposed means of diversion, construction and operation are adequate;

(iv) The diversion and ultimate use will not interfere with other planned uses or developments for which a water right with a senior priority date has been applied for or permit issued;

(v) The diversion and ultimate use of the water will not exceed the allocated share under the compact of any of the signatory states;

(vi) The diversion and ultimate use of the water are in the public interest of Wyoming; and

(vii) The applicant intends to comply with the laws of the signatory states to the compact.

(b) Any person proposing to divert compact water allocated to Montana or North Dakota for use out of the basin, whether the point of diversion is in Wyoming, Montana or North Dakota, shall file an

application with the state engineer. The application must state the name and address of the applicant, describe the proposed point of diversion, the point of use, the ultimate use and facts tending to show that:

(i) The proposed means of diversion, construction and operation are adequate;

(ii) The diversion and ultimate use of the water will not exceed the allocated share under the compact of any of the signatory states; and

(iii) The applicant intends to comply with the compact.

(c) The state engineer shall publish a reasonable summary of the application for three (3) consecutive weeks in at least three (3) newspapers of general circulation within the state and if the proposed point of diversion is within Wyoming, publish the notice in at least one (1) newspaper of general circulation in the county where the diversion point is to be located.

41-12-606. Diversions from the Yellowstone River Basin; objections; public hearing.

(a) An objection to an application must be filed with the state engineer by the date specified in the published notice.

(b) The objector to an application shall state his name and address and any facts tending to show how the objector will be affected by the application.

(c) If the state engineer receives a valid objection to an application, the state engineer shall hold a public hearing within sixty (60) days from the date set by the state engineer for filing objections. Service of the notice of the hearing must be made by certified mail upon the applicant and the objector.

(d) Cost of the public hearing shall be borne by the applicant only in those cases of an application made pursuant to W.S. 41-12-605(a).

41-12-607. Diversions from the Yellowstone River Basin; criteria for approval; terms.

(a) The state engineer may conduct whatever other studies he deems necessary to adequately evaluate an application.

(b) The state engineer may issue his approval of an application proposing to divert compact water allocated to Wyoming if:

(i) The diversion and the ultimate use of the water are for a beneficial use of water;

(ii) The diversion and ultimate use of water will not adversely affect the water rights of other persons;

(iii) The proposed means of diversion, construction and operation are adequate;

(iv) The diversion and ultimate use will not interfere unreasonably with other planned uses or developments for which a water right application has been filed or a permit issued;

(v) The diversion and ultimate use of the water will not exceed the allocated share under the compact of any of the signatory states;

(vi) The diversion and ultimate use of the water are in the public interest of Wyoming; and

(vii) The applicant signs an agreement to comply with the laws of the signatory states to the compact in construction, operation and maintaining all facilities associated with the diversion and ultimate use of the water.

(c) The state engineer may approve an application proposing to divert compact water allocated to Montana or North Dakota as described in W.S. 41-12-605(b) if the diversion will not adversely affect the property rights or interests of an appropriator located in Wyoming and if the diversion and ultimate use of water will not exceed the allocated share under the compact of any of the signatory states.

(d) The state engineer may approve an application subject to such terms, conditions, restrictions and limitations as the state engineer considers necessary to meet the application criteria listed in W.S. 41-12-605 and this section.

(e) The state engineer's approval of an application pursuant to this act [§§ 41-12-603 through 41-12-607] shall not constitute approval for an out of state use of the water pursuant to W.S. 41-3-105 and 41-3-115.

ARTICLE 7
UPPER NIOBRARA RIVER COMPACT

41-12-701. Generally.

Ratification and approval is hereby given to the Upper Niobrara River Compact as signed at Cheyenne, Wyoming, on the 26th day of October, A.D. 1962, by E. J. Van Camp, the interstate streams commissioner of the state of Wyoming, and the assistant commissioners, hereinafter named, under and in accordance with the authority of W.S. 41-11-201 through 41-11-204, which compact was also signed by the duly authorized commissioner of the state of Nebraska, and which Upper Niobrara River Compact is in full as follows:

UPPER NIOBRARA RIVER COMPACT

The state of Wyoming, and the state of Nebraska, parties signatory to this compact (hereinafter referred to as Wyoming and Nebraska, respectively, or individually as a "state" or collectively as "states"), having resolved to conclude a compact with respect to the use of waters of the Niobrara River basin, and being duly authorized by Act of congress of the United States of America, approved August 5, 1953 (Public Law 191, 83rd congress, 1st Session, chapter 324, 67 Stat. 365) and the Act of May 29, 1958 (Public Law 85-427, 85th congress, S.2557, 72 Stat. 147) and the Act of August 30, 1961 (Public Law 87-181, 87th congress, S.2245, 75 Stat. 412) and pursuant to the acts of their respective legislatures have, through their respective governors, appointed as their commissioners: for Wyoming, Earl Lloyd, Andrew McMaster, Richard Pfister, John Christian, Eugene P. Willson, H. T. Person, Norman B. Gray, E. J. Van Camp; For Nebraska, Dan S. Jones, Jr., who after negotiations participated in by W. E. Blomgren appointed by the president of the United States of America, have agreed upon the following articles:

Article I

(a) The major purposes of this compact are to provide for an equitable division or apportionment of the available surface waters supply of the upper Niobrara River basin between the states; to provide for obtaining information or groundwater and underground water flow necessary for

apportioning the underground flow by supplement to this compact; to remove all causes, present and future which might lead to controversies; and to promote interstate comity.

