

Wyoming Water Development Commission

January 6, 2016

Management Audit Committee

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Wyoming Legislative Service Office

Executive Summary

Wyoming Water Development Commission

Evaluation Purpose

In recent years, the Wyoming Water Development Commission (Commission) has made the Legislature aware of increased demand for funding for water development projects. These issues originally appeared limited to rehabilitation projects, but as of November 2015, funding requests for new development projects also outpace available funding. Accordingly, this evaluation includes review of the methods for managing the three Water Development Accounts (Account I, Account II, and Account III) as well as how the Commission can work to prioritize projects to stay within the Accounts' funding limits.

This evaluation also reviews numerous Commission administrative practices, including consultant selection for Level I and Level II planning studies, compliance with documenting its meetings, and concerns regarding written disclosures and voting recusals related to Commission members' conflicts of interest. Finally, potential statutory and practical difficulties related to the Commission's promulgation of Water Development Program (Program) rules and oversight of the Program and Water Development Office (Office) are also explored. LSO focused on this limited scope in order to provide timely information to the Management Audit Committee (Committee) and Legislature prior to the 2016 Budget Session.

Background

The Program was established in 1979 to develop Wyoming's unappropriated water and is currently funded through three water development accounts established to fund new development (Account I), rehabilitation (Account II) and the construction of large dams and reservoirs water projects (Account III). Three different and unequal distributions from the Severance Tax Distribution Account fund these Accounts.

While the Commission is statutorily the primary oversight entity for the Program, the Office provides day-to-day administrative support to the Commission. The Legislature's Select Water Committee is required to "monitor" the Commission and Program. Water development project applications are completed by the sponsor, reviewed by the Office, recommended by

the Commission, and sponsored in legislation known as Omnibus Water Bills by the Select Water Committee.

The Commission funds Level I (reconnaissance) and Level II (feasibility) planning studies with 100% state funds. For Level I and Level II planning studies, the Commission is required to follow State procurement laws when awarding professional engineering services contracts. Each spring, the Commission interviews engineering firms for new studies approved in the Planning Omnibus Water Bill.

The State and the project sponsor pay jointly for construction projects authorized through the annual Construction Omnibus Water Bill. However, contracting for these projects is handled by the project sponsor.

Over the past thirty-five years, the Legislature (mostly advanced and directed by Commission recommendations) has approved over 1,400 planning and

construction projects appropriations (including project amendments) totaling over \$1.4 billion.

Report, Finding, and Recommendation Summary

In recent years, the number of rehabilitation projects has exceeded the typical revenues allocated to Account II. This precipitated the Office and Governor to issue a 2015 supplemental budget request for additional revenues to fund rehabilitation projects. This request was submitted prior to notifying the Commission and without the Commission's advice or approval. With only half of the supplemental request funded by the Legislature and no projects cut as a result of the reduced appropriation, questions about the lack of project prioritization, the budgeting process, and account distribution status have arisen.

Chapter Two of this evaluation identifies current Commission practices with tracking and projecting account revenues and matching these with expected project commitments and requests. While this budgeting methodology is similar to how the state budgets each biennium, it does not account for possible cash constraints on the Accounts as revenue and expenditures are not always evenly distributed in each fiscal year.

As discussed in Chapter Three, statute requires the prioritization of development projects, which can be adjusted by the Commission to meet changing Program needs. The Commission's current Operating Criteria lists the type or broad categories of projects it will fund and are deemed eligible like "multipurpose" projects. Yet there is no other method by which the Commission scores, measures, ranks, or orders annual sponsors' applications. Prior to November 2015, with few exceptions, nearly every project deemed eligible had received

funding. The Commission does try to complete large projects through phasing, and may turn down projects if funding is available from other sources. However, given the fixed funding environment confronting increased project demands, a refined and robust prioritization model that considers the merit, funding, and readiness of a project is necessary.

Finally, in Chapter Four, the evaluation covers six Commission practices or administrative concerns that impact the effectiveness of the Program's functioning. Overall, the implementation of the Program resides with the Commission, but in reality, the Commission relies heavily on the Office Director and staff to fully exercise its authority in administering the Program. These practice and administrative concerns include:

- The essential absence of Program rules, especially where sponsor and application processes and requirements are concerned.
- That Commission "workshop" sessions, which can and often do appear to frequently influence subsequent "meeting" sessions, are not recorded and published in the minutes of Commission proceedings.
- That commissioners do not comply with written disclosures of conflicts of interest required under W.S. 41-2-121(c).
- That commissioner voting recusals are not guided by a reliable policy or protocol and are not consistently reflected in Commission minutes.

- That final consultant selection decisions are made without full notification or disclosure of how the Commission and Office apply factors listed in W.S. 9-2-1031(a).
- Possible misperceptions or misunderstandings of which entity, the Commission or Office, has primary oversight, administrative, and policy authority over the Program and Accounts.

The primary recommendations made within this evaluation focus on the Commission

fine-tuning its practices and actions for stronger and clearer Program function. These recommendations include policy considerations related to extending available funding, forming a clear and consistent project prioritization model, and establishing consistent policies and standards, related to administrative processes and actions. The evaluation also provides recommendations and policy considerations for the Legislature to assist in determining if modifications are needed to meet with changing funding, project, or other Program demands.

Agency Response

Water Development Commission

The Commission believes the report to be impressive and helpful and agrees with all recommendations and policy considerations directed toward the Commission with the exception of establishing a cash balance and tracking policy for the Accounts. The Commission notes that it still believes its Operating Criteria plays an important role in the operation of the Program, but will undertake a review of its rules and regulations as recommended. Additionally, it still believes in accounting for equitable distribution of consultant contracts after selection team decisions. Finally, the Commission expresses that it maintains a good working relationship with the Office, but will look to set internal policies to better outline the division of responsibilities between the Commission and Office for the Program.

Water Development Office

The Office states that the report represents a comprehensive investigation of the practices and procedures of the Commission and Office and that it offers a valuable resource and constructive recommendations to improve the Program. Specifically, the Office agrees with all recommendations except for two. The Office partially agrees with implementing the consultant contract equitable distribution requirement before consultant interviews and disagrees with any statutory revisions to the governance and oversight structure between the Commission and Office. The Office disagrees with three of the four policy considerations related to the Accounts, but agrees that the Commission and Legislature should explore additional options to extend available funding. Finally, the Office offers seven contextual comments about specific statements made in the report.



Recommendation Locator

Chapter Number	Recommendation Number	Recommendation	Page Number	Party Addressed	Agency Response
2	2.1	The Commission should review the funding needs of the dam and reservoir assets that are supported by the investment accounts and determine the amount of excess funds that should be redirected to Account I pursuant to W.S. 99-99-1001(c), and report back to the Legislature on potential statutory revisions.	27	Commission	Agree
3	3.1	<p>The Commission should develop a project prioritization process to guide its annual recommendation decisions and consider information including, but not limited to:</p> <ul style="list-style-type: none"> ▪ Statutory requirements such as projects that make use of unappropriated water; ▪ Operating Criteria project eligibility; ▪ Funding constraints; ▪ A project's ability to move forward after approval and appropriation; ▪ Emergent funding needs; and, ▪ The appropriateness and impacts of phasing on current and future project funding potential. 	39	Commission	Agree
4	4.1	The Commission should conduct a thorough review of its responsibilities, required actions, and processes related to W.S. 41-1-106 through 41-1-108 as well as W.S. 41-2-107 through 41-2-118 and establish clear and consistent procedures in Program rules for project sponsors.	45	Commission	Generally Agree

Chapter Number	Recommendation Number	Recommendation	Page Number	Party Addressed	Agency Response
4	4.2	The Commission should record and maintain public minutes of workshop sessions.	47	Commission	Agree
4	4.3	Members of the Commission should complete and file written disclosure forms, and continue to do so annually, in order to comply with W.S. 41-2-121(c).	48	Commission	Agree
4	4.4	The Commission should develop protocols and procedures for declaring conflicts of interests and recusals and voting actions should be clearly and consistently noted in meeting minutes.	52	Commission	Agree
4	4.5	The Commission should consider the criteria of W.S. 9-2-1031(a), including the equitable distribution requirement, prior to the consultant interviews and the Commission should consider scoring and documenting these considerations.	57	Commission	Agree
4	4.6	The Legislature could consider more explicit and/or different specifications in statute, to reflect the desired governance and oversight relationship between the Commission and Office for the Program and other water development responsibilities.	64	Legislature	Not Applicable
4	4.7	The Commission could consider creating a set of internal policies to clarify the specific duties and responsibilities of the Commission, commissioners, and Office in relation to one another for the administration of the Program, as provided for in statute.	64	Commission	Agree

Policy Considerations

Chapter Number	Policy Considerations	Page Number	Party Addressed	Agency Response
3	The Legislature could consider redistributing the severance tax revenues between the water accounts if there is a desired change in funding priorities.	28	Legislature	Not Applicable
3	The Legislature could consider statutory revisions to allow for the funding of dam and reservoir rehabilitation projects from Account III.	28	Legislature	Not Applicable
3	The Legislature or the Commission could consider establishing a formal cash monitoring policy.	28	Legislature and Commission	Disagree
3	The Legislature and the Commission could continue to consider ways to extend project funding.	29	Legislature and Commission	Agree



TABLE OF CONTENTS

Wyoming Water Development Commission

<i>Introduction, Scope, and Methodology</i>	<i>i</i>
Chapter 1 Background	1
Chapter 2 Water Development Funding.....	11
Chapter 3 Project Prioritization	31
Chapter 4 Commission Practices	41
Finding 4.1 Rules and Regulations and Operating Criteria	41
Finding 4.2 Open Meetings.....	45
Finding 4.3 Disclosures	47
Finding 4.4 Conflicts of Interest and Recusals.....	48
Finding 4.5 Consultant Selection	52
Finding 4.6 Commission and Office Roles for Program Oversight	57
Agency Responses	
Wyoming Water Development Commission	65
Wyoming Water Development Office.....	69
<i>Appendices</i>	
(A) <i>Wyoming Constitution and Statute</i>	<i>A-1</i>
(B) <i>Wyoming Water Development Projects.....</i>	<i>B-1</i>
(C) <i>LSO Commissioner Survey Questionnaire</i>	<i>C-1</i>
(D) <i>Project Prioritization Examples</i>	<i>D-1</i>



List of Acronyms

Wyoming Water Development Commission

Accounts.....	Water Development Accounts
Account I	Water Development Account I
Account II.....	Water Development Account II
Account III	Water Development Account III
A&I	Department of Administration and Information
AML.....	Abandoned Mine Lands
APA.....	Wyoming Administrative Procedure Act
DWSRF.....	Drinking Water State Revolving Funds
JAC	Joint Appropriations Committee
LSO	Legislative Service Office
MAC or Committee	Management Audit Committee
OSLI.....	Office of State Lands and Investments
Program	Water Development Program
RFP	Request for Proposal
SFC	School Facilities Commission
WOLFS	Wyoming On-Line Financial System
WWDC or Commission	Wyoming Water Development Commission
WWDO or Office	Wyoming Water Development Office



Scope, Introduction, and Methodology

Scope

The Legislative Service Office (LSO) is authorized by W.S. 28-8-107(b) to conduct program evaluations, performance audits, and analyses of policy alternatives. Generally, the purpose of such research is to provide a base of knowledge from which policymakers can make informed decisions.

The Management Audit Committee (Committee) voted during its December 2014 meeting to request a scoping paper of the Wyoming Water Development Program (Program). At its July 2015 meeting, the Committee discussed the scoping paper and voted to authorize a full evaluation of the topic. Under the guidance provided by the scoping paper and accompanying discussion of the Committee, LSO focused the evaluation on the Wyoming Water Development Commission (Commission), its responsibilities over the Program, and how it is funded. The following research questions were addressed:

1. Are the practices, policies, and procedures of the Wyoming Water Development Commission consistent with statute?
2. Is the Water Development Program adequately funded?
3. Does the Water Development Commission effectively and efficiently fund water development projects?

Based on information gathered during the scoping and survey processes for this evaluation, LSO focused on a limited scope in order to provide timely information to the Committee prior to the 2016 Budget Session. For additional explanation, the following notes summarize several Committee and LSO considerations that helped refine the scope of this evaluation:

- The Committee stated it has concerns regarding the possible lack of commissioner recusal and disclosure regarding potential conflicts of interest.
- The Water Development Office (Office) raised the concern before and after the 2015 General Session that Water Development Account II (Account II) is likely insufficient to support current and future demand for rehabilitation projects.
- The Office, through the Governor, requested an \$18 million supplemental appropriation, half of which was funded by the Legislature. However, the Commission did not cancel any projects due to the reduced appropriation.

- Due to a preceding program evaluation on *Wyoming Public Purpose Investments* (2015), the Office of State Lands and Investments (OSLI) is currently working with the Office to determine areas in which the two entities overlap and/or share responsibilities. This review includes a study of the Commission's small water programs, OSLI's irrigation loan program, and hydropower projects for both agencies. For purposes of this evaluation, LSO did not focus on alternate funding sources for water projects from programs administered outside the Commission.

Introduction

While the evaluation is Commission focused, evaluators could not discount that the Commission relies heavily upon the staff at the Office for information on projects, funding recommendations, consultant selection, and project review and evaluation. As such, findings and recommendations directed to the Commission will undoubtedly impact the role and practices of the Office.

The key concern reviewed throughout this evaluation centers on the oversight of the Commission over the Program and Office. The Office does operate the Program under statutorily required Operating Criteria approved by the Commission. However, it should be noted that while extensive, the Operating Criteria serves as an elastic policy with less binding authority than formal rules and regulations.

Additionally, LSO reviewed other states' practices to identify efficient or innovative ways to conduct program activities. However, the funding structure put in place by the Legislature makes the Program unique. Therefore, the use of other states as a gauge for the Water Development Program is difficult because of the Wyoming-specific nature of the Program.

Overall, this evaluation focuses on informing the Committee and the Legislature about the practices, funding projections, contract processes, project costs, standards, criteria, and recommendations or policy considerations that may be applied to the Program.

Wyoming Legislature Reviewed the Program in 1994

In 1994, LSO conducted an evaluation of the Commission. At the time of the evaluation, there were two primary components of the Program: project development and water development planning. The Commission was also responsible for duties associated with instream flow, groundwater grant research, and water investments, such as the State's interests in dam facilities ("water assets") like Buffalo Bill Dam. All of these responsibilities still reside with the Commission.

The 1994 report provided five findings and two recommendations. Findings included:

1. The shifting demands to meet municipal needs;
2. Commission operations are mostly successful, but could benefit from a point or rank-based project prioritization strategy;
3. The use of Water Development Account I for non-water development needs;
4. Weak subdivision laws allowed land developers to shift water system costs to the Commission; and,
5. Shared concerns with other western states regarding future water policy, particularly related to the federal government.

The first recommendation suggested that the Legislature consider re-evaluating the intent of the Water Development Program. The report suggested policy considerations, as well as financing alternatives, such as bonding and using the Permanent Wyoming Mineral Trust Fund as a source of loans for water projects. The second recommendation suggested that the Legislature consider enacting stronger subdivision laws to more proactively account for water systems in subdivision and community development.

Methodology

This evaluation was conducted according to statutory requirements, professional standards, and methods for governmental audits and evaluations. The research was conducted from July 2015–October 2015. The general analytical time frame covered by this evaluation includes documents and data from July 1, 2004–September 2015, unless noted otherwise.

Interviews, Observations, Requests

1. Interviewed or communicated with current and former staff from Wyoming entities including: the Office; the Commission; the Attorney General’s Office; Secretary of State’s Office; State Engineer’s Office; Game and Fish Department; Department of Transportation; Wildlife and Natural Resource Trust; School Facilities Commission; Department of Administration and Information; and, the Legislative Service Office.
2. Observed Water Development Commission meetings.
3. Observed the following Wyoming legislative committee meetings, during the 2015 Legislative Session and/or 2015 interim: Select Water Committee; House and Senate

Agricultural, State and Public Lands & Water Resources Committees; and Joint Appropriations Committee.

4. Developed research questions to clarify agency practices based on program requirements or criteria including statutes, rules, policies, and guidelines, and submitted questions to the administering agency for written response.
5. Conducted field visits of potential new project sites in Casper, Cheyenne, Sheridan, and Smoot.
6. Surveyed and interviewed Water Development commissioners.
7. Requested Information from the following states: Idaho, Montana, North Dakota, and Utah.

Document Review

8. Reviewed current Water Development Office and Commission codified and non-codified statutory provisions as well as researched legislative history and session law changes to the Water Development Program over time.
9. Reviewed current Office and Commission documentation including:
 - a. Rules and regulations;
 - b. Operating Criteria;
 - c. Commissioner Protocol Manual;
 - d. Legislative Reports;
 - e. Meeting minutes, materials, and notes;
 - f. Office's project application review, evaluation, and recommendation materials, such as checklists and matrices;
 - g. Applicants' project-specific materials; and,
 - h. Office accounting documentation.
10. Requested and reviewed water development commissioners disclosures of conflict of interest filed with the Secretary of State.
11. Reviewed the Department of Administration and Information Procurement statutes, rules and regulations, and procedures manual.
12. Requested and reviewed relevant written Attorney General opinion, guidance letters, or other documents issued to the Commission or Office (see Information Safeguards, below).
13. Requested and reviewed Commission executive session information (see Information Safeguards, below).

Data Review

14. Requested and reviewed individual water development data tracking and reporting systems. This information included statistical, financial, and accounting data systems.
15. Reviewed Wyoming On-Line Financial System (WOLFS) account coding and transactions for the Program.

Information Safeguards

Excerpt of W.S. 28-8-113(a):

“Any officer or employee of a state agency subject to audit or other review by the legislature shall fully assist the legislative service office during the course of the audit or review. The legislative service office shall have access to and authority to examine all books, records, accounts, files, correspondence and all other documents, *confidential or otherwise*, maintained by the agency or its employees during the course of agency business.” (*LSO Emphasis*)

Customary to all of the evaluations conducted by LSO, evaluators submitted numerous information requests to the Office. While the vast majority of requested information was provided in a timely and efficient manner, there were a few items that required extensive discussion between the LSO and Office staff, and not all of LSO’s initial requests were fulfilled. Specifically, LSO requested two sets of confidential information based on its authority under W.S. 28-8-113(a), shown at left:

- Written Attorney General guidance letters or memoranda related to Commission and Office administrative responsibilities for the Program; and,
- Copies of Commission executive session meeting minutes.

Early review of documents and interviews revealed potentially relevant confidential information to the evaluation. In compliance with the Generally Accepted Government Auditing Standards, when confronted with initial denials to provide this information, LSO implemented information safeguards to verify what may be contained in the documents requested, but not received.

After an initial request for the Attorney General guidance letters was denied on attorney-client privilege grounds, LSO submitted an itemized follow-up request focusing on legal advice the Commission or Office received since July 1, 2005, relating to fourteen separate areas and responsibilities. On all items except for one, the Office stated that written guidance had not been provided; however, the agency did supply a guidance letter for one of the items listed.

LSO also submitted an initial request to obtain Commission executive session minutes. As W.S. 16-4-405(b) require a valid court order to release such minutes, LSO submitted a modified, follow-up request rather than pursue a subpoena to obtain the minutes. This follow-up request for data on executive sessions was fulfilled and included:

- Dates the executive sessions were held;
- Whether proper motions and protocols were used to move into executive session; and,

- Specific notes on which statutory provisions, allowing for executive sessions, were used for justification.

Area for Further Review

Given the timeframe and nature of this evaluation, LSO identified additional areas that may benefit from future review by the Management Audit Committee.

Studies for Private Entities

Commissioners expressed concerns that the Commission funds planning studies for private entities. While numerous approvals of these studies has occurred in recent years, the Commission allows these projects within its Operating Criteria and the Legislature also approves these projects. Having financed 100% of the study, the Commission owns it upon completion.

External Stakeholders

Similarly, by focusing on the Commission's operations and practices, LSO did not conduct a detailed review of other external stakeholders to the Program. Specifically, LSO was not able to engage with two distinct groups: consultants and sponsors. The Office does conduct various surveys of stakeholders, including irrigation district and municipal sponsors, but an independent review by the Committee may be beneficial.

While the Program appears to benefit from public support, the Committee may wish to study these issues at a later date.

Acknowledgements

The LSO expresses appreciation to those individuals and agencies that assisted with our research. We convey specific gratitude to the Office and the Commission for their long and continuous cooperation during the preceding scoping paper and this evaluation. We commend them for their professionalism, availability for interviews, and prompt responses to document and data requests.

We also extend gratitude to the Attorney General's Office, Game and Fish Department, the Department of Transportation, the School Facilities Commission, the staff of the Wildlife and Natural Resource Trust Fund, the State Engineer's Office, Department of Administration and Information; and the Secretary of State's Office for their assistance during this evaluation including their availability for interviews and prompt responses to inquiries and requests. We also want to express appreciation to the states of Utah and North Dakota for their assistance.

Chapter 1: Background

The Management Audit Committee (Committee) believes that the Water Development Commission (Commission), with its power to approve and spend public funds, should be the focus of the evaluation. Therefore, this evaluation focuses on practices and procedures, commissioner adherence to conflict of interest disclosure requirements, and of the Water Development Accounts (Accounts) and funding levels.

However, an important caveat to the preferred scope of the Committee is the inability to entirely separate the Commission and its responsibilities from the processes, procedures, and communications of the Water Development Office (Office) in assisting the Commission with making informed decisions. The relationship between the Commission and Office was an important foundation for completing the objectives within this evaluation.

Oversight entities

The Water Development Program (Program) appears to be a highly regarded and respected program in Wyoming as well as among Wyoming's surrounding neighbor states. Each year, the Legislature passes bills to fund planning and construction of water development projects, usually by a significant majority (96.6% of legislators voting approval) and with few amendments. This signals a deference and respect for the layered review process set up in statute.

Three primary entities administer and oversee the Water Development Program (Program). Although duties are prescribed in statute, the hierarchy of the administering bodies is unclear.

The Water Development Office

The Office, consisting of twenty-six employees and a biennial budget of \$8 million for administration, provides professional expertise and day-to-day operations for the Program. Formed in 1991, the Office is funded in its entirety from Water Development Account I (Account I). The Director of the Office serves at the pleasure of the Governor.

The Water Development Commission

The ten-member Commission, established in 1979, is a Governor appointed entity and serves as the first layer of policymaking and oversight for the Program. Additionally there are three non-voting advisory members, including the State Engineer (or his/her designee), the CEO of the Business Council (or other person

W.S. 41-2-112(b) provides authority exclusively to the Commission for program implementation

designated by the Council), and a representative from the University of Wyoming to advise the Commission.

