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FINANCING WATER RESOURCES  
DEVELOPMENT IN WYOMING

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## TABLE OF CONTENTS

CHAPTER	Page
I. INTRODUCTION . . . . .	1
II. EXISTING ALTERNATIVES . . . . .	8
III. ALTERNATIVES AND RECOMMENDATIONS . . . . .	23
APPENDIX - PROPOSED LEGISLATION . . . . .	31

## CHAPTER I

### INTRODUCTION

This study has basically two purposes: first, to identify, review and analyze those existing alternatives available in Wyoming to finance water development projects; and second, to consider the gaps, if any, in the existing Wyoming alternatives and, where necessary, to recommend changes in or additions to the existing alternatives. The first portion of the study is basically descriptive, considering the existing approaches, in view of scope of project authorized, scope of powers granted (or necessary), and scope of financing authorized. The second portion considers the circumstances under which the existing approaches are insufficient to reach certain desirable results, considers some possible alternatives which might be considered by the legislature for adoption, and sets out the author's conclusions as to a recommended course of action.

A question might arise as to the propriety of considering the scope of powers granted to a particular entity or the scope of projects authorized in a study of financing. The author's answer is that the question of what an entity can do and its ability to finance what it can do are integrally related. For example, one might find the ideal entity for doing what one wants to do, but that entity may be so limited in its financing ability that the project, although authorized, is simply impossible to achieve. Conversely, one may find an agency with the ideal financing powers, but its particular powers and scope of authority are so limited that the financing powers are simply wasted, so far as the

particular project is concerned. Further, it would seem that the entity which is to be charged with operating and maintaining a particular project ought just as well be charged with solving the problems of obtaining the money and then returning it over time from the outset through the life of the project. Having the same agency responsible for building, operating, maintaining, financing and repaying of a project would seem to result in better and more coordinated planning and analysis from the outset. The author feels that in having the same entity charged with all these responsibilities, there is less likelihood of weak projects being built than there would be if one agency put together a proposal, then convinced another that the proposal was feasible, then had yet another agency operate and maintain the project (perhaps not in accordance with the assumptions made in considering the feasibility of the particular project). Further, this seems to be a better way to fix responsibility for success or failure of a particular project. Also, there would seem to be economy of expertise in this approach, i.e., instead of having several agencies duplicating one another in expert personnel, one agency could do it all. Overall, however, this thinking may be due to the in-grained philosophical predilections of the author toward having fewer agencies in government rather than more. If the world cannot have the situation espoused by the phrase "that government governs best which governs least," then at least, we can have the situation where the government has responsibility best allocated, i.e., such that it is comparatively easy to determine who is to be blamed or credited. The fewer agencies charged with responsibilities, the easier

it is to know to whom to charge blame or to give credit. In any event, for the foregoing reasons, this paper will consider both aspects.

Further, those with a great deal of expertise or familiarity with the problems of governmental finance, particularly with respect to water or general resource development, will probably find a great deal of the following information superfluous and will consider a great portion of the paper as worthless to them. However, this paper has the goal of providing a certain educational service in addition to serving as an advisory tract. For those coming fresh to the field, the educational aspects might be most helpful; those familiar with the area can skip over to the sections recommending particular action. Many of those who remain to be convinced that any sort of water development is desirable will probably be unfamiliar with the area. Perhaps it will help in the struggle to convince them that water development is desirable for them to have some of the general language and general problems of governmental finance available. It might also help to convince them that some of their pet ideas for preventing water resource development are not as strong as they thought and thus help to minimize the scope of their future action against such development.

Where, then, does one start in considering the problems of water development? One might start simply in the abstract, with no particular project in mind. In the abstract, a water development project could take one of several forms: 1) it could be a federal project; 2) it could be a state project; 3) it could be a local project (which includes all units of local government, other than the state itself); 4) it could be a private project; or 5) it conceivably could be some

combination of any or all of the foregoing. To finance the project, one might look to one of the following for money: 1) federal funds; 2) state funds (or debt); 3) local funds (or debt); 4) private funds (not secured by any sort of public debt); or 5) some combination of any or all of the foregoing. In this paper, the federal alternatives will be ignored, at least in part on the assumption that the federal government has more or less left the business. This leaves the burden on the states, local governments and private enterprise to meet the challenge of providing the financing for and the implementation of water development projects.

At the outset, one faces the same questions, whether considering some governmental activity or some private activity. Those questions are: 1) does the entity considered have sufficient authority to engage in the activity (this involves both building the project and operating it after it is built); and 2) where does the entity obtain the money to build and, later, operate the project?

To some extent, the problems governmental and private entities face in answering these questions coincide. If the private entity is a person, he looks to the laws of the particular jurisdiction to determine if he is prohibited from engaging in the activity. If the private entity is a partnership, it looks to the partnership agreement to see if it authorizes the proposed activity and to the laws of the particular jurisdiction to see if the activity is prohibited. If the private entity is a corporation, it looks to its articles of incorporation, its by-laws and the laws of the jurisdiction to determine if the activity is authorized on the one hand or constrained on the other. In each instance, having determined that the laws of

the jurisdiction allow individuals to engage in the particular activity and that the necessary authority is available in the documents (and laws) creating the entity (persons obviously do not have this problem), the entity faces the problem of where to get the money.

Similarly, the governmental entities have the same difficulties. If the entity is the state, it looks to the state Constitution (and more and more to the United States Constitution and congressional enactments) to determine if it can engage in the proposed activity. Within the state government itself, the questions will split. If the entity is the legislature, the question to be answered is whether it is prohibited from authorizing the proposed activity. If not, it enacts its legislation. If the entity is the executive branch, three questions arise: 1) has the legislature authorized it; 2) is the legislation constitutional (the same question which the legislature faced); and 3) if the legislature has not authorized it, can authority be found some other place (either in the Constitution itself, or as an implied or inherent power of the executive)? Having determined that authority is present to do what is desired, the next question is the same as that faced by the private individual, where does it find the money?

Local governmental entities face almost the same questions which the executive faces at the state level. Has the legislature authorized what it wants to do? Is the legislation constitutional? if the legislature has not authorized what the local government wants to do, can authority be found elsewhere? Given that it can do what it wants, where does it get the money?



When considering where to find the money for the long range project, the sources for private and public entities are conceptually similar. The private entity can seek participation by others (by creating some sort of equity in the enterprise and thereby allowing others to put up some of the money in exchange for a share in the profits to be derived). This route is not generally available to governmental entities, although it is not completely unheard of (e.g., the various federal public corporations). Generally, however, the obtaining of financing is not the purpose for which such corporations are created; and the equity financing of such entities is incidental to their real purpose.

Another approach available to both the private and governmental entity is to finance the particular activity out of current revenue or surplus revenue. In the instance of the private entity, this would be financing out of current earnings or out of surplus earnings. In the instance of a governmental entity, it generally would be financing out of current tax receipts or out of a general fund (or its equivalent) surplus. In this instance, the governing body simply appropriates the funds for the purpose in the traditional way.

Finally, both the private and governmental entity can borrow the necessary funds. This involves the issuance of instruments of debt on the part of either entity. In the case of the private entity, the debt can be unsecured or secured in a variety of ways. The public debt usually takes one of three or four forms. Short term debt, where authorized, can be in the form of warrants or some other form of instrument issued against short term anticipated tax revenues. Long

term debt usually takes one of three forms (with variations and permutations): 1) general obligation bonds; 2) revenue bonds; or 3) mortgage bonds.

In the case of general obligation bonds, the debt is secured by the general taxing authority of the particular entity; or stated another way, it is secured by the full credit of the issuing body. In the case of revenue bonds, the debt is secured only by a pledge of the revenues to be derived from the particular activity (or project) for which the funds were borrowed. The marketability of such bonds is obviously influenced in large part by the prospective purchaser's evaluation of the project's ability to produce sufficient revenues (unless, of course, the entity has some sort of captive market, e.g., the state permanent land fund). A variation on the revenue bond is to secure the debt with a pledge of continuing income of the entity rather than with revenues to be derived from the project. For example, the University of Wyoming commonly secures bonds issued to raise funds for constructing buildings with a pledge of the income to be derived from its allotted portion of shared federal lands mineral royalties. In the case of mortgage bonds, the debt is secured by mortgaging some portion of the state's assets (e.g., a building).

The foregoing is a general discussion of the basic questions presented by a determination to engage in some sort of water development project, and of the approaches available. We must now turn to a specific consideration of the Wyoming statutes and Constitution to determine what, if any, authority and financing powers exist for water development by the state, by subdivisions of the state, or by private enterprise.

## CHAPTER II

### EXISTING ALTERNATIVES

In this consideration of existing alternatives, this paper will first consider what authority exists at the state level for the state as an entity to engage in the construction and operation of water development projects, then consider existent authority for subdivisions of the state to engage in the construction and operation of water development projects, and finally, consider existing techniques for granting financing assistance from the state to encourage private development.

#### A. The State's Authority

In considering the state's authority, as pointed out in the Introduction, two questions must be considered: first, is there authority for the state to engage in the construction and operation of water development projects; and, second, if there is such authority, is there sufficient financing authority to raise the necessary money?