(b) The physical and other conditions peculiar to the upper Niobrara River basin constitute the basis for this compact, and neither of the states hereby concedes that this compact establishes any general principle or precedent with respect to any other interstate stream.

(c) Either state and all others using, claiming or in any other manner asserting any right to the use of the waters of the Niobrara River basin under the authority of that state, shall be subject to the terms of this compact.

Article II

(a) The term "upper Niobrara River" shall mean and include the Niobrara River and its tributaries in Nebraska and Wyoming west of range 55 west of the 6th p.m.

(b) The term "upper Niobrara River basin" or the term "basin" shall mean that area in Wyoming and Nebraska which is naturally drained by the Niobrara River west of range 55 west of the 6th p.m.

(c) Where the name of a state or the term "state" or "states" is used, they shall be construed to include any person or entity of any nature whatsoever using, claiming, or in any manner asserting any right to the use of the waters of the Niobrara River under the authority of that state.

Article III

(a) It shall be the duty of the two (2) states to administer this compact through the official in each state who is now or may hereafter be charged with the duty of administering the public water supplies, and to collect and correlate through such officials the data necessary for the proper administration of the provisions of this compact. Such officials may, by unanimous action, adopt rules and regulations consistent with the provisions of this compact.

(b) The states agree that the United States geological survey, or whatever federal agency may succeed to the functions and duties of that agency, insofar as this compact is concerned, may collaborate with the officials of the states charged with the administration of this compact in the execution of the duty of such officials in the collection, correlation, and publication of information necessary for the proper administration of this compact.

Article IV

Each state shall itself or in conjunction with other responsible agencies cause to be established, maintained, and operated such suitable water gaging stations as are found necessary to administer this compact.

Article V

(a) Wyoming and Nebraska agree that the division of surface waters of the upper Niobrara River shall be in accordance with the following provisions:

(i) There shall be no restrictions on the use of the surface waters of the upper Niobrara River by Wyoming except as would be imposed under Wyoming law and the following limitations:

(A) No reservoir constructed after August 1, 1957, and used solely for domestic and stock water purposes shall exceed twenty (20) acre-feet in capacity.

(B) Storage reservoirs with priority dates after August 1, 1957, and storing water from the main stem of the Niobrara River east of range 62 west of the 6th p.m. and from the main stem of Van Tassel Creek south of section 27, township 32 north, range 60 west of the 6th p.m. shall not store in any water year (October 1 of one (1) year to September 30 of the next year) more than a total of five hundred (500) acre-feet of water.

(C) Storage in reservoirs with priority dates prior to August 1, 1957, and storing water from the main stem of the Niobrara River east of range 62 west and from the main stem of Van Tassel Creek south of section 27, township 32 north, shall be made only during the period October 1 of one (1) year to June 1 of the next year and at such times during the period June 1 to September 30 that the water is not required to meet the legal requirements by direct flow appropriations in Wyoming and Nebraska west of range 55 west. Where water is pumped from such storage reservoirs, the quantity of storage water pumped or otherwise diverted for irrigation purposes or other beneficial purposes from any such reservoir in any water year shall be limited to the capacity of such reservoir as shown by the records of the Wyoming state engineer's office, unless additional storage water becomes available during the period June 1 to September 30 after meeting the legal diversion requirements by direct flow appropriations in Wyoming and Nebraska west of range 55 west.

(D) Storage in reservoirs with priority dates after August 1, 1957 and storing water from the main stem of the Niobrara River east of range 62 west and the main stem of Van Tassel Creek south of section 27, township 32 north, shall be made only during the period October 1 of one (1) year to May 1 of the next year and at such times during the period May 1 and September 30 that the water is not required for direct diversion by ditches in Wyoming and in Nebraska west of range 55 west.

(E) Direct flow rights with priority dates after August 1, 1957, on the main stem of the Niobrara River east of range 62 west and Van Tassel Creek south of section 27, township 32 north, shall be regulated on a priority basis with Nebraska rights west of range 55 west, provided that any direct flow rights for maximum of one hundred forty-three (143) acres which may be granted by the Wyoming state engineer with a priority date not later than July 1, 1961 for lands which had territorial rights under the Van Tassel No. 4 Ditch with a priority date of April 8, 1882, and the Van Tassel No. 5 Ditch with a priority date of April 18, 1882, shall be exempt from the provisions of this subsection (E).

(F) All direct flow diversions from the main stem of the Niobrara River east of range 62 west and from Van Tassel Creek south of section 27, township 32 north shall at all times be limited to their diversion rates as specified by Wyoming law, and provided that Wyoming laws relating to diversion of "surplus water" (W.S. 41-4-317 through 41-4-324) shall apply only when the water flowing in the main channel of the Niobrara River west of range 55 west is in excess of the legal diversion requirements of Nebraska ditches having priority dates before August 1, 1957.

Article VI

(a) Nebraska and Wyoming recognize that the future use of ground water for irrigation in the Niobrara River basin may be a factor in the depletion of the surface flows of the Niobrara River, and since the data now available are inadequate to make a determination in regard to this matter, any apportionment of the ground water of the Niobrara River basin should be delayed until such time as adequate date [data] on ground water of the basin are available.