Several statutory provisions provide that the Commission is responsible for the identification and prioritization of projects, creation and modification of policy and rules, and financial recommendations on each project application.

The Select Water Committee

The Select Water Committee, established in 1983, provides final approval for water development projects. In addition to its other responsibilities, statute requires that the Select Water Committee “monitor” the Program, review project contracts, and prepare annual legislation.

The Select Water Committee typically submits two annual omnibus bills for the Legislature’s consideration: one for planning projects and the other for construction projects. The planning and construction bills are considered outside of the administrative budget requests and appropriations of the Office. The Legislature must appropriate and approve any expenditure of funds from the Accounts.

Other Stakeholders

Project Sponsors

Any municipality, irrigation district, joint powers board, or other approved assessment district can apply for funding from the Program. All Level I (planning) and Level II (feasibility) study applicants must be public entities with taxing and/or assessment authority, except applicants for dams and reservoirs. However, the Commission has approved in its Operating Criteria the option to waive the public entity requirement for Level I studies.

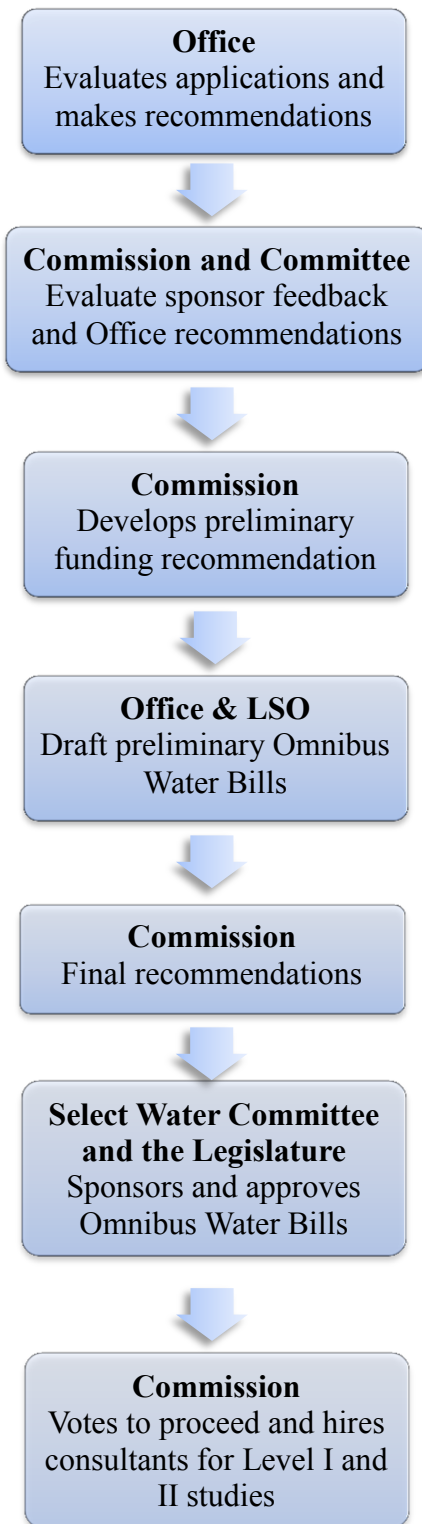
Project Consultants

Consultants are engineering firms contracted by the Commission to conduct Level I and Level II studies. Once the Select Water Committee finalizes these projects within the Omnibus Planning Bill, and while the bills are moving through the Legislature during its sessions, the Office begins the consultant selection process. By May of each year, the Commission selects the final consultant for each project and directs the Office to conduct contract negotiations. The Commission and Office negotiate consultant contracts and finalizes them by the end of the fiscal year.

Water Development Program

According to W.S. 41-2-112(a), the Program was established to

Figure 1.1
Water Development
Project Process



Source: Legislative Service Office analysis and summary.

“[F]oster, promote and encourage the optimal development of the state's human, industrial, mineral, agricultural, water and recreational resources. The program shall provide, through the commission, procedures and policies for the planning, selection, financing, construction, acquisition and operation of projects and facilities for the conservation, storage, distribution and use of water, necessary in the public interest to develop and preserve Wyoming's water and related land resources. The program shall encourage development of water facilities for irrigation, for reduction of flood damage, for abatement of pollution, for preservation and development of fish and wildlife resources and for protection and improvement of public lands and shall help make available the waters of this state for all beneficial uses, including but not limited to municipal, domestic, agricultural, industrial, instream flows, hydroelectric power and recreational purposes, conservation of land resources and protection of the health, safety and general welfare of the people of the state of Wyoming.”

While statutory language is broad enough to allow the Program to address all types of water projects, through its Operating Criteria, the Commission has limited its consideration to nine broad project categories, and provides a list of ineligible projects as discussed in Chapter 3.

While the Commission does not prioritize projects beyond the eligibility list in the Operating Criteria, within the last five years, the projects most commonly funded by the Commission have related to municipal and agriculture water supply. The type of project (i.e. new development, rehabilitation, or dam/reservoir) determines the funding source (e.g. new development from Account 1). However, each project has the potential to go through every level of development.

Level I projects are defined as reconnaissance studies including master plans and watershed improvement studies. Level II projects consist of studies that determine if a specific development solution is feasible to continue to Level III construction. Both Level I and Level II projects are currently funded with 100% state funds by the Commission. Finally, Level III projects are construction projects that may be funded by up to 75% state grant funds, with the remainder funded through either a loan from the Commission or funding from an alternative source gathered by the sponsor.

Current Commission practice is to fund construction projects at 67%, rather than 75%, state grant dollars.

Project Funding

There are three statutorily created accounts used to fund water projects:

- Water Development Account I (Account I) - New development projects, including existing projects that are expanded;
- Water Development Account II (Account II) - Rehabilitation projects that are completed and at least fifteen years old; and,
- Water Development Account III (Account III) - New dam and reservoir projects with focus on new storage capacity of greater than 2,000 acre-feet and expansion of existing dams greater than 1,000 acre-feet.

Funds cannot be transferred between the Accounts without specific legislative authorization. In addition to individual water projects, appropriations from the Accounts are used to fund other water commitments and initiatives, including those listed in Table 1.1, below. In the past six years, the other funding commitments have accounted for approximately 20% of Account I appropriations and approximately 1% of Account II appropriations. In addition to the other funding commitments listed in Table 1.1, over the years, funding for the Groundwater Grant Program, Water Resources Data System, litigation, and other special projects has also been provided from the water accounts.

Table 1.1
2016 Estimated Appropriation Amounts for Other Funding Commitments

Account	Other Funding Commitment	Appropriation Amount
Account I	WWDO Agency Budget	\$8,581,505 ¹
	Water Quality Funding (Administered by Dept. of Agriculture)	\$675,000
	Colorado River Endangered Fish Program (Administered by SEO)	\$102,953
	UW Office of Water Programs	\$175,000
	State Water Research (Administered by UW)	\$400,000
	Basin Wide Planning	\$100,000 ²
	Small Water Projects	\$750,000
	Drinking Water State Revolving Fund (Administered by OSLI)	\$2,133,120 ¹
Account II	Small Water Projects	\$300,000

Source: Legislative Service Office Summary of information provided by the Water Development Office.

¹ Biennial funding amount.

² As needed funding frequency.

Investment Accounts

The Office, through the Commission, also manages the State's water investment accounts, which are established to ensure the operation, maintenance, replacement, mitigation, and contract obligation related to water investments are met in an effective and timely manner. There are eight water investment accounts, including one for the High Savery Dam and Reservoir, which is owned and operated by the State. All revenues received from the water investments for each project are deposited into the respective account. Statute directs that excess funds from six of the eight investment accounts be deposited into Account I. However, to date, these transfers to Account I have not occurred.

Revenues

Each Water Development Account has a dedicated revenue stream along with other revenues, which are dependent on the account balance and use of loaned funds. The dedicated revenue comes from the Severance Tax Distribution Account pursuant to W.S. 39-14-801(e). These Accounts receive a collective total of 15.05% in severance taxes collected from within the established distribution cap of \$155 million. Listed in Table 1.2, below, is the severance tax distribution to each account with the maximum annual funding amount.

Table 1.2
Severance Tax Distribution

Water Account	% of Severance Tax Distribution	Amount of Severance Tax¹
Account I	12.45%	\$19,297,500
Account II	2.10%	\$3,255,000
Account III	0.50%	\$775,000
All Accounts	15.05%	\$23,327,500

Source: Legislative Service Office summary.

¹Severance tax distribution assuming fully funded for a cap of \$155 million.

In addition to severance tax, any revenues generated from loans for construction projects are deposited back into the account from which they were funded. To date, no construction projects have been funded from Account III using loans from the Commission, and it does not currently receive revenues from project loans.

The third and final regular revenue source for the Accounts is investment revenue. Wyoming statute 41-2-124 requires that the State Treasurer invest unexpended balances and credit any interest earned to each respective account. Listed in Table 1.3, below, are

the average revenues amounts from severance tax, investment interest, and program loans for each account in the past five years

Table 1.3
FY2011–FY2015 Average Revenue

Revenue Source	Account I		Account II		Account III	
	Average Revenue	% of Total	Average Revenue	% of Total	Average Revenue	% of Total
Taxes	\$19,295,329	67%	\$3,244,995	44%	\$775,054	12%
Investment Interest	\$4,558,855	16 %	\$1,161,086	16%	\$5,861,298	88%
Loans/Interest	\$5,034,260	17%	\$2,954,286	40%		
Total	\$28,888,444	100%	\$7,360,367	100%	\$6,636,352	100%

Source: Legislative Service Office summary using Water Development Commission Legislative Reports.

Note: Revenues do not include special appropriations such as repayment of Governor and Legislative diversions, the 2015 supplemental appropriation from the Buffalo Bill Investment Account, or other non-regular revenues.

In addition to the regular revenue sources, other revenues have been deposited into the accounts. On occasion, the Governor and Legislature have authorized diversions from the Accounts, with subsequent repayments back into the Accounts. For example in 2009, the Governor used his authority to divert over \$22 million from Account III to compensate for reduced budgets, which was paid back in 2014 with state General Funds. Similarly, in 2010, the Legislature authorized the use of over \$16 million from Account III for the Gillette-Madison Project. In addition to borrowed funds, special additional appropriations have been provided to the Accounts. The 2015 Legislature transferred \$9 million from the Buffalo Bill Dam Account to Account II to partially fund the Governor's 2015 supplemental request.

Project History

According to data provided by the Office, over the past thirty-five years, the Commission and Legislature have approved over 1,600 water development appropriations, which include project amendments, totaling \$1,620,687,670 (a total of about 1,400 planning and construction projects and \$1,401,530,563 if non-project appropriations¹ are excluded). The Legislature funds an average of forty-six water development projects per year with an average total appropriation of \$46,305,362 (\$40,043,730 without non-project appropriations), which includes funding for all project levels from all accounts and amendments to past-approved projects.

¹ These include administrative appropriations, weather modification, and University of Wyoming research funds, among other items.

Account I is the only account spanning all thirty-five years documented within the Office's project database. The first projects in Account II started in 1982 and Account III projects began in 2004. Illustrated in Figure 1.2 and 1.3, below, are the number of projects and appropriation amounts since the inception of each account.

Figure 1.2
Number of Projects

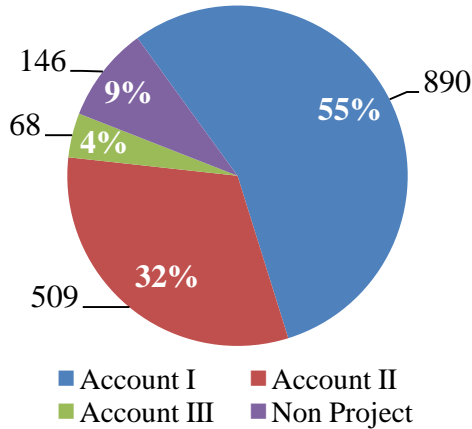
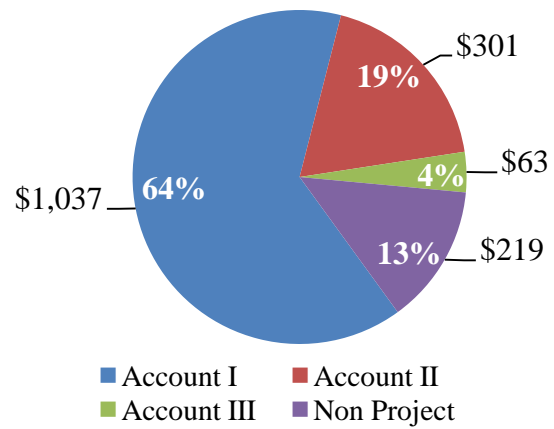


Figure 1.3
Appropriation Amounts (Millions)

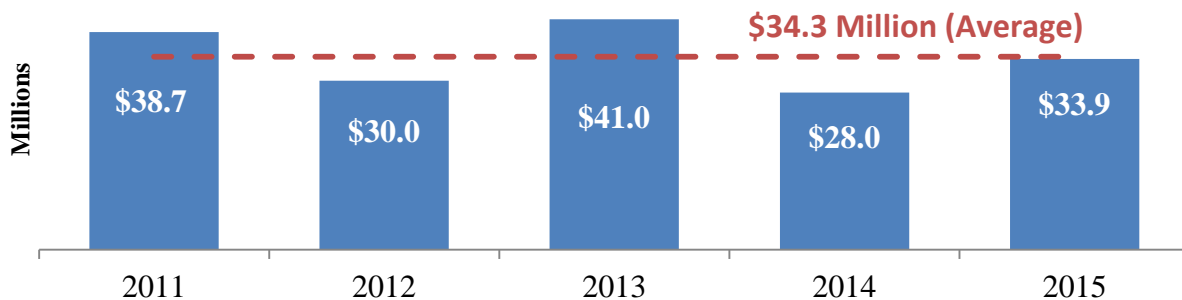


Source: LSO analysis of WWDO Project Database.

Note: 146 non-projects, of which 137 are Account I and nine are Account II are listed as "non-project."

The funding needed from each account has varied depending on project applications each year. In recent years, the average appropriation from Account I was \$34.3 million as shown in Figure 1.4 below.

Figure 1.4
2011-2015 Account I Appropriations

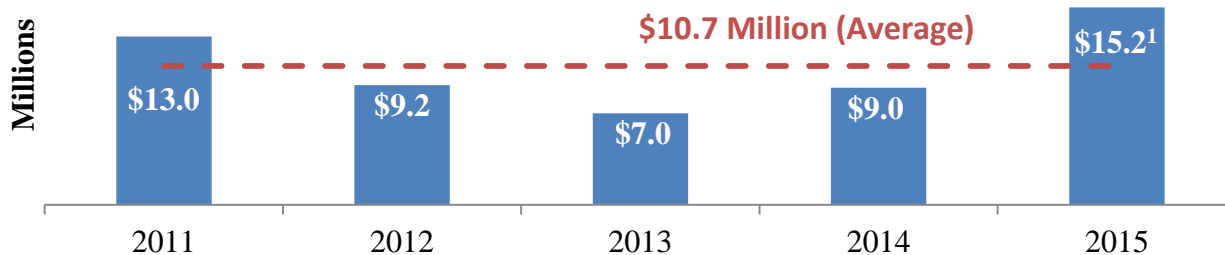


Source: Legislative Service Office summary using information provided by the Water Development Office.

Note: Includes non-project appropriation amounts.

From 2011-2015, the average appropriation from Account II has been \$10.7 million, as shown in Figure 1.5, below. This average was impacted by the supplemental funding provided in 2015.

Figure 1.5
2011-2015 Account II Appropriations

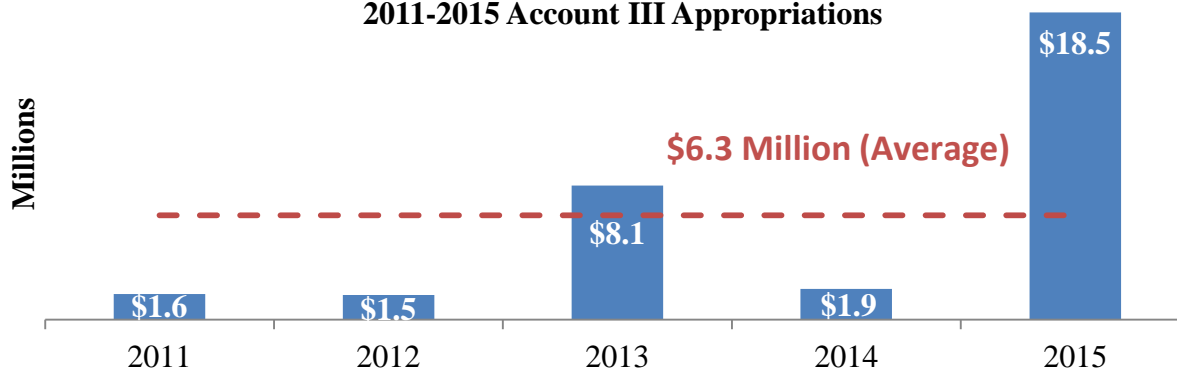


Source: Legislative Service Office summary using information provided by the Water Development Office.

¹ Includes \$9 million supplemental appropriation from the Buffalo Bill Dam Investment Account.

The appropriations for Account III fluctuate due to a smaller number of funded projects and varying costs. Based on recent years, the average appropriation from Account III has been \$6.3 million. However, because very few construction projects have been funded from Account III, the average is not representative of future funding needs.

Figure 1.6
2011-2015 Account III Appropriations



Source: Legislative Service Office summary using information provided by the Water Development Office.

All projects are organized based on the sections within the Office, as listed in Table 1.4. Statute and the Office further classify projects based on the level of progression (Level I, Level II, and Level III). For all levels, appropriations for construction are the highest at 68%, followed by administration at 17%, planning at 12%, and dams and reservoirs at 3%. The following table identifies the total number of projects and appropriations by section for all years.

Table 1.4
Number of Projects by Section

Totals	Admin.	Construction	Dams and Reservoirs ¹	Planning	Grand Total
Total Projects	157	683	68	705	1,613
% of Total	10%	42%	4%	44%	100%

Totals	Admin.	Construction	Dams and Reservoirs¹	Planning	Grand Total
Total Appropriations	\$267,917,252	\$1,103,314,890	\$54,747,000	\$194,708,528	\$1,620,687,670
% of Total	17%	68%	3%	12%	100%

Source: Legislative Service Office analysis using information provided by the Water Development Office.

¹ The Dams and Reservoirs section of the Office was formed in 2005. Account I was used for dam and reservoir projects prior to this reorganization and establishment of Account III.

Tables 1.5 and 1.6, below, display summary data for all projects associated Level I, Level II and Level III and “Other.” The Office database contains 120 project records (7%) that are not associated with a specific project level (labeled as “Other”) as they are for such items as administration, litigation, and Drinking Water State Revolving Funds (DWSRF). Generally, most water development projects advance through each level.

Table 1.5
Total Number of Projects by Level

Year	Level I	Level II	Level III	Other	Total
Total	289	493	711	120	1,613
% of Total	18%	31%	44%	7%	100%

Source: Legislative Service Office analysis using information provided by the Water Development Office.

Table 1.6
Total Appropriations by Level

Year	Level I	Level II	Level III	Other	Total
Total	\$118,550,303	\$133,698,212	\$1,163,803,890	\$204,635,265	\$1,620,687,670
% of Total	7%	8%	72%	13%	100%

Source: Legislative Service Office analysis using information provided by the Water Development Office.

Report Looks to Refine a Valued Program

An important consideration is that while the Program is respected and appreciated, this evaluation suggests room for continued improvement and refinement of processes, decisions, and actions of the Commission. The remainder of this evaluation examines three main topics. Chapter Two summarizes current issues concerning how the Accounts are managed in light of fixed funding and increased project demands. Chapter Three goes over various circumstances and conditions related to project prioritization, especially with the current funding environment. Finally, Chapter Four highlights several Commission practices and processes that could be refined or modified to improve Program functioning.



Chapter 2: Water Development Funding

Finding 2.1 **Recently, costs for submitted projects have exceeded available annual funding. While additional funding through the State’s Water Investment Accounts may be available for Account I, policy considerations to redirect funds between the Water Development Accounts could change established funding priorities.**

Over the years, the Legislature has funded water projects through dedicated revenue streams to the Water Development Accounts (Accounts) as well as special appropriations through State permanent fund loans and other funds. Until recently, revenues to the Accounts have been sufficient to fund almost all eligible water projects. Although revenues have remained mostly constant, the number and cost of recent project applications have risen to levels that exceed annual available funding. Moving forward, both the Legislature and the Commission, in concert with the Office, could examine ways to extend funding to meet future funding requests.

Water Account Revenues

As discussed in the Chapter 1, the primary sources of funding for each water account are revenues from severance tax distributions, investment income, and construction project loan repayments. Severance tax revenues have remained constant for all three accounts since the creation of Account III in 2005, and are expected to remain constant barring significant changes to severance tax distributions. Under current distributions, collected mineral severance taxes would need to drop below \$300 million before revenues to the water accounts are impacted. By comparison, revenues from investment interest and loan payments are variable depending on the cash balance of the account and the amount of loaned funds, respectively.

Listed in Table 2.1, below, is a comparison of the severance tax distributions along with the average appropriation for each account, on a percentage and dollar basis. Since 2011, a greater percentage of appropriations have been provided from Account II and Account III relative to their respective revenues from severance taxes. This comparison indicates that each account relies significantly on recurring revenues from investment income and loan repayments.

Table 2.1
Comparison of Severance Tax Distribution to Distribution of Appropriated Funds

Fund	Amount of Severance Tax¹	% to Each Account	2011-2015 Average Appropriation	% of Total Appropriation
Account I	\$19,297,500	83%	\$34,282,753	67%
Account II	\$3,255,000	14%	\$10,666,728	21%
Account III	\$775,000	3%	\$6,291,200	12%
Total	\$23,327,500	100%	\$51,240,681	100%

Source: Legislative Service Office summary.

¹Severance tax assuming fully funded under maximum distribution cap of \$155 million.

Cash Balance and Investment Revenues

Generally, planning projects can take one to two years to complete (with a typical three-year appropriation deadline) and construction projects can take up to five years (the typical appropriation deadline) or longer. Project funding is disbursed on a reimbursement basis. This process means all funds are not immediately needed from the time appropriated because projects gradually draw down appropriations as they are completed. As shown in Table 2.2, below, of the projects approved in the past five years, only 27% are complete and over half of the appropriated funding remains unused.

