

CHAPTER I

INTRODUCTION TO WYOMING WATER ADMINISTRATION

Section 1. Constitutional Framework.

a. The water within the boundaries of Wyoming is "declared to be the property of the state" by Section 1, Article 8 of the Wyoming State Constitution. Section 2 establishes the State Board of Control, hereinafter referred to as Board, as the governmental body "which shall, under such regulations as may be prescribed by law, have the supervision of the waters of the state and of their appropriation, distribution and diversion, and of the various officers connected therewith." The State Board of Control is to be composed of the State Engineer and the superintendents of the state's four water divisions. The superintendents are appointed by the Governor based upon the results of examinations conducted by the State Engineer.

b. The Constitution also provides at Section 5, Article 8, that the State Engineer is to be appointed by the Governor and is to serve as President of the State Board of Control. In his or her capacity as State Engineer, he or she "shall have general supervision of the waters of the state and of the officers connected with its distribution." The ex-officio secretary is appointed by the Board (see W.S. 41-4-202). Additional administrative officers are provided by statute, most notably, the state's water commissioners.

Section 2. Water Divisions and Districts. Boundaries of the four water divisions are defined by W.S. 41-3-501. Each division is further subdivided into water commissioner districts by the Board, pursuant to W.S. 41-3-601. Any one stream system of "practicable administrative scope" is to be included within a single district. Each district is to be supervised by a hydrographer commissioner or water commissioner appointed by the Governor from among persons recommended by the superintendent of the water division in which the district is located.

Section 3. Lines of Authority. W.S. 41-3-603 provides that when called upon each hydrographer commissioner or water commissioner shall "divide, regulate

and control the use of water of all streams within his district" according to the priority of lawfully established water rights. Actions of the various hydrographer commissioners or water commissioners may be appealed by injured persons to the division superintendents, whose decision may be appealed to the State Engineer. The decision of the State Engineer concerning an action or failure to act on the part of a hydrographer commissioner or water commissioner is a final administrative decision which may be appealed to the district court. In carrying out their duties, hydrographer commissioners or water commissioners and their assistants have the power to arrest offending persons.

Section 4. Types of Water Rights.

a. A Wyoming water right is a right to use the water of the state when it is applied under the law to beneficial use, as defined by permit or adjudication and its appropriation has been made in conformance with the applicable rules and regulations. W.S. 41-3-101 states: "beneficial use shall be the basis, the measure and limit of the right to use water at all times." The right attaches to the land or place of use for which appropriated and is limited to the purpose for which appropriated. Because water is so important to the economy of this state, its use is always limited to a concept of public interest. The only uses for which water rights may be established are those which receive "public recognition" under the laws of the state.

b. A small number of water rights in Wyoming were confirmed by court decrees prior to creation of the State Board of Control and the office of the State Engineer. Generally, all other water rights acquired prior to statehood were adjudicated by the State Board of Control on the basis of "Claims to Water Filed under Territorial Law" and are known as "territorial appropriations." The first state legislature enacted a comprehensive water code, which established a filing procedure for securing water rights by permit from the State Engineer with final adjudication by the State Board of Control. The majority of Wyoming water rights have been obtained through this permit and adjudication system.

c. Permits to appropriate water are issued for the direct diversion of the natural flow of a stream, the storage of water in a reservoir, the secondary attachment of stored reservoir water to specific lands or service area, for instream flow use, and for the withdrawal or other use of water from an underground source. A direct flow diversion is measured in cubic feet per second (c.f.s.), and in the case of irrigation, is statutorily adjudicated at a rate not to exceed one c.f.s. for each 70 acres of land irrigated (except when surplus and excess flows are available - see Sections 11 and 12). A storage right is measured in ~~acre-feet~~ acre-feet (a.f.) and may be filled only in order of priority. An instream flow right is measured in c.f.s. A ground water right is measured in gallons per minute (g.p.m.) pumping rate and acre-feet (a.f.) per calendar year. All water rights are limited to the beneficial uses being made. The State Engineer may deny or modify an application for permit if he or she determines that the granting of an application would be injurious in some respect.

d. After an applicant obtains a permit from the State Engineer, and then proceeds to establish the water right by applying the water to beneficial use in accordance with the terms of the permit, a proof of appropriation may be submitted to the State Board of Control. The Board will then initiate adjudication procedures in accordance with Wyoming Statutes and these regulations. Amendments or corrections of unadjudicated permits are generally accomplished by petition to the State Engineer. If a water right has been adjudicated, it can only be changed or modified by the State Board of Control. A permit to appropriate water authorizes the holder to make use of the water as limited in the permit. However, a water right as such is established only when the water is applied to beneficial use. A water right is publicly recognized and specifically defined when it is adjudicated by the State Board of Control, and a certificate of appropriation is issued. Stock reservoirs, stock or domestic wells, test wells, and other temporary uses are not typically adjudicated.

e. Certain rights to use waters of the state were awarded in the Big Horn River General Adjudication. Such rights have been recognized and adjudicated by various decrees therein. In addition to the types of rights

described in subsections a through d above, some water rights were awarded based on the Winters reserve water right doctrine or were established by judicial decree. Such rights are recognized by the Board as they appear in various court decrees entered in that adjudication and the same have been incorporated into the official water records of the state.

Section 5. Ground Water.

a. W.S. 41-3-901 through 41-3-938 constitute a comprehensive ground water code. Although the use of ground water is not administered in exactly the same manner as is the use of surface water, a permit system is in effect in Wyoming. Prior to commencement of construction of a ground water development, a permit to appropriate ground water must be obtained from the State Engineer. Upon completion of construction and application of the water to beneficial use, and submission of proper documents, a proof is presented to the State Board of Control for adjudication. The statutes give authority to the State Engineer to resolve disputes involving interference between ground water appropriations or between surface water and ground water appropriations. For a detailed explanation of the procedures to be followed, see the Regulations and Instructions of the State Engineer's Office.

b. The statutes also provide procedures whereby a "ground water control area" may be designated by the State Board of Control upon the recommendation of the State Engineer after the Board holds a public hearing. After the boundaries of a newly designated control area are geographically and stratigraphically determined, all previously unadjudicated ground water rights (excepting stock, test wells or domestic ground water rights) within the control area are adjudicated. The State Engineer works with an advisory board, which is elected from within the control area. W.S. 41-3-915 provides that the appropriators in a control area "may agree to any method or scheme of control of withdrawals, well spacing, apportionment, rotation or proration of the common supply of underground water," and same may be instituted if ordered by the State Engineer.

Section 6. Administrative Regulation. Any person with a water right in a stream system may in writing, request the hydrographer commissioner or water commissioner to regulate the source of supply for his or her benefit. If regulated during periods of decreased natural supply, the priority of the appropriations will be observed as nearly as practical and the headgates for the junior-most appropriations may be adjusted in order to satisfy senior appropriations. The request shall be made in writing on a form provided by the State Board of Control (see Appendix A of these Regulations and Instructions for a sample). Upon approving a proper request for regulation, the hydrographer commissioner or water commissioner will act to limit each water right in accordance with the priority and amounts recorded in the official records of the state. Both direct flow and the filling of storage rights are regulated in the same priority manner. ~~During periods of decreased natural supply, the priority of the appropriations will be observed and the headgates for the junior most appropriations may be closed in order to satisfy senior appropriations.~~ The regulation of ground water appropriations generally follows priority regulation except for ground water appropriations located within control areas. ~~Wyoming Statute W.S. 41-4-208~~ requires the Board to publish a tabulation of adjudicated water rights to facilitate regulation. Where special provisions for administration of water rights arise by judicial decree, such rights shall be administered in accordance with applicable laws.

Section 7. Reservoir Storage.

a. A reservoir is entitled to be filled in order of priority once each year if water is available. The water year is defined as from October 1 through September 30 of the following year. If water remains unused in the reservoir at the end of the water year, this water is termed "carry-over storage" and is counted toward providing the water to meet the following year's supply for the appropriation. For example, if a reservoir which has a right to store one thousand acre-feet has two hundred acre-feet remaining in storage which is carried over into the following year, then this appropriation would be entitled to again accrue only the remaining appropriated capacity (800 a.f.) as the storage right comes into priority on the permitted source of supply.

b. In order to conserve the waters of the state, it is a necessary requirement that all reservoirs be filled at times that will not interfere with or that will provide the least interference with the use of water by direct flow appropriators and thereby prevent a waste of water. W.S. 41-3-603 provides authority to the Hydrographer commissioner or water commissioner to control reservoir filling and reads in part as follows:

Such water commissioner shall have authority to require the filling of any reservoir whenever practical and water is available for storage from the stream or streams for which the appropriations for such reservoir are established.

All water which is allowed to flow past the reservoir diversion point after receipt of a notice or order to store from the hydrographer commissioner or water commissioner will be chargeable to the storage in the reservoir and the right to store may be reduced by that amount.

Section 8. Storage of Direct Flow Rights. W.S. 41-3-305 provides that the holder or owner of an adjudicated water right to use the direct flow of a surface stream may store the water "so long as no other Wyoming appropriator or user is injured or affected thereby." A request to store a direct flow right must be made in writing to the State Engineer. Approval must be given by the State Board of Control before the direct flow may be diverted into storage under authority of this statute. Consideration of a request to store direct flow is generally a complex matter, which requires the availability of detailed information. Since no injury to other appropriators can occur, the storage is limited to the historic consumptive use and is restricted to the same place of use. The details concerning the storage of direct flow rights are set out in the Regulations and Instructions of the State Engineer's Office.

Section 9. Rotation of Water Use.

a. W.S. 41-3-612 allows that water uses may be rotated with the approval of the hydrographer commissioner

or water commissioner. The purpose of this statute is to bring about a more economic and efficient use of water. Rotation is accomplished in accordance with the specific rules set out in Chapter V, Section 23 of these regulations. The usual practice is to divert the collective supply available in priority to the appropriations to be rotated for irrigating the lands under each appropriation more quickly and efficiently. After the first irrigation, the diversion is closed down and the collective supply is used for the irrigation of the lands under another appropriation, etc. The rotation must be accomplished in such a way that there is no injury to other appropriators from the same source of supply. This is done by establishing a definite rotation period for irrigation of the land under each appropriation based on the number of acres irrigated by each appropriation plus an adjustment in time of irrigation to account for the differences in return flow patterns from the irrigation for each appropriation.

b. For example, assume that land under two appropriations to be rotated have the same general cropping pattern, soil characteristics, slope of land, etc., and therefore have similar return flow patterns, and that each appropriation is for one cubic foot per second for irrigation of 70 acres. Further assume that the one 70 acre tract can be irrigated in five days with the collective supply from both appropriations. The total supply of two cubic feet per second would be applied to the one 70 acre tract for a five day period and would then be shut off from these lands and be diverted at the same rate to the other 70 acre tract for another five day period.

c. If we assume the same general conditions are present except that the two appropriations are for 70 acres and for 140 acres, then water would be allowed for diversion on the larger tract for twice as long as for the smaller tract.

d. The above examples are over-simplified for most situations, but are intended to give a general idea of how rotation of water use operates.

Section 10. Supplemental Supply Rights. The appropriation of water as supplemental supply is defined in detail by W.S. 41-3-113. In general, it involves the appropriation of direct flow water from another surface

water source to augment or supplement the available water for an existing appropriation for which the original source of supply does not provide a full supply. The amount of water, which may be diverted is the amount available, in priority, to bring the total water diverted from all surface water sources up to the original appropriated amount.

Section 11. Surplus Water. Whenever the supply of water in a stream exceeds the total amount required to satisfy all existing appropriations established on or before March 1, 1945, the stream is said to be in a surplus flow condition. When surplus flows are available during the water year, they are divided proportionally among the irrigation water rights holders with priorities on or before March 1, 1945, up to an additional one c.f.s. for each 70 acres irrigated. Rights with priorities later than March 1, 1945, may be regulated to meet the demands for surplus water made by the owners of water rights with priorities earlier than or equal to March 1, 1945 (see W.S. 41-4-317 through W.S. 41-4-324). Surplus water only applies to irrigation water rights that are based on the statutory diversion rate of 1 c.f.s. per 70 acres, and not to volumetric awards made in acre-feet per acre.

Section 12. Excess Water. Whenever the supply of water in a stream exceeds the amount required to satisfy all existing appropriations established on or before March 1, 1985, the stream is said to be in an excess flow condition. When excess flows are available during the water year, they may be beneficially used by irrigation water rights holders with priorities dating from March 2, 1945 through March 1, 1985, up to an additional one c.f.s. for each 70 acres irrigated (see W.S. 41-4-329 through W.S. 41-4-331). Excess water only applies to irrigation water rights that are based on the statutory diversion rate of 1 c.f.s. per 70 acres, and not to volumetric awards made in acre-feet per acre.