(b) To obtain data on ground water, Nebraska and Wyoming, with the cooperation and advice of the United States geological survey, ground water branch, shall undertake ground water investigations in the Niobrara River basin in the area of the Wyoming-Nebraska state line. The investigations shall be such as are agreed to by the state engineer of Wyoming and the director of water resources of Nebraska, and may include such observation wells as the said two (2) officials

agree are essential for the investigations. Costs of the investigations may be financed under the cooperative ground water programs between the United States geological survey and the states, and the states' share of the costs shall be borne equally by the two (2) states.

(c) The ground water investigations shall begin within one (1) year after the effective date of this compact. Upon collection of not more than twelve (12) months of ground water data Nebraska and Wyoming with the cooperation of the United States geological survey shall make, or cause to be made an analysis of such data to determine the desirability or necessity of apportioning the ground water by supplement to this compact. If, upon completion of the initial analysis, it is determined that apportionment of the ground water is not then desirable or necessary, re-analysis shall be made at not to exceed two (2) year intervals, using all data collected until such apportionment is made.

(d) When the results of the ground water investigations indicate that apportionment of ground water of the Niobrara River basin is desirable, the two (2) states shall proceed to negotiate a supplement to this compact apportioning the ground water of the basin.

(e) Any proposed supplement to this compact apportioning the ground water shall not become effective until ratified by the legislatures of the two (2) states and approved by the congress of the United States.

Article VII

The provisions of this compact shall remain in full force and effect until amended by action of the legislatures of the signatory states and until such amendment is consented to and approved by the congress of the United States in the same manner as this compact is required to be ratified and consented to in order to become effective.

Article VIII

Nothing in this compact shall be construed to limit or prevent either state from instituting or maintaining any action or proceeding, legal or equitable, in any court of competent jurisdiction for the protection of any right under this compact or the enforcement of any of its provisions.

Article IX

(a) Nothing in this compact shall be deemed:

(i) To impair or affect any rights or powers of the United States, its agencies, or instrumentalities, in and to the use of the waters of the upper Niobrara River basin nor its capacity to acquire rights in and to the use of said waters; provided that any beneficial uses of the waters allocated by this compact hereafter made within a state by the United States, or those acting by or under its authority, shall be taken into account in determining the extent of use within that state.

(ii) To subject any property of the United States, its agencies, or instrumentalities to taxation by either state or subdivision thereof, nor to create an obligation on the part of the United States, its agencies, or instrumentalities, by reason of the acquisition, construction or operation of any property or works of whatsoever kind, to make any payment to any state or political subdivision thereof, state agency, municipality, or equity whatsoever in reimbursement for the loss of taxes.

(iii) To subject any property of the United States, its agencies, or instrumentalities, to the laws of any state to an extent other than the extent to which these laws apply without regard to the compact.

(iv) To affect the obligations of the United States of America to Indians or Indian tribes, or any right owned or held by or for Indians or Indian tribes which is subject to the jurisdiction of the United States.

Article X

Should a court of competent jurisdiction hold any part of this compact contrary to the constitution of any state or of the United States, all other severable provisions shall continue in full force and effect.

Article XI

This compact shall become effective when ratified by the legislatures.

IN WITNESS WHEREOF, the commissioners have signed this compact in triplicate original, one (1) of which shall be filed in the archives of the United States of America and shall be deemed the authoritative original, and one (1) copy of which shall be forwarded to the governor of each of the signatory states.

Done at the city of Cheyenne, in the state of Wyoming, this 26th day of October, in the year of our Lord, One Thousand Nine Hundred Sixty-Two 1962.

Commissioners for the state of Nebraska
/s/Dan S. Jones, Jr.

Commissioners for the state of Wyoming

/s/ Earl Lloyd	/s/ Eugene P. Willson
/s/ Andrew McMaster	/s/ H. T. Person
/s/ Richard Pfister	/s/ Norman B. Gray
/s/ John Christian	/s/ E. J. Van Camp

I have participated in the negotiation of this compact and intend to report favorably thereon to the congress of the United States.

/s/W. E. Blomgren
Representative of the United States of America.

41-12-702. When binding; notice of ratification.

The said compact shall not be binding or obligatory upon the state of Wyoming or any of the other high contracting parties thereto unless or until the same shall have been ratified by the legislature of Nebraska, and consented to by the congress of the United States. The governor of Wyoming shall give notice of the ratification and approval of said compact by the Wyoming legislature to the governor of Nebraska and to the president of the United States.

ARTICLE 8
WATER DEVELOPMENT STUDIES

41-12-801. Studies authorized for waters allocated by certain compacts.

In order to more fully utilize the waters allocated to the state of Wyoming by the Yellowstone River Compact (W.S. 41-12-601), the Colorado River Compact (W.S. 41-12-301), and the Upper Colorado River Compact (W.S. 41-12-401), the state engineer is hereby directed to initiate studies to plan the

development of these waters, including, but not limited to, transbasin diversions within the state wherever shown feasible as projects of the state of Wyoming. Such studies shall show the diligent intent of the state to fully utilize all of Wyoming's compact share of the Big Horn River and its tributaries, the Green River and its tributaries, and other tributaries of the Colorado River within the boundaries of the state of Wyoming.

CHAPTER 13
WATERCRAFT

ARTICLE 1
REGISTRATION; ACCIDENTS

41-13-101. Definitions; classification of motorboats.