Table 2.2
Projects Completed and Amount of Appropriated Funds Used For All Accounts

Session Year	Projects Total	Closed Project Total¹	% of Projects Closed	Appropriation	Amount Remaining¹	% Remaining Funds
2011	46	31	67%	\$41,935,610	\$2,516,124	6%
2012	46	20	43%	\$40,327,400	\$16,582,507	41%
2013	45	15	33%	\$44,909,387	\$26,843,659	60%
2014	58	3	5%	\$28,758,350	\$22,869,388	80%
2015	65	0	0%	\$65,668,661	\$65,229,890	99%
Total	260	69	27%	\$221,599,408	\$134,041,568	60%

Source: Legislative Service Office summary using information provided by the Water Development Office.

Note: Does not include appropriations for non-program.

¹Number of projects and amount remaining as of 6/30/2015.

The cash balance for each account includes unappropriated revenues as well as unused but committed funds, such as those illustrated in the table above. In recent years, the cash balance has remained relatively stable for Account I (between \$104 and \$112) million at the end of each fiscal year), but there has been a significant decrease (\$40 million to \$19 million) in the cash balance for Account II until FY2015, as show in Table 2.3, below.

The cash balance in Account III has increased, but few construction projects have been funded from Account III to date.

Table 2.3
End of Fiscal Year Cash Balance by Account

Fiscal Year	Account I	% Change	Account II	% change	Account III	% change
FY2010	\$110,762,758		\$40,247,858		\$135,752,193	
FY2011	\$107,047,114	-3%	\$36,566,209	-9%	\$143,064,945	5%
FY2012	\$104,089,889	-3%	\$25,707,267	-30%	\$143,809,879	1%
FY2013	\$111,874,463	7%	\$24,221,675	-6%	\$150,279,730	4%
FY2014	\$107,438,227	-4%	\$18,805,540	-22%	\$153,131,207	2%
FY2015	\$104,768,556	-2%	\$28,558,230 ¹	52%	\$158,763,754	4%

Source: Legislative Service Office summary using Water Development Commission Legislative Reports.

¹There is a decrease in the uncommitted balance from -\$4,289,130 in FY2014 to -\$2,767,674 in FY2015.

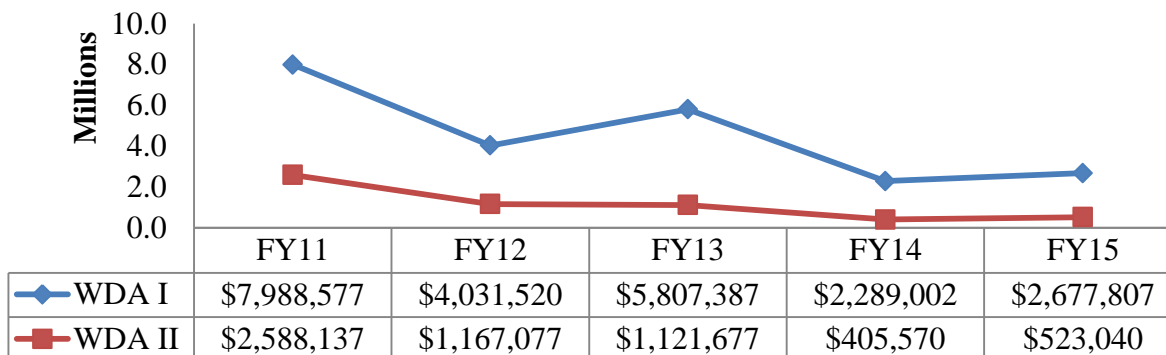
Unused and unappropriated funds are invested by the State Treasurer's Office to generate investment income for each account, and the amount invested can be gauged using the cash balance within each account. For FY2011–FY2015, investment interest has been between 8.7% and 24% of Account I revenue, between 6.6%² and 33% of Account II revenue, and between 80%³ and 92% of Account III revenue.

Investment revenues are considered supplementary, in that the Office does not attempt to maintain a specific or minimum fund balance for investment purposes. However, as cash balances decrease, fewer funds are available for investment, potentially causing investment revenues to diminish. Illustrated in Figure 2.1, on the next page, are the investment incomes for Account I and Account II. Diminishing cash balances are not the only variable for investment returns as demonstrated by the fluctuation in investment revenues for Account I. While investment revenues are considered ancillary, they are not insignificant.

² Excludes FY2015, which includes a \$9 million appropriation from the Buffalo Bill Dam.

³ Excludes FY2015, which includes \$38.65 million appropriation from General Funds for repayment of funds for the Gillette-Madison project and previous diversions.

Figure 2.1
Account I and Account II Investment Revenue



Source: Legislative Service Office summary using the Water Development Commission Legislative Reports.

Project Projections and Funding Predictions

The Commission's annual Legislative Reports include a list of anticipated future projects for each water account. The list of projects is created to illustrate community and state funding desires for future legislative sessions. Listed in Table 2.4, below, are the predicted number of projects and corresponding estimated project costs for each water account since the 2011 Legislative Report. Overall, there has been an increase in the number of projects and predicted funding needs for all three accounts. The greatest percentage increase in estimated funding occurs within Account II while the greatest monetary increase is observed within Account III.

Table 2.4
Projected Projects by Account (Millions)

Projected Projects		Account I	Account II	Account III
2012 or later	Project Cost	\$75.5	\$9.3	N/A ¹
	# of projects	20	9	10
2013 or later	Project Cost	\$48.9	\$6.5	N/A ¹
	# of projects	21	10	10
2014 or later	Project Cost	\$36.3	\$14.0	\$257.5
	# of projects	17	14	12
2015 or later	Project Cost	\$110.7	\$25.2	\$338.0
	# of projects	16	18	12
2016 or later	Project Cost	\$99.0	\$39.1	\$473.0
	# of projects	27	17	17
Cost Change %		31%	320%	84%
Amount Change		\$23.5	\$29.8	\$215.5

Source: Legislative Service Office summary of Water Development Commission Legislative Reports.

¹ No amount listed.

The Office generates the predicted funding request list from three sources:

1. Completed or on-going Level I and Level II studies;
2. Discussions with project sponsors that are contemplating submitting project applications; and,
3. Allowances for Level I studies identified through the River Basin Plans.

Currently, the only way the Office becomes aware of new projects is when they are contacted by prospective sponsors. There are no formal or coordinated practices or procedures in place to identify potential sponsor orientated projects at regular intervals or on a statewide basis. The predicted funding amounts, listed in Table 2.4, above, are derived from the following: cost estimates included in the Level I or Level II studies, cost estimates prepared by the sponsor, or cost estimates prepared by Office staff.

The Office measures the predicted funding requests against the current available funds to assess the amount needed in the future. For example, at a 2014 budget hearing, the Office compared the amount of funding available after the 2015 appropriation request to the list of predicted projects for 2016 or later to illustrate the amount of future funding needed. Listed in Table 2.5, below, are the predicted funding requests presented during the 2014 budget hearing totaling \$409.7 million. The Office did specify that it does not use this methodology in its financial calculations to manage the water accounts. Instead, the information was presented to the Legislature in this format to illustrate that the current available funding was intended to be used in the future for anticipated projects and to protect the accounts.

Table 2.5
Office Predicted Funding Needs

Account	2015 Balance	Estimated Funding Requests for 2016 or later	Predicted Funding Need
Account I	\$33,808,765	\$99,000,000	(\$65,191,235)
Account II	\$2,452,320 ¹	\$27,075,000	(\$24,622,680)
Account III	\$153,116,916	\$473,000,000	(\$319,883,084)
Total	\$186,378,001	\$599,075,000	(\$409,696,999)

Source: Legislative Service Office summary BFY2015-2016 supplemental budget hearing.

¹Assumes supplemental funding totaling \$18,653,241.

When assessing future funding demands using the methodology illustrated above, there are a couple of factors to consider. First, the analysis did not consider future revenues. As discussed above, the severance tax revenues are expected to remain constant. Second, the predicted list of projects does not include information

to assess the timing for when the identified funding would actually be required to complete the expected projects.

For example, when comparing the 2011 Legislative Report to the 2015 Legislative Report, there are at least eleven projects, totaling \$176 million that are reported as anticipated funding requests in each of the five reports. In other words, these expected projects have continued to be anticipated over multiple years, but have not progressed to official application and appropriation requests. Six of the predicted projects, totaling \$160 million, listed in all of the reports between 2011 and 2015 are for Account III projects.

Project Phasing

Another factor to consider when assessing future funding needs is the amount currently appropriated for what the Office refers to as “phased” projects. The Office makes recommendations to phase projects for several reasons, especially to defer or step construction costs for larger projects.

During the first phase, funding may be provided for the design, permitting, and/or the easement and acquisition portion of a construction project. Once the initial phase is complete, the Commission recommends an amendment to fund the remaining portion of the construction project that likely accounts for the majority of the costs. For example, in 2012, the Legislature appropriated \$160,000 for Phase I of the Rolling Hills Water Supply project for design, permitting, and project land procurement. In 2014, the Legislature passed an amendment to appropriate an additional \$1,184,000 to complete construction. While the Commission and the Legislature are not formally obligated to approve a project amendment (see W.S. 41-2-114(d)), there is a level of expectation to proceed with the project when funding has been provided for previous phases.

While not specified in the Operating Criteria, phased projects have traditionally been considered funding priorities over other potential projects. Since 2011, the amount of predicted funding for phased projects funded from Account II has increased from \$2.8 million in 2012 or later to \$25 million in 2016 or later. Increasing amounts of phased projects could create a backlog. However, the cost of phased projects, which is known in advance, is not considered against biennial budget projections.

Status of Water Accounts

Noting the revenue conditions (supply) and project expectations (demand), any conclusion on adequacy of funding for each Account is driven by these factors and on what scale (annual, biennial, or long-term) the data is presented. On a biennial scale,

while there is no documented or official standard for fiscal prudence for these accounts, currently the Office annually recommends an amount that is about half of the uncommitted balance plus what the Office estimates as the anticipated revenues for the upcoming or current biennium. This process is similar to how the State estimates revenues and expenditures for other state funds and is consistent with established accrual accounting principles adopted by the State. Based on this projection process, the status of each account varies, as discussed in the following sections.

Water Development Account I

The funding recommendations most recently considered by the Office for 2016 are based on the Office's methodology of adding the total of uncommitted funds in Account I plus three fiscal years of anticipated revenues: the current FY2016 as well as the next biennium, FY2017 and FY2018. One important factor to consider for Account I is that non-project appropriations also come from this account and are allocated first for before available water project funds are estimated. Illustrated in Table 2.6, below, is the basis for the Office's 2016 funding recommendations to the Commission for Account I, including the subtracted amount for non-project appropriations.

Table 2.6
Account I — 2016 Funding Recommendation

Uncommitted Balance (FY2015)	\$7,483,444	Balance and Revenues	\$80,983,444
FY2016 Anticipated Revenues	\$25,500,000	2016-2017 Non-Projects	\$11,492,578
FY2017 Anticipated Revenues	\$24,000,000	Balance Available for Water Project	
FY2018 Anticipated Revenues	\$24,000,000	Appropriation (through FY2018)	\$69,490,866
Balance and Revenues	\$80,983,444	2016 Recommended Funding (1/2)	\$34,745,433

Source: Legislative Service Office summary of information provided by the Water Development Office.

Table 2.7
Account I (millions)

FY2015 Account Balance	\$104.8
FY2015 Uncommitted Balance	\$7.5
FY2016 Anticipated Revenues	\$25.5
Anticipated available in FY2016	\$33.0
Average Appropriation	\$34.3

Source: Legislative Service Office based on information provided by the Water Development Office.

FY2016 anticipated revenues are included with 2017-2018 biennial projections to calculate the uncommitted balance at the end of the current biennium. According to the Office, FY2016 revenues will be used primarily to fund projects that were approved in 2015.

At the beginning of this evaluation, the Office stated that it considered Account I stable and adequately funded for typical annual applications. Shown in Table 2.7, at left, as of the end of FY2015, the account balance was \$104.8 million, but the *uncommitted* or available balance for new appropriations was \$7.5 million. The Office estimates revenues for FY2016 at \$25.5 million. The expected FY2016 available balance of \$33 million is slightly

2016 Program Funding Recommendations for Account I

below the average appropriation from Account I of \$34.3 million, as discussed in Chapter 1.

For the Legislature's 2016 Budget Session, the Office received more project applications than in prior years, and the estimated project costs exceed available funding. Of the \$53.7 million requested for 2016 projects, the Office recommended funding forty-two of the fifty-four projects totaling \$38.3 million in new appropriations. The Office also recommended approval of a \$3.7 million reversion, which could be redirected for current project recommendations, for a net funding recommendation of \$34.6 million. At its November 2015 meeting, the Commission voted to approve a total of \$33.8 million in funding, including the reversion amount, but the Commission also tabled discussions on two projects totaling \$1.5 million that will be discussed at its January 2016 meeting before determining its final funding recommendations.

Water Development Account II

Illustrated in Table 2.8 are the revenue projections and recommended funding calculation for Account II, which shows the same methodology used for Account I shown in Table 2.6.

Table 2.8
Account II — 2016 Funding Recommendation

Uncommitted Balance	(\$2,767,674)
FY2016 Anticipated Revenues	\$4,700,000
FY2017 Anticipated Revenues	\$4,700,000
FY2018 Anticipated Revenues	\$4,700,000
Balance and Revenues	\$11,332,326
Recommended Funding	\$5,666,163

Source: Legislative Service Office summary of information provided by the Water Development Office.

Despite this projection and recommended funding level, the Office considers Account II underfunded due to insufficient projected revenues measured against submitted applications. Shown in Table 2.9, on the next page, as of the end of FY2015, the account balance was \$28.6 million. However, due to the total appropriation commitments, the uncommitted balance of Account II was a negative \$2.8 million.⁴ The anticipated revenues for FY2016 are \$4.7 million, and the average appropriation from Account II has been \$10.7 million in recent years.

⁴ This is not the first year Account II exhibited an overcommitted balance; the FY2014 year-end balance was a negative \$4.3 million.

Table 2.9
Account II (millions)

FY2015 Account Balance	\$28.6
FY2015 Uncommitted Balance	(\$2.8)
FY2016 Anticipated Revenues	\$4.7
Anticipated available in FY2016	\$1.9
Average Appropriation	\$10.7

Source: Legislative Service Office based on information provided by the Water Development Office

While funds may appear overcommitted or over appropriated within a given fiscal year, this is a point-in-time calculation and the account balance has not been over expended. Similar to the Account I projections, when measured against anticipated revenues over the next biennium, the account shows an estimated positive balance. In fact, Office staff report that the over committed amount for Account II has since been absorbed in its projections of future available funding (FY2016 and later years revenue).

For the 2016 session, requested funding for Account II totaled \$10,347,140, slightly less than the average appropriation shown in Table 2.3, above. Of the twenty-three project requests, the Office and Commission recommended funding for fourteen projects totaling \$5.8 which is the smallest funding amount since 2010.

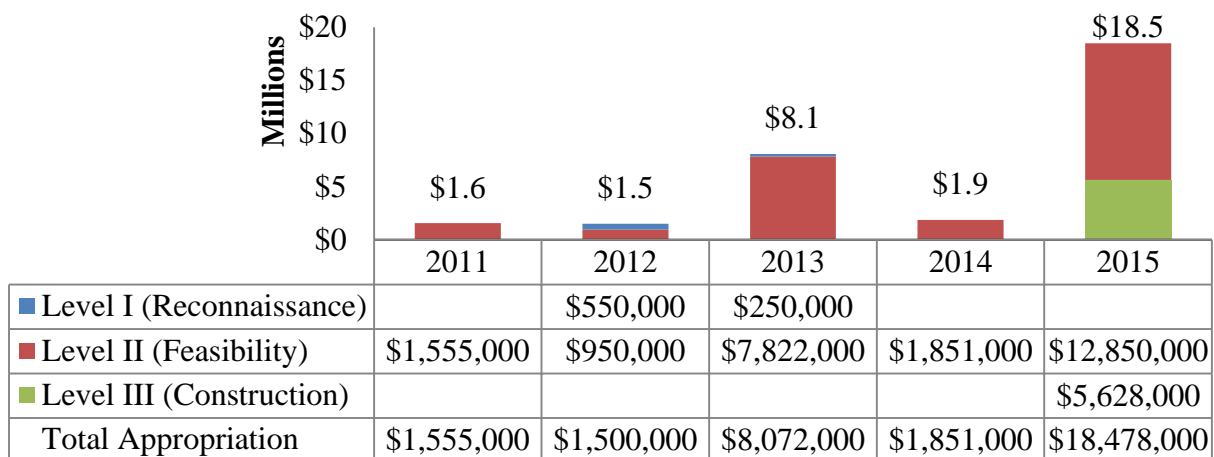
Water Development Account III

With respect to Account III, according to the Office, this account is adequately funded for the short-term, but is insufficiently funded to support anticipated projects currently in development or to meet the Governor's "Ten in Ten" storage project water strategy. As of the end of FY2015, the account balance was \$158.8 million. However, only three construction projects have been funded from Account III since the inception of the account in 2005.⁵ As construction projects are typically the most costly, the current average appropriation is illustrative of storage projects' planning costs, but is not a reliable benchmark to assess the overall sufficiency of the funding within Account III. Figure 2.2, below, contains the appropriations for Account III by project level since 2011.

2016 Program Funding Recommendations for Account II

⁵ This amount does include the \$16 million legislative appropriation for the Gillette Madison project in 2009.

Figure 2.2
2011-2015 Account III Appropriations by Project Level (Millions)



Source: Legislative Service Office summary using information provided by the Water Development Office.

2016 Program Funding Recommendations for Account III

For 2016, the Office received two project applications with projected costs of \$800,000. Both projects are not recommended by the Office or Commission for funding since Phase I of these projects is not complete. If no projects are authorized from Account III in the 2016 Legislative Session, the estimated uncommitted balance through 2017 will be \$132.4 million.

Although funding in Account III has been sufficient to fund all eligible projects to date, which have primarily been planning projects, the Office predicts funding shortfalls in the future. Currently, there are three Level II, Phase III storage projects, Big Sandy, Alkali, and Leavitt, with a combined estimated cost of \$98 million. In addition, the Office noted two additional projects at a similar development stage, West Fork and Middle Piney that would increase required funding to approximately \$180 million. All five projects are expected to progress to the construction stage within the next two to five years, depending on potential design and permitting difficulties. According to the Office, the projects will require at least 95% state funding. In the long-term, there are seventeen dam and reservoir projects under consideration with anticipated funding needs estimated at \$473 million.⁶

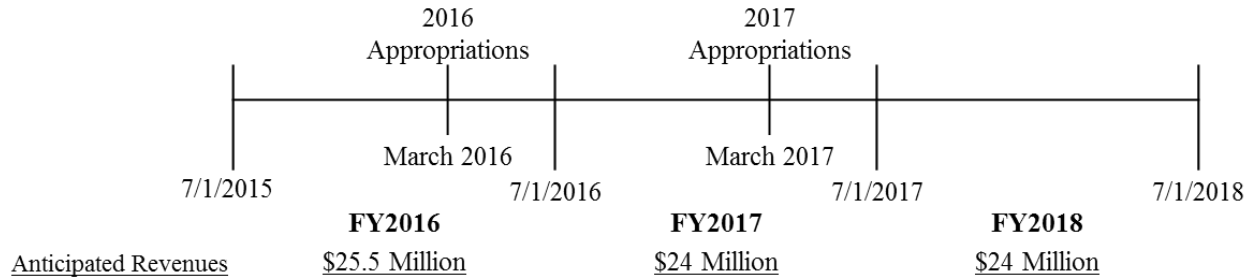
Cash Flow is a Central Concern

For reference, illustrated in Figure 2.3, below, is the funding timeline for appropriations for the upcoming biennium. A factor to consider is that when each Omnibus Water Bill is passed by the Legislature, it is immediately effective (generally by March 1 of each year). This practice makes the appropriations available as

⁶ The Office projects additional funding needs from Account III to support the Governor's "Ten in Ten" initiative. However, the Office has included several of the current storage projects in the \$473 million projection.

soon as possible to begin contracting for studies or construction of approved projects.

Figure 2.3
Funding Timeline



Source: Legislative Service Office based on information provided by the Water Development Office.

Consequently, according to the Office, the functional management of the water accounts is centered on the cash flow within each account. As noted during the March 2015 Commission meeting, the Office stated that the Account II cash balance was lower than preferred. While the biennial budget projections indicate that the annual appropriations are within available funding and predicted revenues, the Office explained to the Commission that if all approved projects were approved and began to draw down their appropriations, there would be cash flow problems for the account. Specifically, the Office was concerned it was possible the account could drop below its preferred level of \$1.5 million of cash on-hand.

Contributing to this issue was the effect of the 2015 supplemental budget request. The Office and Governor submitted the request for \$18.65 million in General Funds for seven rehabilitation (Account II) projects. The Legislature appropriated \$9 million for this request from the Buffalo Bill Dam Investment Account, and approved six of the seven projects through the Construction Omnibus Bill.

Although the appropriation was half of the amount requested, the projected funding amount for the Douglas Transmission Pipeline, was \$8 million; the Commission did not receive the sponsor's application and it was ultimately not included in the Construction Omnibus Bill. Therefore, the net difference between the request (six projects and \$10.6 million) and the funding provided through the supplemental appropriation (\$9 million) was \$1.6 million short of full funding for the projects. To accommodate this potential cash shortfall, the Commission discussed delaying, but not denying, release of the funds (contracting the project) on at least two projects until the sponsors' portion of the funding was fully available.

In addition to the 2015 supplemental request, the Office stated that Account II has required cash infusions in previous legislative sessions. Additional appropriations from the Budget Reserve Account to Account II occurred in 2007 and 2008 for \$2 million and \$10 million, respectively.

As for Account I, while no cash flow difficulties have been identified by the Office, as illustrated in Table 2.1, the cash balance is primarily comprised of committed funds (\$97.3 of the \$104.8 million or 93% of the balance is already committed). Additionally, expenditure of committed funds is dependent on the progression of projects. While expenditures are made according to contracts, when expenditures come due may not always accommodate what the Office determines to be necessary cash on-hand requirements.

Cash Accounting

Considering the Office's concern with the cash flow of the accounts, presenting to the Commission an accounting of funds on an annual cash or cash balance basis may prove equally useful as the biennial budget projections for the Accounts. For example, the available cash balance at the end of FY2016 is projected to be \$33 million. Taking into account only half (one year) of non-project costs, the annual funding amount of \$29 million, is within the expected cash balance. The Commission also expects additional revenues in FY2017 to provide funding for projects authorized during the 2016 session including the \$24 million, noted above, along with regular project reversions.