Section 13. Temporary Use of Water. Permission for temporary use of water for such purposes as road construction, well drilling, and other purposes may be obtained from the State Engineer through the procedures set out in the State Engineer's Regulations and Instructions. Also outlined in the State Engineer's Regulations and Instructions, is the procedure to be followed for changing

a water use to a different type of use on a temporary basis. However, when an existing right is temporarily changed, the new use can have a marked affect on the return flow to the stream as compared to the return flow resulting from the historic use. For this reason, the hydrographer commissioner or water commissioner must assess the change in return flow, as well as other effects on the stream resulting from the temporary use. He or she must then make adjustments in the amount of water remaining for diversion to insure that there is no adverse affect on other appropriators from the same source of supply.

Section 14. Water Year. The water year is defined as from October 1 through September 30 of the following year.

Section 15. Diversion and Conveyance Changes.

a. Pursuant to W.S. 41-3-114, the State Board of Control may consider and grant a petition to change a point of diversion or a petition to change a point of diversion and/or means of conveyance for an adjudicated water right provided that the petitioner can demonstrate that no other appropriator will be injured by the change. When a change of point of diversion is approved, the water right at the new location cannot exceed the amount of water available at the original point of diversion and may be restricted to a lesser amount if return flow or other factors so indicate.

(1) If a permit is involved rather than an adjudicated water right, the petition for change of point of diversion or change of point of diversion and/or means of conveyance is directed to the State Engineer.

(2) Prior to 1965, there was no statutory requirement for recording a change of point of diversion and means of conveyance. Such changes could have been made as a matter of right as long as no injury to other appropriators occurred. Changes made prior to 1965 to the point of diversion and means of conveyance can be recorded with the Board by submission of a simplified petition if the following conditions are met:

(a) There must be proof that 1. The change occurred prior to 1965, so that it is clear that this action is to correct the records to reflect the situation as it has existed and been operated on-the-ground since

that time; 2. No injury has occurred to other appropriators;

(b) The new point of diversion must have a current and accurate legal survey tie, to a known corner of the public land survey, on file in the State Engineer's Office;

(c) The entire appropriation must have been changed and is now being sought for recordation, or the portion changed must include the full acreage covered in the quarter-quarters. If only a portion of a water right within a given quarter-quarter is served by the new point of diversion, this section will not apply;

(d) The appropriation must have been diverted at least once in the last five years when water was available through the new point of diversion and means of conveyance.

A sample format for a simplified petition to facilitate the described change of point of diversion and means of conveyance is found in Appendix A of these Regulations and Instructions.

b. Under special circumstances, the division superintendent may give permission for a temporary change of point of diversion or change of point of diversion and/or means of conveyance until a proper petition can be prepared. The request shall be in writing on a form provided by the Board or in a letter which states all the same information as required by the printed form (see Appendix A of these Regulations and Instructions for a sample). A temporary change ~~will~~may be limited to one irrigation season.

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~~_____ (b) The new point of diversion must have a current and accurate legal survey tie, to a known corner of the public land survey, on file in the State Engineer's Office;~~

~~_____ (c) The entire appropriation must have been changed and is now being sought for recordation, or the portion changed must include the full acreage covered in the quarter-quarters. If only a portion of a water right within a given quarter-quarter is served by the new point of diversion, this section will not apply;~~

~~_____ (d) The appropriation must have been diverted at least once in the last five years when water was available through the new point of diversion and means of conveyance.~~

~~A sample format for a simplified petition to facilitate the described change of point of diversion and means of conveyance is found in Appendix A of these Regulations and Instructions.~~

Section 16. Change of Location of a Well. Pursuant to W.S. 41-3-917, the Board may consider and grant a petition to change the location of all ground water rights provided the petitioner can demonstrate that no other appropriator will be injured by the change. A change of location of a well may be allowed only for the amount of water the well is actually capable of producing, but not in excess of the adjudicated or demonstrated amount of use during the past five years, whichever is less.

Section 17. Water Rights Transfers.

a. Changes of place of use are authorized by W.S. 41-3-104. This type of petition is filed when lands with attached adjudicated water rights have become seeped or otherwise unfit for production of crops by irrigation, and it is the desire to change the land description by excluding these lands and substituting other suitable lands of equal or less area. This type of petition is also used to redescribe appropriations to reflect on the record the actual situation ~~on the ground~~ on-the-ground.

b. Changes of use are authorized by W.S. 41-3-104. A change of use may be allowed "provided that the quantity of water transferred by the granting of the petition shall not exceed the amount of water historically diverted under the existing use, nor exceed the historic rate of diversion under the existing use, nor increase the historic amount consumptively used under the existing use, nor decrease the historic amount of return flow, nor in any manner injure other existing lawful appropriators." In considering a proposed change of use, the Board must quantify the rights proposed for change of use based upon actual diversion or pumping records or otherwise reliable information. The Board also examines the economic losses and benefits of the proposed change of use and inquires into "whether other sources of water are available for the new use."

Section 18. Abandonments. Pursuant to W.S. 41-3-401, an owner of a water right may deliberately relinquish an adjudicated water right or seek involuntary abandonment of a water right owned by another appropriator by a petition to the Board. A petition for involuntary abandonment may be brought before the Board by any appropriator whose water right may be benefited by a declaration of abandonment of an existing water right or whose water right might be injured by the reactivation of an unused water right.

Section 19. Preferred Uses.

a. Certain uses of water including municipal, stock and domestic uses are defined by law as preferred uses. W.S. 41-3-102 sets out the preferred uses and establishes their order of preference. Water for industry is a

preferred use over water for irrigation except that the use of water for steam power plants and industrial purposes does not give the right of condemnation. Water rights for these uses may be obtained through the regular permit and adjudication procedures, or by acquisition of the right to use water already appropriated for some other purpose, such as irrigation. The law allows a preferred use to condemn a lower ranking use in accordance with the provisions of civil law relating to condemnation of property. Following a successful condemnation action, a petition for change of use must be submitted to the Board.

b. Regardless of how a preferred use appropriation is acquired, the right to divert water is subject to regulation in accordance with the priority date of the acquired water right. The condemnation procedure does not expand the nature of the right condemned by a preferred use. It only ensures that the change of use can occur. W.S. 41-3-907 provides an exception for appropriations of underground water for stock or domestic purposes (with certain quantity limitations), which may be used at any time regardless of priority dates.

Section 20. Rights-of-Way. The issuance of a permit by the State Engineer, or the granting of a petition or the adjudication of a water right by the State Board of Control does not give a right-of-way to the water appropriator over the lands of any other person. The individual appropriator is responsible for obtaining proper and necessary rights-of-way or easements by negotiation and agreement or otherwise by compliance with the law of the state.

Section 21. Interstate Compacts and Court Decrees. In addition to complying with state water law, Wyoming appropriators must comply with any restrictions on water use contained in interstate water compacts and court decrees. In the administration of such rights, the Board will follow any specifically mandated provisions of administration of rights contained in such compacts and decrees. The local water administrators will be familiar with these additional restrictions applicable to their districts and may be contacted for further information.

Section 22. Instream Flow. Prior to 1986, Wyoming water law required water to be diverted from its natural channel and conveyed to a point of use or stored

constituting beneficial use. In 1986, enactment of the instream flow law expanded this concept to allow only the State of Wyoming to own a water right for instream flow in a natural channel for fisheries purposes. Thus, pursuant to W.S. 41-3-1001 through 41-3-1014, a new water right can be issued, or an existing right changed, to allow water, when available, to remain in the natural stream channel and be protected for fisheries purposes according to its water right priority. With proper permitting, instream flow needs may be met from reservoir storage.

CHAPTER II

ORGANIZATION AND AUTHORITY

Section 1. Authority. The State Board of Control was created by Section 2, Article 8 of the Wyoming State Constitution, adopted by vote of the people on November 5, 1889, and approved by the United States Congress on July 10, 1890 (see also Chapter 4 of Title 41, Wyoming Statutes, 1977, especially W.S. 41-4-201, et seq.).

Section 2. Rules and Regulations.

a. W.S. 41-4-211 authorizes the State Board of Control to adopt reasonable rules and regulations to carry out the duties imposed on it by law. These regulations are promulgated pursuant to this authority.

b. These regulations shall apply to all proceedings before the State Board of Control. Persons having business before the Board are advised to also examine the previous decisions of the Board, which are published in its Order Record. The decisions sometimes contain discussions of policy, which could prove helpful in a pending matter. However, such policy statements are not to be viewed as binding precedent. The Board may adapt its policies to the situations at hand on a case-by-case basis.

Section 3. Definitions. In addition to the definitions set out in the Wyoming Administrative Procedure Act (W.S. 16-3-101 through W.S. 16-3-115) and in Title 41 of the Wyoming Statutes, the following terms are used throughout these regulations:

a. "Board" means the State Board of Control.

b. "President" means the State Engineer acting as President of the State Board of Control.

c. "Acting Chairman" means the person chosen by the Board to act for the Board as chairman in a specific manner.

d. "Superintendent" means a water division superintendent who serves as a member of the Board.

e. "Secretary" means the ex-officio secretary of the Board who is appointed by the Board in a non-voting capacity.

f. "Adjudication Officer" means the person employed by the Board who is charged with maintaining its official books and records at its office in Cheyenne. As instructed from time to time by the Board, the Adjudication Officer assists the Board in the conduct of its meetings and routine business. As reflected in the Board's minutes, the Adjudication Officer has limited authority to sign correspondence and otherwise act as the Board's agent. The Adjudication Officer may also be referred to as the Administrator of the Board.

g. "W.S." refers to the Wyoming Statutes, 1977, in their most recently enacted form. Any statutory citation, unless otherwise indicated, references the legislation enactment as amended.

Section 4. Board Composition. The State Board of Control is composed of the State Engineer and the superintendents of the four water divisions of the state. The State Engineer serves as President of the Board and is a voting member.

Section 5. Powers and Duties.

a. The State Board of Control has supervision over the waters of Wyoming and their appropriation, distribution and diversion, and of the various officers connected therewith. The Board serves as a quasi-judicial body in the adjudication of water rights, and in the consideration of contests and petitions affecting adjudicated water rights.

b. Historically, the first duty of the Board was to determine the priorities of rights to use the water flowing in the streams of Wyoming, beginning with the streams most heavily used for irrigation. This task was accomplished by a general stream adjudication for the entire state. Thereafter, the Board has continued to adjudicate surface and ground water rights under permit and to consider petitions dealing with abandonment, amendment, or change of water rights.

c. The Board is directed by W.S. 41-3-601 to divide the State into several water commissioner districts within each of the four water divisions. On recommendation of the State Engineer or the division superintendent, the Board may change the water commissioner district boundaries.

Section 6. Oaths. The members of the State Board of Control are authorized to administer oaths in all situations where to do so is necessary in the performance of their official duties (see W.S. 41-4-211).

Section 7. Seal. All certificates of appropriation and construction issued by the State Board of Control shall be signed by its President and be attested to by the Secretary over the seal of the Board. All other certificates, certifications and certified documents may be signed and sealed either by the President, Secretary, or Adjudication Officer. The Board's official seal is described as follows:

An embossed circular seal one and three quarters inches in diameter consisting of two concentric circles, the outer being one and three quarters inches in diameter, and the inner being one and three sixteenths in diameter. The space between the two circles to contain the words: "State of Wyoming Board of Control." The inner circle to contain the Great Seal of the State of Wyoming.

CHAPTER III

GENERAL PROCEDURES

Section 1. Meetings. By statute, the Board holds four quarterly meetings each year. To the extent possible, these regular meetings are spaced equally throughout the year according to the following schedule:

First week in February;
Second week in May;
Third week in August; and
Fourth week in November (except when it conflicts with Thanksgiving).

Special meetings may be held at other times at the call of the President or Acting Chairman after consultation with the other Board members. If a special meeting is held at the request of a private party, the costs of providing for the travel expenses of the Board members and any necessary staff assistants and legal advisors must be met by the private party (see W.S. 41-4-201).

Section 2. Quorum and Voting. A majority of the members of the Board constitute a quorum to transact business, but a decision of the Board requires an affirmative vote of three members (see W.S. 41-4-201).

Section 3. Order of Business. Meetings of the Board will generally proceed in the following manner (subject to change as necessary):

- a. Call to order;
- b. Review, correction and approval of the minutes from the last meeting;
- c. Consideration of petitions (which can include short hearings, appearances for oral argument, etc.);
- d. Consideration of proofs of appropriation and proofs of construction (ground water proofs are usually considered at the May and November meetings while surface water proofs are usually considered at the February and August meetings);

e. Unfinished or carry-over business from the last meeting;

f. New business, appearances and discussion items;

g. Adjournment.