(a) As used in this act:

(i) "Commission" means the Wyoming game and fish commission;

(ii) "Department" means the Wyoming game and fish department;

(iii) "Motorboat" means any watercraft propelled in any respect by propulsion machinery powered by an energy source other than human effort;

(iv) "Operate" means to navigate or otherwise use a watercraft;

(v) "Owner" means a person having the property in or title to a motorboat excluding a lienholder or a lessee under a lease not intended as security;

(vi) "Safety equipment" includes personal flotation devices, towing and bailing devices, paddles, fire extinguishers and navigation lights, backfire flame arresters, whistles or other sound producing devices and ventilation systems;

(vii) "Watercraft" means any contrivance used or designed primarily for navigation on water;

(viii) "Waters of this state" means any waters within the jurisdiction of Wyoming;

(ix) "This act" means W.S. 41-13-101 through 41-13-220.

(b) Motorboats subject to the provisions of this act shall be divided into four (4) classes as follows:

(i) Class A. Less than sixteen (16) feet in length;

(ii) Class B. Sixteen (16) feet or over and less than twenty-six (26) feet in length;

(iii) Class C. Twenty-six (26) feet or over and less than forty (40) feet in length;

(iv) Class D. Forty (40) feet or over.

41-13-102. Motorboat certificate of number required.

(a) Except as provided by W.S. 41-13-103, all motorboats powered by propulsion machinery of any type and operated on the waters of this state shall be numbered.

(b) No person shall operate nor shall the owner permit the operation of any motorboat unless:

(i) The motorboat is numbered in accordance with this act, applicable federal law or a federally approved numbering system of another state;

(ii) The certificate of number issued for the motorboat is in full force and effect; and

(iii) The identifying number set forth in the certificate of number is displayed on each side of the bow of the motorboat.

41-13-103. Motorboats to be numbered; exempt motorboats.

(a) A motorboat shall not be required to be numbered under this act [§§ 41-13-101 through 41-13-111] if it is:

(i) Already covered by a number in full force and effect which has been awarded to it pursuant to federal law or a federally approved numbering system of another state. Provided, that such boat shall not have been within this state for a period in excess of ninety (90) consecutive days;

(ii) Presently numbered under the rules of the department until the present registration expires and provided further, that present coast guard numbers shall be specifically recognized for their duration or until the certificate expires, whichever is first;

(iii) A motorboat whose owner is the United States, a state or a subdivision thereof, but such ownership must be visibly evident;

(iv) A motorboat belonging to a class of boats which has been exempted from numbering by the department after said agency has found that the numbering of motorboats of such class will not materially aid in their identification; and, if an agency of the federal government has a numbering system applicable to the class of motorboats to which the motorboat in question belongs, after the department has further found that the motorboat would also be exempt from numbering if it were subject to the federal law.

41-13-104. Application for certificate; issuance of certificate and assignment of number; conformity with federal numbering system; expiration and renewal of certificate; transfer of ownership; duplicate certificate; manufacturer and dealer certificates.

(a) The owner of each motorboat requiring numbering by this state shall apply for a number with the department or any place selling game and fish licenses on forms approved by the department. The application shall be signed by the owner and accompanied by the fee required by W.S. 41-13-109. At the time of application, the applicant shall also present proof in a form approved by the department of revenue that all sales or use tax due on the motorboat have been paid. Any person who knowingly presents a false or fraudulent statement of proof is subject to the provisions of W.S. 6-5-303, in addition to any penalties and interest due for nonpayment of sales or use tax on the motorboat. Upon receipt of the application in approved form the department shall issue to the applicant a certificate of number stating the number awarded to the motorboat and the name and address of the owner. The owner shall paint on or attach to each side of the bow of the motorboat the identification number in such manner as may be prescribed by rules and regulations of the commission in order that it may be completely visible. The number shall be maintained in legible condition. The certificate of number shall be pocket size and shall be available at all times for inspection on the motorboat for which issued, wherever the motorboat is operated. If any motorboat is

rented for less than one (1) day, the owner or his designee may retain the certificate of number on shore if the certificate is readily available for inspection.

(b) The owner of any motorboat for which a current certificate of number has been issued pursuant to any federal law or a federally approved numbering system of another state shall, if the motorboat remains in this state in excess of ninety (90) consecutive days and is operated on the waters of this state at any time during this ninety (90) day period, apply for a certificate of number in the manner prescribed in subsection (a) of this section.

(c) In the event that an agency of the United States government shall have in force an overall system of identification numbering for motorboats within the United States, the numbering system employed pursuant to this act by the department shall be in conformity therewith.

(d) The department may award any certificate of number directly or through authorized agents. Numbers and certificates awarded by authorized agents in conformity with this act and with rules and regulations of the commission are valid as if awarded directly by the department.

(e) All records of the department made or kept pursuant to this section shall be public records.

(f) Each certificate of number issued under this act expires on December 31 of the last year of valid registration under the certificate unless sooner terminated or discontinued under this act. A duplicate number may be obtained by an owner upon application to the department, which may require payment of a fee of not more than five dollars ($5.00). Certificates of number may be renewed by the owner in the same manner provided under this act for obtaining initial certification.

(g) The owner of any motorboat shall within fifteen (15) days notify the department if such motorboat is destroyed or abandoned, or if his address no longer conforms to the address appearing on the certificate of number. In all such cases, the notice shall be accompanied by a surrender of the certificate of number. When the surrender of the certificate is by reason of the motorboat being destroyed or abandoned, the department shall cancel the certificate and enter such fact in its records. If the surrender is by reason of a change of address on the part of the owner, the new address shall be endorsed on the certificate and the latter returned to the owner.