By comparison, under a cash balance analysis, the available amount at the end of the 2016 for Account II is expected to be \$1.9 million, which is not sufficient for the recommended 2016 projects totaling over \$5.8 million. However, the Office anticipates \$4.7 million in revenue during FY2017 to fund the projects that are approved during the 2016 session for a net positive balance of almost \$870,000 at the end of FY2017. However, this balance is below what the Office expressed in March 2015 as the appropriate level of cash on-hand for the account.

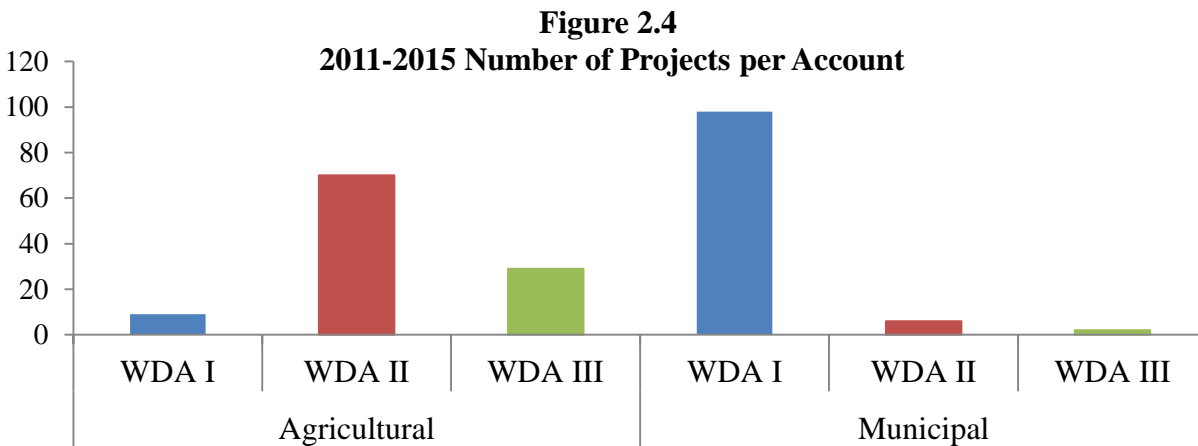
Other Funding Options

Shifting funds between accounts

Segregation of funding into the three water accounts represents legislatively established funding priorities. Currently, the majority of the severance tax distribution to the water accounts is directed to new development projects through Account I, with additional funding for new dam and reservoir projects provided through Account III. The funding for each type of project (i.e. new

development, rehabilitation, and dams and reservoirs) is, therefore, limited by the amount of available funding within the respective water account.

Although not by design, the type of projects recommended and funded by the Commission has created an additional funding priority based on the sector or sponsor type. As shown in Figure 2.4, most agricultural projects are funded from Account II, while most municipal projects are funded from Account I. As Account I received more severance tax revenues than Account II, a funding priority for municipal projects has been created.



Source: Legislative Service Office summary using Water Development Commission Legislative Reports.

Confronting this data are differing perspectives on the potential future use and funding levels for these accounts. One perspective is that a potential budget shortfall in Account II is a result of aging projects originally funded out of Account I that now need rehabilitation. However, it appears most rehabilitation projects intend to repair water infrastructure, especially agriculture infrastructure, built before the Commission's formation in the 1970s. Yet, a proposed solution is to shift a portion of funding from Account I to Account II to support the increased need of rehabilitation projects. However, shifting funding from Account I to Account II may also shift available funding for different types of projects, specifically from municipal to agricultural, resulting in an unintended shift in funding priorities. A competing perspective is that funding for Account I should remain or be increased as well to accommodate the growth in new development needs, primarily for municipalities.

In addition to shifting funding priorities, reallocation of funds from Account I to Account II may also create a potential funding shortage, relative to project requests, in Account I. The cash balance for Account I has not maintained or increased at a consistent rate to support shifting funds to Account II, as illustrated

in Table 2.3. Additionally, the Account I cash balance is currently insufficient to fund all 2016 applications.

Under current statutory criteria, Account III funds may only be used for new and, in limited circumstances, existing dam and reservoir projects, while the rehabilitation of dam and reservoir projects is currently funded through Account II. In 2015, the Legislature appropriated \$4,854,620 for the rehabilitation of three reservoir projects. Although revenue from the Buffalo Bill Dam Investment Account was used to fund the three projects, they represent a funding need of Account II. Modifying statutory criteria to allow for funding of rehabilitation of dam and reservoir projects from Account III would lessen the funding needs of Account II, but could alter future funding conditions for new dam and reservoir projects.

Excess Funds from Investment Accounts

Wyoming Statute 99-99-1001(c) directs *excess* funds from six of the State's water investment accounts to be deposited into Account I. Specifically, W.S. 99-99-100(c) states:

“Funds in excess of the amount needed to meet obligations specified in subsections (d) through (j) of this section *shall* be deposited in water development account I created by W.S. 41-2-124(a)(i).” (*LSO emphasis*)

However, only the statutory language for the Buffalo Bill Dam Investment Account and the Miscellaneous Water Investment Account quantifies the amount that is considered excess. For example, W.S. 99-99-1001(e) states any balance in the Buffalo Bill Dam Investment Account in excess of \$500,000, or the amount necessary to meet operation, maintenance, and replacement obligation, whichever is greater, may be used to meet the annual obligation of the State for any of the water investment accounts. Therefore, after the specified required costs for the Buffalo Bill Dam Project and support of the other investment accounts, excess funds are required, by statute, to be deposited into Account I.

Of the six water investment accounts that require excess funding to be directed to Account I, two accounts have increasing balances, three accounts have stable balances, and one account has a decreasing balance, as illustrated in Table 2.10, below.

Table 2.10
Six Water Investments Accounts with Directed Excess Funds to Account I

Account	Balance (as of 10/22/15)	Account Status	Source of Funds
Platte River Endangered Species Account	\$5,709,274.61	Stable	Account I
Buffalo Bill Dam Account	\$23,548,275.18	Increasing	Western Area Power Admin. Agreement- repayment of funds
Fontenelle Reservoir	\$1,580,539.14	Decreasing	Account I, Account II, and Buffalo Bill Dam Account ¹
High Savery	\$1,104,919.16	Stable	Land sale and Account I
Palisades	\$217,674.06	Increasing	Game and Fish Appropriation and Water Sale
Miscellaneous Water Investment	\$18,025.48	Stable ²	Account I

Source: Legislative Service Office summary BFY2015-2016 supplemental budget hearing.

¹\$4.5 million transferred from Buffalo Bill Dam to Fontenelle through three transfers in 2006, 2008, and 2010.

²The 'Stable' rating was provided by the Office in December 2014, since which time the account balance has decreased \$24,294.72, from \$42,320.20.

As shown above, the Buffalo Bill Dam Investment Account has the largest balance, and will continue to receive revenues from loan payments until April 2030. In addition to loan payments by Western Area Power, the Buffalo Bill Dam Investment Account has earned approximately \$11 million in investment income since its inception in 1996. As a result of the consistent revenues and lack of obligations, the balance of the Buffalo Bill Dam Investment Account has increased consistently from \$238,620 in 2003 when the loan to the U.S. Bureau of Reclamation totaling \$26.1 million was repaid.

Since the creation of the Buffalo Bill account, three transfers totaling \$4.5 million have been made to the Fontenelle Reservoir Account, and no other funds have been transferred to any other investment account. Additionally, to date, no funds from any of the investment accounts have been directed to Account I. However, the Legislature appropriated \$9 million from the Buffalo Bill Dam Investment Account to Account II to fund the 2015 supplemental budget request. The Office views the 2015 supplemental appropriation as a Legislative reprioritization of funding intended for Account I, even though to date no funds have been transferred to Account I as prescribed by statute.

Ideas for Alternative Program Funding

At the August 2015 Commission meeting, the Commission requested that the Office draft a recommendation for a Level I

study to explore the potential of leasing water from the Colorado River to downstream users to generate additional income. While the study was included in the list of projects for 2016 consideration, the Office and Commission ultimately did not recommend funding for the project based on advice from the State Engineer who believes leasing options could violate the Colorado River Compacts.

Another revenue alternative proposed by a member of the Select Water Committee, is that the State refocus its funding to revenue generating facilities, such as hydroelectric power, and use the revenue streams to support future water development projects.

The Commission and Select Water Committee are also considering ways to extend funds. At the November 2015 meeting, members of the Commission and the Select Water Committee discussed options such as decreasing the typical proportion of grant funding for construction projects. Both entities also discussed decreasing funding for loans to extend available grant funding, based on the availability of similar interest rates through private lenders. However, while a comparable interest rate may be available, it is unlikely that comparable repayment terms (such as repayment only upon project completion as determined by the Commission) would be available to the applicant through a private lender.

Other States Funding Models

Table 2.11
North Dakota 2013-2015
Revenues for Water Development

Fund	Available Revenues	Appropriated
Resource Trust ¹	\$579.5	\$461.8
Water Development Trust ²	\$19	\$17.7
Total	\$598.5	\$479.5

Source: Legislative Service Office Summary from information provided by North Dakota Water Commission.

¹ Funded by oil extraction tax

² Funded by 40% of the state's tobacco settlement

Table 2.12
Idaho Water Development
Revolving Accounts (Millions)

Accounts (including sub-accounts)	Annual Estimated Revenues¹
Revolving Development ²	\$5.2
Water Management	\$0.0
Aquifer Management ³	\$5.8
Total	\$11.0

Source: Legislative Service Office summary of Idaho Water Resource Board Meeting Materials.

¹ Estimates revenues as of 08-2015 for the next 12 months

² \$4 million appropriated since inception (1969).

³ \$5.5 million in revenues from cigarette tax.

Approaches to water development projects funding differ in both amounts and funding mechanisms from state to state. North Dakota, like Wyoming, funds water development projects through revenues from oil extraction tax that are deposited into its Resource Trust Fund. A specified percentage of the Resource Trust Fund is dedicated for water development, but in recent years the North Dakota Legislature has not appropriated the full available amount.

Unlike severance tax revenues in Wyoming, the amount of funds dedicated for water development projects is not capped. Consequently, with large increases in oil tax revenues, funding for water development projects has also increased. For example, in BFY2003-2005, North Dakota spent \$60 million on water development projects. However, with increased available revenues from oil extraction tax, they spent \$266.9 million on water development projects in the most recent biennium.

North Dakota also dedicates a portion of its tobacco settlement money to its Water Development Trust Fund.

Table 2.13
Utah Water Development
Revolving Funds (Millions)

Fund	FY2016 Available Funds
Revolving Construction Fund ¹	\$10.3
Conservation and Development Fund ²	\$31.9
City Water Loan Fund ¹	\$8.6

Source: Legislative Service Office summary of Utah Water Commission Materials.

¹ Funded by loan repayment

² Funded by sales tax and loan repayment.

Revenues from tobacco settlement money have remained consistent over the years. Listed in Table 2.11, are the revenue and appropriation amounts from each trust fund for BFY2013-2015.

An alternative funding mechanism is observed in both Idaho and Utah, which fund water development projects through revolving funds. In both states, the revolving accounts were created through legislative appropriations. In Idaho, revenue from cigarette tax is allocated to one of its revolving accounts, and in Utah, sales tax revenues are deposited into one of its revolving accounts. As show in Table 2.12 and 2.13, the annual available revenues vary from state to state.

Recommendation 2.1: The Commission should review the funding needs of the dam and reservoir assets that are supported by the investment accounts and determine the amount of excess funds that should be redirected to Account I pursuant to W.S. 99-99-1001(c), and report back to the Legislature on potential statutory revisions.

The operation, maintenance, replacement, and contract obligations costs related to dam and reservoir projects funded through the investment accounts are difficult to predict. Investment accounts need to maintain adequate fund balances to ensure contingencies are managed when required. However, the Buffalo Bill Dam Investment Account, in particular, has a sizable balance, and identified excess funds should be re-directed to Account I as statutorily required.

While the Commission currently reports the account balances through the annual Legislative Report, the report does not note what account funds are in excess of expected State obligations and monies that should be redirected to Account I. The Commission should report the excess amount, defined in statute, annually to the Select Water and Joint Agriculture, State and Public Lands & Water Resources Committees pursuant to W.S. 99-99-1001(c). It should also bring to the Legislature's attention potential statutory changes to define the amount of funds needed annually to meet the State's expected obligations for each asset.

Policy Considerations

Aside from the above recommendation, there are no other conclusive recommendations drawn in this chapter. Rather, the information provided is intended for use by policymakers to aid in future discussions related to funding. Policy considerations for

funding changes at this time may be premature without consideration of a formal prioritization model, which is discussed in the next chapter.

The Legislature could consider redistributing the severance tax revenues between the water accounts if there is a desired change in funding priorities.

Account II currently confronts the greatest financial challenges. Account III has the greatest cash balance. Account I has been relatively stable. The Legislature could choose to combine revenues for Account I and Account II or all three accounts, or redistribute revenues between the water accounts to accommodate for immediate funding shortages in any one account. While it may be useful to prioritize all water projects collectively, the first option would require the Commission to set annual priorities for the full pot of funds. However, all of the accounts have some type of current or predicted funding constraint and any redistribution could change funding priorities, which requires additional consideration.

The Legislature could consider statutory revisions to allow for the funding of dam and reservoir rehabilitation projects from Account III.

Shifting dam and reservoir rehabilitation funding to Account III would alleviate some of the financial pressure on Account II. However, with a shift in funding obligations to Account III, the amount of the severance tax distribution may need to be considered. Account III receives the smallest percentage of the severance tax distribution to the water accounts; therefore, additional funding obligations could change the intended funding priority of Account III. In addition, a statutory change to fund dam and reservoir rehabilitation from Account III could impact funding availability for projects identified in the Governor's Water Strategy.

The Legislature or the Commission could consider establishing a formal cash monitoring policy.

While the state generally follows accrual accounting of revenues and expenditures, in accounting for funds the Office has explained that a significant concern with the water development accounts is cash flow. Therefore, regular cash monitoring could include budgeting parameters to meet cash flow needs. It could also include consideration of committed funds, anticipated reversions, specific project costs for phased projects not yet authorized, and other factors that detail how quickly Account funds are expended once appropriated.

Additionally, a cash monitoring policy could be used to help dictate investment revenues. The Water Development Program is

established to fund water projects and dedicated revenues are intended to be put to use. However, revenues from investment income have been significant, and as funding within the water accounts is depleted additional revenue opportunity from investment income is lost.

The Legislature and the Commission could continue to consider ways to extend project funding.

As discussed in this chapter, members of the Commission and the Select Water Committee are exploring ways to generate additional revenue as well as extend funding for more projects.



Chapter 3: Water Development Project Prioritization

Finding 3.1: The Commission currently limits its prioritization to broad project categories, which are not sufficient to prioritize projects in light of increased funding demands.

While the Water Development Commission (Commission) identifies the type of projects it will fund within its Operating Criteria, it does not otherwise score, measure, or rank projects when it considers annual project applications from sponsors. Until recently, the Water Development Accounts have been sufficient to fund recommended projects. However, given that the Water Development Office (Office) has begun recommending the denial of projects based primarily on the reason of a lack of funding, a more formal project prioritization model that considers, among other considerations, the merit, funding, and readiness of a project may be justified.

In 1994, LSO Recommended the Legislature Consider Establishing Specific Project Criteria for Account I and Account II

In the 1994 evaluation, LSO found that the Commission, Office, and Select Water Committee "...have not seriously considered adopting criteria that assign points or otherwise rank individual projects competitively." Further, the finding states that the "...written criteria [of the Commission] do not suggest a method of further prioritizing those projects which can demonstrate present need."

This finding was based on the predications that severance and coal tax revenues would be flat through 1998. LSO observed that:

"[A]s the demand for WDA funds increases, competition for these funds is likely, and tougher decisions will have to be made. In view of these factors, the Legislature may wish to consider revising the program's statutory direction, which currently emphasizes multipurpose and storage projects. The Legislature may also wish to consider establishing specific project criteria for WDA I and WDA II."

The Office and Commission Categorizes Projects Based Broadly on the Type of Project Application it Receives

The Office contends that it employs prioritization when reviewing and approving water project funding through its Operating Criteria.

Statute provides the Commission authority to fund a broad range of projects and the Office confirmed the Program may fund most any project dealing with water development .

However, in order to narrow that authority, the Commission has developed a list in its Operating Criteria for project types it will and will not consider. The order in which the project types are listed in the table below is the same priority order in which the Commission considers project applications.

Table 3.1
Water Development Program Projects Consideration Guidelines

Project Types Considered	Project Types Not Considered
<ul style="list-style-type: none"> • Multipurpose • Storage projects • Irrigation and municipal water supply projects • Irrigation and municipal water supply systems • Rural domestic projects • Rural domestic projects with independent water supplies • Level I and Level II Hydropower projects • Purchase of existing storage • Municipal and rural domestic raw water projects 	<ul style="list-style-type: none"> • Refinancing previously completed improvements • Wastewater projects • Recreation • Environmental enhancement • Flood control • Level III Hydropower projects • Erosion control • Distribution systems • Water Treatment Facilities • Subdivisions • System Maintenance • Legal Fees • Water Rights • Engineering Fees in excess of 20% of approved costs • Audits

Source: Legislative Service Office summary of Water Development Commission Operating Criteria.

The Commission does not provide direction for ranking or prioritizing individual projects each year. According to the Office, between FY2010 and FY2015 the Office has recommended denial of forty-one projects; four of them due to limited funding along with other reasons. At the November 2015 Commission meeting, eight projects were recommended for denial based solely on limited funds.

Prior to FY2016, most eligible projects were approved, unless the project was determined to not be feasible, there was no compelling purpose, or deemed ineligible based on the Operating Criteria. No projects had been denied for primary reason of a lack of funding. Still, there have been some funding limitations. For example, the

Legislature has approved other water projects, such as the Gillette-Madison Project, outside of the Omnibus Bills due to high project costs as these projects can exceed the availability of the Accounts' funds.

Legislators and Commissioners Question Project Prioritization

Members of the Legislature and the Commission have stated there is a need for projects to be prioritized

Members of the Legislature and the Commission have questioned the lack of formal project prioritization. During the 2015 Legislative Session, members of the Joint Appropriations Committee (JAC) asked if the Commission had prioritized the projects in the event that the supplemental request was not fully funded. The Office informed JAC that there was no prioritization. Ultimately, the Legislature funded half of the request leaving the Commission to decide which of the projects listed in the Omnibus Water Bills would receive funding. The Commission did not take any action to deny the six approved projects based on a lack of funding.

The majority of commissioners surveyed commented that funding will eventually become limited and the need for prioritization will be necessary. However, some commissioners stated that they do not believe the Commission has reached that point.

Other Wyoming Commissions and Other State Prioritization Processes

Although the Commission has broad criteria within statute and in its Operating Criteria for categorizing water projects, other Wyoming commissions and associated agencies approach project prioritization through a more prescribed fashion and use it as a budgeting tool. Evaluators reviewed the project prioritization processes for the Wyoming Transportation Commission, the Wyoming Aeronautics Commission, the State Loan and Investment Board, and the Wyoming Wildlife and Natural Resource Trust Fund.

The Wyoming Transportation Commission

The Wyoming Transportation Commission uses the State Transportation Improvement Plan (STIP) to prioritize its projects. The Transportation Commission meets monthly to assess the STIP and make any needed adjustments. According to Transportation Department staff, the STIP is a "fiscally constrained" document, and the Transportation Commission does not request additional appropriations to cover project funding that may be in excess of what is available. If there are more projects than available funding, those projects will be included on the STIP at a later date.

District engineers review projects based on the formal assessments of highways, as well as using professional judgment, and create a pick-list for projects that will be included in the current STIP. If emergency situations arise, funds will be diverted from another project, which is then scheduled for funding at a future date. It is notable that Department of Transportation staff commented that current funding needs far exceed available resources.

Through the Long Range Transportation Plan, the Department and Transportation Commission schedule the highest need projects for a six-year period. This process also functions as a budgeting tool that allows the Transportation Commission to complete as many projects as possible with the available funding.

The Wyoming Aeronautics Commission

The Wyoming Aeronautics Commission uses a similar process to the STIP called the Wyoming Aeronautics Capital Improvement Plan (WACIP) and is included in the Transportation Commission's STIP project prioritization process. The WACIP, however, focuses on aviation needs for a six-year period. Part of the WACIP process is prioritizing and ranking projects through the Priority Rating Model for Project Evaluation. The Aeronautics Commission recently revised this model, which takes a variety of categories and sub-categories into account based on a weighted points system in order to assist in ranking projects. Given that funding is not available for all projects, the Aeronautics Commission also maintains a waitlist for eligible projects it considers lower priority. Appendix D illustrates the categories used in the Priority Rating Model.

The Wyoming Wildlife and Natural Resource Trust Fund

The Wyoming Wildlife and Natural Resource Trust Fund (WWNRT) uses a prioritization, or selection, matrix to arrange projects within the parameters of available funding. Once applications are received, all nine board members review and initially score each project based on a scoring sheet. The WWNRT uses weighted subcategories to further distill the number of project applications down to those that are the best fit and highest priority for funding. Appendix D illustrates the matrix used by the WWNRT to prioritize projects.

The State Loan and Investment Board

The State Loan and Investment Board oversee a number of programs that require prioritization. For example, the Municipal Solid Waste Facilities Cease and Transfer Loan and Grant Program rules require project prioritization based on criteria found in SLIB rules Chapter 35, Section 5(a), as found in Appendix D. Shortly

after this program was established, the Office of State Lands and Investments and the Department of Environmental Quality (DEQ) developed the initial non-prioritized list of potential projects. The two agencies sought information from stakeholders, developed a list of projects, and included estimated costs. Later, the Legislature prioritized the list of projects and specified the maximum amounts of eligible project costs. The Legislature further limited funding to the first twenty-one projects on the list. However, authority was provided to DEQ to modify project prioritization based on:

- Optimized efficiency;
- Project readiness;
- Compliance with grant or loan qualifications or conditions; and,
- To address emergency or immediate emergency concerns.

During the 2015 legislative session, the projects were re-prioritized and the maximum amount of eligible costs was amended (2015 Laws, Ch. 35). In addition, the limit on funding for only the top twenty-one projects was removed (2015 Laws, Ch. 142, Section 333).

North Dakota's Water Project Prioritization

The North Dakota State Water Commission has developed the *Water Project Prioritization Guidance Concept*. An illustration of this prioritization model can be found in Appendix D.