#### 1. Construction and Operation

With respect to the first question, it is the author's opinion that there is presently only one possible agency at the state level which might even be argued to have construction and operation authority. Even that agency's authority is not clearly delineated, although the statutory language setting out the powers of the agency could be read as authorizing the agency to be in the construction and operation of water projects business. The agency, of course, is the Department

of Economic Planning and Development. The specific language here considered is to be found in Section 9-160.31 of the Wyoming Statutes (1973 Cum. Supp.). This section sets out the duties and powers of the administrator of the Division of Water development of the department. The section recites that the administrator, "shall be responsible for the duties imposed upon him by the legislature . . . and the executive director in the conservation, planning and development of the water resources of this state. . ." (Section 9-160.31 (a), emphasis added). The language would seem to contemplate that the legislature could grant duties and powers to the administrator with respect to development of water resources, but this language alone would seem to be insufficient to grant construction and operation duties and powers to the administrator. However, the following powers are granted to the administrator in the same section:

(iii) Conduct studies and carry on any type of activity in connection with investigation, financing, and construction of proposed physical projects relating to the conservation, storage, distribution and use of water; . . .

(vi) Enter into contracts and agreements with the government of the United States or a duly authorized representative agency thereof for the construction or purchase of water development projects;

(vii) Accept federal funds for the construction of water development projects within this state, . . .;

(viii) File applications through the state engineer's office reserving water which may be beneficially used for any purpose; . . .

(ix) Enter into the contracts for furnishing water or a water service to users thereof, based on the needs of those contracting with the department;

(x) Set the water rate on the furnishing of such water so that the department may repay any financial obligation assumed for such development under state law plus interest at the going rate, that the state would be making in its long-term investments

on contracting for such water; . . . (Section 9-160 (a), emphasis added).

The foregoing powers would seem to contemplate an agency in the business at least of operating water projects. The statute would also seem to suggest that the department would be, to the extent it had funds available, a water development agency, i.e., in the business of developing the state's water resources. Constructing the necessary projects to develop the resource would seem to be a necessary function to achieve such an end, and Section 9-160.31 (a) (iii) would seem to grant the power to the department to construct projects.

On the other hand, notwithstanding the provisions of Section 9-160.31 (a) (vi), (ix) and (x), the legislature saw fit to enact Sections 9-160.38 and 9-160.39, with respect to the purchase of Fontenelle Reservoir. Section 9-160.39, while containing some language not found in Section 9-160.31, duplicates much of the language of 9-160.31. Perhaps the legislature is of the opinion that the general provisions do not grant much authority to the administrator. Further, in Section 9-160.37, the legislature recites that nothing in the act creating the section (the act authorized feasibility studies with respect to development of waters in the Green River and Great Divide Basins and also created Section 9-160.36) should be construed to "do more than enable the State of Wyoming, through its agencies, to conduct a feasibility study . . ." This would also seem to indicate that perhaps the legislature does not read the general provisions so liberally.

However, it is clear that the present financing ability of the department is totally dependent on general appropriations, grants, federal funds, contracts, water rates, and so forth, and that there is

no general authority for creating state debt. In light of this, perhaps these later enactments are simply the financing arrangements; and the necessity of the later powers grants (or restrictions) is simply for the purpose of the particular monies authorized; and the general provisions only apply to those monies generally authorized.

In any event, given the general legislative attitude with respect to expenditures for what are essentially capital items (e.g., see § 9-578 (a) (iv), (1974 Supp.)), which provides that the legislature has to approve any building on the University of Wyoming campus, or the provision mentioned above with respect to the Green River Great Divide Basins feasibility study, it would seem that however one reads the general powers of the Department of Economic Planning and Development, the legislature holding the purse strings is going to have to be sold on the particular project in question. This would seem to be true with respect to almost any state action, particularly as indicated by the activities of recent legislatures (see, e.g., Section 41-10.5 of the Wyoming Statutes (1974 Interim Supp.), passed by the 42nd State Legislature, 1974 Session).

Since the department is really without financing powers and the legislature would have to authorize the financing powers of any major developmental activity, the discussion of whether or not DEPAD has power to do this is probably moot. If the legislature were convinced to authorize the necessary financing for a particular project, the necessary authority would also be forthcoming. Since such financing authority does not exist, it is necessary to consider what powers the legislature has to authorize financing, or perhaps, more correctly, the restrictions on the legislature's authority to authorize financing.

## 2. Financing

Perhaps this consideration of limitations on financing capabilities should be placed with the recommendations and this sub-portion of the paper limited to a mere statement that the legislature has not authorized any large-scale creation of public debt for water development projects. However, this seems to the author the best place at which to sort out some possible problems and anticipate certain objections which might be made with respect to the legislature's power to authorize such large-scale financing by creation of public debt. Since these are questions relating to what the legislature could or could not do, this seemed the appropriate place to consider them. At the outset, two sections of Article 16 of The Wyoming Constitution must be considered, as they have to do with debt limitation and restrictions at the state level. The sections of Article 16 are sections one and two.

First, what about section two? Section two of the Article provides that no debt in excess of the current year's taxes shall in any manner be created, unless the proposition to create such debt has been submitted to the people for their approval by vote. Exceptions not here applicable are provided. Thus at first blush, one seems to be faced immediately with the probable necessity of a vote of the people to authorize a bond offering.

It would appear, however, that the debt contemplated by this constitutional provision is that secured by the total credit of the state, i.e., general obligation bonds, and that debt secured by something less than the total credit of the state (e.g., revenue or income bonds) would not come within the ambit of this provision. In other

words, it would appear that revenue or income bonds could be issued without the submission of the question to the voters.

While the foregoing proposition has never specifically been decided by the Wyoming Supreme Court, the reasoning in the cases of Arnold V. Bond, 47 Wyo. 236, 34 P.2d 28 (1934), and Laverents v. City of Cheyenne, 67 Wyo. 187, 217 P.2d 877 (1950) seems broad enough to support the foregoing. The Arnold case, in particular, involving as it did the pledge of future income of the permanent land fund of the University, with its specific finding that the debt created was not that of the state as contemplated by Section 2 of Article 16 of the Wyoming Constitution is perhaps the most persuasive. Laverents involved municipal revenue bonds, issued for the purpose of constructing (actually expanding an existing) sewage disposal plant. The court there found, in considering whether the act authorizing such issuance was violative of Section 5 of Article 16 of the Wyoming Constitution, that municipal revenue bonds secured exclusively by the revenue to be derived from income of the plant were not debt as contemplated under the section. An interpretation of Section 4 of Article 16 was not necessitated since there was provision for an election, the election had been held, and the voters had approved the offering. (Section 4, Article 16 is similar to Section 2, Article 16, except that Section 4 applies to municipalities and counties, while Section 2 applies to the state). However, in the later cases of Reed v. City of Cheyenne, 429 P.2d 69 (Wyo. 1967) and Uhls v. State, 429 P.2d 74 (Wyo. 1967), the opinion of the court (in a 2-2 split) was that the Industrial Development Projects Act did not contravene Sections 4 and 5 of Article 16 in that no debt as contemplated under



those sections was created. At least as to this portion of the court's opinion, the dissenters joined and concurred, or, at least, did not formally dissent. These cases involved what are essentially revenue bonds.

Thus, as indicated, it would appear that general obligation bond debt could be created by the legislature up to the amount of the current year's taxes without the necessity of an election. Since the 1973 taxes in Wyoming were approximately \$93,750,000, Section 2 of Article 16 would limit authorized debt without an election to this amount for the purpose of this paper. Revenue bond funding would apparently be available to whatever extent the legislature desired (and determined that the project in question could adequately support).

Notwithstanding the foregoing, however, the limitations of Section 1 of Article 16 of the Wyoming Constitution must also be considered. That provision of the Constitution indicated that in any event (except to suppress insurrection or to provide for the public defense), debt shall not be created by the state in excess of one percent of the assessed value of the taxable property of the state as shown by the last general tax assessment. This provision, too, however, would seem to be limited to general obligation debt, for the same reasons as set out above with respect to Section 2 of Article 16. With respect to general obligation debt then, this provision of the Constitution would limit the amount of such debt which could be created to approximately \$15,000,000 based on the general assessment value of taxable property in the state in 1973 of approximately \$1,500,000,000. Thus, Section 1 of Article 16 would limit general obligation debt more extensively than Section 2, and would prevail. Revenue bond financing

underwriting, although the thrust of the foregoing cases might be sufficient to convince such underwriter's counsel that this type of security was constitutionally proper.

A further consideration is whether the legislature could authorize debt for water development purposes notwithstanding that the constitutional provisions discussed were met. Section 6 of Article 16 provides in pertinent part: "The state shall not engage in any work of internal improvement unless authorized by a two-thirds vote of the people." Water projects would generally be considered internal improvements. However, Section 10 of Article 16 of the Wyoming Constitution specifically exempts "the construction or improvement of any works designed, constructed or operated for the purposes of conservation or utilization of water . . . ." The provision goes on to authorize the legislature to provide for such construction or improvement in whole or in part, either directly or by extending aid to legal sub-divisions of the state or to duly organized, specifically enumerated special districts, or to public corporations legally organized for the purposes "of the conservation, distribution or utilization of water or soil . . . ." This would appear to be a fairly liberal mandate to the legislature to engage wholly or partially in water development projects, and to authorize the creation of public debt therefore.