(h) The purchaser of a motorboat may operate the motorboat for thirty (30) calendar days from the date of purchase without a new certificate of number if upon demand by a person authorized to enforce this act, the new owner can furnish proof of ownership and the date the motorboat was acquired. Upon transfer of ownership of a motorboat, the current certificate of number may be transferred to the new owner upon application to the department. Application by the new owner shall include his name, address and the certificate of number of the motorboat, together with payment of the registration fee prescribed by W.S. 41-13-109 and presentation of proof of transfer. Upon receipt of application and fee, the department shall transfer the certificate of number issued for the motorboat to the new owner. Unless the application is made and fee paid within thirty (30) days, the motorboat is without certificate of number and no person shall operate the motorboat until a certificate is issued.

(j) No number other than the number awarded to a motorboat or granted reciprocity pursuant to this act shall be painted, attached, or otherwise displayed on either side of the bow of such motorboat.

(k) If any certificate of number is lost, mutilated or becomes illegible, the owner of the motorboat for which the certificate was issued may obtain a duplicate certificate upon application to the department. The department may set and collect payment of a fee for a duplicate certificate not to exceed five dollars ($5.00).

(m) A person engaged in the manufacture or sale of motorboats may, upon application to the department in the manner and on forms prescribed by rule and regulation, obtain certificates of number for use in the testing or demonstrating of these motorboats. The fee for each registration under this subsection shall be fifteen dollars ($15.00). The numbers assigned by certificates of number issued under this subsection shall be temporarily placed on the watercraft to be tested or demonstrated.

41-13-105. Watercraft accidents or collisions; duty to render aid; reportable accidents; operators required to report; accident investigation; seizure of watercraft.

(a) The operator of a watercraft involved in a collision, accident or other casualty, so far as he can do so without serious danger to his own watercraft, crew, passengers and guests, shall render to other persons affected by the collision, accident or other casualty such assistance as may be practicable and as may be necessary in order to save them from or minimize any danger caused by the collision, accident or other casualty. The operator shall give his name, address and identification of his watercraft to any person injured and to the owner of any property damaged in the collision, accident or other casualty.

(b) If a collision, accident or other casualty involving a watercraft results in death or injury to a person requiring medical treatment beyond first aid, the disappearance of any person from the watercraft under circumstances which indicate the possibility of death or injury, or damage to property in excess of five hundred dollars ($500.00), the watercraft operator shall immediately provide notice of the accident to any Wyoming law enforcement agency or peace officer of this state. For purposes of this section, accidents include capsizing, flooding, fire, explosion, disappearance of the watercraft other than by theft and all collision accidents involving other watercraft or fixed or floating objects.

(c) The operator of any watercraft involved in a reportable watercraft accident as defined under subsection (b) of this section shall immediately provide notice of the accident to any Wyoming law enforcement agency or peace officer. If a watercraft operator is not able to provide notice under this subsection, another adult person on the watercraft at the time of the accident may provide the required notice. Notice under this subsection shall to the extent reasonably known, contain the following information:

(i) For each watercraft involved in the accident, the identifying number assigned by the certificate of number issued to the watercraft;

(ii) The location, time and date of the accident;

(iii) The name, address and age of the operator of each watercraft involved in the accident;

(iv) If not operating the watercraft at the time of the accident, the name and address of the watercraft owner;

(v) The name and address of any person injured, killed or missing as a result of the accident;

(vi) The nature and extent of each injury resulting from the accident;

(vii) A description of any property damage resulting from the accident;

(viii) The name and address of any passengers on the watercraft at the time of the accident.

(d) In addition to subsection (c) of this section, the watercraft operator shall within ten (10) days after the date of the accident, file with the department a full description of the collision, accident or other casualty. The report required under this subsection shall be submitted on a boating accident report form approved by the department and obtained from the investigating law enforcement agency or peace officer. The department shall provide forms required under subsection (c) of this section and this subsection to the appropriate law enforcement agencies and peace officers. The report shall not be referred to in any way and shall not be used as evidence in any judicial proceeding.

(e) If the cause of any reportable watercraft accident as defined under subsection (b) of this section cannot be immediately determined during the investigation of the accident by the appropriate peace officer or law enforcement agency and the watercraft is necessary for investigative purposes, the officer or agency may temporarily seize and hold any watercraft involved in the accident.

41-13-106. Accident report information to federal government.

Upon the request of an authorized official or agency of the United States, any information compiled or otherwise available to the department pursuant to W.S. 41-13-105 shall be transmitted to the requesting official or agency.

41-13-107. Political subdivisions not to number watercraft.

This act governs the numbering and registration of watercraft on the waters of this state. All other political subdivisions of this state are expressly prohibited from numbering watercraft in any respect.

41-13-108. Publication and distribution of regulations.

A copy of the regulations adopted pursuant to this act, and of any amendments thereto, shall be published by the department in a convenient form and a copy shall be distributed with each registration.

41-13-109. Motorboat registration fee.

(a) The nonrefundable and nontransferable registration fee for motorboats is:

(i) Fifteen dollars ($15.00) for one (1) year; or

(ii) Forty dollars ($40.00) for three (3) years.

(b) In addition to the fee under subsection (a) of this section, persons registering a motorboat in Wyoming may pay a fee of one dollar ($1.00) to fund search and rescue activities. Motorboat registration forms shall contain information about the voluntary fee under this subsection.