The process used by North Dakota separates project types within priority categories. Projects are then organized by major drainage basin within each project type. The list is organized into four categories including: flood control, general water management, irrigation, and water supply. Within these guidelines, there are four priority categories including:

- Essential Projects, which are not prioritized as these projects are classified as emergent;
- High Priority;
- Moderate Priority; and,
- Low Priority.

In order to better plan and prioritize water projects, the North Dakota State Water Commission biennially solicits project and program information from potential project sponsors. These results provide the Commission with an updated inventory of water projects and programs that could come forward for funding in the following biennium, and beyond. The report notes that "...the product of this effort becomes the foundation that supports the

State Water Commission's budget request to the Governor and Legislature."

After project reviews are completed, that information is transferred into a water project database. This information provides the Commission with updated project information for older projects and an accounting of new projects that have developed since the last inventory process.

One key element of water project prioritization in North Dakota is that sponsors are asked to assign *the most realistic start dates possible to projects they expected to present to the Commission*. Sponsors are also asked to consider when a funding commitment from the Commission would be needed for projects or programs to proceed.

Project Readiness as Prioritization Criteria

There are multiple considerations for prioritizing projects funded out of the Water Development Accounts, including: phased projects, new development projects for unappropriated water, multi-purpose projects, and level of project readiness.

As the Commission develops a project prioritization model, the readiness of projects to move forward once funds are appropriated should be considered. According to data provided by the Office, a number of construction projects from 2011 to 2014 have yet to draw down funds, suggesting that some of the projects the Commission has approved may not have been ready to move forward upon appropriation. Without prioritization, approving projects that are not "shovel-ready" could prevent the Commission from funding projects that are, or that have emergent funding needs.

Project applications are required to contain a comprehensive financing plan, including a schedule showing when the predicted sponsor matching funding is expected to become available. According to the Operating Criteria, priority may be given to sponsors with a finalized financing plan or documented evidence that financing will be in place within the calendar year in which funds are appropriated by the Legislature.

The Office considers project readiness in its initial review of the project applications. Readiness factors considered by the Office include:

- Is a feasibility study complete;
- Does the sponsor have adequate funds for their share; and,
- Is the sponsor prepared to increase rates to cover debt service costs, if a loan is administered.

The Office states it will not recommend funding if a project is not ready. Of the forty-one projects not recommended for funding between FY2010 and FY2015, three were not recommended pending completion of a feasibility study, and the sponsor of one project was having difficulties securing the match funding.

While there will always be unforeseen and unexpected project delays, there may be opportunity for the Commission to refine the established criteria related to project readiness within a formal prioritization model. Additionally, the examples of the unused appropriations discussed below, may illustrate an opportunity for the Commission to refine its practices related to review of delayed projects.

Delays Due to Sponsor Financing

According to the Office, a construction project cannot move forward until the entire financial package has been secured and the sponsor has matching funds available. The Office further notes that there are currently two projects, which are listed in Table 3.2, totaling \$3.9 million in funding that have not moved forward because of issues with sponsor financing.

Table 3.2
Delayed Projects Due to Sponsor Financing

Session Year	Project	Appropriation	Reason for Project Delay
2013	Cottonwood Lake Enlargement ¹	\$3,700,000	Sponsor considers the amount of debt too much for their small district.
2013	Eden Valley Farson Lateral Rehab	\$233,500	Sponsor share pursued through Basin Wide Salinity Control Program; however, funds retracted due to federal budget sequestration.

Source: Legislative Service Office summary using information provided by the Water Development Office.

¹ Project funds recommended for reversion by Office in November 2015.

Unused Funds for Project Amendments

There are also instances in which an appropriation has not yet been used because a previous appropriation for the project has not been exhausted. For example, listed in Table 3.3 are appropriations for eight amended projects, totaling \$25 million, in which the supplemental appropriation has not been used, and in some instances, the unused appropriation for the amended amount is several years old.

Table 3.3
Unused Appropriations for Amended Projects

Session Year	Project	Appropriation	Prior Appropriation	Remaining Funds from Prior Appropriation¹
2011	Deaver Rehab 2009	\$350,000	\$673,000 (2009)	\$115,056
2012	GR/RS/SC Raw Water Reservoir	\$7,382,000	\$900,000 (2011)	\$117,743
2012	Willwood Dam Rehab	\$1,410,000	\$210,000 (2011)	\$135,447
2013	Gillette Regional Extension	\$5,494,000	\$703,500 (2012)	\$72,865
2014		\$234,500		
2014	Rolling Hills Water Supply	\$1,184,000	\$160,000 (2012)	\$85,822
2014	Big Horn Regional Well Connection	\$1,447,200	\$4,730,200 (2012)	\$40,527
2014	Heart Mountain Rehab 2010	\$325,000	\$485,000 (2012)	\$213,606

Source: Legislative Service Office summary using information provided by the Water Development Office.

¹ Amount as of 6/30/15.

Unused Appropriations for Other Reasons

In addition to the unused appropriations due to sponsor financing issues, and related to amended appropriations, there are currently ten other unused appropriations, totaling \$3,150,050, that were authorized in 2014 or earlier. Listed in Table 3.4, below, is a summary of the number and amount of the unused appropriations.

Table 3.4
Unused Appropriations for All Other Reasons

Session Year	<u>Account I</u>		<u>Account II</u>		<u>Total</u>	
	Amount	#	Amount	#	Amount	#
2011			\$154,100	1	\$154,100	1
2012			\$180,000	1	\$180,000	1
2013	\$406,370	3			\$406,370	3
2014	\$2,272,900	4	\$136,680	1	\$2,409,580	5
Total	\$2,679,270	7	\$470,780	3	\$3,150,050	10

Source: Legislative Service Office summary using information provided by the Water Development Office.

The reasons the appropriations in Table 3.4, above, have not been used vary. In several instances, the Office reports that the project is in design phase or in construction, but the sponsor has not submitted any invoices for reimbursement, which is the reason listed for the two oldest unused appropriations. In two other instances, one in 2013 and one in 2014, the sponsor is hesitant to start the design phase because the project relates to another water project that is not completed. In another example, the design phase is on hold because of easement issues.

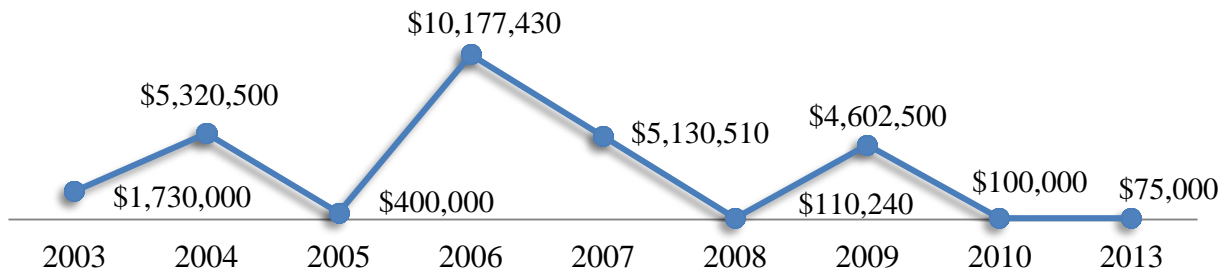
Cancelled Projects

Each project appropriation has a reversion date assigned which is typically July 1st of the fifth year after the appropriation.

According to the Office, if the sponsor has not secured its share by that date, the funds revert and the project is cancelled. In some cases, the Director may ask the Commission to revert funds before the five-year period has elapsed due to insufficient progress by the sponsor to secure matching funds.

In the past five years, only one project has been cancelled without use of the appropriation prior to lapse of the five-year period. Since 2003, unused appropriated amount for cancelled projects is \$27.6 million, as shown in Figure 3.1, below.

Figure 3.1
Appropriated Amounts for Cancelled Projects



Source: Legislative Service Office analysis of information provided by the Water Development Office.

Given that the Water Development Accounts are encountering significant demands, the Commission should develop a prioritization process that focuses on a needs-based selection of individual projects in addition to the types of projects in the Operating Criteria. As part of its prioritization, the Commission should closely review construction projects to ensure that the Commission is not committing funds on projects that are not ready for construction, when other projects may be “shovel-ready.”

Recommendation 3.1: The Commission should develop a project prioritization process to guide its annual recommendation decisions and consider information including, but not limited to:

- Statutory requirements such as projects that make use of unappropriated water;
- Operating Criteria project eligibility;
- Funding constraints;
- A project’s ability to move forward after approval and appropriation;

- Emergent funding needs; and,
- The appropriateness and impacts of phasing on current and future project funding potential.

Chapter 4: Water Development Commission Practices

Finding 4.1 Commission rules do not match statutory requirements.

The Commission is required to develop and promulgate rules to implement its authority to specify the fine points of how the Water Development Program (Program) or process should function on a day-to-day basis. However, the Commission has a longstanding history of minimalizing rules, while proceeding to develop its Operating Criteria, akin to a policy manual, in order to set standards and operating procedures for the Program. While administrative rules are required to be developed using the Wyoming Administrative Procedure Act (APA), the Operating Criteria are not required to go through the same review and evaluation process.

Essentially, instead of operating the Program with a balanced combination of clear rules and flexible criteria, the Operating Criteria appear to be used in lieu of Program rules. As the Operating Criteria do not carry the same force and effect as rules, there is increased risk that Office and/or Commission actions will not be consistent and uniform for sponsors or projects. This inconsistency is due, in part, to a potential conflict in statute where the Legislature requires program rules, but also wishes to keep the Program moving forward and insulated from challenges to project decisions.

Commission is required to Promulgate Program Rules

The Commission is required under W.S. 41-2-118(a)(vii)⁷ to develop rules "to implement the provisions of W.S. 41-1-106 through 41-1-108 and 41-2-107 through 41-2-118, including establishment of qualifications for the administrator." Therefore, not only are rules required of the Commission, the statute specifies which program elements should fall under those rules. Specifically, W.S. 41-1-106 through 41-1-108 addresses the Commission's authority to work with and receive funding from the federal government for various water and land resource planning activities.⁸ Statute sections 41-2-107 through 41-2-118 deal more specifically with the requirements, considerations, and processes of the Program.

⁷ The Commission is required to develop rules for the Groundwater Studies program under W.S. 41-2-119; these rules have been promulgated.

⁸ W.S. 41-1-107 also allows the Commission to adopt rules that may be required to implement a federal program, if necessary.

Commission is Further Authorized to Develop Operating Criteria

In addition to the requirement for program rules, W.S. 41-2-121(a) directs the Commission to “establish criteria for evaluation and administration of water development projects,” which states:

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

Therefore, the recommendations, prioritization, and disqualification decisions of the Commission cannot be challenged under the APA.

Commission Rules Currently Cover Minimal Standards, Procedures, and Processes

The Commission has six chapters of rules that cover the following:

- Chapter One - General Provisions;
- Chapter Two - Meetings;
- Chapter Three - Administration;
- Chapter Four - Public Hearings;
- Chapter Five - Public Records Request; and,
- Chapter Six - Groundwater Exploration Grants.

Chapter Four references public hearings, which are required of the Program for certain projects. The other five chapters do not directly specify which functions of the Program they encompass. All Chapters, except Chapter Three – Administration, were revised in January 2014; Chapter Three was last revised in 2009.

Current rules for the Commission are very brief, limited to one page or less per chapter, and do not have details as to how the Commission implements or administers its various authorities for the Program. For example Chapter One – General Provision notes the need to adopt rules by restating the authority in statute, but only defines the Commission officers and Office Director. In addition, Chapter Three – Administration, the Commission chairman, vice-chair, or the director, as directed by the Commission, will sign contracts or agreements authorized by the Commission. Significantly, these rules are mostly void of

requirements directly related to how project sponsors should interact with the Program.

The Commission Reduced Rules in 2014

In late 2013, the Office began to review the administrative rules of the Commission, in response to the Governor's initiative, to streamline and reduce the length and number of rules by one-third. At the time of this initiative, the Commission rules were still mostly one-page in length, except for rules on public hearings and groundwater grants. Examples of provisions that were impacted included:

- Removed the water project definition from Chapter One - General Provisions;
- Combined Chapter Two – Meetings and Chapter Four – Public Meetings and eliminated meeting agenda and minutes preparation, notice, and record requirements;
- Eliminated procedure and process standards for Chapter Five – Public Hearings; and,
- Greatly reduced or eliminated criteria related to notice of eligibility, funding requirements, various application procedures, and formatting requirements for the Groundwater Grants program.

Statute Authorities for Rules and Operating Criteria May Conflict

There appears to be overlap between the Program elements that are statutorily required for rules and those elements that are required in the Operating Criteria. For example, under W.S. 41-2-118(a)(vi), the Commission is required to “[e]stablish and *adjust priorities* for water development projects.” (*LSO emphasis*) This provision appears to require the Commission to establish and articulate project priority standards in rules to provide the public with clear and consistent guidance on where the Commission feels program funds should be dedicated. However, the Commission orders or groups projects based on broad project categories as opposed to a comprehensive prioritization methodology that evaluates individual projects from year-to-year.

Moreover, the Legislature emphasis on the development of hydroelectric projects through W.S. 41-2-112 and W.S. 41-2-114(a)(iv) suggest that program funds are intended for and could be used for hydropower construction (“Level III construction and operation plans...”). Yet, the statute that specifies what should be contained in the Operating Criteria limits the Commission to funding only Level I and Level II studies for hydroelectric projects. As such, the Commission has followed Office

recommendations to deny five hydroelectric projects since July 1, 2009. Two of these denials were for Level II feasibility studies.

Finally, W.S. 41-2-121(a)(ii)(D) states that the Commission should include findings that support the funding recommendations of the Commission under W.S. 41-2-112(b). Both statutes reference how the Commission should consider and act on recommendations under the Program. However, the requirements for both rules and Operating Criteria may indicate a potential contradiction or complication in determining how directive or flexible the Legislature wishes the Commission to be.

Operating Criteria are Non-Binding and May be Waived

One of the most significant differences between the establishment of Operating Criteria and promulgation of rules is that rules have the full force and effect of law. Specifically, rules establish binding standards and processes between the government entity and the constituency it serves.

With this understanding, three main issues arise that may impact the consistency and clarity of Commission actions related to the Program:

1. The Operating Criteria are not required to go through the same public review and comment process as rules.
2. The Commission can waive portions of the Operating Criteria, without notice, if it feels it will advance or restrict a project or the process.
3. The Commission has implemented requirements that are not stated in rules or the Operating Criteria.

First, Operating Criteria are not promulgated rules, and the Commission is not required to follow the APA. As such, there is no requirement to receive public comment, conduct public hearings, or have other external reviews. The Commission does currently approve a forty-five day comment period on suggested changes to the Operating Criteria. Yet some Commissioners expressed concerns about the public comment process, as the Operating Criteria are internal policies and in fact not promulgated rules. Additionally, there are no requirements or standards for the Commission to act on public comments. Additionally, while required of promulgated rules, there is no requirement for the LSO to review, or Governor to approve the Operating Criteria.

Second, the Operating Criteria is not a binding document or policy for either the Commission or the Office staff. Specifically, the introduction to the Operating Criteria states that it is “not intended to be inflexible or uncompromising rules but rather to provide

general guidelines for use in the decision making process.” Additionally, there are sections of the Operating Criteria that allow the Commission to waive certain provisions, such as providing a planning study benefiting a private entity.

Third, the Commission has implemented changes to its processes without updated guidance within the Operating Criteria or rules. Essentially, these changes affect policies and procedures of the Program without fully informing or providing timely warning to potential project sponsors.

For example, during its August 2015 workshop the Commission discussed implementing an additional application requirement. The Commission discussed if irrigation districts should provide a current response to the most recent survey of the districts in order to be considered for project funding. While the Commission did not officially vote to add this requirement to the application or the Operating Criteria, the Office has since implemented this requirement, posted the notice on its website, and added new language to its applications for the most recent October 1, 2015 project application deadline. This requirement was set *after* the August 15, 2015 deadline for new project applicants, but was discussed during applicant review site visits with applicable sponsors.

Recommendation 4.1: The Commission should conduct a thorough review of its responsibilities, required actions, and processes related to W.S. 41-1-106 through 41-1-108 as well as W.S. 41-2-107 through 41-2-118 and establish clear and consistent procedures in Program rules for project sponsors.

On one hand, it is reasonable for the Legislature to want the Program to function efficiently by limiting the impact of contested decisions of the Commission. Implementing rules for the entire Program could be difficult and it may not be feasible or reasonable for all functions to be in rules. On the other hand, it also appears that the Legislature recognized the need for administrative processes of the Program to be consistent. The Commission should articulate its processes to sponsors in Program rules to provide for procedural safeguards.

Finding 4.2: **The Commission rarely documents the proceedings of its workshop sessions in accordance with the Wyoming Public Meetings Act.**

The Commission currently has two separate business sessions: workshops and meetings. While workshop days can provide more explanation regarding Commission practices, the Commission also uses these sessions to discuss items that may require action on the

meeting day. If the Commission is engaged in discussions or deliberations during their workshop sessions, pursuant to W.S. 16-4-402(a)(iii) and W.S. 16-4-403(c)(i), minutes of the workshop sessions should be recorded.

Wyoming statute 16-4-402(a)(iii) defines a meeting under the Wyoming Public Meetings Act as “an assembly of at least a quorum of the governing body of an agency which has been called by proper authority of the agency for *the expressed purpose of discussion, deliberation, presentation of information or taking action regarding public business.*” (*LSO emphasis*)

Although statute does not require meeting minutes to be published when no formal action is taken, statute requires minutes to be recorded pursuant to W.S. 16-4-403(c)(i).

Commission Rarely Keeps Minutes of Workshops

The Commission generally holds its meetings over two, or in some instances, three days. The first day is a workshop session, and the second day is the official public meeting where formal actions are taken by the Commission. Meetings that cover three days can include project tours and a chance for sponsors to speak to the Commission about their applications.

Workshop sessions are public meetings held to provide responses to Commission information requests and minutes are not generally recorded. However, the Office commented that public notice of workshops is provided and the agenda serves as the public record. Nevertheless, the agenda does not always reflect the deliberations that occur during workshop days. For example, the August 2014 workshop agenda indicated that recusal protocol and policy was discussed, but based on information gathered during this evaluation, the Commission tabled the discussion and instead focused on a different issue. This issue has not been revisited.

Of the thirty-one workshop sessions held July 2009–July 2015, the Commission documented only two sets of workshop minutes due to the required recording for the act of moving into executive session.

Publication of minutes

The Office has not consistently published its meeting minutes on its website. When questioned about this practice, Office staff commented, “we do not see any public demand for old agendas, minutes or board materials. As such, they have been removed from the website.” However, Office staff clarified that if a formal public records request is submitted for copies of past meeting minutes, those minutes will be copied and provided for a fee.

While there are no meeting minutes, Commission deliberation on formal actions have been observed during workshop days.

Recommendation 4.2: The Commission should record and maintain public minutes of workshop sessions.

LSO acknowledges and commends the Office as it has begun posting some past Commission agendas and minutes on its website and encourages this practice to continue.

Finding 4.3 Commissioners do not file written disclosures.

Statute requires Commissioners to publicly disclose certain personal and professional information that may impact their role and responsibilities while on the Commission. Disclosures include interests in water rights or applications and/or relationships with engineering companies that may come before the Commission. Until recently, Commissioners have not been aware of, or complied with, this requirement.

Commissioners Are Required to File Personal and Professional Interest Disclosures

The Commission does not have a formal practice in place to ensure that members file written disclosures with the Secretary of State as required by W.S. 41-2-121(c), which states:

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

- (i) Any water rights, permits or applications held, whether for direct flow, reservoirs or underground water;
- (ii) Any interests in engineering or construction firms which engage in designing or constructing water projects.”

According to the Secretary of State’s Office, the statute requiring the Commission to file written disclosures is unique to the Commission, as no other Wyoming board or commission has a similar law requiring such disclosures. Instead, statutes direct other boards and commissions to deal with conflict of interest through public disclosure and recusal to the discretion of each entity. However, these conflict and recusal instances should be recorded in public minutes.

As part of the new commissioner orientation and training process, the Office provides a Handbook for the Wyoming Water Development Program which includes, among other things, a copy of Title 41 Water statutes W.S. 41-2-101 through 125 and also a copy of “Protocol and Procedures of the Wyoming Water Development Commission.” This document offers an overview of the professional and ethical responsibilities of being a Commission member and parliamentary procedures for conducting meetings. This document, however, does not provide specific reference to W.S. 41-2-121(c) in the sections dealing with conflict of interest, recusal, or ethics.

As the project decisions made by the Commission are exempt from the APA, the requirement to file written disclosure may provide an additional layer of transparency and assist commissioners in avoiding the appearance of impropriety. At the time of this writing, only two commissioners have filed written disclosure with the Secretary of State. According to staff from both entities, the Secretary of State’s Office and the Water Development Office are working on processes to implement a standardized disclosure form and management system.

Recommendation 4.3: Members of the Commission should complete and file written disclosure forms, and continue to do so annually, in order to comply with W.S. 41-2-121(c).

Finding 4.4 The Commission lacks standardized and documented business practices for managing and recording recusals in meeting minutes.

Commissioners are required to make public recusals from votes on Commission actions where they may have potential conflicts of interest. Based on LSO review of Commission meeting minutes, notes, and other documentation, it appears that recusals are inconsistent and made without clear policy or protocols. In addition, there are instances in which a commissioner’s conflict of interest may be broader than the criteria set forth in W.S. 41-2-121(c) related to written disclosures. Examples of broader conflicts include employer relationships outside of engineering or construction firms, or litigation cases involving client-attorney relationships. Overall, this varied approach may cause Commission decisions to be called into question.

Executive Branch Ethical and Legal Obligations

The Executive Branch has five resources, within two handbooks, providing guidance for managing real or perceived instances of conflict of interest. These five resources provide general

statements about the ethical and legal obligations surrounding conflict of interest, bias, and recusal.

Handbook for the Wyoming Water Development Program

The Handbook for the Wyoming Water Development Program contains three resources:

- Protocol and Procedures;
- Ethics and Disclosure Act (W.S. 9-13-101 *et. seq*); and,
- Executive Order 1997-4: Executive Branch Code of Ethics.

First, the Commission's Protocol and Procedures document states that if a commission member feels he or she is faced with a conflict of interest, or feels there may be bias in their decision making, the commissioner should recuse him or herself.

Second, the Ethics and Disclosure Act (Act), clarifies that commissioners are not to privately profit or benefit for their service on the Commission and that they shall not make official decision or votes in matters of personal or private interest.