Finally, one must consider the possibility that the legislature could simply appropriate funds, in whole or in part, for a water development project. The primary restrictions which might come into play here are to be found in Article 3 of the Constitution of Wyoming, specifically Sections 34, 35, 36 and 37. In the author's opinion, the only one of these sections which might be troublesome would be

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Section 35. Since the construction of a water project might continue over several years, one would have to be careful as to how the appropriation for such project were phrased. However, one continuing appropriation has been approved by the Wyoming Supreme Court, Unemployment Compensation Comm. v. Renner, 59 Wyo. 437, 143 P.2d 181 (1943). The case indicated that the payments under the Unemployment Compensation Act were to be paid from a fund created by the legislature, said fund receiving its monies from contributions of employers. The fund was to be kept separate and apart from public funds of the state and was to be used solely for the purpose of meeting the payments to be made to unemployed workmen. The Act was challenged, inter alia, as a violation of Section 35, Article 3 of the Wyoming Constitution, in that money was being paid out of the treasury without an appropriation made by the legislature. The court found that the provisions of the Act constituted "a continuing appropriation for a specific purpose, and that the act is not in violation of the constitutional provision just mentioned," (i.e., Section 35 of Article 3). If a special fund were created for the purpose of constructing the water development facilities, the requirements of Article 3, Section 35, would seem to have been met.

Thus, there would appear to be no constitutional prohibitions on the legislature of the state of Wyoming authorizing the creation of public debt secured by revenue bonds (and, to some extent, mortgage bonds) for purposes of constructing water development projects. It seems further that the legislature could, if financially feasible and if so desired, directly appropriate funds to finance, in whole or in part, water development projects. The constitutional limitation of Article 16, Sections 1 and 2, however, would seem to preclude an initial

general obligation bond issuance of the magnitude of the California experience. California authorized in 1959, through a vote of the people, the issuing of one and three-quarter billion dollars of general obligation bonds for the purpose of constructing the California Water Plan project. Wyoming's Constitutional prohibitions would preclude a general obligation offering of this magnitude.

#### B. The Sub-Governmental Units

Wyoming, like most states, has provided for a variety of water development activities by sub-governmental units. From the point of view of this paper, most of these provisions have one or both of two shortcomings. The district is limited in the type of activity in which it can engage (i.e., it is probably one-purpose in nature) or it is not very extensively endowed with financing capacity. With one exception, they would not generally lend themselves to very productive consideration for multi-purpose water development projects. The exception to the foregoing statement is the water conservancy district.

The water conservancy district is provided for at Sections 41-77 through 41-117, Wyoming Statutes (1957). Such districts when created are well endowed with powers sufficient to achieve their purpose. Section 41-91 is replete with powers which an entity desiring to be in the water project construction and operation business should have. It can obtain water rights for all beneficial uses consistent with the purposes for which the district was created, in various ways, including by its own appropriations and by eminent domain. Eminent domain would seem to be available, since water rights in Wyoming are real property interests and the district may acquire real property by eminent domain.

It has power to construct and operate its facilities. It may allocate such lands. It can sell, lease or otherwise dispose of its appropriated waters and fix rates at which water not allotted to lands shall be sold, leased and so forth. It can borrow money and incur indebtedness without statutory limitation, although constitutional limitations would still be present. It seems to have power to issue general obligation bonds upon the approval of qualified electors of the district at an election held in conformance with the act. Further, it has the power to levy and collect taxes and special assessments within the limitations of Sections 41-109 through 41-117. The district has full power to enter into contracts with other entities.

The district does not seem to have any limitations on the extent of its boundaries, except that first class cities must consent to their inclusion within such districts, and that of the practical problem of obtaining the necessary signatures on the petition to create the district. Obviously, the larger the geographical limits of the district, the more difficult it becomes to obtain the necessary signatures. In fact, the basic problem with the conservancy district is the somewhat cumbersome method of creating the district. Oddly enough, there appears to be no authority for monies of the state permanent fund to be invested in the bonds of such districts. Perhaps it is because such districts are sufficiently endowed with financing powers that there is no anticipated need for them to have a semi-captive, or, at least, friendly market.

If a state-wide water conservancy district could be created, it would appear to have all the powers and financing authority that a water development entity might desire. However, the creation of such a state-wide water conservancy district under the existing legislation would

appear to be unlikely, in a practical sense. For a river basin development, it might, however, be ideal.

As mentioned above, many of the districts which can engage in water development projects suffer from one or more shortcomings. Most require a minimum number of landowners to petition the proper authority, usually a district court, for the creation of the district, and then typically the district is created by court decree or by special election. Water conservancy districts, irrigation districts, flood control districts, drainage districts, and public irrigation and power districts are particularly difficult to create, all requiring the support of 25 percent of the landowners within the proposed district.

Several of the districts suffer from geographical limitations. Only public irrigation and power districts, soil and water conservation districts, water conservancy districts, drainage districts, and irrigation districts are not so limited, and several of these require that the benefits from each separate part of the district exceed the costs. Soil and water conservation districts, flood control districts, and health districts have no powers of eminent domain. Watershed improvement districts and health districts are restricted to contracting with state agencies, and sanitary and improvement districts are restricted to contracting with municipalities. However, the significant districts are generally empowered to sell bonds, levy taxes in varying amounts and make special assessments on lands benefited.

The difficulties which these districts face is reflected at least in part by the aid and assistance which the legislature has provided from time to time. First, there is the provision that the State Treasurer is authorized to invest state permanent funds in the bonds of

irrigation districts organized under the laws of the state of Wyoming (§ 9-581 (c)). Further, the treasurer is authorized to invest such funds in "such other securities as the legislature may by law authorize," (§ 9-581 (a) (vi)). One of "such other securities" is a non-negotiable debenture bond issued by the state Farm Loan Board. These debentures are to be purchased by the State Treasurer with permanent funds of up to \$30,000,000 (but not, in any event, to exceed 25 percent of the total permanent funds). This money, in turn, is available to the farm loan board to make loans to aid in water development projects, private and public. The loans can be made, subject to limitations set out in the statutes to "court approved water districts, to agencies of state and local government, persons, corporations and associations in this state . . ."

Thus, the state has created a "friendly" market place for many of such districts, apparently to encourage local water development projects and to assist such local entities in finding financing. However, one-third of the total authorized funding is for small projects (not in excess of \$150,000) and the loans are restricted as to individuals to Wyoming electors or corporations, the majority of the stock of which is owned beneficially or of record by qualified Wyoming electors. The authority to make such loans is a function more or less jointly shared by the Farm Loan Board and the Director of the Department of Economic Planning and Development.

The fact that such authority exists is some indication of the financial capabilities of the various districts and their need for financing sources. It is also some indication of their financial inability, as authorized, to engage even in the limited purposes for which



they are authorized. It is a further indication of the need for a coordinated state water development approach, to enable the state to not only assist local entities, but to join them in feasible water development projects.

### CHAPTER III

#### ALTERNATIVES AND RECOMMENDATIONS

The basic and foremost problem presented by the Wyoming situation with respect to water development is that there is no provision at the state level for the state to engage in any large-scale financing of water development projects. What authority exists for assistance of even local public entities and individuals is to some degree fragmented and is rather minimal with respect to funding available for any particular project. The only solid authorization for any sort of multiple-purpose type project is the water conservancy district, which is replete with powers and financing ability, but, as pointed out above, is probably limited in its effective availability by the practical problems of creation as the area to be encompassed by a particular project increases. In addition, there is no assurance under the statutes that such a district would build projects which the state feels are desirable (although the State Engineer, given his power over the administration and granting of permits, can probably have some influence over this). Even if the district were willing to engage in projects which the state found to be desirable, the district might be limited in its financial ability to carry the project out.

This gives rise to yet another problem presented by the existing laws in Wyoming. While there is authority, fragmented among agencies, to give some assistance to local public bodies and private individuals in water development projects, the provisions are not adequate. The state Farm Loan Board, which has money to loan, is probably precluded,

simply by the amount it has available, from giving any large amount of financial assistance. Further, it is limited as to the type of loans it can make and as to whom it can make loans. In any event, it seems clear that the Farm Loan Board is without authority to engage in joint ventures with any entity, but is limited to loaning the monies available to it to those limited number of entities and persons eligible for its loans.

On the other hand, the Department of Economic Planning and Development (DEPAD), which is the most likely agency in which to find powers to build projects (see discussion in part II above), is not endowed with the funds necessary to carry out whatever functions it does have with respect to water development. The legislature has given DEPAD the usual powers: to receive federal funds and use them, to receive gifts and funds from whatever source and use them, and to collect water use fees from users (assuming, of course, it ever has any projects on which to set and from which to collect such fees). In addition, there is authority for the department to use the excess funds (if any) which it might have from the Fontenelle project, after paying the federal government what is owed it. The response, in terms of money provided to DEPAD through these various sources, has been overwhelming.

Ideally, all the water resource functions of the state should, in the author's opinion, be under one agency's aegis. This would include general state water planning, individual project analysis, comparative project feasibility analysis, financing, encouragement of local governmental and private water development and general administration of water laws, as well as project construction, operation and maintenance. This

could be achieved by transferring those water resource functions of the Department of Economic Planning and Development to the Office of the State Engineer, and then creating within the State Engineer's Office a Division of Water Development.