Section 4. Books and Records. The following books and records shall be kept and shall constitute the official records of the Board, which are open to the public and available for copying (electronic versions may be available for copying if they exist):

a. Minutes -- loose-leaf book to contain, in proper order, the minutes of all meetings of the Board;

b. Order Record -- loose-leaf book to contain the original of all Orders entered by the Board;

c. Certificate Record -- loose-leaf book to contain a copy of each certificate of appropriation of surface or ground water or certificate of construction of a reservoir issued by the Board;

d. Card Index File of the following:

(1) SURFACE WATER -- a listing by water division and stream of all adjudicated water rights with the name of the appropriator, permit number, priority date, order record number, certificate record number, proof number, name of the ditch or pipeline, and such other information as may appear to be appropriate;

(2) GROUND WATER -- a listing by township and range of all adjudicated ground water rights with the name of the appropriator, permit number, statement of claim or well registration number, priority date, order record number, certificate record number, proof number and the name of the well; and

(3) PETITIONS -- a listing of each petition according to the source of the appropriation and the name of the petitioner;

e. File of Proofs of Appropriation Allowed, by number;

f. File of Rejected Proofs;

g. An individual file folder for each petition or pending action.

Section 5. Interagency and Intra-Agency Memoranda. All files and papers of the State Board of Control not listed above in Section 4 are deemed to be interagency or intra-agency memoranda or letters not routinely made available to the public. Most of the Board's correspondence, maps and other printed materials can be made available upon written request directed to the Board at its office in Cheyenne, Wyoming. Should any requested file or paper not be provided as requested, the requestor will be provided with a written explanation.

Section 6. Orders and Certificates.

a. A specific order shall be entered in the Order Record upon the grant, denial or dismissal of any petition filed with the Board, and a copy of the Order shall be mailed to the petitioner. If the Board action grants an amendment in land description, an amendment to or correction of an existing certificate, a change of use, or an abandonment of a water right, a certified copy of the Order shall be recorded in the office of the county clerk of the county or counties in which the water right is located.

b. When a certificate of appropriation, amended certificate, or a certificate of construction of a reservoir is issued, the original shall be recorded in the office of the county clerk of the proper county and then forwarded to the appropriator. A copy shall be filed in the office of the Board in the Certificate Record (see W.S. 41-4-325).

Section 7. Rule Making. Rule making through the promulgation of written regulations shall be accomplished in accordance with W.S. 16-3-102 through W.S. 16-3-106.

Section 8. Fact Finding Hearings.

a. In exercising its rule making authority or general regulatory authority over the waters of the state,

the Board may conduct fact finding hearings, pursuant to notice as required by statute for the situation involved.

b. A fact finding hearing is non-adversary in nature and no pleadings are required. Any interested persons will be afforded the opportunity to appear or otherwise make his views known to the Board. Oral and written statements may be presented without regard to the rules of evidence.

c. The Board member or other person designated as the hearing officer may adopt whatever procedures appear to be reasonable and necessary for the conduct of the hearing.

d. Persons appearing to make statements or present information are not thereby made available for cross-examination, but will be permitted to answer questions asked by the hearing officer, Board members, or any other person, provided they choose to do so. The hearing officer may limit questioning and the length of oral statements in the interest of conducting the hearing in a proper manner.

Section 9. Assistance of Attorney General. In all matters before the Board, the Attorney General may be present to assist and advise the Board.

CHAPTER IV

ADJUDICATION OF PROOFS

Section 1. Surface Water Proofs.

a. The requirements for the submission of, advertising, holding open for inspection, opportunity of contest, and allowance of proofs of appropriation of water are set out in W.S. 41-4-511, and the other statutes mentioned therein. Hearings on contests of proofs, hearing fees, and dispositions after hearing are governed by W.S. 41-4-311 through W.S. 41-4-314, and Chapter IV, Section 3 of these regulations.

b. When the final notice of completion of beneficial use of water or completion of construction of a reservoir is filed by the water user, a proof form will be forwarded by the Adjudication Officer to the superintendent of the water division in which the project is located. A letter is sent to the water user advising him of the necessary action for submission of final proof. A water user may also contact the superintendent to arrange a time and place when final proof will be taken (see W.S. 41-4-511).

c. In the case of large irrigation or water conservancy districts, proofs may be submitted by the district on behalf of the individual landowners within the district. The certificate shall be issued in the name of the district on behalf of each individual landowner.

d. Surface water proofs shall be on a form furnished by the State Board of Control and must be accompanied by the appropriate fee. When the water is used for irrigation, stock or domestic purposes, acceptable proof of ownership from the county clerk in which the lands are located, showing the claimant to be the present owner of the lands on which the beneficial use is made, must be presented when the proof is submitted.

e. The superintendent or a designated hydrographer commissioner will make an on-the-ground inspection of the facility to determine if it has been completed within the terms of the permit. An adjustment will be made on the proof form to reflect the actual irrigated acreage, and the remaining lands not irrigated under the permit must be

eliminated by the owner through submittal of an elimination request. The person conducting the inspection will submit a written inspection report to the Board for its consideration.

f. Stock reservoirs filed on a Form S.W. 4 will not be adjudicated unless requested by the permit holder. However, stock reservoirs will be inspected to see that they are constructed within the terms of the permit and then incorporated into the appropriate tabulation of adjudicated water rights.

g. The proofs taken must be advertised in a newspaper of general circulation in the nearby area by the water division superintendent at least 30 days before any regular meeting of the State Board of Control. The advertisement shall contain the date, time and place where proofs will be available for inspection and the description of the appropriation, as required by law. The advertised day or days during which the proofs are held open for inspection must occur at least 15 days in advance of a regular Board meeting (see W.S. 41-4-511). As a matter of administrative practice, the advertisement will not begin any earlier than 45 days prior to the Board meeting.

h. As to the adjudication of expired or partially expired permits where no notices have been filed or a beneficial use notice is more than 20 years old, the State Engineer may reinstate the permits or unadjudicated lands to good standing by means of affidavits. If the superintendent is contacted by the water right user and asked to adjudicate a right, the superintendent will contact the Board office in Cheyenne, Wyoming, to check the status of the permit. If it appears that the matter should proceed, the superintendent may request that affidavits be obtained by the landowner, which must be executed by two or more disinterested persons. The affidavits must describe the lands or points of use involved and state that the persons signing the affidavits know of their own knowledge that the lands have been continuously irrigated from the proper source, or other uses made under the terms of the permit, since the date of expiration of notice of beneficial use. After completion, these affidavits will be forwarded to the State Engineer's Office. The actions then taken are as follows:

(1) The State Engineer or designee will examine the affidavits to determine if they appear to be valid. If so, the "adjudication in process" stamp is placed on the permit to indicate that efforts are being made to adjudicate the permit. If the affidavits appear inadequate, they will be returned to the claimant with directions as to how to proceed.

(2) If the affidavits appear valid and to the extent the State Engineer endorses the permit as reinstated, copies will be sent by the Board's Cheyenne office to the division superintendent of the division in which the lands or points of use are located along with a set of proof forms prepared by the staff. The originals will be retained in the Board's Cheyenne office.

(3) The division superintendent will proceed with the adjudication as provided by statute. An on-the-ground inspection will be conducted to determine if the lands appear to have been historically irrigated or water beneficially used under the terms of the permit and are presently being irrigated or used. The superintendent may also interview those persons who signed the affidavits. If the named source is routinely regulated by priority, the superintendent may also investigate whether the appropriation has been historically diverted during priority regulation. Reinstatement or adjudication of permits, which lack evidence of historic intentional diversion, may be denied.

(4) The division superintendent will also prepare and submit to the Board a report on the proof form giving the date of the field inspection, a summary of the findings, and the recommendation concerning acceptance or rejection of the proof. If the proof is to be rejected, the Board will recommend to the State Engineer that the permit be cancelled, or the lands in question or points of use be eliminated from the permit, as appropriate, and the State Engineer will then take the action deemed necessary.

(5) If everything appears to be in order, the superintendent will proceed to have the proof executed, obtain the fee, determine the land ownership, and advertise the proof for consideration at the next Board meeting.

i. If the proof is uncontested, and all else is in order, the Board will accept the proof and approve the appropriation.

j. In the event an advertised proof is contested under the provisions of W.S. 41-4-312, the procedures outlined in Section 4 of this chapter shall be followed:

(1) A claimant may not rest upon the allegations contained in affidavits as sufficient evidence to support the adjudication of a water right.

(2) The claimant must produce credible evidence in the form of testimony, subject to cross examination which supports the statements made on the proof form.

Section 2. Ground Water Proofs.

a. Rights to the use of ground water shall be adjudicated by the State Board of Control as provided in W.S. 41-4-511 (see also W.S. 41-4-513).

b. To adjudicate a ground water right, various steps must be taken by the water user, by the State Engineer's Office, and by the State Board of Control. The following is a brief outline of the basic procedure:

(1) PERMIT -- A permit (Form U.W. 5) must be approved by the State Engineer before commencing the construction of any well (including test holes). Unless otherwise extended, the permittee has one year from the date the permit is approved by the State Engineer in which to commence the construction of the well.

(2) STATEMENT OF COMPLETION -- This form (Form U.W. 6) is required to be submitted within 30 days after the well has been completed with a permanent pump. If the well is a flowing well, the Statement of Completion must be submitted within 30 days of completion of the well with valve or other acceptable control device.

(3) PROOF OF APPROPRIATION AND BENEFICIAL USE OF GROUND WATER -- This form (Form U.W. 8) consists of three separate parts.

PART I -- This portion is required to be submitted to the State Engineer by December 31 of the year following the year in which the application was approved by the State Engineer, or prior to such time stated in a letter of extension. Part I contains information detailing the date and type of beneficial use.

PART II -- This part of the Beneficial Use Notice is to be submitted with Part I. Part II is an acceptable plat of the completed facility, or a topographic map in acceptable form. The plat or topographic map must be prepared in accordance with the map instructions of the State Engineer's Office, Ground Water Division. Acceptable proof of ownership must accompany all plats submitted.

PART III -- After all required notices and the certified plat have been submitted to the State Engineer's Office, a representative of the State Engineer or the water division superintendent will conduct an on-the-ground inspection of the facility to determine if the terms of the permit have been met. The person conducting the inspection will submit a written inspection report to the Board for its consideration. For the holder of a water right under a Statement of Claim or Well Registration to obtain an adjudicated ground water right, only Part II and Part III must be completed.

(4) The proof, advertising, and recording fees are collected for each ground water permit when the executed proof form is returned by the applicant.

(5) The proofs taken must be advertised in a newspaper of general circulation in the nearby area at least 30 days before any regular meeting of the Board. The advertisement shall contain the date, time and place where proofs will be available for inspection and the description of the appropriation, as required by law. The advertised day or days during which the proofs are being held open for inspection must occur at least 15 days in advance of a regular Board meeting (see W.S. 41-4-511). As a matter of administrative practice, the advertisement will not begin any earlier than 45 days prior to the Board meeting.

(6) After proper advertisement of the water right, and if no protest is received, the proof is submitted to the State Board of Control for final

consideration. If the proof is adjudicated, a certificate of appropriation is issued and recorded in the county in which the place of use is located and forwarded to the ground water right owner.

Section 3. Instream Flow Proofs.

a. Authorization for taking final proof of instream flow permits is set out in W.S. 41-3-1006(f). This statute states that "(I)f an application for an instream flow appropriation is approved by the State Engineer, it shall be deemed that work has been commenced and completed and beneficial use made thirty (30) days after the date of approval for purposes of W.S. 41-4-506 and proof of appropriation shall not be submitted until three (3) years thereafter."

b. The superintendent or a designated hydrographer commissioner will make an on-the-ground inspection of the segment, inspect the measuring device, and review discharge records and measurement notes for the last five years. The Wyoming Game and Fish Department may provide, or upon request submit, stream flow data to document flows. If permitted flows have not actually occurred during the period of review, an adjustment will be made by elimination of the permitted c.f.s. amount reduced to the amount which was actually present.

c. Advertising and dispensing of these proofs will be done in conjunction with other surface water proofs (see Chapter IV, Section 1 of these Regulations and Instructions).

Section 4. Contested Proofs.

a. Any person, corporation, or association of persons owning a valid water right to the use of water from any source involved in the adjudication may contest the rights of any person, corporation, or association, which has submitted a proof to the superintendent, provided that the contestant notifies the superintendent of the appropriate water division in writing within fifteen days after the proofs have been made available for public inspection and states the grounds of the contest (see W.S. 41-4-312 through 41-4-315, and 41-4-511).

b. If a valid contest is received, the division superintendent shall notify the contestant and the person, corporation, or association whose rights are contested to appear before him at a convenient time and place as he shall designate in writing. The date of hearing shall not be less than thirty days nor more than sixty days from the date the notice is served on the parties to the contest. This notice shall be mailed by certified mail with return receipt requested.

c. The superintendent shall have the power to adjourn hearings from time to time upon reasonable notice to all interested parties. If requested and if necessary, he shall issue subpoenas to compel the attendance of witnesses to testify. The evidence shall be confined to the subjects stated in the notice of contest. A deposit, as required by W.S. 41-4-314, for each day of taking evidence, shall be required from each of the parties. The contestant shall arrange for a record to be taken and shall pay the cost of preparing the transcript of the hearing before the record is forwarded by the superintendent to the State Board of Control for final determination or adjudication.

d. The water division superintendent shall transmit all the evidence and testimony from a hearing on a contested proof to the Cheyenne office of the Board in person or by certified mail.

e. The specific rules of practice for contested cases are described in Chapter VI of these regulations.