41-13-110. Disposition of registration fees.

(a) Except as provided under subsection (b) of this section, all registration fees received under this act shall be deposited in the state treasury to the credit of the game and fish fund to be used for administration and enforcement of this act. The department may receive funds and property under federal assistance programs. Any monies in excess of administration and enforcement expenses shall be used to promote boating safety, boating safety education and for the construction of boating facilities for the general public.

(b) All fees received under W.S. 41-13-109(b) shall be deposited in the state treasury to the credit of the search and rescue account created by W.S. 19-13-301(a).

41-13-111. Prohibited acts; penalties.

(a) No person shall intentionally or knowingly deface, alter, remove or destroy a vessel hull identification number (HIN) or an engine or outboard motor serial number.

(b) No person shall intentionally or knowingly provide false information in a report required pursuant to W.S. 41-13-105(c).

(c) Any person who fails to register and affix an assigned registration number to a motorboat as required by this act, operates an unregistered or unnumbered motorboat unless authorized by this act or fails to report a watercraft accident as required by W.S. 41-13-105 is guilty of a misdemeanor and shall be fined not more than one hundred dollars ($100.00) for each violation.

ARTICLE 2
OPERATION; EQUIPMENT

41-13-201. Repealed by Laws 1979, ch. 112, § 2.

41-13-202. Provisions applicable to all watercraft in state; supplemental to federal laws and regulations.

The provisions of this act [§§ 41-13-201 through 41-13-218] shall be applicable to all watercraft operating on all of the waterways of this state. The provisions of this act shall be construed to supplement federal laws and regulations when not expressly inconsistent therewith on all waterways where such federal laws and regulations are applicable.

41-13-203. Careless operation defined.

Any person who operates any watercraft in a careless or heedless manner so as to be indifferent to the person or property of another person, or at a rate of speed greater than will permit him in the exercise of reasonable care to bring the watercraft to a stop within the assured clear distance ahead, is guilty of the crime of careless operation.

41-13-204. Reckless operation defined.

Any person who shall operate any watercraft in such a manner as to endanger the life or limb, or damage the property of, another person, shall be guilty of the crime of reckless operation.

41-13-214. Repealed by Laws 1979, ch. 112, § 2.

41-13-206. Operation of watercraft by intoxicated or drugged person prohibited.

(a) As used in this section:

(i) "Alcohol concentration" means as defined in W.S. 31-5-233(a)(i);

(ii) "Controlled substance" includes:

(A) Any drug or substance defined by W.S. 35-7-1002(a)(iv);

(B) Any glue, aerosol or other toxic vapor which when intentionally inhaled or sniffed results in impairment of an individual's ability to safely operate a watercraft.

(b) No owner of any watercraft or person having charge or control of a watercraft shall authorize or knowingly permit it to be operated by any person who is under the influence of alcohol, a controlled substance or combination thereof in violation of subsection (c) of this section.

(c) No person shall operate or be in actual physical control of a watercraft if the person:

(i) To a degree which renders him incapable of safely operating a watercraft:

(A) Is under the influence of alcohol;

(B) Is under the influence of a controlled substance; or

(C) Is under the influence of a combination of the elements named in subparagraphs (A) and (B) of this paragraph.

(ii) Has an alcohol concentration of ten one-hundredths of one percent (0.10%) or more; or

(iii) Has an alcohol concentration of ten one-hundredths of one percent (0.10%) or more as measured within three (3) hours of the time of operation or actual physical control.

(d) In any criminal prosecution for a violation of this section relating to operating or being in actual physical control of a watercraft while under the influence of alcohol, the amount of alcohol in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's blood, urine, breath or other bodily substance shall give rise to the following presumptions:

(i) If there was at that time an alcohol concentration of five one-hundredths of one percent (0.05%) or less, it shall be presumed that the defendant was not under the influence of alcohol;

(ii) If there was at that time an alcohol concentration of more than five one-hundredths of one percent (0.05%) and less than ten one-hundredths of one percent (0.10%), that fact shall not give rise to any presumption that the defendant was or was not under the influence of alcohol, but it may be considered with other competent evidence in determining the guilt or innocence of the defendant.

(e) Nothing in subsection (d) of this section shall be construed as limiting the introduction of any other competent evidence bearing upon the question of whether or not the defendant was under the influence of alcohol, including tests obtained more than three (3) hours after the alleged violation. The fact that any person charged with a violation of subsection (c) of this section is or has been entitled to use the controlled substance under the laws of this state shall not constitute a defense against any charge under this section. It is an affirmative defense to a violation of paragraph (c)(iii) of this section that the defendant consumed a sufficient quantity of alcohol after the time of actual operation or physical control of a watercraft and before the administration of the evidentiary test to cause the defendant's alcohol concentration to exceed ten one-hundredths of one percent (0.10%) but evidence of the consumption may not be admitted unless notice is given to the prosecution pursuant to Rule 16.1 of the Wyoming Rules of Criminal Procedure [Rule 12.1, W.R. Cr. P.].

(f) Repealed by Laws 1989, ch. 119, § 3.

(g) Nothing in this section shall be construed to authorize a violation of the Wyoming controlled substances act.

41-13-207. Operation of watercraft by person under disability prohibited.

It shall be unlawful for the owner of any watercraft or any person having such in charge or in control to authorize or knowingly permit the same to be operated by any person who by reason of physical or mental disability is incapable of operating such watercraft under the prevailing circumstances.