The office should be given clear authority to initiate, investigate, analyze, determine the feasibility of, and recommend to the legislature the construction of water development projects within the state. It should be given the clear power to construct such projects and to operate them after construction, upon legislative approval. The office should be given clear authority to exercise the powers of eminent domain over real property, including water rights, where necessary to accomplish the water development purposes of the office.

General authority should be given to join other governmental subdivisions and agencies and private entities in the construction of water development projects in which the public interest would be served and to lend monies to such subdivisions and private entities in instances where the office did not care to participate.

Funds for the foregoing could come from several sources. A general umbrella revolving fund should be created, from which funds monies could be transferred to other funds for various purposes. Among these purposes should be the construction of projects, loans to sub-governmental units and private entities, funds for operation and maintenance of projects, monies for financing further feasibility analyses, project design and specifications, for the repayment of any revenue bonds which might be issued to finance construction of water development projects, and for the obtaining of any necessary lands and water rights, easements and rights of way necessary for the accomplishment of the purposes of the agency.

The water development fund should be the depository for funds appropriated by the legislature for the purposes of water development, for revenues derived from projects, for transfers from other state funds to be used in water development, repayments of loaned moneys, and for other funds received, from whatever source, for the purposes of water development. Additional monies could be derived, and should be derived, from an earmarking of a certain portion of the income to be generated by the Mineral Trust Fund, created by the 1974 legislature. Further, additional funds could be made available for the use of the agency in encouraging water development by earmarking a certain portion of the corpus of the Mineral Trust Fund for water development project loans to local governmental agencies and giving the office approval authority with respect to such loans (similar to the present DEPAD exercised authority with respect to Farm Loan Board water development loans). Finally, in certain instances of non-revenue public benefits being derived from a particular project, the state should participate with direct appropriations from the general fund.

Clearly, the office should have the power to enter into contracts with almost everyone and the power to set fees, water charges and other charges with respect to its projects. It should have the power to require and accept security with respect to its loans, and in participatory projects, it should have the obligation and power to set conditions to be met by the other participants, if necessary, to protect state interests.

While the office should have to obtain legislative approval with respect to major projects (whether its own, participatory or those in which it is lending monies), there should be, in the author's opinion,

provision for the office to engage in smaller activities without specific legislative approval. What would constitute the dividing line between small and large in these inflationary days is somewhat difficult to ascertain. The author's own inclination is that such a dividing line depends on the nature and scope of participation.

If the foregoing proposal were adopted, Wyoming would have an integrated and well-funded water development program. The coordination of projects throughout the state would be improved, whether such projects were state projects, local projects or private projects. Further, the opportunities to encourage water development projects by entities other than the state would be improved. Finally, all of the specialized expertise with respect to water resources and their development would be concentrated in one office, and the office would be that which has all the inventory information with respect to water resources within the state. All in all, it seems the most logical approach to follow. Essentially the foregoing proposal combines aspects of the present Idaho approach and the California approach. Some objection might be raised as to the propriety of the same office being involved in granting water rights, administering water rights, holding water rights and developing waters. Those voicing such objections probably have a fear of creating a water Czar, i.e., simply giving too much power to one office or man. The primary answer to this is simply that an integrated approach seems best and the officer in charge would be subject to the same controls--legal and political--to which a multiplicity of officers would be subject. Further, decisions with respect to each of the areas of water resources affects the other areas, and by having one agency

charged with the total decision making process, there would seem to be more likelihood of decisions which take all factors into account.

However, if the foregoing proposal to put water development functions of the state into the State Engineer's Office were not acceptable, the author's second recommendation would be to use the existing Department of Economic Planning and Development and grant the foregoing proposed powers and responsibilities to that department. With the exception of eliminating duplication of effort and of centralizing water functions of the state, this approach could achieve much the same ends as what is set out above.

It would, of course, be possible to create an entirely new entity (e.g., the Water Development Commission, or the Water Development Authority, or even the Department of Water Development), but this would be objectionable from the author's point of view in that it does not eliminate duplication, it creates more. Further, such an agency, being entirely new, would seem to have built-in lag time in achieving its purposes since its expertise would have to be created from the ground up, so to speak. A division within the State Engineer's Office or the Department of Economic Planning and Development would already have available to it the necessary expertise, having already been concerned with the problems.

Another alternative would be to separate the functions of financing of and construction and operation of projects. The author's comments in the Introduction set forth the reasons for his finding this objectionable.

Finally, there is, of course, the choice of doing nothing with respect to changing the state approach to financing water development.

The do nothing approach would probably guarantee that no major state water development would be done. This paper has been prepared on the assumption that this state of affairs would be undesirable. Whether one likes the idea or not, development is coming to Wyoming (and is already here in some sections of the state), and the corresponding problems will require, among other things, the creation of and development of additional water supplies for almost every beneficial purpose heretofore known in the state. If the state does not move now to provide the necessary powers to meet such requirements, the present problems of fast growth in the southwest portion of the state may come to be commonplace throughout the state. At such time, it may be too late to solve the problems in any desirable way; and the state will have to merely react to, rather than solve, the problems presented.

The suggested legislation in the Appendix hereto would, the author believes, aid the state in creating the water projects necessary to anticipate and minimize the problems of future growth. Further, it is submitted, such legislation would enable the state to better control and direct the nature of such development vis a vis the general public interest of the people of Wyoming. The legislation is written to implement the first recommendation above. The Comments indicate that it could be adopted to any of the alternations except that of doing nothing. That alternative is unacceptable.





APPENDIX  
PROPOSED LEGISLATION

## Section 1

### Policy

It is hereby declared to be in the public interest and to be the policy of the State of Wyoming to foster, promote and encourage, by all reasonable means, the maximum development of the State's human, industrial, mineral, agricultural and recreational resources; and it is hereby declared to be in the public interest and to be the policy of the State of Wyoming to finance and construct and to financially assist in programs and projects necessary to the development, preservation and maintenance of Wyoming's water and related land resources, including programs and projects for the abatement of pollution, potential reduction of flood damages, reservation of lands for resource development projects, provision of public irrigation facilities, preservation and development of fish and wildlife resources, protection and improvement of public lands, provision of public outdoor recreation lands and facilities, provision and preservation of the waters of this state for all beneficial uses, including, but not limited to, domestic, agricultural, and manufacturing uses, conservation of land resources, and protection of the health, safety and general welfare of the people of the State of Wyoming. It is in the public interest to utilize said water resources, as expeditiously as it is feasible, to protect Wyoming's water resources from further encroachment by downstream states. It is in the public interest to make maximum, practical, beneficial, and multiple use of Wyoming's water resources, first in the drainage of origin and next in other drainages within the State.

## Section 2

### Definitions

As used in this Act, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

- A. "Division" shall mean the Water Resources Development Division of the Office of the State Engineer, created under this Act.
- B. "Project" shall 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.
- C. "Bonds" shall mean revenue bonds issued in the name of the State of Wyoming under the provisions of this Act and shall include notes.
- D. "Revenue" shall mean any or all fees, tools, rents, charges, payments, receipts, moneys or income derived by the Division through the ownership or operation of the project or funds received from the Fontenelle Reservoir revolving fund, and shall include earnings on the investment of the proceeds of bonds or on the investment of moneys in the Project Bond and Reserve Fund established pursuant to this Act or on the investment of the funds held in the Wyoming Water Development Revolving Fund established pursuant to this Act.
- E. "State" shall mean the State of Wyoming.
- F. "Feasibility," with respect to a project, shall mean a finding and determination by the Division that it is or is not in the public interest of the State to construct a project. In determining what is in the public interest, the Division shall consider:
  - 1. the net benefits resulting directly from the proposed project;
  - 2. the benefits to the State and to the locality resulting indirectly from the economic activity that will result from the proposed project;
  - 3. the benefits, if any, resulting to the public from improvement of, or increased opportunities for fishing, hunting and recreation;

4. the loss of the benefits of alternate projects, if any, that would probably be constructed within a reasonable time if not precluded or hindered by the proposed project;
  5. the loss of, harm to, or impairment in value of the property and rights of persons that would result from the proposed project; and
  6. the loss and harm to the public that would result from loss of, harm to, or impairment of fish, wildlife and recreational values;
- G. "Appraised price" shall mean a value determined independently by two (2) competent professional real estate appraisers who are members of a recognized professional appraisal society or organization and appointed by the Division to determine such value.

Comment: If it is determined that the Department of Economic Planning and Development should be the agency charged with the duties of this Act, then the "Division" definition should be changed to read:

"'Department' shall mean the Department of Economic Planning and Development of the State of Wyoming."

Obviously, the word "Division" used throughout the Act should be changed to "Department."

If it is determined to create an entirely new agency, it should be defined in this section, and name changes similar to the foregoing should be made throughout.

### Section 3

#### Division of Water Resources Development

There is hereby created within the Office of the State Engineer of the State of Wyoming a Division, to be called the Division of Water Resources Development; said Division shall be headed by a Director, to be appointed by the State Engineer of Wyoming. The Director shall serve at the pleasure of the State Engineer.

Comment: If DEPAD is to be given the powers under this Act, this section would be deleted; or if some other entirely new agency is to be created, it should be created here.