Third, the 1997 Executive Order requires that those who serve the people of the State of Wyoming, including commissioners, do so with integrity and without even the appearance of impropriety. The guidance prohibits commissioners from taking official action on matters in which he or she has a personal or financial interest.

2012 State of Wyoming Board Handbook

The 2012 State of Wyoming Board Handbook includes general guidance related to member duties and obligations, ethics, conflict of interest, and parliamentary procedure. Also included in this guidance is Executive Order 1981-12: Biased Decision Making. These two references, typically found in other board and commission handbooks, are not included in the Commissioner Handbook.

WYDOT Ethics Training

It is the responsibility of the Commission to manage these obligations through their internal handbooks, which incorporate written policy and procedures. For example, a review of the Transportation Commission policy handbook provides reference to an intensive four hour orientation session that includes:

- Ethics training by the Attorney General;
- Management of recusals and conflicts of interest;
- Training on the State of Wyoming Board Handbook; and,
- Links to training videos.

Upon completion, WYDOT commissioners are required to sign an affidavit acknowledging receipt of the ethics training.

Commissioner Recusals 2010-2015

In the past six years, twenty commissioners have served on the Commission and made decisions for approximately 400 projects. In review of Commission minutes from August 2009–July 2015, eleven different commissioners (55%) recused or abstained from voting on twenty-nine, or approximately 7% of total projects. The majority of recusal actions occur during the November meetings, where the Commission discusses and approves projects for inclusion in the proposed Omnibus Water Bills. Table 4.1, below, provides a summary of how often commissioners have abstained from voting, declared a conflict with additional actions, or recused themselves from a vote.

Table 4.1
Frequency of Recusal Actions by Commissioners

Actions of Recusal	Frequency
Abstain	4
Recused	27
Conflict/Recused	3
Conflict/Abstain	1
Conflict/made motion/carried	1
Total	36

Source: Legislative Service Office review of the Water Development Commission meeting minutes.

Inconsistent Minute Records Provide Challenges to Understanding Commissioner Recusals

The review of minutes identified several challenges in determining how and when commissioners recused themselves from a project discussion and subsequent vote. For example, in the instance of a commissioner abstaining from voting on a project, the minutes reflect that the motion was made, seconded, and carried 8-0 with a commissioner abstaining from the vote. However, the Protocol and Procedures manual states that “abstentions count as ‘no’ votes,” therefore, the vote should have been recorded as 8-1. There were no instances in the minutes identifying an abstention resulting in a no vote.

The majority of minutes appear to reflect that commissioners are recusing themselves with various actions. The minutes describe one commissioner who identified specific reasons for declaring a conflict on two projects. Once declared, the commissioner recused from the vote on one project and abstained on the other project. Another commissioner declared a conflict on a project, and once

declared, followed with a motion to accept the project, which was subsequently carried by the whole Commission.

A review of the minutes has identified inconsistent documentation of recusals as follows:

- Commissioner X recused him or herself from the vote. Motion made, seconded, carried.
- Commissioner Y recused him or herself from the vote. Motion made, seconded, carried unanimously.
- Commissioner Z recused him or herself from the vote. Motion made, seconded, carried with Commissioner Z recused from the vote.

The above examples of Commissioner X and Y demonstrate that the minutes lack clarity in recording recusals and commissioner participation in the vote.

One commissioner's voting record on a single project, provided an example of how recusals are inconsistently documented for the same, or similar, project from meeting to meeting. During the first year, a project was unanimously approved. In the second year, the commissioner abstained from voting for the project, and in year three the same commissioner declared a conflict, but made a motion to approve the project. The commissioner's recusal is then documented in the meeting minutes for year four of the project. While LSO acknowledges that conflicts may not always exist from year-to-year, a lack of consistent documentation within the minutes is concerning.

Recusals on Omnibus Water Bills May Also be Problematic

The Commission considers many projects during the months of November and December (or January of even numbered years) in preparation for the upcoming legislative session. The majority of recusals occur during the November meetings when the Commission is approving project recommendations for inclusion in the proposed Omnibus Water Bills; a small number of commissioners also recuse themselves from the December/January votes as the bills are finalized.

Upon review of minutes dealing with the proposed Omnibus Water Bills, it does not appear as if commissioners recuse or abstain from voting when they had done so in previous meetings. For example, there was an instance documenting a commissioner's recusal when a project was initially approved, but when the 2011 Construction Omnibus Bill was approved no recusals or abstention votes were reflected in the minutes.

In a second example, a commissioner moved to eliminate a previously approved project from the recommended list presented to the Select Water Committee. While the Commission voted in favor of this motion, and the Select Water Committee agreed, the Legislature ultimately re-introduced and approved the project. It was not until after the legislation had passed that the commissioner declared a conflict and refrained from future votes.

Need for Training on Conflict of Interest and Ethics

One question in the LSO Commissioner Survey requested that respondents rank their training with regard to their responsibility in filing disclosures with the Secretary of State; 33% reported that they received no training and 56% stated that training was limited.

Regarding a question on ethics, including declaration of conflict of interests, 56% responded that training was limited, however the remaining 44% felt it was sufficient to make informed decisions or that continuous training was provided. However, a commissioner expressed concern over instances of perceived impropriety by other commissioners. Additionally, Office staff noted a few situations of potential bias, or conflicts of interest, relating to commissioner actions.

The process for orienting and training new commissioners includes providing them with copies of the Handbook for the Wyoming Water Development Program and reviewing the contents with the Office Director, as time allows. Most of the training is considered “on the job,” obtained through Commission meetings.

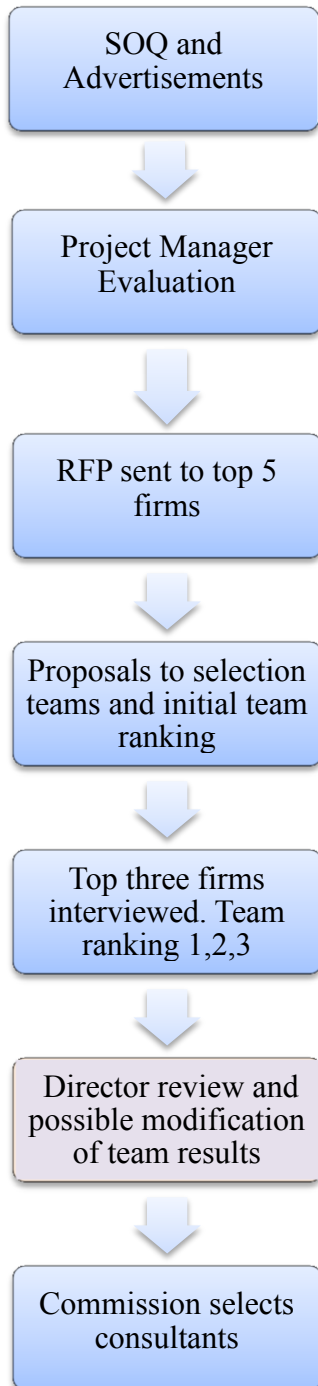
Recommendation 4.4: The Commission should develop protocols and procedures for declaring conflicts of interests and recusals and voting actions should be clearly and consistently noted in meeting minutes.

Finding 4.5 The Office has modified consultant selection team decisions without informing the full Commission.

While the Commission is authorized to evaluate and contract with engineering consultants pursuant to W.S. 16-6-119 and W.S. 9-2-1030 and 1031, the Director reviews a summary of the interview results, and in some instances, will modify a selection team’s decision if one firm has been selected for too many project contracts. According to the Office, modifications are “based on the ‘equitable distribution of contracts among qualified firms’ language found in W.S. 9-2-1031(a).” The Office also noted that these changes are only made if it is in the best interest of the Program.

Team Selection Process

Figure 4.1
Consultant
Selection Process



Source: Legislative Service Office analysis and summary.

As shown in Figure 4.1, the Commission appears to follow the procurement process for consultant selection. Selection teams that include Commission members generally begin their participation when the Office sends copies of the Request for Proposal (RFP) consultant responses to each team. From here, team members are responsible for knowing the project prior to the final consultant selection meeting in May.

However, the Office does not provide the team with a rubric or matrix for use when ranking consultant presentations, which increases the subjectivity during the final stage of consultant selection. On the day of the interviews, the Office meets with sponsors and other team members that have not previously participated in the selection process. Office staff directs team members to vote their conscience during the interview process. At the end of each set of consultant interviews, the selection team agrees on the ranking of firms. Once all teams have made their selections, the Director is informed of the results.

When selection teams choose a single firm for what the Office Director believes is too many projects (current standard is three or more projects), the Director will speak to the project managers of each project to determine if the second rated firm was well qualified. Coincidentally, the Office stated to LSO that by the time a consultant makes it to the interview stage, they have been determined to be well qualified and the interview is intended to find the best fit for the project.

After speaking with project managers, the Director may also speak with one or more of the commissioners that served on the selection team. However, it is the understanding of LSO that the entire selection team is not consulted on the modification to the team's selection decision. After an altered selection decision is made, the full Commission is provided a modified list of interview rankings. The modifications are not noted on any handout, and the list is presented at the meeting as the official interview results of the entire selection team, without any discussion of the original team rankings.

Modification of selection team results does not happen often. In the last three years, modifications have occurred once in 2013, once in 2014, and twice in 2015. While the previous director also modified team selection scores, the process was not documented. Therefore, the Office could not produce the number of times modifications occurred prior to 2013.

In May 2015, selection teams chose one firm for multiple projects during the interview phase, but later voted to start contract

negotiations with two different consultants based on the recommendations of the Director to satisfy the equitable distribution requirement. In order to keep specific project information confidential, Table 4.2 illustrates the modifications that occurred. Selection teams chose Firm C for four separate projects. The following day the Commission voted to select alternate consultants for two of the projects without explanation.

Table 4.2
Consultant Modification for 2015 Consultants

Consultant Selection	Project 1	Project 2
May 7 Interviews (no specific order)	<ul style="list-style-type: none"> ▪ Firm A ▪ Firm B ▪ Firm C 	<ul style="list-style-type: none"> ▪ Firm C ▪ Firm D ▪ Firm E
May 7 Selection Team Ranking	<ol style="list-style-type: none"> 1. Firm C 2. Firm B 3. Firm A 	<ol style="list-style-type: none"> 1. Firm C 2. Firm D 3. Firm E
May 8 Commissioner Motion	<ol style="list-style-type: none"> 1. Firm B 2. Firm C 3. Firm A 	<ol style="list-style-type: none"> 1. Firm D 2. Firm C 3. Firm E
June 4 Contract Awarded	Firm B	Firm D

Source: Legislative Service Office observations and notes from May 2015.

When asked about the current modification process, commissioners had divided opinions. Two of the five commissioners interviewed stated that they were comfortable with the process. Three of the commissioners, however, stated that they did not believe that the Commission or the Director should modify the scores once the selection teams made their final decisions. In addition, several commissioners stated that the selection teams needed better project information, such as a firm's past performance, before they make any decisions.

Other Executive Branch Agencies Interview Scoring

In reviewing other Wyoming commissions that are also charged with hiring engineering consultants, the School Facilities Commission (SFC) provides four guidelines for the selection of professional services providers. Those guidelines include policy and procedure for shortlist scoring, composite scores, reference checking to consider past performance, and interview ranking. These guidelines also provide examples of matrices for scoring those items.

The SFC guidelines provide that during the short list phase, considerations listed in the statute are to be "used as the first step in the professional services provider selection process." The SFC

scores its initial evaluations of each interested firm based on the following:

- Professional approach and philosophy;
- The ability of professional personnel;
- Past performance;
- Willingness to meet time requirements;
- Location of personnel in relation to the project;
- Residency;
- Current and projected workloads; and,
- Volume of work previously awarded and the equitable distribution of contracts among qualified firms.

The Water Development Commission considers the same areas required under W.S. 9-2-1031(a), but unlike the SFC, the Commission considers some of these items, such as residency, during its initial short list review, and other areas, such as equitable distribution, after the selection teams have made their decisions.

No formal scoring of the consultant presentations

The Commission does not weight or score statutory considerations. At the August 2015 Commission meeting, one commissioner asked if all the statutory requirements of W.S. 9-2-1031 are considered. Those provisions include “the ability of professional personnel, past performance, willingness to meet time requirements, location, residency, current and projected workloads, the volume of work previously awarded to the firm by the agency, and the equitable distribution of contracts among qualified firms.” The Director stated that there has been some reference to the requirements, but the considerations have not been formal, and much of the evaluation is subjective from year-to-year.

When asked about the benefits of a scoring mechanism, such as a rubric or matrix, the Office stated that the subjectivity offered by the current process is invaluable. Office staff stated that sometimes a consultant may look good on paper, but is not a good fit with the sponsor. However, without such documentation, there is no evidence that the Commission reviews the statutory considerations.

Although Office staff stated that once a Level I or Level II project is complete, neither the Commission nor the Office formally evaluate the final product for timeliness, quality, consultant performance, and/or other factors. However, Office staff noted that in the future, the project manager might be involved in

ensuring the selection team has that information prior to new consultant selections.

The Commission also discussed this issue at the August 2015 meeting. A member of the Select Water Committee asked if there was a process by which consultant performance is measured. The Director explained that initial ranking is mostly subjective based on the professional judgement of the project manager.

Out of the nine commissioners surveyed, five responded that training was sufficient in the area of consultant selection; however, four commissioners stated there was limited to no training on the area of consultant selection or that more training was needed. When asked about strengths and weaknesses of the consultant selection process, commissioners commented that the process allows at least two commissioners to see presentations for each project. However, in a follow-up interview, one commissioner pointed out that there is a potential weakness of the process when “consultants may be selected by the Director in spite of selection committee’s selection.” The Office drafts the motion based on the list provided by the Director, one of the commissioners who participated on the selection team is responsible for making the motion. Within the surveys and interviews, several commissioners expressed dissatisfaction with the modification process; however, no one has contested the Director’s modifications during a public meeting.

Risk of Selection Process Being Challenged

According to the Office, engineering firms spend thousands of dollars to bid on water development projects. As one commissioner explained, from the consultant perspective, proposing a job is a gamble and modifying selection results in the spirit of equitable distribution further limits the odds of being selected for a project. Another commissioner shared, “Consultants aren’t supposed to bid for more than they can handle, so I’m not sure it’s our place to make that decision.” However, it is unclear if this perception is an official requirement.

While the decisions related to project recommendation, prioritization, and disqualification are exempt from administrative review under W.S. 41-2-121(d), the statute does not include reference to consultant selection, which happens after the Commission and Legislature approve the projects. As such, A&I Chapter 4 rules on consultant protest may allow consultants to challenge the selection of the Commission within ten days. These rules allow the consultant the opportunity to show if any procurement rules, policies, or statutes have been violated and A&I will attempt to resolve the issue informally. However, the protest

may advance to a hearing stage, where A&I will conduct a formal investigation. If A&I finds in favor of the contesting party, a contract may be rescinded and the Commission will be required to issue a new bid.

This risk was illustrated at the August 2015 Commission meeting when one commissioner stated that he/she was approached by at least three firms after the 2015 process, questioning the selection choices of the Commission.

Recommendation 4.5: The Commission should consider the criteria of W.S. 9-2-1031(a), including the equitable distribution requirement, prior to the consultant interviews and the Commission should consider scoring and documenting these considerations.

With a formal and steady process used by the Commission for consultant selection it is difficult to reconcile the informal and subjective modification of selection team decisions. While the Office and Commission believe it is not logical to apply the equitable distribution requirement until *after* the selection teams have made their decisions, any changes to the teams' selections made in the spirit of equitable distribution should be applied in a manner that is transparent to the Commission as a whole.

Additionally, altering selection team results should have full consent of the entire selection team, with quantitative support for the change. Lastly, the Commission should make consultants aware of the three-project standard used to limit the number of contracts awarded to any given firm earlier in the selection process or at least prior to the interview stage.

Finding 4.6 The responsibilities for the Program, as well as the relationship between the Commission and Office, are unclear.

There is not a unified view of how the Commission and Office manage the Program. One interviewee noted that the Commission takes on a different personality as members leave and new members are appointed; the same is true of Office staff and the Director. There are competing perspectives regarding how the Program should operate, especially related to the level of detail, involvement, and oversight of the Commission and individual Commissioners when making decisions on projects or Program policies and procedures.

These competing perspectives appear to have manifested in issues brought before the Commission in recent years that may have heightened the Program's profile with the Legislature. These

issues could be due to statutory confusion over the separation of Office and Commission responsibilities over the Program or that various responsibilities of the Commission have been gradually absorbed by the Office. It may be helpful for both the Legislature to explicitly specify the expected relationship between the Commission and Office and for the Commission to internally articulate to the Office its desired level of involvement in Program administration and execution.

Recent Concern over Commission and Office Actions

In the last two years, there have been two high profile instances where Commission and Office positions on Program responsibilities or obligations have raised questions about which circumstances either the Office or Commission has primary authority over the Program. First, some commissioners expressed concern about a project in the northwest part of the State that was legislatively amended into the 2014 Planning Omnibus Bill after the Commission and Select Water Committee recommended against funding the project. Second, the Office submitted a supplemental budget request for the 2015 session for projects that had yet to submit applications for funding. In each instance, the level of Commission authority to conduct its business and make informed decisions has been a concern.

2014 North Fork Shoshone Water Supply Level I Planning Study

Beginning in fall 2013, the Northwest Rural Water District in Park County submitted an application for a Level I study to identify the potential for expanding the district boundaries to add additional rural landowners that had inadequate water supply. The Commission favorably recommended the project at its November 2013 meeting for inclusion in the 2014 Planning Omnibus Bill.

According to the Office, the sponsor requested guidance on whether their presence at the January 2014 meeting was necessary when the final Omnibus Water Bills would be reviewed. The Office stated that, at the time, it was not aware of any controversy regarding the project, so the sponsor did not attend the meeting. At the January meeting the Commission changed its position and voted to remove the project from its recommended list, a decision with which the Select Water Committee concurred.

After this decision, the Office noted to LSO that the sponsor contacted the Office upset with the decision to not fund the project as they did not have representation at the meeting. According to the Office, the sponsor had two options to proceed. They could either re-submit the application in a later year, or find a sponsor to make an amendment to the Planning Omnibus Bill. During the

2014 Legislative Session, the project was amended back into the planning bill.

At subsequent Commission meetings, some commissioners expressed concern that the project was moved too quickly, that sufficient review and public input were lacking, and that the Office and Commission may not be approaching the project in the same way. At the March 2014 meeting, the Commission went over communication issues and possible misunderstandings related to how this project was handled.

Eventually the Office conducted additional research of property owners in the area and, based on the results, the Commission voted to cancel the project at its November 2014 meeting. The 2015 Planning Omnibus Bill passed with all remaining project funds reverting to Water Development Account I.

2015 Project Supplemental Budget Request

In August 2014, prior to the project application submission deadline, the Office informed the Commission that it submitted a supplemental budget request for \$22 million for seven anticipated projects, including one application that the Office did not expect to receive until 2015. The combined cost of the seven projects would have otherwise exhausted Account II. While the Office knew that it intended to submit the supplemental request as early as May 2014, and met with the Commission in June 2014, at the August 2014 meeting, the Director informed the Commission that there was insufficient time to involve the Commission prior to the submission deadline. However, several commissioners expressed dissatisfaction with the Director's actions. Commissioner concerns included:

- The Office had circumvented the Commission's statutorily prescribed responsibility for program project review by seemingly pre-approving these projects and requesting funding without the prior knowledge or approval of the Commission.
- By listing the projects in the supplemental request, the Office had given preference to each over other projects or an expectation that they would be funded regardless of the proper application processes and procedures.

The Director stated that if the Legislature did not approve the supplemental request, then these projects would go through the normal application process and he would recommend denial based on a lack of funding in Account II. Ultimately, the Governor approved an \$18.65 million supplemental request, which was then

further reduced by the Legislature to \$9 million, and funded from the Buffalo Bill Dam Investment Account.

A central issue with the supplemental request is that the Commission, not the Office, is vested with the statutory authority to present financial recommendations to the Legislature for projects funded under the Program. The decision of the Office to submit the supplemental budget request appears to be seen by some commissioners as circumventing the statutory authority granted to the Commission, including the charge to make funding recommendations to the Legislature.

Questions Regarding the Primary Authority over the Program

Program Perspective

The Commission is separately established and its powers are specified under W.S. 41-2-117. Although the Office conducts many of the duties and responsibilities outlined for the Program in W.S. 41-2-112 through W.S. 41-2-125, these statutes grant primary Program authority to the Commission. Within these statutes there are only a few references to Office specific duties and responsibilities, including:

- Files water rights applications for the State;
- Consults with Commission-contracted legal counsel; and,
- Works with the University of Wyoming to submit an annual report on the activities of the University's Office of Water Programs.

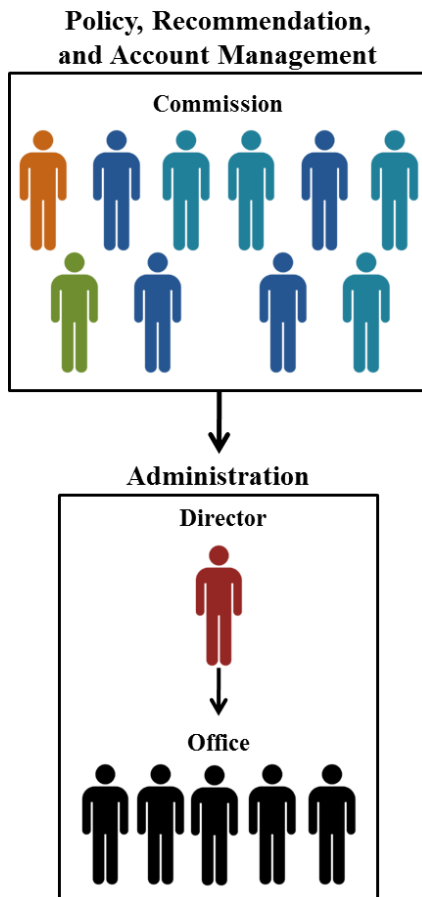
Statute specifically states in W.S. 41-2-117(c) that "[a]ll grant and loan programs over which the commission has authority shall be administered by the Wyoming water development office."

Additionally, the Commission's Chapter Three – Administration rules specify that the Office Director is the "chief executive officer to the Commission," and until 2009, these rules specified that the Office consult the Commission on staff hiring.