CHAPTER V

PETITION INFORMATION

Section 1. Initiation. Matters concerning adjudicated appropriations of water, all changes of use, and ground water permits under which water has been put to beneficial use, must be brought before the State Board of Control in the form of petitions. In most cases, it will be necessary for the surveyor, or other party preparing a petition, to secure detailed information from the records of the State Board of Control. Assembly of this information from the Board records will be greatly simplified if the request for information is accompanied by a general statement as to the nature of the proposed petition.

Section 2. Required Information.

a. The permit number and name of the original appropriator (generally found in the Tabulation of Adjudicated Water Rights), the proof number, the Order Record citation (book and page), and the Certificate Record (book and page) wherein the appropriation is recorded or, in the case of a decreed right, the specific reference to the decree under which the appropriation was granted, should be included in the petition to properly identify the appropriation involved. This information is available from the office of the State Board of Control.

b. It is the responsibility of the registered engineer or land surveyor to accurately portray, by map and written statement, the existing conditions ~~on the ground~~ on-the-ground. The information of record relating to adjudicated water rights may not properly reflect the conditions ~~on the ground~~ on-the-ground. Therefore, care must be exercised in utilizing record information. Where there are discrepancies between the record and the actual situation, these differences should be pointed out to the Board, and, where necessary, a proper request made to correct the record to reflect the true conditions. If there is a question as to when it is necessary to correct the records, it is suggested that an inquiry be directed to the Board, setting out the circumstances and asking how to proceed.

Section 3. Hearing Expenses. In all hearings before the division superintendents or the State Board of Control where oral evidence is to be presented, the petitioner or contestant shall provide and pay for a complete transcript of testimony as required by the statute or statutes applicable to the petition involved. In the case of an abandonment petition, the party initiating the abandonment (contestant) shall provide and pay for a complete transcript.

Section 4. Filing Requirements.

a. A petition filed with the State Board of Control, Cheyenne, Wyoming, must be accompanied by a letter of transmittal designating a person to receive correspondence concerning the petition.

b. A petition must be in the form of a sworn affidavit signed by the petitioner or his authorized agent before a notary public or other officer authorized to administer oaths, the original of which must be filed with the Board. Photocopies or fax copies are not acceptable.

c. The petition must be filed with the State Board of Control at least thirty days prior to the date of the meeting of the Board at which the petition is to be considered.

d. The petition of an incorporated or unincorporated ditch company or irrigation district, or other corporation, such as a land and livestock company, must be accompanied by evidence of the authority of the officers or agents to present the petition. Generally, a certified copy of an excerpt of the company or district minutes authorizing such action is sufficient. When a petition involves ditches which are individually owned or in partnership, all parties of interest should join in the petition. If another person is to act in their behalf, the petition must be accompanied by the proper authorization.

e. Powers of attorney, or any other supporting documents shall be of legal form and shall be notarized.

f. The required fee(s) in each case must be received by the Board before final action can be considered on any petition.

Section 5. Maps and Surveys.

a. Petition maps must be on good quality tracing linen or an acceptable equivalent. All maps to be filed in the office of the State Board of Control shall conform with the Regulations and Instructions of the State Engineer's Office. Particular attention shall be accorded the land grid which is used on maps accompanying petitions, which shall agree with the current U.S. Government survey plat as to lotting and other subdivision identification. Sufficient information should be placed on the map to clearly show what is proposed in the petition. This can be done by use of a proper map title, a detailed map legend, proper land ownership and explanatory notes and labels as needed.

b. The same map used for an application for permit to the State Engineer and/or a petition to the State Engineer may accompany a petition to the State Board of Control when it is feasible to show all the required information on one map. In such a situation, the map title shall reflect that the map supports two or more proposals by identifying each in detail. The original shall be filed with the State Engineer, while a paper print may be filed with the State Board of Control.

c. All maps in support of petitions must bear the certificate of a professional engineer or land surveyor licensed to practice in Wyoming.

d. Maps shall be prepared from field notes and a survey and shall reflect the true conditions ~~on the ground~~ on-the-ground. The survey may be supplemented by information from aerial photographs and the records of the State Board of Control and State Engineer. However, such supplemental information is not to be substituted for a survey made ~~on the ground~~ on-the-ground. Because most petitions to the State Board of Control deal with lands which are irrigated in whole or in part, the certificate should reflect what lands shown on the map are in fact irrigated. A statement that lands have been irrigated, or could be irrigated, or are irrigable, is not acceptable. The Board must know the true situation ~~on the ground~~ on-the-ground which exists at the time the map is prepared. For example, if part of the lands in the original adjudication lie above a ditch and have not historically

been irrigated, or are not now being irrigated, the map should portray this situation, which should also be reflected in the certificate. The same type of information is generally required when ground water appropriations are involved.

e. Maps must not be folded.

f. If a special situation arises which does not appear to be compatible with the map requirements outlined above, specific written permission from the ex-officio secretary of the Board should be obtained in order to deviate from these map requirements. Such a permission letter must be transmitted with the petition and map when they are filed.

g. When a delivery system (means of conveyance) becomes so complicated in the view of the division superintendent that it hampers water administration, the division superintendent may require that a petition to describe or change the means of conveyance be filed.

h. All maps which accompany petitions for change of water rights shall:

(1) Show by proper cross-hatching the location within 40-acre subdivisions the lands from which the water right is being removed and/or the lands which are affected by the change. Do not use symbols. If necessary, show two views, one as presently irrigated, and one as proposed to be amended.

(2) Show all ditches, pipelines and other means of conveyance needed to support the petition.

(3) Show by tie from a found corner of the public land survey the location of all points of diversion, wells, pumps, and pivot points for circular sprinklers.

(4) The legend which corresponds with the appropriate cross-hatching shall clearly state the right involved and how it is to be amended.

(5) All landmarks and physical features such as highways, railroads, streams, etc., shall also be shown on the map.

(6) Indicate the location of points of diversion, reservoir outlets, wells, pumps and pivot points by latitude and longitude.

(7) Delineate ownership boundaries of lands described in the petition, and all other ownership boundaries required by the proposed petition.

i. Computer generated maps are acceptable with an original seal and signature within the certificate of a professional engineer or land surveyor.

Section 6. Proposed Subdivision Developments. ~~Wyoming~~ Statute W.S. 18-5-306 (a)(xi) provides for the disposition of any water rights appurtenant to the lands involved in a proposed real estate subdivision development prior to its approval by the county officials. The disposition of each subject water right must be in accordance with one or more of the ~~three~~ five (5) procedures outlined below:

a. If there are no water rights found appurtenant to the subdivision lands, the developer should obtain a statement confirming this fact from the office of the state engineer for submission to the county officials.

ab. Subdivider may submit to the Board of Control or the State Engineer the documentation necessary to relinquish all or part of the water rights:

(1) If the water rights are adjudicated, the developer will submit to the Board of Control a petition for voluntary abandonment. The petition must be accompanied by a statement of ownership certified by the appropriate county clerk or some other acceptable proof of ownership. Other documentation may be required ~~by the Board.~~ (See Section 18 - Voluntary Abandonment.)

(2) If the water rights are unadjudicated, the developer will submit a written request to the State Engineer for either a cancellation of the entire permit or for the elimination ~~from the permit~~ of the lands involved from the permit. Either request must be accompanied by a statement of ownership certified by the appropriate county clerk or some other acceptable proof of ownership.

~~bc.~~ The subdivider may ~~submit to the Board the documentation necessary~~ petition to transfer all or part of the water rights to new lands, or change all or part of the water rights to new uses, and thereby provide for the continued use ~~of the water outside the subdivision~~. A petition and accompanying map certified by a professional engineer or land surveyor licensed to practice in Wyoming will be required (see Section 11 below (Authorizing Statutes) and the applicable sections of the State Engineer's Regulations and Instructions on the preparation of maps).

~~ed.~~ After In addition to disposing of the water rights under proposed roadways and other areas no longer to be irrigated, the subdivider may leave all or part of the water rights on the land and develop a plan for distribution within the subdivision. ~~This alternative allows the developer to submit certified plans to the State Engineer and the division superintendent for distribution of the water rights to the subdivision lands. These plans must show all existing water rights which will remain attached to the lands and define the distribution of the water to the various lots within the proposed subdivision, as well as the location of return flows ditches and drains if applicable (see the sections of the State Engineer's Regulations and Instructions dealing with subdivisions and additions for information on water right distribution plans).~~

~~If there are no water rights appurtenant to the subdivision lands, the developer should obtain a statement confirming this fact from the office of the State Engineer for submission to the county officials. The developer shall submit a certified plan to the State Engineer, and a copy to the local irrigation district board, association, or remaining appropriators in the case of an unorganized ditch or pipeline system for distribution of the water right(s) within and through the subdivision. The Water Distribution Plan must show:~~

(1) All existing water rights which will remain attached to the subdivided lands.

(2) How each water right is to be conveyed from the source to and beyond the subdivision.

(3) How the water is delivered to the various lots within the subdivision.

(4) How waste water under the new usage pattern(s) is to be handled.

(5) How much acreage of each water right is to remain appurtenant to each subdivision lot.

(6) This plan will be evaluated so it does not introduce or perpetuate errors in the records of the State Engineer's Office.

(7) The water right items to be shown on the plat map for each subdivision lot should include:

(a) Permit number, proof and certificate record (if adjudicated), court decree priority (if applicable), and stream name, name of supply facility, priority date, and source of the water right(s).

(b) Numbers of acres permitted or adjudicated and currently being actively irrigated.

(c) The facility which conveys water from the source stream to the subdivision should be shown in its entirety, on the location map.

(d) The means of conveyance of the water shall be shown to each lot entitled to water delivery. In addition, culverts to convey the delivery under driveways and streets within the subdivision should be shown.

(e) If necessary to assist in the evaluation of the means of delivery and application of water to the lots within the subdivision, contour lines, direction of slopes or other means of showing direction of water flow should to be included.

(f) Because property owners are responsible for the drainage of their waste water, depict how waste water is to be managed to insure that it does not damage any adjoining lands nor alter historic return flow patterns. To prevent property damage from irrigation or waste water to lots down gradient within the subdivision it may be necessary

to design and show waste ditches or drains to capture waste water or return flow from the upper lots.

(8) Since Wyoming law does not recognize any riparian water rights, lot owners have no right to water flowing past or through the subdivision other than for permitted use(s) which is specifically appropriated or adjudicated to their lot via the State Engineer's Office or the State Board of Control. A statement to this effect shall be added to the plat.

(9) Final approval by the State Engineer of the proposed plan to deliver water to the subdivision shall be sent to the appropriate county which enforces notice to the local irrigation district board, association, or remaining appropriators in the case of an unorganized ditch or pipeline system before giving final authorization for the subdivision. Copies of the State Engineer's approval along with the map will also be sent to the subdivider, the water division superintendent, and the hydrographer/water commissioner.

(10) Upon final approval of the subdivision by the appropriate county's Board of County Commissioners, a reproducible mylar map of the subdivision plat shall be provided to the State Engineer's Office for incorporation into their records. The subdivider should make available a copy of the approved water right distribution plan to each lot owner as a lot is purchased.

(11) Due to the complicated nature of water administration matters, the subdivider should allow at least 90 days from the time the subdivision plat is submitted to the State Engineer's Office for a final decision by the State Engineer. If the Water Distribution Plan is associated with a Petition or Authorization to Detach Water Rights, it is possible that the plan approval by the State Engineer will be delayed until the Board of Control has taken action on the associated Petition or Authorization to Detach Water Rights at its quarterly meeting.

e. Authorization to Detach Water Rights

(1) An Authorization to Detach Water Rights (ADWR) relates to the "Water Right Deeds" referred to in

W.S. 41-3-324, and may be used to satisfy Title 18 (W.S. 18-5-306 (a)(xi)) requirements to the State Engineer.

(a) An approved ADWR shall constitute authorization for the grantee to request transfer or relinquishment of, i.e., voluntarily abandon, a water right. If a change of use or change in place of use petition is not filed with the State Engineer or Board of Control within five (5) years of the date of the ADWR and such petition subsequently granted, the water right(s) is deemed to be voluntarily abandoned and the State Board of Control will issue an order to that effect.

(b) Once approved, an ADWR for a subdivision cannot be rescinded nor the water rights later re-attached by petition to the same subdivision from which they originated without an approved subdivision Water Distribution Plan and before abandonment is ordered, unless the county does not approve the subdivision, in which case a request for withdrawal of the ADWR must be filed before abandonment is ordered by the Board.