## Section 4

### Transfer of Powers and Duties to Division

- A. The functions, powers and duties heretofore granted to, exercised by and performed by the Department of Economic Planning and Development with respect to water resources through the administrator of water development, said functions, powers and duties specifically including, but not limited to, those enumerated in Sections 9-160.31, 9-160.36, 9-160.37, 9-160.38, and 9-160.39 of the Wyoming Statutes, as amended, are hereby transferred to, and shall be exercised by, on the effective date of this Act, the Division.
- B. The functions, powers and duties heretofore granted to, exercised by and performed by the Wyoming Farm Loan Board and the Department of Economic Planning and Development relating to water resource development loans under Sections 11-655, 11-656, 11-657 and 11-658 of the Wyoming Statutes, as amended, are hereby transferred to, and shall be exercised by, on the effective date of this Act, the Division.
- C. The Division is the successor to the Division of Water Development of the Department of Economic Planning and Development and is the successor, to the extent set out in subpart B of this section, of the Wyoming Farm Loan Board, as of the effective date of this Act. Wherever said Division of Water Development of said Department of Economic Planning and Development is referred to or designated by law, contract or other document, such reference or designation shall refer to the Division, created under this Act; and wherever said Wyoming Farm Loan Board is referred to or designated by the sections enumerated in subpart B of this section, contract or other document, such reference or document shall refer to the Division created under this Act.
- D. All records, property, personnel and unused funds of the Division of Water Development of the Department of Economic Planning and Development shall be transferred to the Division created under this Act, as of the effective date of this Act.
- E. All records, property and unused funds of the Wyoming Farm Loan Board relating to the functions, powers and duties, enumerated in subpart B of this section are transferred to the Division created under this Act, as of the effective date of this Act.

Comments: If all the water development functions of the state are going to be consolidated into the Office of the State Engineer, this provision is necessary to transfer certain of such functions from where they now repose. If it is determined that DEPAD is to be the agency concerned, this section would be eliminated.

## Section 5

### Powers and Duties of Division

- A. The Legislature is cognizant of the fact that the Wyoming Water Planning Program has conducted hydrological studies in addition to preliminary engineering, economic, and other studies and investigations to determine the desirability of various projects to promote future development of the water resources in Wyoming. The Legislature hereby finds that if, upon further investigation, any water development project should prove feasible, the implementation of the most feasible project is necessary and desirable for the State's future prosperity and economic development, and for the preservation of the State's water resources. The Division is hereby authorized and directed to proceed forthwith with such further studies and engineering investigations as are necessary to determine the most feasible project, and subject to the condition of a determination that a project is feasible, such determination to be concurred in by the Governor, to enable it to plan for the implementation of the projects.
- B. If the Division determines that a project is feasible, such determination to be concurred in by the Governor, and the Division determines that the construction costs of such project will exceed five hundred thousand dollars (\$500,000) or determines that the issuance of revenue bonds will be necessary to obtain the moneys for building and implementing such project, the Division is further directed to seek specific legislative approval to finance and construct the project. Following such legislative approval, for the purpose of constructing and putting the project in operation, the Division may issue bonds of the State that are to be payable solely from and secured solely by revenue. The Division is directed to commence construction of the project as soon after legislative approval as practical, or if revenue bonds are to be issued, as soon after the bonds are issued as is practical, and to place the project in use.
- C. In addition to any other powers granted the Division in this Act or elsewhere, the Division is hereby granted the following additional powers:
  - 1. To acquire, construct, equip, operate, maintain, and repair projects;
  - 2. To maintain an office at such place or places within the State as is, in the Division's opinion, necessary for construction, operation or maintenance of a project;
  - 3. To transport and sell any water which it has appropriated in accordance with applicable State law within any river basin or underground water district and, to the degree that there is water in excess of present and foreseeable uses in such river



basin or underground water district, to transport water from such river basin or underground water district to other river basins or underground water districts in the State of Wyoming and sell the same therein;

4. To fix and revise from time to time, and charge and collect fees, tolls, rents, and charges for water or water service provided by a project, and for any other services provided by a project, which in the Division's opinion entitle it to be reimbursed;
5. To determine the location, design standards, construction, materials used, methods of operation and maintenance of all physical facilities necessary or ancillary to the construction or operation of a project;
6. To enter upon any lands, waters or premises for the purpose of making such surveys, soundings, borings, and examinations as the Division may deem necessary or convenient for its purposes, and such entry shall not be deemed a trespass, nor shall an entry for such purposes be deemed an entry under any condemnation proceedings; provided, however, the Division shall pay any actual damage resulting to such lands, water, and premises as a result of such entry and activities;
7. To employ consulting engineers, attorneys, accountants, construction experts, financial consultants and other financial experts, superintendents, managers, trustees, depositaries, registrars, paying agents, transfer agents, and such other employees, agents, and experts as may be necessary in the discretion of the Division to construct, acquire, equip, finance, maintain and operate a project, and to fix their compensation;
8. To generate and wholesale hydroelectric power at the site of production if such power production is connected with another purpose of a project;
9. To file applications and obtain permits, in the name of the Division, to appropriate, store, or use the unappropriated waters of any body, stream, or other surface or underground source of water for specific water projects. Such filings and appropriations by the Division, or any water rights owned or claimed by the Division, shall be made in the same manner and subject to all of the state laws relating to appropriation of water, with the exception that the Division will not be required to pay any fees required by the laws of this State for its appropriations. The filings and appropriations by the Division shall be subject to contest or legal action the same as any other filing and appropriation and such filings and appropriations shall not have priority over or affect existing prior water rights of any kind or nature; provided that the Division shall have the right to file for water rights with

appropriate officials of other states as trustee for project users, and to do all things necessary in connection therewith;

10. To acquire, purchase, lease, or exchange land, rights, water rights, easements, franchises and other property deemed necessary or proper for the construction, operation and maintenance of water projects;
11. To acquire by the exercise of the power of eminent domain any lands, property, rights, water rights, rights-of-way, franchises, easements and other property, including public lands, parks, playgrounds, reservations, highways or parkways or parts thereof, or rights therein, of any person, copartnership, association, railroad, public service, public utility or other corporation, or of any municipality, county or other political subdivision, deemed necessary or convenient for the construction or the efficient operation of a project, or necessary in the restoration, replacement or relocation of public or private property damaged or destroyed, whenever a reasonable price cannot be agreed upon with the governing body of such municipality, county or other political subdivision as to such property owned by it, or whenever the Division cannot agree on the terms of purchase or settlement with the other owner or owners, or because of the inability to agree on the compensation to be paid or other terms of settlement or purchase, or because such owner or owners are nonresidents of the State or are unknown or are unable to convey valid title to such property. Title to any property condemned by the Division shall immediately vest in the Division, and the Division shall be entitled to the immediate possession of such property upon the deposit with the Clerk of the Court in which such condemnation proceedings are originated, of the total amount of the appraised price of the property, and court costs and fees, notwithstanding any threatened or actual appeal of such condemnation proceedings by any parties to such proceedings. Whenever the Division shall make such deposit in connection with any condemnation proceedings, the making of such deposit shall not preclude the Division from appealing any decision rendered in such proceeding. Upon the deposit with the Clerk of the Court of the appraised price, any person or persons entitled thereto may, upon petition to the court, be paid his or their pro rata share of ninety percent (90%) of such appraised price. The acceptance of such payment shall not preclude such person or persons from appealing any decision rendered in such proceedings. If the appraisal is greater or less than the amount finally determined by the decision in such proceeding or by an appeal, the amount of the increase or decrease shall be paid by or refunded to the Division;
12. To conduct surveys, tests, investigations, research, examinations, studies, and estimates of costs relating to availability of unappropriated water, effective use of existing supply, conservation, storage, distribution and use of water;

13. To cooperate in all water studies, planning, research, or activities with any state or local agency in this State, or any other state or any federal agency and to enter into contracts with federal, state and local governmental agencies to effect this purpose;
14. To present to the Governor for presentation to the Legislature not later than the 30th day of November of each November prior to the convening of a regular legislative session a final report containing the complete plans, costs and feasibility estimates for any water project which the Division recommends that the State construct, participate in or finance by loans, when such project construction, participation or loan financing requires the authorization of the Legislature; and to construct, participate in or finance by loans any water project specifically authorized by the Legislature;
15. To enter into contracts with political subdivisions, municipal entities, individuals and others for the sale and lease of water, use of water, water storage, electric power, or other service, to turn over projects to water users after pay-out and to lease facilities, sell, lease or dispose of surplus facilities subject to the provisions of applicable law;
16. To enter into contracts to effect the purposes of this Act;
17. To sue and be sued;
18. To call upon any other state agency for cooperation, assistance or use of information available to such agency; provided, however, if such agency is required to make substantial expenditures in responding to such request, appropriate arrangements for compensation may be accomplished;
19. To issue revenue bonds for water projects, pledge any revenues available to the Division to secure said bonds, exclusive of any revenues derived from legislative appropriations, and pool revenues from one or more projects constructed or operated by the Division.
20. To formulate and recommend, prior to each session of the Legislature, proposed legislation that may be necessary to assist it in effecting a proper plan for conservation, development and utilization of water resources and to report to each session of the Legislature on the public business entrusted to its care and the financial affairs of the Division. In the period between legislative session, the Division shall deposit with the legislative service agency statements describing all actions taken and projects undertaken by it;
21. On or before the last day of April in each year, the Division shall make an annual report of its activities for the preceding calendar year to the Governor. Each such report shall set forth

a complete operating and financial statement covering its operations during the year. The Division shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants, and the cost thereof shall be considered an expense of the Division, and a copy thereof shall be filed with the State Treasurer, the State Auditor, and the State Examiner;

22. To issue procedural and operative rules and regulations as may be necessary for the conduct of its business;
23. To take such other action as may be necessary to carry out its duties and powers under this Act.