The statutes provide extensive direction to the Commission regarding specific duties and responsibilities regarding the Program. To provide a few examples, the Commission has the following duties and responsibilities, generally related to the preceding findings of this chapter:

- Per W.S. 41-2-112(a), through the Commission the Program shall have procedures and policies for the planning, selection, financing, construction, acquisition, and operation of projects for the use of water.
- Per W.S. 41-2-112(b), in making financial recommendations for the Program, the Commission, shall

Figure 4.2
Illustration of Governance
Structure in Statute



Source: Legislative Service Office
illustration based on statute.

emphasize multi-purpose water projects as well as recommend the terms and conditions for financing project costs.

- Per W.S. 41-2-118, the Commission shall establish and adjust priorities for projects, adopt rules and regulations, and recommend legislation “giving priority to projects for utilization of water not now being beneficially used in Wyoming.”
- Per W.S. 41-2-121(a), the Commission shall develop criteria for the “evaluation and administration of water development projects.”
- Per W.S. 41-2-121(a)(i), “all water development proposals submitted to the legislature shall be reviewed by and accompanied by the recommendation of the...Commission.”
- Per W.S. 41-2-121(a)(ii), recommendations to the Legislature by the Commission should emphasize projects developing unappropriated water and preference, when possible, to developing new storage capacity.

From the examples shown, the statutes do not specify the manner and form in which the Office should carry out the responsibilities of the Commission. Therefore, one interpretation of the governance structure is that program statutes suggest the Office administers the Program under direct guidance and supervision as specified by the Commission, shown in Figure 4.2, at left (arrows show line of authority).

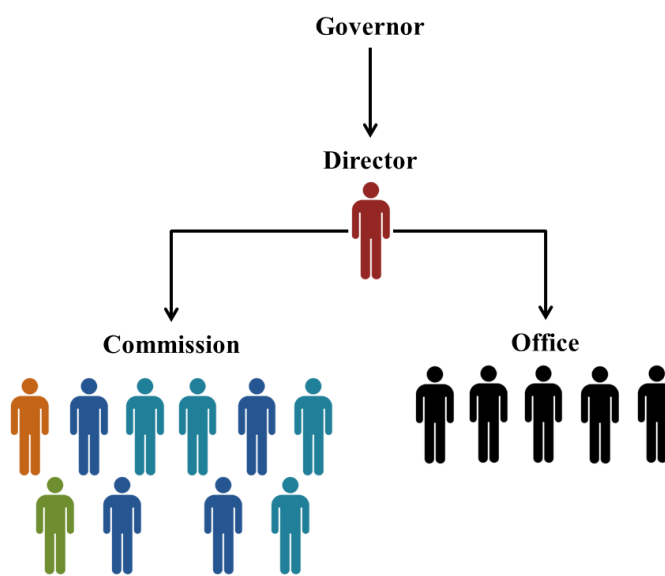
Administrative Perspective

Based on W.S. 9-2-2014 the Office currently operates with the perspective that Office staff, including the Director, works for the Governor. Along with W.S. 9-2-1704(d)(xii), this statute, establishes the Office as a separate operating agency, which includes the Commission as one of its components. Accordingly, under this outlook the Commission does not have oversight or supervisory authority over the Office staff, the Director, or the Office’s operating budget, and may directly or indirectly be overseen by the Office and its Director.

According to the Office, the Commission is a large part of water development in the State, but the Commission’s focus is more advisory on guiding projects forward and looking at the big picture, rather than the administrative details and processes of the Program. Therefore, although the two entities continue to maintain a good working relationship with one another, the Office operates as a separate, independent entity *not* under the direct purview of

the Commission. As shown in Figure 4.3, below, W.S. 9-2-2014 suggests that in practice the Office manages, oversees, and administers the Program and periodically provides information to the Commission on which it must vote to approve.

Figure 4.3
Illustration of Governance Structure
According to W.S. 9-2-2014



Source: Legislative Service Office illustration based on statute and information provided by the Water Development Office.

Concerns over Other Program Responsibilities and Commission Participation

In addition to the events noted above, LSO understands that other Commission concerns have gone unaddressed with the Office. Commissioners have indicated that given recent economic trends, project prioritization is a growing concern that has gone unaddressed by the Office. However, this responsibility falls under the purview of the Commission per W.S. 41-2-118(a)(vi) to “*establish and adjust priorities for water development projects,*” (LSO Emphasis) and therefore, the Commission has the authority to adjust or alter the current project prioritization methodology.

The Office states that it does consider project prioritization when it makes recommendations to the Commission. As previously discussed, the Office broadly categorizes projects during the initial application review process based on project eligibility as found in the Operating Criteria. When questioned at a recent meeting on this issue by commissioners, the Office noted its resistance to changing its approach due to the required professional subjectivity needed for its staff to review each project. However, at the

November 2015 meeting the Office has since requested that sponsors prioritize their own projects when submitting multiple project applications.

An additional concern that has been raised multiple times in 2015 is when, and how often, the Commission should be funding projects for private entity sponsors. While the Operating Criteria notes that the Commission can waive the requirement for a sponsor to be a public entity, commissioners expressed concern that this waiver is becoming the standard and not the exception. This trend is also in contrast to past Omnibus Water Bills, where the Legislature included footnotes that required private entity sponsors to become a public entity before funding on planning projects could be expended. Finally, other issues that have been raised without satisfactory resolution include the Office modifications to consultant selection team decisions and potential regionalization or better coordinated approaches to planning studies.

Additionally, a few commissioners have expressed a desire to increase their involvement and participation in the project approval process to ensure they are making informed decisions on project recommendations. While the Office has recently begun assigning commissioners to new project applications earlier in the application review process, the Office expressed concern that commissioners' participation could slow down or hinder the progression of projects from initial review through construction. Likewise, the Office notes that if the Commission would like to be more involved in the process then application timelines would have to be re-evaluated.

Governance between Other Wyoming Commissions and Agencies

The statutes for other Wyoming commissions, such as the Transportation Commission or the School Facilities Commission all have clear statutory language that identifies the governance structure expected for the commission and associated department. While each of these commissions is unique in its purpose and functions, the administrative structures share common themes that may provide criteria for how the Commission and Office could better functions for the benefit of the Program.

For example, as written in W.S. 24-1-105(a), the Department of Transportation must have the *approval* of the Commission to promulgate any necessary rules and regulations. In W.S. 21-15-123, the School Facilities Department is charged with performing all “duties required pursuant to this act and any duties as designated by the” School Facilities Commission.

As compared to the statutes of other Wyoming commissions, those governing the Commission and Office may provide competing

authorities between these entities, leading to different understandings about the appropriate duties and responsibilities of one another over the Program. The events illustrated at the beginning of this finding provide examples where the Commission and Office were not operating on the same assumptions about their respective responsibilities.

Recommendation 4.6: The Legislature could consider more explicit and/or different specifications in statute, to reflect the desired governance and oversight relationship between the Commission and Office for the Program and other water development responsibilities.

If it is the Legislature's belief that the Commission should have similar roles and responsibilities to those of the comparator commissions listed within this chapter, those roles and responsibilities could be specified in statute. Statutes to consider for revision include W.S. 9-2-2014, 16-1-301, and 41-2-117.

Recommendation 4.7: The Commission could consider creating a set of internal policies to clarify the specific duties and responsibilities of the Commission, commissioners, and Office in relation to one another for the administration of the Program, as provided for in statute.

While the relationship between the Commission and Office will always be dynamic to the needs of the Program and desires of the Legislature, these recommendations provide the opportunity to provide clarity. First, the Legislature could clarify whether the Office has a formal staffing and reporting role to the Commission and what level of supervision the Commission has over the Office related to the Program. Second, to assure clear and consistent protocols for Commission oversight of the Program, the Commission could begin to develop internal policies or by-laws. These policies or by-laws could encapsulate the ever-evolving nature of its work and be used by the Commission and Office over time to continually define their duties related to Program administration, management, and oversight.

Agency Response

Wyoming Water Development Commission⁹



WYOMING WATER DEVELOPMENT COMMISSION

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Matthew H. Mead

Governor

Commissioners

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Travis C. Brockie, I	William Resor
Karen Budd-Falen	Jeanette Sekan
Floyd Canfield	Rodney Wagner
David Evans	Todd Werbelow

Harry C. LaBonde, Jr., P.E.

Director

December 8, 2015

Michael Swank,
Program Evaluation Manager,
Legislative Service Office
Wyoming State Legislature

Re: LSO Program Evaluation Report: Wyoming Water Development Commission

Mr. Swank:

Enclosed you will find the Wyoming Water Development Commission's response letter to the Management Audit Committee regarding the Legislative Service Office's Program Evaluation Report regarding the Wyoming Water Development Commission. In addition, the Commission comments to the LSO Program Evaluation Staff that it would like the tone of the Report to convey the existing positive working relationship between the Commission and the Office.

Respectfully,

A handwritten signature in blue ink that reads "Floyd Canfield".

Floyd Canfield, Chairman
Wyoming Water Development Commission

⁹ Any discrepancies between the Water Development Commission response and report language results from response completion prior to Water Development Office feedback and final editing.



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Harry C. LaBonde, Jr., P.E.

Director

December 8, 2015

Senator Bruce Burns, Chairman
Representative David Miller, Vice-Chairman
Management Audit Committee
Wyoming State Legislature

Re: LSO Program Evaluation Report: Wyoming Water Development Commission

Dear Chairman Burns and Vice-Chairman Miller:

The Wyoming Water Development Commission appreciates the opportunity to comment and respond to the Legislative Service Office's Program Evaluation Report regarding the Wyoming Water Development Commission. The Commission found the Report to be impressive and very helpful in identifying issues for improvement within the Commission, Wyoming Water Development Office, and the Wyoming Water Development Program. The Commission agrees with the recommendations found in the Report and intends to take positive steps to address issues identified. The Commission would like to note, that as with any generalized report of this nature, the Wyoming Water Development Commission Report does not necessarily represent a complete picture of how the Commission and the Office operate. The Commission would further like to highlight that the Commission and the Water Development Office work well together. Addressed below are the Commission's responses to each of the recommendations made by the Program Evaluation Staff.

Program Evaluation Staff Recommendations

Recommendation Number 2.1

The Commission should review the funding needs of the dam and reservoir assets that are supported by the investment accounts and determine the amount of excess funds that should be redirected to Account I pursuant to W.D. 99-99-1001 (c), and report back to the Legislature on potential statutory revisions.

The Commission agrees with Recommendation 2.1.

Recommendation Number 3.1

The Commission should develop a project prioritization process to guide its annual recommendation decisions and consider information including, but not limited to:

- Statutory requirements such as projects that make use of unappropriated water;
- Operating Criteria project eligibility;
- Funding constraints;

- A project's ability to move forward after approval and appropriation;
- Emergent funding needs; and,
- The appropriateness and impacts of phasing on current and future project funding potential.

The Commission agrees with Recommendation 3.1.

Recommendation Number 4.1

The Commission should conduct a thorough review of its responsibilities, required actions, and processes related to W.S. 41-1-106 through 41-1-108 as well as W.S. 41-2-107 through 41-2-118 and establish clear and consistent procedures in Program rules for project sponsors.

The Commission generally agrees with Recommendation 4.1 and will undertake a thorough review of the Operating Criteria and Rules and Regulations pertaining to the Water Development Program. However, the Commission believes that the Operating Criteria play an important role in the operation of the Program.

Recommendation Number 4.2

The Commission should record and maintain public minutes of workshop sessions.

The Commission agrees with Recommendation 4.2.

Recommendation Number 4.3

Members of the Commission should complete and file written disclosure forms, and continue to do so annually, in order to comply with W.S. 41-2-121(c).

The Commission agrees with Recommendation 4.3.

Recommendation Number 4.4

The Commission should develop protocols and procedures for declaring conflicts of interests and recusals and voting actions should be clearly and consistently noted in meeting minutes.

The Commission agrees with Recommendation 4.4.

Recommendation Number 4.5

The Commission should consider the criteria of W.S. 9-2-1031(a), including the equitable distribution requirement, prior to the consultant interviews and the Commission should consider scoring and documenting these considerations.

The Commission agrees with Recommendation 4.5, but would like to note that while it considers the equitable distribution requirement when selecting consultants, any distribution issues cannot be resolved until after the consultant interviews and initial selections are made by the Commission.

Recommendation Number 4.7

The Commission could consider creating a set of internal policies to clarify the specific duties and responsibilities of the Commission, commissioners, and Office in relation to one another for the administration of the Program, as provided for in statute.

The Commission agrees with Recommendation 4.7, but would like to emphasize that the Commission and the Wyoming Water Development Office generally have and maintain a good working relationship. The Commission would further like to comment that Figure 4.2 on page 56 and Figure 4.3 on page 57 are incomplete representations of the working relationship between the Commission, the Water Development Office, and the Select Water Committee.

Commission Policy Considerations

1. The Legislature or the Commission could consider establishing a formal cash balance policy.

The Commission disagrees with this policy recommendation but will review and formalize existing fiscal practices regarding available funding projections.

2. The Legislature and the Commission could continue to consider ways to extend funding.

The Commission agrees with this policy recommendation.

Conclusion

The Commission would like to thank the Management Audit Committee for the opportunity to respond and looks forward to implementing changes as put forth by the Committee.

Respectfully,



Floyd Canfield, Chairman
Wyoming Water Development Commission

Agency Response

Wyoming Water Development Office¹⁰



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David Evans	Todd Werbelow

Harry C. LaBonde, Jr., P.E.
Director

Date: December 11, 2015

To: Senator Bruce Burns, Chairman
Representative David Miller, Vice-Chairman
Management Audit Committee

From: Harry LaBonde, Director *HCL*
Water Development Office

Subject: LSO Program Evaluation Report: *Wyoming Water Development Commission*

Dear Chairman Burns and Vice-Chairman Miller,

The Wyoming Water Development Office appreciates the opportunity to comment and respond to the Legislative Service Office Program evaluation report, *Wyoming Water Development Commission*. The Office has thoroughly reviewed the report and believes it represents a comprehensive investigation of the practices and procedures utilized by both the Commission and Office to implement the Wyoming Water Development Program. I cannot stress enough the importance of the close working relationship between the Office and its staff, and the members of the Commission. Without this strong working relationship, the effectiveness of this very successful program would suffer. The Office hereby offers the following comments for the Committee to consider in reviewing the report.

Program Evaluation Report Recommendations

Recommendation 2.1: "The Commission should review the funding needs of the dam and reservoir assets that are supported by the investment accounts and determine the amount of excess funds that should be redirected to Account I pursuant to W.S. 99-99-1001 (c), and report back to the Legislature on potential statutory revisions."

Agency Response: Agree. The Office has started the process to document the long term operation and maintenance needs and contract obligations of each asset along with revenue forecasts for these accounts. The Office will then work with the Commission to provide the above referenced report to the Legislature in 2017.

¹⁰ Any discrepancies between the Water Development Office response and report language results from response completion prior to final Management Audit Committee review, consideration, and release.

Recommendation 3.1: “The Commission should develop a project prioritization process to guide its annual recommendation decisions and consider information including, but not limited to:

- Statutory requirements such as projects that make use of unappropriated water;
- Operating Criteria project eligibility;
- Funding constraints;
- A project’s ability to move forward after approval and appropriation;
- Emergent funding needs; and
- The appropriateness and impacts of phasing on current and future project funding potential.”

Agency Response: Agree. The Office will work with the Commission to expand the project prioritization criteria now defined in the Operating Criteria of the Wyoming Water Development Program.

Recommendation 4.1: “The Commission should conduct a thorough review of its responsibilities, required actions, and processes related to W.S. 41-1-106 through 41-1-108 as well as W.S. 41-2-107 through 41-2-118 and establish clear and consistent procedures in Program rules for project sponsors.”

Agency Response: Agree subject to the requirements of W.S. 41-2-121 which requires the Commission to establish operating criteria for evaluation and administration of water development projects. To date, the Commission has developed and relied upon operating criteria to guide management of the Program.

Recommendation 4.2: “The Commission should record and maintain public minutes of workshop sessions.”

Agency Response: Agree. This recommendation has already been fully implemented by the Commission and Office.

Recommendation 4.3: “Members of the Commission should complete and file written disclosure forms, and continue to do so annually, in order to comply with W. S. 41-2-121 (c).”

Agency Response: Agree. The Office will assist Commission members in meeting this statutory requirement.

Recommendation 4.4: “The Commission should develop protocols and procedures for declaring conflicts of interests and recusals and voting actions should be clearly and consistently noted in meeting minutes.”

Agency Response: Agree

Recommendation 4.5: “The Commission should consider the criteria of W.S. 9-2-1031 (a), including the equitable distribution requirement, prior to the consultant interviews and the Commission should consider scoring and documenting these considerations.”

Agency Response: Partially Agree. The Office believes the consideration of “equitable distribution of work” is best considered after interviews are completed but before the Commission takes final actions to award contracts.

Recommendation 4.6: “The Legislature could consider more explicit and/or different specifications in statute, to reflect the desired governance and oversight relationship between the Commission and Office for the Program and other water development responsibilities.”

Agency Response: Disagree. The Office believes that W.S. 41-2-107 through 41-2-123 clearly establishes the Commission’s responsibility for directing the Program. W.S. 9-2-1704(d)(xii) and W.S. 9-2-2014 define the Office as a separate operating agency of which the Commission is included. These two statutes in no way supersede the Commission’s responsibilities as directed in W.S. 41-2-107 through 41-2-123. Implementation of Recommendation 4.7 is the preferred approach to addressing the Program management concerns described in the report.

Recommendation 4.7: “The Commission could consider creating a set of internal policies to clarify the specific duties and responsibilities of the Commission, commissioners, and Office in relation to one another for the administration of the Program, as provided for in statute,”

Agency Response: Agree

Program Evaluation Report Policy Considerations

3.1: “The Legislature could consider redistributing the severance tax revenues between the water accounts if there is a desired change in funding priorities.”

Agency Response: Disagree. The funding priorities as established by the Legislature for Water Development Accounts I, II, and III have functioned very well over the life of the Program. The Office does not believe a change is warranted at this time.

3.2: “The Legislature could consider statutory revisions to allow for the funding of dam and reservoir rehabilitation projects from Account III.”

Agency Response: Disagree. Bringing rehabilitation of existing reservoirs into Account III will diminish the available funding and hamper Program efforts to build new storage in the state.

3.3: “The Legislature or the Commission could consider establishing a formal cash monitoring policy.”

Agency Response: Disagree. The Office with oversight from the Commission, has effective financial practices which efficiently utilize Program funding to construct water infrastructure projects around the state. The financial program has met all governmental accounting standards as substantiated by annual audits.

3.4: “The Legislature and the Commission could continue to consider ways to extend project funding.”

Agency Response: Agree

Other Agency Comments

1. Page 33 – The report states, “The Commission did not take any action to deny the six approved projects based on a lack of funding.” Please note that the Commission and Office placed three of these projects totaling \$6.5 million on hold and to date, two of these projects remain on hold pending the sponsors securing their local funding for the project.
2. Page 53 and 55 – The report states that the standard for considering equitable distribution of work is three projects. As the Director for the last three years, I have applied a standard or threshold of consultants not receiving more than two projects.
3. Page 56 - The report states, “The Office drafts the motion based on the list provided by the Director,” This is incorrect in that the Office drafts the motions based on the selection team results. The Director’s involvement occurs when one firm is selected for more than two projects and the statutory provision of “equitable distribution of work” is applied to consider alternate firms. During this process, the Director speaks with both commissioners who served on the selection team and recommendations are only modified if the two commissioners and project manager agree to the change. If they do not agree, the recommendation is not changed.
4. Page 59 – The report gives the dates of May 2014 and June 2014 to depict when the Office was directed by the Governor to submit a supplemental budget request and when the next Commission meeting took place. The actual dates of May 28, 2014 and June 4-5, 2014 should be stated to correctly depict the seven day period between the two events.
5. Page 59 – The two bullets describe that the Office “circumvented the Commission’s statutorily prescribed responsibility for program project review...” and “Office had given preference to each over other projects or an expectation that they would be funded regardless of the proper application processes and procedures.” The report does not include the following:
 - Applications for all six projects were received by the Commission before the last application deadline of October 1, 2014.

- The Commission considered all six projects at their November 5-7, 2014 meeting and approved funding for the six projects subject to supplemental funding.
- The Commission approved the Omnibus Water Construction bill at their December 11, 2014 meeting and the bill contained all six projects in question.

As such, the Office believes the Commission duly considered and approved the six projects through the normal application processes and Commission procedures and well in advance of the 2015 Legislative Session.

6. Page 61 (last paragraph) – The report states, “According to the Office, the Commission is a large part of water development in the State, but the Commission’s focus is more advisory on guiding projects forward and looking at the big picture, rather than the administrative details and processes of the Program.” This statement is incorrect as neither the Director, nor the Office views the Commission as, “advisory.” The Commission is the determining authority for Program recommendations to the Legislature and overall project management. The Office provides administrative and professional support in those endeavors.
7. Page 62 – Figure 4.3 contains in its title the phrase, “According to the Water Development Office” The Office does not prescribe to the notion that the Commission reports to the Director as noted in the figure. The Office maintains that the Commission is an independent body charged with directing the state’s Water Development Program. As such, the title is not correct.

In summary, the Office appreciated the professional approach that the LSO team has displayed throughout this evaluation project. The findings and recommendations are constructive and will be a valuable resource as the Commission and Office work to improve the Wyoming Water Development Program. Thank you for the opportunity to comment on this report.



Appendices

Wyoming Water Development Commission



Appendix A

Wyoming Constitution and Statutes

Wyoming Constitutional Provisions

Article 1. Declaration of Rights, **Section 31.** Control of water.

Article 8. Irrigation and Water Rights, **Section 1.** Water is state property and **Section 4.** Water divisions.

Article 13. Municipal Corporation, **Section 5.** Acquisition of water rights.

Article 16. Public Indebtedness, **Section 5.** Limitation on municipal, county or school district debt and **Section 10.** Construction and improvement of works for conservation and utilization of water.

Wyoming Statutory Provisions

Title 9. Administration of Government, **Chapter 2.** Agencies, Boards, Commissions and Departments Generally, **Article 10.** Department of Administration and Information

W.S. 9-2-1027 through 9-2-1033 ("Professional Architectural, Engineering and Land Surveying Services Procurement Act")

Title 9. Administration of Government, **Chapter 2.** Agencies, Boards, Commissions and Departments Generally, **Article 17.** Reorganization of Government

W.S. 9-2-1704. Reorganization plan; structure; time frame (establish Water Development Office)

Title 9. Administration of Government, **Chapter 2.** Agencies, Boards, Commissions and Departments Generally, **Article 20.** Government Departments

W.S. 9-2-2014. Wyoming water development office created; director appointed; structure.