(2) Map Requirements

(a) If an ADWR is filed with a petition or a Water Distribution Plan, then all existing mylar map requirements must be met. If an ADWR is not associated with a petition or a Water Distribution Plan, then a good quality paper map is acceptable, certified by a PE or LS. All maps involved with ADWRs must delineate the area of each water right involved to be authorized for detachment, specifying the acreage within each quarter-quarter. The title block must show that it is also the "Map to Accompany the Authorization to Detach Water Rights" when with a petition or Water Distribution Plan.

(3) Land Ownership

(a) Land ownership by the grantor in the form of a certificate of ownership or a copy of a recorded warranty deed is required for all lands under an ADWR.

(b) The grantor or their successors are responsible for providing notice, to the successive purchasers of those lands, of the status of the water rights authorized for detachment and that this water right

will be removed or abandoned within five (5) years. Evidence that the ADWR was timely recorded in the proper County Clerk's Office must be provided to the Board of Control at the time the ADWR is filed with the Board. If the Board subsequently approves changes to the land description, the grantor or successors are required to re-record the corrected ADWR in the county.

(4) Historic Use Requirements

(a) Prior to filing a petition and map for a change of place of use or change of use for lands that were previously authorized for detachment by the Board of Control, evidence of recent historical use, within the five (5) years immediately prior to the signing of the ADWR, and other requirements will be needed for submittal with the associated petition. If the water rights are being placed in a subdivision, a Water Distribution Plan will also be required. Until such change or abandonment is granted by the Board of Control, water rights involved in the ADWR remain attached to the lands for the described permitted use. If no petition completing the detachment and transfer has been received prior to the end of the five (5) year period, the Board of Control, without further notice to landowners, will enter an order abandoning the water rights on those lands from the records of the Board of Control.

(5) Fees

(a) No fee is associated with the filing of an ADWR.

(6) Form Requirements

(a) The signatures of the grantee and grantor on the ADWR must both be notarized. Only fully-worded and notarized ADWR forms with accompanying map, proper land ownership documentation and evidence that the ADWR has been recorded in the County Clerk's Office, will be reviewed and considered by the Board of Control. See form with the required wording in Appendix A on page A29-30.

(7) Consent or Disclaimer

(a) Notarized disclaimer(s) of interest or consent(s) for an ADWR are required where the authorization to detach is only for a portion of an un-delineated blanket appropriation or court decreed water right, including any appropriation undefined within the affected quarter-quarter, to show that the other landowner(s) within the affected area are not adversely impacted by the apportionment of the appropriation between the landowners as shown in the ADWR and its accompanying map.

Section 7. Consent. When a petition for a change of water rights is filed with the State Board of Control which requires that consent be obtained from the owners of appropriations of water that might be affected (see sample Consent form in Appendix A for required waiver of further notice requirements), which in some cases can be from an organized company representing individual owners, but consent cannot be obtained, the procedure shall be as follows:

a. In accordance with the Wyoming Administrative Procedure Act, the Board, at a regular or special meeting, may order that a hearing be held by the superintendent of the water division in which the appropriation proposed to be changed is located. The date and place of the hearing shall be fixed by the superintendent, who shall notify all parties known to own an interest in any affected appropriations of the time and place of the hearing.

b. Notice shall be given by legal advertisement, by certified mail, or by acknowledged personal service, depending on the type of petition, not less than thirty nor more than sixty days before the date of the hearing.

(1) If personal service is utilized, it shall be made by the superintendent or by the hydrographer commissioner or water commissioner, and acceptance shall be by endorsement on the copy which is retained by the superintendent.

(2) In cases where personal service cannot be obtained, by certified mail or otherwise, an advertisement, published in at least one issue of a newspaper of general circulation in the county where the appropriation involved

is situated, shall meet the requirement of notice of the hearing provided that it name the party requesting the change and set forth the time and place of the hearing and a general description of the petition.

c. The superintendent shall have the power to adjourn hearings from time to time upon reasonable notice to all parties interested, and shall allow parties to produce witnesses and offer such testimony as they may deem necessary to inform the State Board of Control as to the facts concerning the petition.

d. The cost of taking and transcribing the testimony, and of securing the service upon the parties involved shall be borne by the petitioner.

e. These procedures shall be followed with petitions involving change of point of diversion, or change of point of diversion and/or means of conveyance, when one or more appropriators affected by the proposed change neglects or refuses to give the necessary consent to the change.

Section 8. Fees. See the current publication of Fees - Wyoming State Engineer's Office and Wyoming State Board of Control.

Section 9. Funds. The appropriate amount for the county recording fee shall be used by the Secretary of the Board to pay for the recording of a certificate of appropriation or amended certificate of appropriation or order in the office of the county clerk of the county in which the water right is situated, and the remainder of the fee shall be remitted to the State Treasurer for credit to the general fund. If the Board of Control denies the petition, the recording fee shall be returned to the person, association, or corporation submitting the petition. All other fees received by the Board for copies, certified copies of records, tabulations of adjudicated water rights, etc., shall be transmitted to the State Treasurer for credit to the general fund of the State of Wyoming (see W.S. 41-4-514).

Section 10. Proof of Ownership. The proof of ownership of lands involved in a petition can be in the form of a certificate from the county clerk, but it may be in some other form, such as a copy of land purchase

contract or recorded warranty deed. If the lands are being purchased by the petitioner from the owner of record, a consent to the petition by the seller is required. If the ownership is joint in nature, all co-owners must either join as petitioners or consent to the petition. In the case of husband and wife ownership, it is best if both parties sign the petition as petitioners. When all or part of the lands involved are managed by a federal government agency, the petitioner must show some authority to request the proposal in the petition such as a lease, special use permit, etc. In addition, consent to the petition from the government agency must be obtained. If the lands involved are State owned, a consent from the State Land Office is required. Proof of ownership must also be provided for all persons consenting to the petition.

Section 11. Authorizing Statutes. The following statutes authorized the various petitions enumerated hereunder:

- a. W.S. 41-3-114
 - (1) Change of point of diversion.
 - (2) Change of point of diversion and means of conveyance.
- b. W.S. 41-4-514 -- Correction or amendment of certificate of appropriation.
- c. W.S. 41-3-102 through 41-3-104 -- Change of use and/or change in place of use.
- d. W.S. 41-3-401 through 41-3-402 -- Involuntary abandonment.
- e. W.S. 41-4-517 -- Appeal from endorsement of the State Engineer.
- f. W.S. 41-3-917 -- Change in location of well.
- g. W.S. 41-3-612 -- Rotation of water use - (see Appendix A of these Regulations and Instructions).
- h. W.S. 41-3-329 -- Change of point of diversion for a reservoir.

Section 12. Change of Point of Diversion - Surface Water. The required contents for a petition for change of point of diversion of surface water are stated in W.S. 41-3-114 (ditch) or 41-3-329 (reservoir). The following information is required:

a. HEADING -- Show ample description and identification of the ditch (or reservoir) and appropriation to be changed.

b. OPENING STATEMENT -- Identify the petitioner; show a mailing address and give a general introduction.

c. BODY --

ITEM 1 -- Show that the petitioner is either the sole or partial owner of the ditch or facility for which a change in point of diversion is to be requested, give the name of the ditch or facility, source of supply, permit number, and priority, and identify any documentary evidence of ownership being furnished with the petition.

ITEM 2 -- Identify the original appropriator, and give the name of the ditch (or reservoir), the proof number, the Order Record Book and page number, the Certificate Record Book and page number, and the priority date of all adjudicated appropriations and all permits in good standing which utilize the point of diversion which is to be changed.

ITEM 3 -- Set forth the change that is desired, describing in detail both the original point of diversion and the proposed new point of diversion (or new reservoir location). Describe the acreage under each appropriation to be changed and give a short statement of the necessary physical work to accomplish the proposed change in point of diversion.

ITEM 4 -- Give reasons why the proposed change is desirable.

ITEM 5 -- Indicate whether or not there are any intervening diversions between the original and proposed new point of diversion (or new reservoir location). If there are intervening diversions, identify them and indicate their location by subdivision, section, township and range. Show whether or not consents to the proposed change have been obtained from the intervening appropriators.

Written consents should be obtained and submitted along with the petition (a sample consent form is included in Appendix A with these Regulations and Instructions). If consents cannot be obtained, a hearing must be held. It is the policy of the Board that a change in point of diversion will be limited to the amount of water available in priority at the original point of diversion.

ITEM 6 -- Identify all intervening tributaries or other sources of supply. If there are none, make a simple statement to this effect.

ITEM 7 -- State whether or not any other appropriator from the same source of supply will be injured in any way.

ITEM 8 -- A map is required and must show the location of the present point of diversion, the proposed new point of diversion, with both locations properly tied to a corner of the public land survey. It also should show the location of all intervening points of diversion.

The location of the new portion of the ditch (or reservoir) also should be shown on the map. The map must show the lands irrigated which are involved in the change.

d. PRAYER -- State, in summary, specifically what is desired to be accomplished by the petition.

e. No fees are required in connection with a petition for change in point of diversion (or change in reservoir location).

f. A change of point of diversion petition may not be necessary if the new point of diversion for the entire facility is in the same 40 acre subdivision as the record point of diversion, if there are no intervening points of diversion or intervening sources of supply, and if there are no injury concerns.

g. This outline and sample petition in Appendix A of these Regulations and Instructions are intended to apply to the typical petition which might be filed with the State Board of Control. If a proposed petition appears to involve too many appropriations to conveniently list the land descriptions in the petition or to readily show the lands on the map, it is suggested that an inquiry be directed to the Board explaining the situation and asking advice as to how to proceed.

h. An alternate point of diversion may be requested using the same instructions described above ~~in times when water is not available at the original point of diversion.~~

Section 13. Change of Point of Diversion and/or Means of Conveyance. The required contents of a petition for change of point of diversion and means of conveyance are found in W.S. 41-3-114. The following information is required:

a. HEADING -- Show ample description and identification of the appropriation or appropriations to be changed.

b. OPENING STATEMENT -- Identify the petitioner, show a mailing address and give a general introduction.

c. BODY --

ITEM 1 -- Show that the petitioner owns all of the lands irrigated under the appropriation to be changed. Mention inclusion of documentary proof of ownership.

ITEM 2 -- Describe in detail the appropriations to be changed, showing the name of the original appropriation, permit number, proof number, stream, ditch, priority, Order Record Book and

page number, and Certificate Record Book and page number.

ITEM 3 -- Give a complete legal tie and location of the present point of diversion. Name and describe the ditch into which the proposed change is to be made, giving the legal tie to the location of the point of diversion and indicating the appropriations already involved, or stating whether this is to be an entirely new ditch. Describe the lands under each appropriation for which a change in point of diversion and means of conveyance is proposed. Include a short explanation of the physical arrangement ~~on the ground~~ on-the-ground.

ITEM 4 -- Give reasons why the proposed change is desirable.

ITEM 5 -- State that consents have been obtained from all other appropriators using the two facilities directly involved, i.e., the old and new ditches. Written consents should be obtained and submitted with the petitions. If all appropriations are being transferred out of the ditch of record, then a statement should be made to show what will become of the ditch, such as, "ditch will be abandoned, headgate removed and diversion closed to the passage of water."

ITEM 6 -- Identify intervening headgates and points of diversion, or note the lack thereof. If there are intervening headgates or points of diversion, describe their location by subdivision, section, township and range. Also show whether or not consents to the proposed change have been obtained from the intervening appropriators. Such consents should be obtained and submitted with the petition (a sample consent form in Appendix A accompanying these Regulations and Instructions). If consents cannot be obtained, a hearing must be held.

ITEM 7 -- Identify any intervening tributaries or other sources of supply. If there are none, make a simple statement to that effect.

ITEM 8 -- State whether or not any other appropriator from the same source of supply will be injured in any way.

ITEM 9 -- A map is required and shall show the location of the stream, both ditches and the land irrigated thereunder as they affect the appropriation of water to be changed, as well as the location of any intervening points of diversion and sources of supply.

d. PRAYER -- State what is desired to be accomplished by the petition.

e. No fees are required in connection with a petition for change of point of diversion and/or means of conveyance.

f. This outline and the sample petition in Appendix A of these Regulations and Instructions are intended to apply to the typical petition which might be filed with the Board. If there is any question as to the applicability of these requirements to a specific petition because of the number or type of appropriations involved, etc., an inquiry should be directed to the Board explaining the situation and asking advice as to how to proceed.

g. This type of petition may also be used to propose a partial change of point of diversion and/or means of conveyance of a portion of an appropriation. For example, a portion of an appropriation is to be changed to another ditch or pump for irrigation through a sprinkler system while the remainder of the appropriation remains under the ditch of record.

h. A petition for change of point of diversion and/or means of conveyance shall be allowed only when the change will not adversely affect any existing right in good standing at the time the change is made.

i. It shall be a part of the Order of the Board, where a complete change of point of diversion and means of conveyance is made, that the old point of diversion shall be completely and permanently closed to the satisfaction of

the Division superintendent at the time the new point of diversion is put into operation.

j. An alternate point of diversion and/or means of conveyance may be requested using the same instructions described above ~~in times when water is not available at the original point of diversion.~~

Section 14. Correction or Amendment of Certificate of Appropriation. The authorization for this petition and provisions pertaining to hearing, costs, endorsement on the records, and other matters are found in W.S. 41-4-514 through W.S. 41-4-517. The following information is required:

a. HEADING -- Show sufficient description and identification of the appropriation or appropriations to be amended.

b. OPENING STATEMENT -- Identify the petitioner, and give a mailing address and a general introduction.

c. BODY --

ITEM 1 -- Indicate whether the petitioner is the sole or part owner of the appropriation and of all or part of the lands described in the appropriation. Mention inclusion of proof of ownership.