41-13-208. Overloading prohibited.

Watercraft shall not be loaded with passengers or cargo beyond its safe carrying capacity as stated on the capacity plate and affixed to the watercraft by the manufacturer, taking into consideration weather and other existing operating conditions. Capacity plates shall not be removed or altered.

41-13-209. Overpowered watercraft prohibited; horsepower rating plates; mufflers required.

(a) No watercraft shall be equipped with any motor or other propulsion machinery that has a horsepower rating exceeding the maximum stated on the capacity plate approved and issued by the United States coast guard and affixed to the watercraft by the manufacturer.

(b) Motorboats shall be equipped, maintained and operated to prevent excessive or unusually loud noise and shall at all times be equipped with a muffler or shall use another method of noise suppression in good working order and in constant operation. No person shall operate or allow the operation of any motorboat equipped with an altered muffler or muffler cutout, bypass or other devise designed or installed to continually or intermittently bypass or otherwise reduce or eliminate the effectiveness of any muffler or muffler system.

(c) Subsection (b) of this section shall not apply to motorboats competing in or while on trials of an approved race or regatta nor in areas designated by the game and fish department.

41-13-210. Riding on gunwales or bow decking prohibited; exceptions.

No person operating a motorboat shall allow any person to ride or sit on either the starboard or port gunwales thereof or on the decking over the bow of the vessel while underway unless such motorboat is provided with adequate guards or railing to prevent passengers from being lost overboard. Nothing in this section shall be construed to mean that passengers or other persons aboard a motorboat cannot occupy the decking over the bow of the boat to moor the watercraft to a mooring buoy or to cast off from such a buoy, or for any other necessary purpose.

41-13-211. Buoys and markers; operation in marked restricted areas prohibited; exceptions.

(a) The commission shall regulate the type and use of watercraft on the waters of the state and the placement of buoys, markers or regulatory signs necessary to provide for the safety and welfare of the public. Watercraft operators shall operate watercraft in accordance with restrictions and regulations specified on the buoys, markers or signs. No waterway marker regulating watercraft use shall be placed on, in or near the waters of the state unless approval has been obtained in accordance with commission regulations.

(b) No person shall operate a watercraft on any water or within a water area which has been designated in accordance with commission regulation as a restricted area. This section does not apply in the case of an emergency, or to patrol or rescue craft.

(c) No person shall tie-off, moor or attach any watercraft to any regulatory buoy or waterway marking device.

41-13-212. Motorboat pulling skier to be occupied by at least 2 persons; hours of operation; use of care; exceptions.

(a) No motorboat which shall have in tow or shall be otherwise assisting a person on water skis, aquaplane or similar contrivance, shall be operated or propelled in or upon any waterway, unless such motorboat shall be occupied by at least two (2) persons. Provided, that this subsection shall not apply to motorboats used by representatives of duly constituted water ski schools in the giving of instruction, or to motorboats used in duly authorized water ski tournaments, competitions, expositions, or trials therefor, or to any motorboat equipped with a wide angle rear view mirror.

(b) No motorboat shall have in tow or shall otherwise be assisting a person on water skis, aquaplane or similar contrivance from the period of one (1) hour after sunset to one (1) hour prior to sunrise. Provided, that this subsection shall not apply to motorboats used in duly authorized water ski tournaments, competitions, expositions, or trials therefor.

(c) All motorboats having in tow or otherwise assisting a person on water skis, aquaplane or similar contrivance, shall be operated in a careful and prudent manner at a reasonable distance from persons and property so as not to endanger the life or property of any person.

(d) No person shall operate or manipulate any vessel, tow rope or other device by which the direction or location of water skis, aquaplane, or similar device may be affected or controlled in such a way as to cause the water skis, aquaplane, or similar device, or any person thereon to collide with or strike against any person or object, other than a jumping ramp or in conjunction with skiing over a slalom course.

(e) The person required to be in a motorboat under subsection (a) of this section who is not operating the motorboat shall:

(i) Continuously observe the person being towed.

41-13-213. Safety equipment required.

All watercraft shall carry or be equipped with safety equipment as prescribed by commission regulation. The commission may also require every person riding on watercraft operating on specified waters to wear commission approved safety equipment.

41-13-214. Repealed by Laws 1979, ch. 112, § 2.

41-13-215. Enforcement.

The game and fish department law enforcement officers shall and at the discretion of such officers, other peace officers of the state or any of its political subdivisions may enforce the provisions of this act and authorized rules and regulations of the commission.

This section is effective until January 1, 2002.

(a) The game and fish department law enforcement officers and any other peace officers of the state or any of its political subdivisions otherwise authorized by law may enforce this act and rules and regulations of the commission.

(b) For purposes of this section, any game and fish department law enforcement officer and any other peace officer may:

(i) Stop, halt, inspect or board any watercraft;

(ii) If there is probable cause to believe a watercraft and associated trailer are stolen, seize the watercraft and associated trailer. A defaced, altered, removed or destroyed vessel hull identification number (HIN) is prima facia evidence that the watercraft and trailer are stolen.

41-13-216. Penalties for violations; suspension of privilege to operate; operating while privilege suspended.