Comment: The foregoing powers could easily be granted to some other agency by the definitional changes suggested in the comment to Section 2. Obviously, there are other specific powers spread throughout the Act. This section is a general powers section, supplemental to the more specific powers to be found elsewhere. There is some overlap between powers transferred under Section 4 and the powers contained here. Some might find these powers too extensive, but all are in the opinion of the author, necessary, or very helpful, to any agency created to or given the additional powers to be a water development financing and construction agency.

The author has attempted here, and elsewhere, to limit the powers of the agency to undertake large-scale projects (whether directly, indirectly through participation, or by loans), but to give the agency some flexibility and independence with respect to smaller-scale projects. Further, the powers here, and elsewhere in the Act, should give the agency considerable flexibility to consider the propriety and feasibility of any and all possible projects which might come to its attention.

## Section 6

### Wyoming Water Development Revolving Fund

- A. There is hereby established in the State Treasury a fund to be known as the Wyoming Water Development Revolving Fund. All money in the fund is appropriated continuously to the Division to be used and administered by it for the purpose of developing the State's water resources.
- B. The State Treasurer is authorized to deposit to such fund the following:
  - 1. All appropriations of the State Legislature appropriated for the purpose of paying the pro rata share of project costs of such public benefits of a project as are non-revenue generating;
  - 2. All proceeds of bonds sold pursuant to this Act;
  - 3. Any interest earned from investments of unused fund balances;
  - 4. Moneys borrowed from the fund, together with interest due therefrom, repaid to the Division;
  - 5. Receipts and revenues of any type and nature derived from any project constructed, operated or maintained, in whole or in part, with moneys from the fund;
  - 6. Revenues received over and above the cost of projects financed by revenue bonds;
  - 7. Revenues received from the sale of State lands acquired by the Division for water projects;
  - 8. Fees received from water deliveries which are in excess of costs on projects sponsored by the Division;
  - 9. Gifts or grants from any source when the same are made for purposes consistent with those of this Act;
  - 10. One-third (1/3) of the income of the permanent Wyoming Mineral Trust Fund;
  - 11. Excess moneys in the "Fontenelle Reservoir Revolving Fund" as provided in § 9-160.39 (c), Wyoming Statutes, as amended;
  - 12. Moneys from any other appropriate sources.

C. The fund created in this section shall be allocated for use as follows:

1. To the Division of the construction of any project which has been approved by the Legislature;
2. To the Division for a project which it deems feasible and which in its opinion, further implements any extant State water plan, in such amounts as are necessary for preparations of a feasibility study of the project, engineering services in preparing designs and specifications, and for construction of the project in those instances not requiring approval of the State Legislature;
3. As loans and grants from the fund which may be approved by the Director of the Division and made to governmental subdivision of the State, special districts, water users' associations, municipal or private corporations, or individuals to finance project costs in conformity with the provisions of this Act;
4. To the Division to finance joint ventures for project construction with federal agencies, neighboring states, legal subdivision of the State, special districts, municipal corporations, private corporations, or other organizations, and including the costs of feasibility studies, investigations, and other preparatory expenses, for purposes consistent with those for which the fund is established, and the Division is authorized to use the fund for these purposes;
5. To the Division of finance feasibility studies, investigations, and other preparatory expenses for projects it intends to fund through the sale of revenue bonds or through use of funds from other sources;
6. To the Division for the repayment of its nonnegotiable debenture bonds authorized under this Act, together with interest thereon;

subject to the limitation that the Project Bond and Revenue Fund created by this Act will be a first charge against the Wyoming Water Development Revolving Fund up to the amount of the revenue, as defined in Section 1 of this Act, on deposit in the Wyoming Water Development Revolving Fund.

- D. Moneys in the Wyoming Water Development Revolving Fund not immediately needed for other purposes may be invested in those kinds of debt obligations in which the State Treasurer is authorized to invest public moneys. For purposes of valuation, investments in the Wyoming Water Development Revolving Fund shall be valued at the lowest of cost or market value of said investments. Valuation shall, however, include earned interest on investments to the date of valuation.

- E. The Division is hereby authorized to issue its nonnegotiable debenture bonds to the Treasurer of the State. The Treasurer of the State is directed, upon the request of the Director of the Division, with the advice and approval of the Governor of the State, to invest and keep invested not to exceed 25 percent of the permanent funds of the permanent Wyoming Mineral Trust Fund in such bonds, which sums shall be transferred to the Wyoming Water Development Revolving Fund and be available for the loan purposes of such fund under this Act. The nonnegotiable debenture bonds when issued shall be delivered to the Treasurer of the State and shall bear interest at a rate not to exceed 10 percent, nor less than 4 percent per annum, said interest rate to be set at the discretion of the Division, payable on or before 40 years from the date of issuance thereof.

Comment: With the exception of California, the foregoing fund would seem to have as substantial a set of sources as any water development fund in the nation. Further, the Division would seem to have more flexible use of such fund than any other state, including California. The provisions of this section (with the possible exception of subpart E) would seem to meet all the constitutional requirements of the state of Wyoming. Subpart E is an almost direct lifting from Section 11-655 of the Wyoming Statutes, as amended.

## Section 7

### Loans From Wyoming Water Development Revolving Fund

- A. Any legal subdivision of the State government, special district, municipal corporation, private corporation, water users' association, or individual may file an application with the Division for a loan from the revolving fund for the purpose of financing project costs. Such application shall be filed in such manner, and shall be in such form and be accompanied by such information as may be prescribed by the Division; provided, however, that any such application filed with the Division under the provisions of this Act, shall:
1. Describe the nature and purpose(s) of the proposed project;
  2. Set forth or be accompanied by a plan for development of the proposed project, together with such engineering and economic feasibility data and estimated costs of construction as may be required by the Division;
  3. State whether money other than that for which application is made to the Division will be used for project costs, and whether such money is available or has been sought for this purpose;
  4. Show that the applicant holds or can acquire title to all lands or has the necessary easements and rights-of-way for the project and related lands, and has or can acquire all water rights necessary for the construction, operation and maintenance of the proposed project, or that there exists sufficient water available for appropriation by proof of a permit issued by the State Engineer.
- B. Upon receipt of an application, the Division shall evaluate and, if it deems it to be necessary, investigate all aspects of the proposed project and the proposed construction thereof. As part of such investigation, the Division shall determine whether the plan for development of the project is satisfactory. If the Division determined that the plan is unsatisfactory, it shall return the application to the applicant and may make such recommendations to the applicant as are considered necessary to make the plan satisfactory.
- C. The Division may approve a loan for project costs of after investigation (if this is deemed necessary) and evaluation it finds that:
1. The plan does not conflict with any extant State water plan;
  2. The proposed project is feasible from an engineering standpoint and economically justified, with studies showing a favorable benefit to cost ratio;



3. The plan for development of the proposed project is satisfactory;
  4. The applicant is qualified and responsible;
  5. There is reasonable assurance that the borrower can repay the loan;
  6. That money in the revolving fund is available for the loan; and
  7. That the loan does not exceed \$3,000,000 unless legislative approval has been obtained.
- D. If the Division approves a loan, the Division and the applicant or applicants shall enter into an agreement for repayment to the revolving fund of money loaned therefrom, together with interest thereon at reasonable rates as determined by the Division. The agreement shall further provide that repayment of the loan, together with interest thereon, shall commence no later than one (1) full year after construction of the project is completed, and the repayment shall be completed within the time period specified by the Division. The repayment period shall not exceed 40 years, except that the Division may extend the time for making repayment in the event of emergency or hardship. Such agreement shall also provide for such assurances of, and security for, repayment of the loan as are considered necessary by the Division.
- E. The State shall have a lien upon a project constructed with money from the revolving fund for the amount of the loan, together with the interest thereon. This lien shall attach to all project facilities, equipment, easements, real property and property of any kind or nature associated with the project and all water rights associated in any way with the project. The Division shall file a statement of the loan, its amount, terms and a description of the project with the County Clerk of each county in which the project or any part thereof is located. The County Clerk shall record the lien and it shall be indexed as other liens are required by law to be indexed. The lien shall be valid until paid in full or otherwise discharged. The lien shall be foreclosed in accordance with applicable State law governing foreclosure of mortgages and liens as set forth in the statutes of this State.
- F. If an applicant fails to comply with the repayment contract, its interest in the project may be conveyed to a successor upon approval by the Division, which may contract with the qualified successor in interest of the original obligor for repayment of the loan, together with the interest thereon, and for succession to its rights and obligations in any contract with the Division.
- G. The State shall have a lien on any or all projects which the Division improves or renovates with money from the revolving fund, and such lien shall be valid and continue in effect until such

funds, together with interest thereon, have been paid in full and the lien discharged. The Division shall file a statement of the lien, and the lien shall be foreclosed upon all project property and rights as provided in subsection E above.