ITEM 2 -- Describe in complete detail the appropriation which will be affected by the petition by showing the name of the original appropriator, proof number, stream, ditch, permit number, priority, Order Record Book and page number, and Certificate Record Book and page number.

ITEM 3 -- Delineate the lands under the appropriation by legal subdivision which are currently irrigated or proposed to be irrigated.

ITEM 4 -- Give sufficient reason for the change requested. Mention briefly the occurrence of error or other circumstances and history that

might justify the requested correction or amendment.

ITEM 5 -- Fees are required for a petition of this type, unless it is clearly evident the error to be corrected was originally by the Board (see Board Fee Schedule).

ITEM 6 -- State conclusively whether or not any other appropriators from the same source of supply will be injured in any way.

ITEM 7 -- State that the required map accompanies the petition. The map must show the location of the ditch and the lands irrigated therefrom. The lands proposed to be excluded and the lands proposed to be included must be shown on the same map by different cross-hatching.

d. PRAYER -- Set forth, in summary, specifically what is desired to be accomplished by the petition.

e. If an error in the original appropriation is to be corrected and the proposed change concerns lands now owned by another, the owner's written consent should accompany the petition. If consent cannot be obtained, a hearing may be required.

f. A petition may also be filed when lands with attached adjudicated water rights have become seeped or otherwise unfit for the production of crops by irrigation, and it is the desire of the appropriator to amend the land description in the certificate of appropriation by excluding these lands and substituting other suitable lands of equal or less area in lieu thereof. The amended area may not exceed the area actually irrigated under the original right.

g. A hearing may be required for all petitions where the redescription of the appropriation includes lands not in the original description of the appropriation, except in the case of simple clerical error.

h. This type of petition is also used to redescribe territorial "blanket descriptions" and court decree rights so as to reflect on the record the actual situation ~~on the~~

~~ground~~ on-the-ground. Typically, this type of petition must be filed before lands can be sold, since the buyer wants to know exactly where the water rights are located. This type of petition may also be necessary in situations involving a change to a preferred use.

i. Petitions may not be approved which would activate a water right, which has not been exercised for at least five years when water has been available for use.

j. Petitions to correct or amend the description of ground water appropriations must be accompanied by copies of the pumping power records for at least the five-year period prior to the petition filing date (see sample petition in Appendix A of these Regulations and Instructions).

Section 15. Change of Use. The definition of and order of preferred uses and the procedure for a change from a lower to a higher ranking use are set out in W.S. 41-3-102 through W.S. 41-3-104. Other changes of use not involving a change to a preferred use can also be made. The following information is required:

a. HEADING -- Show sufficient description and identification of the appropriation to be changed.

b. OPENING STATEMENT -- Identify the petitioner and give a mailing address and a general introduction.

c. BODY --

ITEM 1 -- Show either: (a) that the lands from which the appropriation is to be detached are owned by the petitioner and provide the necessary attached proof of ownership; or (b) that consent has been given from the owner of the lands for the water right to detach the appropriation as provided by W.S. 41-3-104.

ITEM 2 -- Describe in detail the record as it identifies the appropriation to be changed. Describe the lands involved by legal subdivision.

ITEM 3 -- Describe in detail the change desired. It is required that the appropriation to be

changed has previously been and is presently being applied to beneficial use. A statement to this effect should be made. Also set forth in detail any change of point of diversion and/or means of conveyance that may be required to make the appropriation available for the proposed new use.

ITEM 4 -- Any consents of the other appropriators using the same facility should be documented. If consents are not available, it should be so stated.

ITEM 5 -- Identify any intervening headgates between the original point of diversion and the proposed new point of diversion. Show that consents from the various appropriators using these facilities have been obtained. If consents cannot be obtained, it should be so stated.

Item 6 -- One important item in this petition not found in others is a comparison of the proposed use with the historic use of the water right being changed. This comparison could be in the form of a consumptive use report or study made on return flows, both historic and under the proposed use. If a water right has been exercised historically during only a part of the year, the State Board of Control shall limit the new use to that same period of time. The petitioner would have to apply for a current priority right to cover the time not covered by the historic use. The Board's decision is made after a close study of all the evidence, including any obtained at the hearing as prescribed in W.S. 41-3-104.

ITEM 7 -- State whether or not any other appropriator from the same source of supply will be injured in any way.

ITEM 8 -- State that the required map accompanies the petition. The map shall show the location of the affected ditch and stream, or well, the location of the land in each 40 acre subdivision affected by the proposed change and its area, the

location of the pipeline or other means of conveyance by which the water right is to be changed, and the location of the point of new use, and any intervening ditches or commonly used facilities.

ITEM 9 -- A fee is required for each appropriation for which the change is sought (see Board Fee Schedule).

d. PRAYER -- State what is desired to be accomplished by the petition.

e. A description by 40-acre subdivision is required to identify the lands from which it is proposed to detach the appropriation for a change of use. For a territorial appropriation, where the record describes several 40-acre subdivisions by a blanket description, it may be necessary to petition the State Board of Control for an amended certificate of appropriation or change of place of use to show the areas as irrigated and the 40-acre subdivisions from which the water right or appropriation is to be detached and changed to a new use. The 40-acre subdivisions shall be clearly shown on the map by distinctive cross-hatching. It must be clearly shown that the appropriation is an actual appropriation of water that is being applied to beneficial use on specific lands.

f. The Board will look with disfavor on petitions for change of use for which recent historic use cannot be documented. Documentation such as actual diversion or pumping records is necessary to establish the historic rate of diversion or pumping, the period of use, and the amount of water actually consumed. If no records are available to the petitioner, the petition must indicate the manner by which historic use will be demonstrated to the Board. If the proposed change of use also involves a change of point of diversion and means of conveyance of great distance, the petition shall be accompanied by a conveyance loss study which utilizes a methodology acceptable to the Board. The Board may also request that studies be prepared on return flow lag times, the pattern of return flows, the geology and soils in the affected areas, and on other pertinent subjects. Advance inquiry should be made to the Board's Cheyenne office to determine what studies might be recommended.

g. All required information and additionally requested documentation and studies must be provided to the Board before a hearing is scheduled. The Board's staff and any other affected persons need to have sufficient time to review the information, documents, and studies prior to the Board taking any action on a petition for change of use (see sample petition in Appendix A of these Regulations and Instructions).

Section 16. Change of Place of Use. The authorization for this petition and provisions are found in W.S. 41-3-104. The following information is required:

a. HEADING -- Show sufficient description and identification of the appropriation or appropriations to be changed.

b. OPENING STATEMENT -- Identify the petitioner, and give a mailing address and a general introduction.

c. BODY --

Item 1 -- Indicate whether the petitioner is the sole or part owner of the appropriation and all or part of the lands described in the appropriation, and has provided the necessary proof of ownership.

Item 2 -- Describe in complete detail the appropriation which will be affected by the petition by showing the name of the original appropriator, proof number, stream, ditch, permit number, and Certificate Record Book and page number.

ITEM 3 -- Delineate the lands under the appropriation by 40-acre subdivision which are actually irrigated or proposed to be irrigated.

ITEM 4 -- Give sufficient reason for the requested change.

ITEM 5 -- Fees are required for a petition of this type (see Board Fee Schedule).

ITEM 6 -- State conclusively whether or not any other appropriations from the same source of supply will be injured in any way.

ITEM 7 -- State that the required map accompanies the petition. The map shall show the location of the ditch and the lands irrigated therefrom. The lands proposed to be excluded and the lands proposed to be included shall be shown on the same map by different cross-hatching.

d. PRAYER -- State what is desired to be accomplished by the petition.

e. If the proposed change concerns lands now owned by another, the owner's written consent should accompany the petition. If consents cannot be obtained, a hearing may be held.

f. A petition may also be filed when lands with attached adjudicated water rights have become seeped or otherwise unfit for production of crops by irrigation, and it is the desire of the appropriator to change the land description in the certificate of appropriation by excluding these lands and substituting other suitable lands of equal or less area in lieu thereof. The amended area may not exceed the area actually irrigated under the original water right.

g. A hearing may be required for petitions where the re-description of the appropriation includes lands not in the original description of the appropriation, except in the case of simple clerical error.

h. This type of petition is also used to re-describe territorial "blanket descriptions" and court decree water rights so as to reflect on the record the actual diversion ~~on-the-ground~~ on-the-ground. Typically, this type of petition must be filed before lands can be sold, since the buyer wants to know exactly where the water rights are located. This type of petition may also be necessary in situations involving a change to a preferred use.

i. Petitions may not be approved which would activate a water right, which has not been exercised for at least five years when water has been available for use.

j. Petitions to change the place of use of ground water appropriations must be accompanied by copies of the pumping power or other records for at least five years prior to the petition filing date.

Section 17. Involuntary Abandonment. An involuntary abandonment is the forfeiture of a water right which has not been exercised for at least the five successive years past when water was available to satisfy the water right. Years during which a water supply was not available are not included. A petition for involuntary abandonment may be brought before the State Board of Control by any appropriator whose water right might be benefited by a declaration of abandonment of an existing water right or whose water right might be injured by the reactivation of an unused water right. Standing is determined by demonstrating that the petitioner holds a valid adjudicated water right or permit to appropriate water from the same source of supply which is equal to or junior in date of priority to the water right for which abandonment is sought, or a surplus water right if the water right sought to be abandoned has a priority date of March 1, 1945, or earlier. A petition for involuntary abandonment requires a fee (see Board Fee Schedule) for each appropriation for which abandonment is sought. Statutory authority for this type of petition and matters related is found in W.S. 41-3-401, and the contested case procedures set out in these regulations. The State Engineer may also initiate abandonment proceedings under certain conditions as stated in W.S. 41-3-402. A petition for declaration of abandonment must be supported by complete documentation which shows the ownership of each challenged appropriation, and the appropriation(s) upon which the petitioner relies for standing so that the Board's staff may provide notice to all persons known to have any interest in the proceedings. The petitioner is required to specifically list the lands served by each challenged appropriation, and to name all persons known or believed to have any ownership interest. The Board's staff may be contacted for assistance in describing adjudicated appropriations to be placed in contest, and the State Engineer's Office may be contacted for assistance in describing unadjudicated permits to appropriate water. The respective county records and all other readily available public records should be searched by the petitioner to obtain the names

and addresses of the owners. As a minimum, the petition should reference the appropriations' names shown on the records of the Board and provide current ownership information. If the petitioner desires to use surplus water for standing, it must be clearly described in the petition how the standing is determined. The petition should be substantially in the form indicated below and must contain the following information:

a. HEADING -- Sufficiently describe and identify the appropriation(s) for which a declaration of abandonment is sought.

b. OPENING STATEMENT -- Identify the contestant(s), and show a mailing address, and give a general introduction.

c. BODY --

ITEM 1 -- Show that the contestant(s) is the owner(s) of the appropriation for which standing is claimed. Identify the appropriation by the name of the original appropriator, the name of the ditch, the source of supply, the permit number, and the priority. Also describe the lands under the appropriation. Indicate that proof of ownership from the county clerk or other acceptable documentation accompanies the petition.

ITEM 2 -- Set forth the present ownership and completely describe the appropriation for which a declaration of abandonment is sought, showing the name of the original appropriator, proof number, stream, ditch, permit number, and priority. State that proof of ownership from the county clerk or other acceptable documentation accompanies the petition. ~~State the basis for standing and describe how the contestant's water right will be benefited by the declaration of abandonment or injured by the reactivation of the appropriation for which the declaration of abandonment is sought.~~

ITEM 3 -- State and fully describe the factual basis upon which the petitioner claims standing.

ITEM 34 -- State that water has not been applied to beneficial use for at least five successive years last past when water was available for use. The five years need not to be consecutive if there were intervening years when water was not available. However, the specific five years at issue must be specified in the petition.

ITEM 5 -- State and fully describe how the petitioner's water right(s) will be benefited by the abandonment, or how the petitioner's water right(s) will be injured by the reactivation of the water right for which abandonment is sought.

d. PRAYER -- Follow the format set out in the sample petition in Appendix A of these Regulations and Instructions.

e. If the petition seeks abandonment of only portions of an appropriation, the Board may require a map or maps be submitted. Where less than full 40-acre subdivisions are sought for abandonment, map(s) shall be submitted showing the situation as it currently exists ~~on~~ on-the-ground, including a description of the portion of each 40-acre subdivision for which the water rights are sought to be abandoned.