(a) Any person who violates or fails to comply with W.S. 41-13-207 through 41-13-212, 41-13-219 or 41-13-220(b) is guilty of a misdemeanor punishable by a fine of not more than two hundred dollars ($200.00), imprisonment for not more than thirty (30) days, or both, and may be refused the privilege of operating any watercraft on any of the waterways of this state for not more than two (2) years. Any person who violates W.S. 41-13-105, 41-13-111(a) or (b), 41-13-203, 41-13-204, 41-13-206 or 41-13-220(a) is guilty of a misdemeanor punishable by a fine of not more than seven hundred fifty dollars ($750.00), imprisonment for not more than six (6) months, or both, and may be refused the privilege of operating any watercraft on any of the waterways of this state for not more than two (2) years.

(b) Any person who violates or fails to comply with any provision of this act for which no separate penalty is provided or a valid rule or regulation of the commission is guilty of a misdemeanor and shall be fined not more than one hundred dollars ($100.00).

(c) Any person who operates any watercraft during the period when he has been denied this privilege under subsection (a) of this section is guilty of a misdemeanor and upon conviction shall be fined not more than seven hundred fifty dollars ($750.00), imprisoned not more than six (6) months, or both, and may be refused the privilege of operating any watercraft on any of the waterways of this state for not more than two (2) years.

41-13-217. Races or regattas.

The commission may regulate the holding of regattas, motorboat or other boat races, marine parades, tournaments or exhibitions. It shall adopt regulations concerning the safety of motorboats and other vessels and persons thereon, either observers or participants. Whenever a regatta, motorboat or other boat race, tournament or exhibition is proposed to be held, the person in charge, at least thirty (30) days prior thereto, shall file an application with the department for permission to hold the regatta, motorboat or other boat race, marine events, tournament or exhibition. The application shall set forth the date, time and location of the proposed event and such other information as the commission may by regulation require.

41-13-218. Regulations.

The commission shall promulgate rules and regulations necessary to carry out the provisions of this act.

41-13-219. Age of operator of motorboat.

No person shall operate or be in actual physical control of a motorboat required to be numbered on the waters in this state unless he is at least sixteen (16) years of age or is accompanied by an adult. No person shall knowingly permit the operation of a numbered motorboat on the waters of this state by a person under sixteen (16) years of age who is not accompanied by an adult.

41-13-220. Eluding an officer; emergency watercraft equipment restricted.

(a) Any person operating a watercraft shall upon observing a visual or hearing an audible signal from a law enforcement officer enforcing this act and rules and regulations of the commission, bring the watercraft to an immediate stop. No person, after observing a visual or hearing an audible signal from a law enforcement officer enforcing this act and rules and regulations of the commission, shall attempt to elude a law enforcement officer by watercraft or any other means.

(b) Red or blue rotating or flashing lights shall not be displayed and sirens shall not be used on watercraft except as authorized for watercraft operated or used by law enforcement and emergency watercraft.

CHAPTER 14
STORAGE OF WATER FOR INDUSTRIAL AND MUNICIPAL USES

41-14-101. Definitions.

When used in this act [§§ 41-14-101 through 41-14-103], unless the context otherwise requires, "board" means the Wyoming natural resource board [economic development and stabilization board], "director" means the director of the natural resource board, and "chief" means chief of the water development division of the natural resource board.

41-14-102. Contracts with United States for acquisition of space in the proposed Fontenelle Reservoir of the Seedskadee Project.

The board is hereby authorized to contract with the United States or its agent for the acquisition of space in the proposed Fontenelle Reservoir of the Seedskadee Project for the storage of water for municipal and industrial uses, to the extent the board determines necessary for beneficial use in the state of Wyoming, but not to exceed sixty thousand (60,000) acre-feet and to contract for the payment to the United States of not more than nine hundred thousand dollars ($900,000.00) as the allocated costs thereof pursuant to the Federal Reclamation Laws and the Water Supply Act of 1958 (43 U.S.C. § 390b).

41-14-103. Issuance of bonds; purchase of bonds by state treasurer; interest rates; when bonds due and payable; disposition of proceeds of sale; use of revenues derived from furnishing water.

(a) The board is hereby authorized to issue its nonnegotiable debenture bonds in such numbers and amounts, not exceeding nine hundred thousand dollars ($900,000.00), as may, from time to time, be required by it to carry out the provisions of this act [§§ 41-14-101 through 41-14-103]. The state treasurer is hereby authorized and directed, with the approval of the governor and the attorney general, to purchase such bonds for investment of the permanent funds of the state of Wyoming to the extent practicable. Such bonds issued by the board will bear interest at the rate of three percent (3%) per annum and will be payable on dates fixed by the board but not more than ten (10) years from the date of issue.

(b) The funds obtained from the sale of said bonds provided for in subsection (a) of this section are hereby made available to the board to be used for the purposes of this act including, but not limited to the payment of any sums due to the United States for the repayment of the cost of construction of the space acquired by the board in the proposed Fontenelle Reservoir; its share of operation and maintenance of said reservoir and refunding of principal or interest of bonds issued by it.

(c) All revenues derived from the furnishing of water for industrial or municipal purposes pursuant to this act shall be credited to an account within the earmarked revenue fund. The board

shall use any monies in this account for the repayment to the United States of the allocated cost of construction and operation and maintenance of the board's acquired space in the Fontenelle Reservoir and for payment of interest and principal on its obligations prior to the use for such purposes of funds received by it from the sale of its bonds. All monies in this account in excess of those required for the board's current operations under this act shall be applied to the retirement of the board's debenture bonds purchased by the state treasurer.