Comments: This section gives the Division powers to loan moneys of the revolving fund and to make fairly extensive requirements of applicants for such loans. It limits a particular loan to \$3,000,000 without legislative approval. This seems a reasonable amount, but could be changed to whatever other amount seems more reasonable. Some states limit loans to \$100,000 without approval (Idaho, for example); others put no limit on the amount to be loaned (except availability of funds).

## Section 8

### Grants From the Wyoming Water Resources Development Revolving Fund

- A. Allocations from the revolving fund may be made as grants to legal subdivisions of the State, special districts, or municipal corporations when the Division determines that such an allocation will not be reimbursed from revenue or receipts and when the program or project appears to be of general public benefit, thereby making reimbursement of such money from local tax funds inappropriate or impossible, or when the funds are intended for a state or local contribution to a program or project requiring such contribution to meet the requirements for a matching federal grant.
- B. Applications for such grants from the revolving fund shall be submitted to the Division in such manner, and shall be in such form and be accompanied by such information as may be prescribed by the Division; provided, however, that any such application filed with the Division under the provisions of this Act, shall be subject to the same requirements as set out in Section 7A of this Act.
- C. The Division shall have the same powers with respect to grants as granted it in Section 7B of this Act with respect to loans.
- D. The Division may approve a grant application if after investigation (if this is deemed necessary) and evaluation it finds that the provisions of subpart A of this section are met, and further finds that:
  - 1. The plan does not conflict with any extant State water plan;
  - 2. The proposed project is feasible from an engineering standpoint and economically justified, with studies showing a favorable benefit to cost ratio;
  - 3. The plan for development of the proposed project is satisfactory;
  - 4. The applicant is qualified and responsible;
  - 5. That money in the revolving fund is available for the grant; and
  - 6. That the grant does not exceed \$250,000 unless legislative approval has been obtained.

Comment: This section gives the Division powers to grant moneys of the revolving fund and to make fairly extensive requirements

of applicants for such grants. It limits a particular grant to \$250,000 without legislative approval. This seems a reasonable amount, but could be changed to whatever other amount seems more reasonable. This section is an adaption of the provisions of the Nebraska Natural Resources Development Act and of the Idaho Water Resource Development Act.

## Section 9

### Acquiring Interests in Water Projects

- A. The Division may acquire interests in any water resource project within the State in the name of the State utilizing moneys of the revolving fund. Such use of the fund shall be made when the public benefits obtained from the project or a part thereof are state-wide in nature and when associated costs are determined to be more appropriately financed by other than a local organization.
- B. The Division may require such conditions, as in its discretion it deems appropriate for the protection of the State and the public benefits of the project, for any such use of the funds. Such conditions may include, but are not limited to, requirements regarding construction specifications, operation of the project, repayment and fee charge provisions of the project, method of financing the project, location of the project, scope of the project, and ownership of the project.
- C. Actions of the Division under this section may be initiated by application, as required by the Division, or by the Division itself without application.
- D. The Division may exercise its powers under this section if it finds that:
  - 1. All conditions required by the Division have been met;
  - 2. The plan does not conflict with any extant State water plan;
  - 3. The proposed project is feasible from an engineering standpoint and economically justified, with studies showing a favorable benefit to cost ratio;
  - 4. The plan for development of the proposed project is satisfactory;
  - 5. The applicant is qualified and responsible;
  - 6. That money in the revolving fund is available for the purpose; and
  - 7. That the moneys of such fund to be used do not exceed \$500,000 unless legislative approval has been obtained.

Comment: This section gives the Division powers to purchase interests in water projects using fund moneys. It gives powers to make requirements of other participants in the project and

limits expenditures to \$500,000 without the approval of the Legislature. Again, this amount seems reasonable to the author, but could be changed to whatever more reasonable amount might be determined. This section also is a combination of Idaho and Nebraska, with some California provisions also incorporated.

## Section 10

### Project Bond and Reserve Fund

- A. The State Treasurer shall establish and maintain a fund called the Project Bond and Reserve Fund, which fund shall consist of two (2) accounts, a Bond Account and a Reserve Account. The State Treasurer shall, from time to time, transfer from the revenues deposited in the Wyoming Water Development Revolving Fund established pursuant to this act, first, to the Project Bond and Reserve Fund for credit to the Bond Account therein such amounts as shall be necessary to pay the interest on and the principle of bonds issued pursuant to this Act as and when the same become due, including the retirement of bonds in accordance with the terms of any contract between the Division and its bondholders or trustee or trustees therefore, and second, to the Project Bond and Reserve Fund for credit to the Reserve Account therein such amounts as shall be necessary to maintain on credit thereto any debt service reserve required by the instruments securing the bonds, and the revenues are hereby appropriated to both the foregoing purposes.
- B. Moneys in the Project Bond and Reserve Fund on credit to the Bond Account therein shall be held and applied solely to the payment of the interest on and principal of bonds issued pursuant to this Act as they become due and payable, and for the retirement of bonds in accordance with the terms of any contract between the Department and its bondholders or trustee or trustees. Money in the Project Bond and Reserve Fund on credit to the Reserve Account therein may not be withdrawn if to do so would reduce the amount credited to said account to an amount less than the debt service reserve required by the instruments securing the bonds, except for payment of interest then due and payable on bonds and the principal of bonds then maturing and payable, and for the retirement of bonds if other moneys are not available for such payments or retirement. As used in this section, "required debt service reserve" means such amount or amounts of money as the indenture or resolution authorizing an issue of series of bonds shall require.
- C. Moneys in the Project Bond and Reserve Fund on credit to the Reserve Account therein in excess of the required debt service reserve, may be withdrawn at any time by the Division, upon concurrence by the Governor, and deposited in the Wyoming Water Development Revolving Fund.
- D. Notwithstanding any other provision of this Act, the Division shall not issue bonds pursuant to this Act unless there is in the Project Bond and Reserve Fund on credit to the Reserve Account therein, the required debt service reserve for all bonds then outstanding plus the bonds to be issued; provided, however,

that the Division may satisfy this requirement by depositing so much of the proceeds of the bonds to be issued, upon their issuance, as is needed to attain the required debt service reserve. The Division may, at any time, issue bonds for the purpose of increasing the balance on credit to the Reserve Account in the Project Bond and Reserve Fund.



## Section 11

### Revenue Bonds and Refunding Bonds

- A. Provided that the Legislature shall have given the specific prior approval required in Section 5B of this Act, the Division shall have the power and is hereby authorized to issue, from time to time, bonds of the State of Wyoming, in such principal amount as shall be necessary to provide sufficient funds for any of its legal purposes or powers including the making of loans, the establishment or increase of reserves to secure or pay such bonds or interest thereon, and all other costs or expenses of the Division incident to and necessary or convenient to construct a project or otherwise carry out its purposes and powers.
- B. The Division, with the consent of the Governor, is hereby authorized to issue refunding bonds or advance refunding bonds with which to refund outstanding bonds or any issue or series of such outstanding bonds, which refunding bonds or advance refunding bonds may be issued at or before the maturity or redemption date of the bonds to be refunded, and to refund different issues or series of such outstanding bonds by a single issue of refunding or advance refunding bonds, and to issue refunding bonds to pay any redemption premium and interest to accrue and become payable on the outstanding bonds being refunded to the date of payment or redemption, and to establish a refund fund for such refunding bonds as herein provided. Such refunding bonds may, in the discretion of the Division, be exchanged at par for the bonds which are being refunded or may be sold as provided in this section. The interest rate or rates on refunding bonds shall not be limited by the interest rate or rates borne by any of the bonds to be refunded thereby. The proceeds derived from the sale of refunding bonds issued under this section may be invested in those kinds of debt obligations in which the State Treasurer is authorized to invest public moneys pending the application of such proceeds to the purpose for which such refunding bonds have been issued, and to further secure such refunding bonds, the Division may contract with the purchasers thereof with respect to the safekeeping and application of the earnings of such investments. The determination of the Division, with respect to the financial soundness and advantage of the issuance and delivery of refunding bonds authorized under this section, shall be conclusive, but nothing herein contained shall require the holders of any outstanding bonds being refunded to accept payment thereof otherwise than as provided in said outstanding bonds.
- C. The bonds of each issue or series shall be dated, shall be interest bearing, shall mature at such time or times not exceeding fifty (50) years from the date or dates thereof, as may be determined by the Division, and may contain provisions reserving the right of the Division to redeem such bonds before maturity at such price or prices and upon such terms and conditions as may be

fixed by the Division. Such bonds may be issued in coupon or registered form, or both, as prescribed by the Division, and provisions may be made for the registration of coupon bonds as to principal only or as to both principal and interest, and for the conversion of registered bonds into coupon bonds or other registered bonds, and the conversion of coupon bonds into registered bonds. Such bonds may be issued in any denomination or denominations and may be payable at any bank or trust company within or without the State as the Division may determine. Such bonds and the coupons attached to coupon bonds shall be signed either manually or by facsimile thereof; provided that, if the bonds are signed by the facsimile signature of the Governor, such bonds shall also be signed manually by an officer of the Division designated by the Division. In case the Governor, whose signature or facsimile thereof shall appear on any bonds or coupons, or the officer of the Division, whose manual signature shall appear on any bonds, shall cease to hold office before the delivery of such bonds, such signature or such facsimile signature shall nevertheless be valid and sufficient for all purposes, the same as if the Governor or such officer, as the case may be, had remained in office until the delivery thereof.