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

g. A transcript shall be made of the hearing and delivered to the Cheyenne Board office. The contestants shall pay for the costs of establishing the record of the proceedings. At the conclusion of the hearing, a report of the division superintendent shall be transmitted to the Board by the division superintendent. As soon thereafter as may be possible, the Board shall vote to declare the water right(s) in question abandoned, either in whole or in part, or vote to deny the petition.

Section 18. Voluntary Abandonment. A voluntary abandonment of a water right is a deliberate relinquishment by its owner, which is accomplished by petition to the State Board of Control. The following information is required:

a. HEADING -- Sufficiently identify the appropriation to be voluntarily abandoned.

b. OPENING STATEMENT -- Identify the petitioner, and show a mailing address and give a general introduction.

c. BODY --

ITEM 1 -- Show that the petitioner is the sole owner of the appropriation and the adjudicated lands of record, which are to be abandoned. Mention inclusion of proof of ownership from the county clerk or other acceptable documentation. Describe the appropriation in detail and show the name of the original appropriator, proof number, stream, ditch, permit number, and priority. Describe the lands of record by 40-acre subdivision under the appropriation.

ITEM 2 -- State that water under the appropriation is not presently being applied to beneficial use upon the adjudicated lands and that it will not be diverted or used in the future. Provide a reason why this has taken place.

d. PRAYER -- Declare the intention to abandon the appropriation, and request a proper Order of the Board.

e. No fees are required for a petition for voluntary abandonment.

f. If the water right(s) to be voluntarily abandon concern only portions of any appropriation(s), the Board requires that a map or maps be submitted showing the location of the portion of each 40-acre subdivision for which water right(s) is sought to be abandoned (see sample petition in Appendix A of these Regulations and Instructions).

Section 19. Automatic Abandonment. In accordance with W.S. 41-3-107, water rights on irrigated lands inundated by reservoirs will be automatically abandoned after five years of completion of construction of the reservoir. Change of use or change of place of use of the inundated water right(s) may be pursued by proper petition filed within the five-year period.

Section 20. Appeal from Endorsement. An appeal to the State Board of Control from an endorsement of the State Engineer on an application for permit to appropriate water or on a permit is authorized by W.S. 41-4-517. Such an appeal should include the following:

a. HEADING -- Identify the application or permit in question by the name of the proposed facility and by temporary filing number or permit number.

b. OPENING STATEMENT -- Identify the applicant and their mailing address and give a general introduction.

c. BODY --

ITEM 1 -- State that an application was filed or a permit issued, and show the date of filing and name of the facility, and give the temporary filing number or permit number. Show the nature of the challenged endorsement and the reasons stated in the endorsement.

ITEM 2 -- State the reasons for appeal.

d. PRAYER -- The prayer should ask for a hearing by the State Board of Control and a reversal or modification of the State Engineer's action (see sample appeal in

Appendix A accompanying these Regulations and Instructions).

Section 21. Change of Location of Well. Authorization for this type of petition is found in W.S. 41-3-917. Petitions affecting adjudicated ground water rights or unadjudicated ground water rights where beneficial use has been received will follow the sample format as those for surface water rights with some exceptions based on what is requested by the petitioner.

When a petition is submitted to the Board to change a well location, it must be accompanied by copies of all water production records for at least 5 years past to the extent available. A change may be allowed for the amount of water the well is actually capable of producing, but not in excess of the adjudicated right. A condition of approval on any change of location of a well shall be that no injury will occur to any other appropriator. The new well location must be indicated in the records of the Board by a new survey tie certified to by a licensed professional engineer or land surveyor. A new map is not required except as may be necessary to show the new location. A new well located within 100 feet of the original adjudicated well may be described by non-certified distance and bearing from the original well. This information will be provided by the petitioner to the Board on the required Statement of Completion Form (U.W. 6) for the new relocated well. The old well shall be properly abandoned and re-sealed unless it's re-permitted for beneficial use. The following information is required:

a. HEADING -- Sufficiently identify the appropriation to be changed.

b. OPENING STATEMENT -- Identify the petitioner and their mailing address and give a general introduction.

c. BODY --

ITEM 1 -- Show that the petitioner is the present owner of the ground water appropriation involved in the petition, and identify the proof of ownership being furnished with the petition.

ITEM 2 -- Describe the appropriation listing the name of the well, permit number (or statement of claim or well registration number), proof number, Order Record Book and page number, Certificate Record Book and page, and priority date. If the appropriation is for irrigation, the irrigated acreage must be described.

ITEM 3 -- Set forth the change that is desired by describing in detail both the location of the original well and the proposed new location of the well.

ITEM 4 -- Describe the reason for the proposed change.

ITEM 5 -- Indicate that the new well will be in the same ground water basin and the same aquifer. The original well depth and the proposed depth of the new relocated well must be provided. If the well is in a ground water control area, note that the recommendation of the Control Area Advisory Board will be provided.

ITEM 6 -- Maps are required in most instances. However, a letter certificate from a licensed professional engineer or land surveyor is sufficient, provided that the letter certificate indicates a tie, by distance and direction, has been made to the new site. A new well location within 100 feet of the original adjudicated well may be described by non-certified distance and bearing from the original well. This information will be provided by the petitioner to the Board on the required Statement of Completion Form (U.W. 6) for the relocated well. A correction can then be added to the proof of beneficial use of ground water map in the Board's records.

ITEM 7 -- No fees are required for a petition for change of location of a well.

ITEM 8 -- Unless re-permitted for another use, state that the old well will be properly abandoned and sealed in accordance with the State Engineer's Regulations and Instructions.

Abandonment and sealing of the old well will be completed within one year of the completion of the relocated new well and a Statement of Completion Form (U.W. 6) will be filed with the Board providing the details of abandonment and sealing.

ITEM 9 -- A Statement of Completion Form (U.W. 6) will be submitted to the Board within thirty days after completion of the new well.

d. PRAYER -- State specifically what is desired to be accomplished by the petition (see sample petition in Appendix A accompanying these Regulations and Instructions).

Section 22. Temporary Changes of Point of Diversion or Point of Withdrawal. The division superintendents are authorized to issue temporary changes of points of diversion or changes of location for ground water wells for short periods of time up to a maximum of one water use season. The affected surface or ground water right must be a valid appropriation. If a well is located in a ground water control area, the division superintendent may approve the temporary change. For these wells, prior to approving a permanent change of well location, the Board will obtain the recommendation of the control area advisory board. The approval for a temporary change shall not be given if the change would result in injury to any other appropriator. The approval of the temporary change does not guarantee that the State Board of Control will approve a permanent change. If a permanent change is to be requested, a proper petition must be filed with the Board during the period of the temporary change. A request for a temporary change must be made on the appropriate form and must be approved in writing by the appropriate division superintendent prior to being made. No increase in water use by a temporary change shall be allowed. The division superintendent will forward copies of all temporary change requests and approvals to the Board's Cheyenne office (see sample form in Appendix A accompanying these Regulations and Instructions).

Section 23. Rotation of Water Use. A rotation of water use does not require a petition to the State Board of

Control. This section merely explains the Board's policy and establishes a uniform practice.

a. When the source of supply is under priority administration and the owner or owners of two or more water rights can achieve greater efficiencies of use by rotating applications of the total supply available to several different water rights, they are allowed to do so under authority of W.S. 41-3-612, and according to the following conditions:

(1) All appropriations involved must be in priority and entitled to water during the entire rotation period;

(2) An actual rotation of water use for the lands under each appropriation is required, and each rotation period will not exceed ten days unless a longer period is agreed to by the hydrographer commissioner or water commissioner.

(3) The proposed rotation must not result in injury to any other appropriators;

(4) The rotation proposed is limited to one season;

(5) A "Notice of Intention to Rotate" must be filed with the appropriate hydrographer commissioner or water commissioner on a form provided for that purpose by the hydrographer commissioner or water commissioner;

(6) Written approval to the proposed rotation must be obtained from the appropriate hydrographer commissioner or water commissioner prior to commencement of any rotation and such approval shall be endorsed on the rotation form.

b. Requests to rotate must be delivered to the appropriate hydrographer commissioner or water commissioner on a facsimile of the appropriate form or in some other written form acceptable to the hydrographer commissioner or water commissioner which provides the same information (see sample form in Appendix A accompanying these Regulations and Instructions).

Section 24. Request for Regulation. Any holder of a water right may request that the source of supply for their water rights be regulated by the state water administrators as authorized by law and in accordance with established priorities (see W.S. 41-3-503, W.S. 41-3-504, W.S. 41-3-604 and W.S. 41-3-111). Requests for regulation shall be in writing. An appropriate form may be used, or a letter which contains essentially the same information may also be used (see sample form in Appendix A accompanying these Regulations and Instructions).

CHAPTER VI

CONTESTED CASE PROCEDURE

Section 1. Controlling Statutes. In any action before the Board wherein the State or any other party appears in an adverse position against the petitioner, or wherein the petitioner's legal rights, duties or privileges are required by law to be determined by the Board after an opportunity for hearing, the matter is conducted as a contested case pursuant to the Wyoming Administrative Procedure Act, W.S. 16-3-107 through 16-3-112. The specific statute or statutes for the type of petition involved may also require that certain procedures be followed.

Section 2. Additional Definitions. In addition to the terms used in the Wyoming Administrative Procedure Act, W.S. 16-3-101 through 16-3-115, and the definitions given in Chapter II of those regulations, the following definitions apply to contested cases before the Board:

a. "Contestant" means any party who initiates a contest against any petition or proof filed with the Board for its decision, or who seeks to have a water right declared abandoned.

b. "Contestee" means the holder of a water right against which abandonment proceedings have been initiated or a party who has filed a petition or proof with the Board which is being opposed or contested (the term "petitioner" may also be used if no confusion results).

c. "Hearing Officer" means whoever is designated by statute or by the Board as the person to preside over a contested case proceedings.

Section 3. Notice and Service.

a. Notice and service on all contested cases shall be given in accordance with W.S. 16-3-107. A contested case may be initiated by objection being made to a proof of appropriation or construction, by the filing of an abandonment action, or by objections raised to a proposed change of use or change in point of diversion, etc. In cases where the Board is required to hold a hearing in

determining the extent of an appropriator's water rights without any adverse party being present, contested case procedures as to notice and service shall be observed by the Board and by all persons who appear as parties.

b. In a contested case, any person whom the Board knows to have an interest in the matter shall be given notice of the proceedings and of all motions or pleadings by acknowledged personal service or by certified mail, return receipt requested. All unknown persons shall be notified through publication. After all persons wishing to appear as parties have made themselves known, usually at the commencement of a hearing, further notice and service may be made personally at the hearing or by first class mail to the addresses given by the parties. However, the record of the proceedings must be documented in some fashion, such as by transcript notation or by letter copy.

c. Proofs of certified mailings, whether made by the Board or by any party shall be made part of the record. Affidavits of publication shall likewise be made a part of the record.

d. The moving party, whether contestant or contestee, shall be responsible for paying publication charges and may be assessed for the Board's mailing costs connected with a contested case proceedings.

e. The hearing officer may give personal notice to any party at a hearing in any manner so long as the fact of service is documented in the record of the proceedings.

f. In an action for involuntary abandonment of water rights, the petitioner (contestant) shall search all readily available public records to identify all persons who may have any interest in the appropriation or appropriations for which the declaration of abandonment is sought. A list of such persons with their mailing addresses and respective land ownership interests shall be filed in the Board's Cheyenne office with the petition for declaration for abandonment. Within three working days, the Board's staff shall determine if the petition and accompanying list of affected persons appears to be complete. If so determined, the Board's staff shall by the end of the third day send a copy of the petition by certified mail to all persons believed by the petitioner or

Board's staff to have any interest in the matter. The action on the petition for declaration of abandonment shall be deemed as having commenced at the close of business on the day the petition was filed. If the Board's staff determines that the petition and supporting documents are inadequate to give notice to all persons believed to have an interest in the matter, or in any other particular, the original papers filed in the Board's Cheyenne office shall be returned to the petitioner by the end of the third by certified mail with a letter explaining any noted deficiency. A copy of the petition and supporting documents shall be kept for record purposes, but no action shall be deemed to have commenced as a result of the filing of a deficient petition for declaration of abandonment. However, there shall be no restriction of the correction and refileing of a deficient petition.

g. Each party in any contested case is required to keep the hearing officer and all other parties informed of his current mailing address and telephone number or that of his authorized attorney.

Section 4. Pleadings. Except as required by statute for the action initiated, and as stated in the notice of hearing or otherwise required by the hearing officer, formal pleadings are not mandatory. However, each party in a contested case proceedings is advised to make his or her position known in writing so that the issues of fact and law can be clearly defined. All documents in the nature of pleadings which are filed with the Board or given to the hearing officer are deemed to be verified or sworn statements and must be personally signed by the party for who they are submitted or by its attorney.

Section 5. Docket File. The official docket file for a contested case shall be maintained by the Board's Cheyenne office. All notices, pleadings, motions, transcripts, reports, documents, maps, and any other papers or evidence of any kind pertaining to a contested case proceeding shall be systematically filed in the docket file. When complete, the docket file shall constitute the record of the proceedings. Official filings shall not be made with any other person other than the secretary and/or adjudication officer or other Board employee in Cheyenne. Original documents, etc., which pertain to a contested case that come into the possession of any Board officer or

employee shall be forwarded to the Adjudication Officer in Cheyenne. When appropriate, duplicate copies should be provided to the division superintendent or other person designated as the hearing officer. The hearing officer may obtain or retain possession of all or part of the official docket file during the conduct of the hearing.

Section 6. Appearances.

a. Appearance or representation of parties may be made as follows:

(1) An individual may appear and be heard on his or her own behalf;

(2) A partnership may appear and be represented by a partner;

(3) A corporation may appear and be represented by an executive corporate officer, a managing employee, or other duly authorized agent;

(4) A municipal corporation or government agency may appear and be represented by an officer, a member of its governing body, or a duly authorized employee;

(5) An unincorporated association may appear and be represented by any bonafide general officer or full time employee authorized to represent the membership of the association;

(6) Any party may appear and be represented by an attorney at law admitted to active practice in Wyoming. An attorney admitted to practice in another state must associate with local counsel and move the hearing officer to allow his or her appearance.

(7) In unusual circumstances, the hearing officer may allow representation by other persons upon request.

b. The filing of a pleading by an attorney constitutes an appearance for the party he or she represents.

c. The secretary and hearing officer must be notified in writing of the withdrawal of any attorney.

Section 7. Hearing Officer.

a. In addition to such other duties as may be imposed by law, the hearing officer shall:

- (1) Issue Subpoenas;
- (2) Supervise the taking of depositions and other discovery as allowed by W.S. 16-3-107(g) and (h);
- (3) Conduct pre-hearing conferences as he or she deems necessary;
- (4) Arrange for attendance at the hearing of a certified court reporter and ensure that the hearing room is available as scheduled;
- (5) Officially open and close the hearing;
- (6) Administer oaths and affirmations;
- (7) Preside over the hearing and control the course of the proceedings;
- (8) Rule upon offers of proof and receive into the record of the case all competent evidence relevant to the issues;
- (9) Rule upon or otherwise dispose of all procedural motions and requests;
- (10) Prepare a recommended decision for consideration by the full Board at its next regularly scheduled meeting if so requested by the Board.

b. In performing his or her duties, the hearing officer may be assisted, in regard to procedural or legal questions, by the Attorney General, and by the adjudication officer in regard to the Board's books and records maintained in its Cheyenne office. Additionally, the hearing officer may allow or direct other State employees and officials to assist in the preparation of evidence. For example, State Engineer employees or ground water

control advisory board members may be asked to advise the hearing officer as to technical facts. They may question witnesses as directed by the hearing officer. They may also be asked questions by other parties. Their recommendations may be requested in either written or oral form. However, testimony always shall be given under oath and in a hearing.

c. Preferably, the hearing officer will be addressed by names or titles such as "Mr. Examiner" or "The Hearing Officer."

Section 8. Rules of Procedure. To the extent applicable, the Wyoming Rules of Civil Procedure will guide the conduct at a contested case hearing. These proceedings are being conducted before an administrative body and not a court, thus the technical rules of evidence do not apply (see W.S. 16-3-108).

Section 9. Official Notice. In any contested case proceedings, the hearing officer or the Board members may take notice of maps, documents, or other papers in the docket file, which have been brought to the attention of the parties. Official notice may also be taken of all information, data, and the material included within the books and records of the State Engineer and the State Board of Control. The Board may also make on-the-ground inspections. If official notice is to be taken of any information, data, or material not previously made available to the parties, or if a field inspection is relied upon, the parties shall be given notice and an opportunity to present rebuttal evidence (see W.S. 16-3-108[d]).

Section 10. Discovery Procedures. Limited discovery procedures are available to the parties as provided by W.S. 16-3-107(g) and (h). In advance of a hearing, any party may request that the other parties name their witnesses, state the nature of their intended testimony, or make the witnesses available for deposition. A request also may be made that documents, exhibits, etc., be produced for examination. Discovery and disclosure may be voluntary or as directed by the hearing officer or President of the Board as authorized by law.

Section 11. Subpoenas. As authorized by W.S. 16-3-107(d), the hearing officer, upon written request of a party, may issue subpoenas to compel the appearance of witnesses or the production of books, papers or other documents relevant or material to the inquiry. Upon authorization by the hearing officer or by the President of the Board, any voting member of the Board, the secretary, and/or adjudication officer may issue subpoenas in contested case proceedings. However, subpoenas are usually prepared by the attorneys for the parties and submitted to the hearing officer for signature.

Section 12. Motions. It shall be within the discretion of the hearing officer as to how to dispose of all procedural motions in a contested case. Motions for continuance shall be granted only if good cause is shown. Motions which go to the merits of a case shall be decided only by the full Board.

Section 13. Pre-hearing Conference.

a. At any time prior to the hearing, the hearing officer may direct the parties to consider:

(1) Simplification of the issues;

(2) The necessity or desirability of amending the pleadings;

(3) The possibility of obtaining admissions of fact and stipulations as to expert qualifications and authenticity of documents which can avoid unnecessary proof;

(4) Such other matters as may aid in the disposition of the case.

b. The pre-hearing conference may be conducted in person or by telephone conference call.

c. At the conclusion of a pre-hearing conference, the hearing officer shall cause to be prepared a pre-hearing order reciting the matters discussed and the agreements reached among the parties. This order shall control the subsequent course of the hearing unless

modified by the hearing officer to prevent manifest injustice.

Section 14. Disposition by Stipulation. Any contested case may be partially or finally disposed of by stipulation of the parties provided the Board also gives its approval. An appropriate order reflecting the terms of the stipulation will be entered in the Order Record at the conclusion of the proceedings.

Section 15. Default. In a case where a contest has been initiated, or a protest entered, and the party initiating the protest or entering the objection fails to appear at the hearing without good cause, the proceeding may be dismissed. A failure of any party in a contested case to appear at the hearing without good cause may allow the Board to decide all issues adversely against the party not present. In any event, the matter will be brought before the Board at its next regularly scheduled meeting for consideration and appropriate action.

Section 16. Full Board Hearing. Any matter which must be decided by the State Board of Control may at its discretion be heard by the full Board. A party in a contested case proceedings may make a request for a full Board hearing to the Secretary of the Board or the hearing officer. Any request for a full Board hearing will be communicated to the President of the Board for his or her consideration and decision, which is to be made in consultation with the other Board members. The party or parties requesting a full Board hearing shall make payment to the Secretary of the Board in an amount sufficient to cover all expenses, including travel expenses, for the Board members and necessary staff.

Section 17. Hearing Procedure. As nearly as may be practicable, contested case hearings shall be conducted as outlined below:

a. The hearing officer will announce that the hearing is called to order and state the case docket number, nature of the proceedings, and official title of the action.

b. The appearance of all parties appearing at the hearing will be taken and recorded.

c. The hearing officer will briefly review the allegations in any pleadings, state the position of the parties, and describe any evidence which has previously been presented.

d. All pending motions will be disposed of then or later.

e. Opening statements may be made in the following order by each party for the purpose of explaining their position and the evidence they intend to offer:

(1) The petitioner for the action involved, whether the petitioner be contestant or contestee;

(2) The party or parties objecting, responding or defending, whether they be contestant or contestee;

(3) ~~Interveners~~ Interveners whose appearances have been accepted;

(4) The State Engineer or any other Wyoming official or agency representative.

f. Each party will then present its evidence in the order stated in subsection "e" above. Cross examination will be allowed to every other party. The hearing officer, Board members, or the Board's legal advisor may also examine any witness. Exhibits will be marked as directed by the hearing officer. A party may appear as his or her own witness and give evidence in the form of testimony provided that they are sworn to tell the truth and may be cross examined by the other parties.

g. The petitioning party may then offer rebuttal evidence, and the other parties may cross examine.

h. The hearing officer will recall any witness which he or she or a Board member wishes to examine further.

i. Closing statements will then be allowed to each party in the order stated in subsection "e" above.

j. At appropriate times throughout the hearing, or at its conclusion, the hearing officer will announce any

intentions on the part of the Board to take official notice.

k. The hearing officer may recess or continue the hearing as he deems appropriate to the circumstances.

l. The hearing officer may allow testimony and evidence to be presented out of order.

m. Witnesses will be excused when their testimony has been concluded and there is no reason for them to remain present.

n. The parties may provide written briefs or memoranda at any time, or the hearing officer may call for whatever briefs he or she believes may be desirable.

o. After all interested parties have been offered an opportunity to be heard, the hearing officer will declare the evidence closed and excuse all witnesses not previously excused.

p. When the taking of evidence is closed, the hearing officer will allow the parties an opportunity to check that the reporter has in his or her possession or control all exhibits, reports, and other items of evidence accepted as part of the record.

q. At the conclusion of a contested case hearing, the hearing officer will announce that the evidence is being taken under advisement by the State Board of Control and that its findings of fact, conclusions of law and order will be released at its next regularly scheduled meeting or as soon thereafter as may be possible. A further announcement will be made that the Board's decision shall be recorded in the Board's Order Record kept in its office in Cheyenne, and that a copy shall be sent to each party of record by certified mail as soon as it can be put into written form.

r. It should be noted that before a final order has been entered in the Order Record, the evidence in a contested case proceeding may be reopened for good cause shown upon order of the State Board of Control.

Section 18. Witnesses.

a. Any witness summoned before the State Board of Control is entitled to receive the same fee as if he or she were appearing in a district court of the State of Wyoming. Witness fees are to be paid by the party at whose ~~insistance~~ insistence the witness' testimony is given. Witness fees are not required for state water officials who appear as witnesses in their official capacities.

b. Any persons who is to testify at a Board hearing in a contested case shall stand and be given the following oath or something substantially similar by the Hearing Officer:

DO YOU AFFIRM THAT THE TESTIMONY
YOU ARE ABOUT TO GIVE IN THE
MATTER NOW IN HEARING BEFORE THE
STATE BOARD OF CONTROL SHALL BE
THE TRUTH, THE WHOLE TRUTH, AND
NOTHING BUT THE TRUTH?

Section 19. Hearing Record.

a. In all contested cases heard by the State Board of Control, the oral testimony of witnesses shall be recorded by a certified court reporter. Except as may be otherwise provided by the statute(s) for the particular petition involved in the proceedings, the petitioner shall pay the reporter's fees and any other incidental costs of preparing the hearing record.

b. An original and one copy of a hearing transcript shall be provided to the Board's Cheyenne office. The parties to a contested case proceedings may purchase additional copies for themselves by contacting the reporter.

Section 20. Decision.

a. In all contested cases, the Board's decision shall be based upon the record of the proceedings.

b. After a case has been decided by the Board, the Secretary of the Board shall cause to be prepared a written

decision containing findings of fact, conclusions of law, and an order. The final written decision shall be approved by all Board members who voted on the matter before it is entered in the Order Record. The Board's Order shall become its final administrative action when signed and entered in the Order Record. The Secretary of the Board shall cause a copy of the Board's decision to be sent to all parties or their attorneys by certified mail.

CHAPTER VII

APPEALS AND DISTRICT COURT CERTIFICATION

Section 1. Judicial Review. Any final decision and order of the State Board of Control may be appealed to the district court for the county wherein the original action arose. Judicial review is authorized by W.S. 16-3-114, and is governed by the Wyoming Rules of Appellate Procedure as most recently amended by the Supreme Court of Wyoming. An appeal may not be initiated until after the Board's order has been entered in the Order Record.

Section 2. Concurrent and Primary Jurisdiction. At times the State Board of Control and the district court may have concurrent jurisdiction to hear a matter in controversy. Where a water right matter is involved, the Board's jurisdiction may be primary, or the district court judge may decide that the Board is better qualified to hear the case. When a civil action is filed in the district court but the judge decides that the Board should make the factual determinations, the Board shall hear and decide all matters certified to it by the district court as if the matter had come before the Board in the first instance. If the judge's instructions to the Board so require, the Board's decision shall be re-certified back to the district court for its review. If the instructions do not require the Board to make a report, judicial review of the Board's decision is authorized under W.S. 16-3-114.

Section 3. Certification to the District Court. Upon an affirmative vote of the Board, it may certify a question to the district court to resolve a matter which is outside of the Board's jurisdiction, but which must be resolved in order for the Board to make a decision regarding a petition or other proper business. A question to be certified to the district court shall be signed or attested to by the Secretary of the Board over the Seal of the Board.