Bonds issued pursuant to this section shall not in any way be a general obligation, debt or liability of the State, and shall not create or constitute any indebtedness, liability or obligation of the State, within the meaning of any limitation of law, nor shall they constitute a pledge of the faith or credit or taxing power of the State, nor shall the State be a surety for either the principal or interest due or that may become due on any of these bonds, but all such bonds shall be payable solely from the revenues of funds pledged or available for their payment as authorized herein. Each bond issued pursuant to this section shall contain, on the face thereof, a recital substantially to the foregoing effect.

The Division may sell such bonds in such manner either at public or private sale and for such price or prices as the Division may determine. The Division is to reserve the right to reject any and all offers to buy, both public and private. Prior to the preparation of definitive bonds, the Division may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Division may also provide for the replacement of any bonds which shall have become mutilated or shall have been destroyed, lost or stolen.

- D. The bonds issued pursuant to this section shall be issued under a certificate adopted by the Director of the Division. In the discretion of the Division, said bonds may be secured by a trust agreement by and between the Division and corporate trustee or trustees who may be any trust companies or banks having the powers of a trust company within or without the State, provided that the terms and conditions of said trust agreement are to be consonant

with the creation and operation of the Wyoming Water Development Revolving Fund and the Project Bond and Reserve Fund provided for herein. Such trust agreement may pledge or assign all or any portion of the revenues or other funds to be received by the Division but shall not convey or mortgage any project facilities or any part thereof. It shall be lawful for any bank or trust company incorporated under the laws of any state, which may act as depository of the proceeds of bonds or of revenues, to furnish such indemnifying bonds or to pledge such securities as may be required by the Division. The trust agreement may set forth the rights and remedies of the bondholders and of the trustee or trustees, and may restrict the individual right of action by bondholders. In addition to the foregoing, any trust agreement may contain such other provisions as the Division may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement may be treated as a part of the cost of the operation of the project facilities or portion thereof.

- E. The certificate of the Director, providing for the issuance of bonds pursuant to this section and any trust agreement or agreements created to secure such bonds, may for the benefit and security of the holders of such bonds, contain covenants by the Division as to:
1. The operation, maintenance, and repair of the project facilities;
  2. The purpose or purposes to which the proceeds of the sale of such bonds may be applied, and the use and disposition thereof;
  3. The use and disposition of the revenues derived from the ownership or operation of the project facilities and additions, betterments and extensions thereof, including the investment thereof and the creation and maintenance of reserve funds, and all renewals and replacements to project facilities;
  4. The amount, if any, of additional bonds, payable from the revenues, which may be issued, and the terms and conditions on which such additional bonds may be issued;
  5. The fixing, maintaining, collecting, and depositing of fees, tolls, rents, rates, and other charges for all the water, water services or services sold, furnished or supplied by the project facilities;
  6. The management, accounting and auditing of the project and its administrative organization;

7. The appointment of trustees, depositaries, and paying agents within or without the State to receive, hold, disburse, invest or reinvest the moneys in the Project Bond and Reserve Fund created pursuant to this Act; and
  8. Such other covenants and agreements as may be determined necessary in the discretion of the Division to advantageously market the bonds.
- F. Bonds issued under the provisions of this section are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, and all insurance companies, trust companies, banks, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital, in their control or belonging to them. Such bonds are also hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or obligations is now or may hereafter be authorized by law.
- G. The issuance of bonds under the provisions of this section need not comply with the requirements of any other law applicable to the issuance of bonds, and such bonds shall constitute exempt securities as provided in Section 17-117.14, Wyoming Statutes, 1957, Compiled 1965, as amended and re-enacted by Section 1, Chapter 47, Session Laws of Wyoming 1969. Except as otherwise expressly provided in this act, none of the powers granted to the Division under the provisions of this Act shall be subject to the supervision or regulation, or require the approval or consent of any officer, department, board or agency of any city, county or other political subdivisions of the State.
- H. Notwithstanding the provisions of this Act or any provisions of the laws of the State and any recitals in any bonds, interim receipts or any other obligations issued under the provisions of this Act, all such bonds, interim receipts or other obligations shall be deemed to be negotiable instruments under the laws of this State.
- I. The provisions of this section and of the certificate of the Director of the Division, providing for the issuance of such bonds, and of any trust agreement providing for the issuance and security of any such bonds, shall constitute a contract with the holder or holders of any such bonds, and the agreements and covenants of the Division under this section or such certificate or any such trust agreement made pursuant to this section shall be enforceable by any holder or holders of such bonds, by any representative of such holder or holders, and by any trustee appointed under the trust agreement and authorized so to do, and any such holder or holders, representative or trustee may, by suit, action, injunction, mandamus or other proceeding issued by a court of competent

jurisdiction, enforce any and all rights of such holders under the laws of the State or granted by this section and in any such certificate or trust agreement, and may compel performance of all duties required to be performed by this section or other law, or by such certificate of such trust agreement, by the State Treasurer or by the Division or any officer or agent thereof, including the fixing, charging, and collecting of fees, tolls, rents, rates, and other charges for the delivery of water or other uses of project facilities.

- J. All or any portion of the revenues derived from the ownership and operation of a project may be pledged to and charged with the payment of the principal of and the interest on such bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase. Such pledge shall be valid and binding from the time when the pledge is made; the revenues or other moneys so pledged and thereafter received by the Wyoming Water Development Revolving Fund shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act; and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the State, the Division or the State Treasurer, irrespective of whether such parties have notice thereof. The trust agreement by which a pledge is created need not be filed or recorded except in the records of the Division, nor shall any filing be required under the Uniform Commercial Code.

## Section 12

### State Projects Property

- A. All project property is hereby declared to be public property devoted to an essential public and governmental function and purpose, and shall be exempt from all taxes and special assessments of the State or any subdivision thereof. All bonds issued pursuant to this Act are hereby declared to be issued for an essential public and governmental purpose, and such bonds and the interest thereon and the income therefrom, shall at all times be exempt from all taxation within the State, except for transfer, inheritance, and estate taxes. All fees, charges, funds, revenue, income, and other moneys derived from a project, or available to pay or secure the payment of such bonds or interest thereon, shall also be at all times exempt from all taxation within this State.
- B. All property of a project shall be exempt from levy and sale by virtue of execution of any judgment, and no execution or other judicial process shall issue against the same, nor shall any judgment against the Division or a project be a charge or lien upon project property; provided that nothing herein contained shall apply to or limit the rights of the holder of any bonds to pursue any remedy for the enforcement of any pledge or lien given by the Division on the revenue or for enforcement of the payment of the principal and interest on such bonds from the revenues, or apply to or limit any such remedies, or apply to or limit the collection from the revenues of any judgment for overdue but unpaid principal and interest on any bond.
- C. Project facilities may be disposed of if it can be demonstrated that such disposal will not jeopardize the interests of any bondholder or the payment or retirement of the principal of or interest on any bonds of the project; provided that in any event, project facilities will not be disposed of as long as any bonds are outstanding against such project until a reputable consulting engineer or reputable firm of consulting engineers has determined that the facilities involved are either obsolete, worn-out, unfit for use in connection with the project, or not required for the proper operation, maintenance, and repair of the project, or the production or maintenance of revenues from the project.

## Section 13

### Project Option Agreements and Water Sale Contracts

- A. Before commencing construction of a project, the Division shall negotiate and execute option agreements with prospective water users. Said option agreements are to provide, as near as practical, for future water service contracts for the sale of project or other water by the Division to the optionee. Option agreements will prescribe annual quantities; prices or method or formula for determining such prices; places of delivery; readiness to serve charges; operation, maintenance, and repair charges or method or formula for determining such charges; projected time periods; and such other anticipated terms and conditions to which the parties may mutually agree. As a precondition of beginning construction, it shall appear that the revenue to be generated by the option agreements, together with other funds, moneys and revenues from other sources, will be sufficient to meet the expenses of operating, maintaining, and repairing the project, and pay and retire the principal and interest of any bonds issued for the project.
- B. Whenever the Division shall have constructed or otherwise acquired project facilities or shall have issued bonds under this section, the Division shall contract for the sale of water or water service from the project for time periods and at prices, either fixed or to be determined in accordance with a formula or method, and in quantities that will produce revenues sufficient, together with any other moneys that are made available and used for that purpose, to pay the interest on any bonds, and pay or retire the principal thereof, together with reserved for such purposes, and to maintain and operate the project, and to keep the same in good condition and repair.

## Section 14

### Use of State Lands

The State hereby consents, subject to the approval of the Governor, to the use by the Division for and in behalf of a project of any lands, property owned by or water rights held by the State or any of its agencies, including lands lying under water, which are deemed by the Division to be necessary for the construction or operation of a project.



## Section 15

### Interests of Employees

No director, officer, employee or agent of the Division, for the purpose of personal gain, shall have or attempt to have, directly or indirectly, any interest in any contract or agreement of the Division or a project, or in the sale or purchase of any bonds or investments by the Division. Any director, officer, employee or agent of the Division who shall be found guilty of violating the provisions of this paragraph shall be guilty of a misdemeanor.

## Section 16

### Severability

The provisions of this Act are severable, and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the other provisions of this Act.