Title 16. City, County, State and Local Powers, **Chapter 1.** Intergovernmental Cooperation, **Article 1.** Public Works and Contracts

W.S. 16-1-119. State construction; right to reject bids or responses; qualifications of bidders and respondents.

Title 16. City, County, State and Local Powers, **Chapter 1.** Intergovernmental Cooperation, **Article 3.** State Drinking Water Revolving Account

W.S. 16-1-301 through 16-1-308

Title 28. Legislature, **Chapter 11.** Select Committees, **Article 1.** Select Water Committee

W.S. 28-11-101. Appointment of members; powers and duties; related duties of water development commission.

Title 41. Water, **Chapter 1.** General Provisions

W.S. 41-1-106 through 41-1-108 (State/federal water resource planning)

Title 41. Water, Chapter 2. Planning and Development, Article 1. In General

W.S. 41-2-101 through 41-2-106. Repealed By Laws 1999, ch. 149, § 1.

W.S. 41-2-107 through 41-2-125 (Water Development Program and Commission)

Title 41. Water, Chapter 2. Planning and Development, Article 13. Transfer of Water

W.S. 41-2-1301. Transfer of water authorized; conditions.

Title 41. Water, Chapter 3. Water Rights; Administration and Control, Article 10. Instream Flows

W.S. 41-3-1003 through 41-3-1014

Title 99. Noncodified Statutes, Chapter 3. Authorization for Water Development Construction Projects, Article 1. General Provisions

W.S. 99-3-101 through 99-3-106 (General definitions and conditions for water development projects)

Title 99. Noncodified Statutes, Chapter 3. Authorization for Water Development Construction Projects, Article 19. 2014 Construction Projects

W.S. 99-3-1903 and 99-3-1904 (Small water development projects)

Title 99. Noncodified Statutes, Chapter 99

W.S. 99-99-1001. Creation; use of funds; interest. (Water investment accounts)

Wyoming Statute and Session Law for Water Development Projects

Omnibus Water Bill Construction Projects Since 1991

Title 99. Noncodified Statutes, CHAPTER 2. Water Development Projects 1991 through 1997

Title 99. Noncodified Statutes, CHAPTER 3. Authorization for Water Development Construction Projects, Article 2 through ARTICLE 20 (Water development construction projects 1999 through 2015)

Omnibus Water Bill Planning Projects Since 1991

1991 Laws, Chapter 38	2001 Laws, Chapter 86	2011 Laws, Chapter 1
1992 Laws, Chapter 43	2002 Laws, Chapter 7	2012 Laws, Chapter 57
1993 Laws, Chapter 46	2003 Laws, Chapter 125	2013 Laws, Chapter 66
1994 Laws, Chapter 10	2004 Laws, Chapter 34	2014 Laws, Chapter 74
1995 Laws, Chapter 8	2005 Laws, Chapter 75	2015 Laws, Chapter 168
1996 Laws, Chapter 15	2006 Laws, Chapter 99	
1997 Laws, Chapter 46	2007 Laws, Chapter 85	
1998 Laws, Chapter 82	2008 Laws, Chapter 33	
1999 Laws, Chapter 81	2009 Laws, Chapter 66	
2000 Laws, Chapter 36	2010 Laws, Chapter 32	

Appendix B

Water Development Program Projects

Noted in Chapter 1 of this report are project and appropriation statistics based on the Water Development Office (Office) maintained “Project” database. While this database provides project and non-project information since the 1980s, the beginning of the Water Development Program (Program), the Legislative Service Office (LSO) compared this database with the Omnibus Water Bills back through the 2005 General Session. The first section provides LSO cross-checked information over most recent decade or so based on the database and language used in the omnibus bills. The second section provides summary information from the Office’s database back to 1980.

LSO Review 2005-2015

Notes:

- Omnibus Construction Bills from 2005 and later amend projects initiated before 2005, but are not included in the count of projects or amount of appropriations.
- “Non-project” includes appropriations made for administration, research, small water development projects, weather modification, legal funds, and other appropriations made outside of the Level I, Level II, and Level III planning and construction projects.
- Some construction projects are sponsored by the state or impact multiple counties rather than a single county; a sponsor designation is not provided on planning projects in the Omnibus Water Planning Bills.
- Sponsors for construction projects are designated based on the name used in the Omnibus Construction Bills (i.e. City of Casper, Town of Pine Bluffs, Cottonwood Irrigation District, etc.)

All Water Development Projects

Table B.1
Total Number of Projects and Appropriations Made from
Water Development Accounts, 2005-2015

Project Categories	Number of Projects				Appropriations Total			
	Account I	Account II	Account III ¹	Total	Account I	Account II	Account III	Total
Total Planning	170	62	61	293	\$45,093,000	\$10,588,000	\$31,579,000	\$87,260,000
Level I	90	19	9	118	\$18,110,000	\$3,922,000	\$1,806,000	\$23,838,000
Level II	80	43	52	175	\$26,983,000	\$6,666,000	\$29,773,000	\$63,422,000
Construction Level III	126	96	3	225	\$247,375,399	\$98,890,156	\$30,543,000	\$376,808,555
Non-Project	---	---	---	---	\$90,175,207	\$3,300,000	\$800,000	\$94,275,207
Total	296	158	64	518	\$382,643,606	\$112,778,156	\$62,922,000	\$558,343,762

Source: Legislative Service Office analysis of Water Development Office data and Omnibus Water Bills.

¹ Level III construction projects for Account III include a 2009 appropriation for the Gillette Madison Project; this appropriation was paid back to Account III from General Funds in the 2014 Budget Bill.

Table B.2
Number of Projects, Appropriations and Cost per Planning and Construction Project, by County, 2005-2015

County	Number of Planning Projects	Number of Construction Projects	Planning Appropriations	Construction Appropriations	Cost per Planning Project	Cost per Construction Project
Albany	8	9	\$2,065,000	\$22,118,570	\$258,125	\$2,457,619
Big Horn	23	17	\$12,755,000	\$24,720,473	\$554,565	\$1,454,145
Campbell	6	11	\$2,620,000	\$47,780,350	\$436,667	\$4,343,668
Carbon	17	11	\$9,615,000	\$24,588,030	\$565,588	\$2,235,275
Converse	6	5	\$1,275,000	\$4,550,135	\$212,500	\$910,027
Crook	6	5	\$1,018,000	\$4,154,787	\$169,667	\$830,957
Fremont	28	32	\$8,120,000	\$37,527,036	\$290,000	\$1,172,720

County	Number of Planning Projects	Number of Construction Projects	Planning Appropriations	Construction Appropriations	Cost per Planning Project	Cost per Construction Project
Goshen	4	7	\$925,000	\$5,505,520	\$231,250	\$786,503
Hot Springs	18	6	\$2,526,000	\$9,598,570	\$140,333	\$1,599,762
Johnson	8	8	\$2,965,000	\$12,600,000	\$370,625	\$1,575,000
Laramie	8	10	\$3,740,000	\$26,058,090	\$467,500	\$2,605,809
Lincoln	30	7	\$6,183,000	\$11,950,780	\$206,100	\$1,707,254
Natrona	7	16	\$950,000	\$20,623,559	\$135,714	\$1,288,972
Niobrara	7	3	\$1,550,000	\$1,075,000	\$221,429	\$358,333
Park	20	24	\$2,631,000	\$25,303,565	\$131,550	\$1,054,315
Platte	9	6	\$2,600,000	\$3,252,970	\$288,889	\$542,162
Sheridan	8	9	\$1,775,000	\$18,955,570	\$221,875	\$2,106,174
Statewide	13	2	\$3,115,000	\$8,932,000	\$239,615	\$4,466,000
Sublette	14	2	\$5,210,000	\$11,650,000	\$372,143	\$5,825,000
Sweetwater	11	12	\$2,895,000	\$30,738,730	\$263,182	\$2,561,561
Teton	7	6	\$2,250,000	\$5,521,150	\$321,429	\$920,192
Uinta	8	3	\$1,915,000	\$5,366,670	\$239,375	\$1,788,890
Washakie	14	9	\$3,025,000	\$10,578,750	\$216,071	\$1,175,417
Weston	4	5	\$1,750,000	\$3,658,250	\$437,500	\$731,650
Multiple Counties	9	0	\$3,787,000	\$0	\$420,778	\$0
Grand Total	293	225	\$87,260,000	\$376,808,555	\$297,816	\$1,674,705

Source: Legislative Service Office analysis of Water Development Office data and Omnibus Water Bills.

Table B.3
Annual Percent and Amount of Planning and Construction Project Appropriations, 2005-2015

Year	Planning Appropriations	Construction Appropriations	Planning %	Construction %
2005	\$9,820,000	\$22,909,230	30.00%	70.00%
2006	\$9,561,000	\$35,213,735	21.35%	78.65%
2007	\$6,116,000	\$29,649,607	17.10%	82.90%

Year	Planning Appropriations	Construction Appropriations	Planning %	Construction %
2008	\$5,800,000	\$28,771,188	16.78%	83.22%
2009	\$8,110,000	\$58,992,350	12.09%	87.91%
2010	\$4,890,000	\$49,005,060	9.07%	90.93%
2011	\$3,865,000	\$44,341,810	8.02%	91.98%
2012	\$3,970,000	\$35,266,225	10.12%	89.88%
2013	\$10,322,000	\$17,653,639	36.90%	63.10%
2014	\$5,744,000	\$17,185,650	25.05%	74.95%
2015	\$19,062,000	\$37,820,061	33.51%	66.49%
Total	\$87,260,000	\$376,808,555	18.80%	81.20%

Source: Legislative Service Office analysis of Water Development Office data and Omnibus Water Bills.

**Figure B.1
State Water Divisions**



Source: Wyoming State Engineer's Office.

Table B.4
Number of Planning and Construction Projects, Appropriations, and Cost per Project, by Water Division¹, 2005-2015

Water Divisions	Planning		Construction		Total		Cost per Planning	Cost per Construction
	Projects	Appropriation	Projects	Appropriation	Projects	Appropriation		
1	46	\$18,945,000	43	\$81,523,180	89	\$100,468,180	\$411,848	\$1,895,888
2	32	\$10,128,000	38	\$87,148,957	70	\$97,276,957	\$316,500	\$2,293,394
3	103	\$29,057,000	88	\$107,728,394	191	\$136,785,394	\$282,107	\$1,224,186
4	70	\$18,453,000	30	\$65,227,330	100	\$83,680,330	\$263,614	\$2,174,244
Central	20	\$3,775,000	24	\$26,248,694	44	\$30,023,694	\$188,750	\$1,093,696
Statewide Multiple Counties	22	\$6,902,000	2	\$8,932,000	24	\$15,834,000	\$313,727	\$4,466,000
Total	293	\$87,260,000	225	\$376,808,555	518	\$464,068,555	\$297,816	\$1,674,705

Source: Legislative Service Office analysis of Water Development Office data and Omnibus Water Bills.

¹ Water Divisions do not always follow county lines. The numbers and amounts shown reflect the following assumptions: a) Divisions include the counties in which a the vast majority of territory is located; and b) three counties – Natrona, Converse, and Niobrara – are essentially evenly split between Divisions 1 and 2 and are presented separately in the “Central” category.

Planning Projects

Table B.5
Number and Percent of Planning Projects, Appropriations, and Cost per Project by Study Type, 2005-2015

Study Type	Project Count	Appropriations	% Of Projects	% of Appropriations	Cost Per Project
Master Plan, Management Study, et. al.	68	\$11,012,000	23.21%	12.62%	\$161,941
Storage Study	63	\$31,498,000	21.50%	36.10%	\$499,968
Water Supply Study	61	\$16,018,000	20.82%	18.36%	\$262,590
Watershed Study	23	\$6,651,000	7.85%	7.62%	\$289,174
Groundwater Study	14	\$9,015,000	4.78%	10.33%	\$643,929

Rehabilitation Study	12	\$1,810,000	4.10%	2.07%	\$150,833
Other Studies ¹	52	\$11,256,000	17.75%	12.90%	\$216,462
Total	293	\$87,260,000	100.00%	100.00%	\$297,816

Source: Legislative Service Office analysis of Water Development Office data and Omnibus Water Bills.

1 “Other Studies” includes studies like hydropower, conservation, river basin, flow test, etc. studies.

Table B.6
Number of Planning Projects and Appropriations by Water Development Account and Project Level, 2005-2015

Account	Appropriation		Number of Projects		Total Appropriation	Total Number of Projects
	Level I	Level II	Level I	Level II		
WDA I	\$18,110,000	\$26,983,000	90	80	\$45,093,000	170
WDA II	\$3,922,000	\$6,666,000	19	43	\$10,588,000	62
WDA III	\$1,806,000	\$29,773,000	9	52	\$31,579,000	61
Grand Total	\$23,838,000	\$63,422,000	118	175	\$87,260,000	293

Source: Legislative Service Office analysis of Water Development Office data and Omnibus Water Bills.

Table B.7
Annual Number of Planning Projects and Appropriations by Project Level, 2005-2015

Year	Appropriation			Number of Projects		
	Level I	Level II	Total	Level I	Level II	Total
2005	\$3,300,000	\$6,520,000	\$9,820,000	14	27	41
2006	\$2,100,000	\$7,461,000	\$9,561,000	8	25	33
2007	\$2,611,000	\$3,505,000	\$6,116,000	11	19	30
2008	\$2,405,000	\$3,395,000	\$5,800,000	14	14	28
2009	\$2,360,000	\$5,750,000	\$8,110,000	15	12	27
2010	\$1,440,000	\$3,450,000	\$4,890,000	9	13	22
2011	\$1,115,000	\$2,750,000	\$3,865,000	7	12	19
2012	\$1,310,000	\$2,660,000	\$3,970,000	8	10	18
2013	\$1,330,000	\$8,992,000	\$10,322,000	6	12	18

2014	\$2,740,000	\$3,004,000	\$5,744,000	13	16	29
2015	\$3,127,000	\$15,935,000	\$19,062,000	13	15	28
Grand Total	\$23,838,000	\$63,422,000	\$87,260,000	118	175	293

Source: Legislative Service Office analysis of Water Development Office data and Omnibus Water Bills.

Construction Projects

Table B.8
Annual Number of Construction Projects by County, 2005-2015

County	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Total	Years Received Funds (05-15)
Albany	1	1	1	2		1		1		2		9	7
Big Horn		1	2	4	3			3		3	1	17	7
Campbell	4	1		1		2	1	1		1		11	7
Carbon	1		2		1	2	1		1	2	1	11	8
Converse		1		1			1	1		1		5	5
Crook		1	2					1			1	5	4
Fremont	2	2	4	1	5	4	1	3	5	2	3	32	11
Goshen					1		2	1	1		2	7	5
Hot Springs		2	1			2	1					6	4
Johnson	1	2				1		1	1		2	8	6
Laramie	1	1		1	2	1	1		1	2		10	8
Lincoln		2	1		1		1		1		1	7	6
Natrona		1			3	2	3	1	2	2	2	16	8
Niobrara			1						1	1		3	3
Park	1	3	3	1	3	2	4	3	2	1	1	24	11
Platte		1	2				1				2	6	4
Sheridan	2		2						1	1	3	9	5
Statewide		1			1							2	2
Sublette					1			1				2	2
Sweetwater	2	1	1		2	1	3		1		1	12	8
Teton	1	1			1	1					2	6	5

County	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Total	Years Received Funds (05-15)
Uinta	1	1							1			3	3
Washakie		1		2	1		2	1			2	9	6
Weston	1				1						3	5	3
Multiple Counties													0
Grand Total	18	24	22	13	26	19	22	18	18	18	27	225	11

Source: Legislative Service Office analysis of Water Development Office data and Omnibus Water Bills.

Table B.9
Number of Sponsors, Construction Projects Funded, Appropriations, and
Total Project Costs, Grouped by the Sponsor Type, 2005-2015

Sponsor Group	Number of Sponsors	Number of Projects Funded	Appropriations	Total Project Cost	% Appropriations to Total Cost
City	15	45	\$176,793,119	\$258,390,700	68.42%
Town	46	62	\$78,629,661	\$97,183,900	80.91%
Special District	91	147	\$269,681,025	\$391,690,478	68.85%
Total	152	254	\$525,103,805	\$747,265,078	70.27%

Source: Legislative Service Office analysis of Water Development Office data and Omnibus Water Bills.

Table B.10
Average Appropriations and Total Construction Project Cost per Sponsor and
per Project, Grouped by Sponsor Type, 2005-2015

Sponsor Group	Appropriation		Total Project Cost	
	Cost per Sponsor	Cost per Project	Cost per Sponsor	Cost per Project
City	\$11,786,207.93	\$3,928,735.98	\$17,226,047	\$5,742,016
Town	\$1,709,340.46	\$1,268,220.34	\$2,112,693	\$1,567,482
Special District	\$2,963,527.75	\$1,834,564.80	\$4,304,291	\$2,664,561
Total	\$3,454,630.30	\$2,067,337.81	\$4,916,218	\$2,941,988.50

Source: Legislative Service Office analysis of Water Development Office data and Omnibus Water Bills.

Table B.11
Amount and Percent of Appropriations for Construction Projects by Sponsor type
and Water Development Account, 2005-2015

Sponsor Type	Account I	Account II	Account III	Total	% Account I	% Account II	% Account III
City	\$127,751,869	\$26,998,250	\$22,043,000	\$176,793,119	72.26%	15.27%	12.47%
Special District	\$176,692,442	\$84,488,583	\$8,500,000	\$269,681,025	65.52%	31.33%	3.15%
Town	\$70,093,611	\$8,536,050		\$78,629,661	89.14%	10.86%	0.00%
Total	\$374,537,922	\$120,022,883	\$30,543,000	\$525,103,805	71.33%	22.86%	5.82%
% City	34.11%	22.49%	72.17%	33.67%			
% Special District	47.18%	70.39%	27.83%	51.36%			
% Town	18.71%	7.11%	0.00%	14.97%			

Source: Legislative Service Office analysis of Water Development Office data and Omnibus Water Bills.

Table B.12
Number of Construction Projects with One or More Amendments to Funding, 2005-2015¹

Project Purpose	Account I	Account II	Account III	Total (of 225 projects)
Agriculture Water Supply		16		16
Hydropower	1			1
Municipal Raw Water Supply				
Municipal Water Supply	4	3		7
Municipal/Rural Water Supply	25	1		26
Recreation, Agriculture, Industrial Water Supply		1		1
Rural Water Supply	4			4
Total	34	21		55

Source: Legislative Service Office analysis of Water Development Office data and Omnibus Water Bills.

¹ Includes amendments to appropriation level, loan components, grant funding ratio, or other factors impacting a project's financial terms.

Table B.13
Number of Construction Projects with One or More Amendments to a Project Expiration Date¹, 2005-2015

Project Purpose	Account I	Account II	Account III	Total (of 225 projects)
Agriculture Water Supply		12		12
Hydropower				
Municipal Raw Water Supply				
Municipal Water Supply	7	5		12
Municipal/Rural Water Supply	18			18
Recreation, Agriculture, Industrial Water Supply		1		1
Rural Water Supply	3	2		5
Total	28	20		48

Source: Legislative Service Office analysis of Water Development Office data and Omnibus Water Bills.

¹ Expiration date corresponds to the date when authorized project appropriations revert to the originating Account.

Table B.14
Number of Construction Projects with One or More Amendments to Other Project Conditions¹, 2005-2015

Project Purpose	Account I	Account II	Account III	Total (of 225 projects)
Agriculture Water Supply		10		10
Hydropower				
Municipal Raw Water Supply				
Municipal Water Supply	1	1	1	3
Municipal/Rural Water Supply	16			16
Recreation, Agriculture, Industrial Water Supply		1		1
Rural Water Supply	1			1
Total	18	12	1	31

Source: Legislative Service Office analysis of Water Development Office data and Omnibus Water Bills.

¹ Includes amendments to project description, sponsor, or other non-financial and non-expiration date amendments.

Table B.15
Number of Construction Projects with a Water Development Office
Loan Component to Project Financial Terms, 2005-2015

Project Purpose	Account I	Account II	Account III	Total (of 225 projects)
Agriculture Water Supply	1	26		27
Hydropower	1			1
Municipal Raw Water Supply				
Municipal Water Supply	8	1		9
Municipal/Rural Water Supply	36	1		37
Recreation, Agriculture, Industrial Water Supply		1		1
Rural Water Supply	8			8
Total	54	29		83

Source: Legislative Service Office analysis of Water Development Office data and Omnibus Water Bills.

Table B.16
Number and Percent of Construction Projects by County and Sponsor Type, 2005-2015

County	City	Special District	Town	Total	% City	% Special District	% Town	% of all projects
Albany	7	1	1	9	77.78%	11.11%	11.11%	4.00%
Big Horn		11	6	17	0.00%	64.71%	35.29%	7.56%
Campbell	5	6		11	45.45%	54.55%	0.00%	4.89%
Carbon	3	6	2	11	27.27%	54.55%	18.18%	4.89%
Converse	1		4	5	20.00%	0.00%	80.00%	2.22%
Crook		1	4	5	0.00%	20.00%	80.00%	2.22%
Fremont	3	25	4	32	9.38%	78.13%	12.50%	14.22%
Goshen		5	2	7	0.00%	71.43%	28.57%	3.11%
Hot Springs		4	2	6	0.00%	66.67%	33.33%	2.67%
Johnson	2	3	3	8	25.00%	37.50%	37.50%	3.56%

County	City	Special District	Town	Total	% City	% Special District	% Town	% of all projects
Laramie	3	1	6	10	30.00%	10.00%	60.00%	4.44%
Lincoln		2	5	7	0.00%	28.57%	71.43%	3.11%
Natrona	6	9	1	16	37.50%	56.25%	6.25%	7.11%
Niobrara		1	2	3	0.00%	33.33%	66.67%	1.33%
Park	2	20	2	24	8.33%	83.33%	8.33%	10.67%
Platte		3	3	6	0.00%	50.00%	50.00%	2.67%
Sheridan	6	2	1	9	66.67%	22.22%	11.11%	4.00%
Statewide		2		2	0.00%	100.00%	0.00%	0.89%
Sublette		1	1	2	0.00%	50.00%	50.00%	0.89%
Sweetwater		8	4	12	0.00%	66.67%	33.33%	5.33%
Teton		5	1	6	0.00%	83.33%	16.67%	2.67%
Uinta		3		3	0.00%	100.00%	0.00%	1.33%
Washakie	1	7	1	9	11.11%	77.78%	11.11%	4.00%
Weston	1	3	1	5	20.00%	60.00%	20.00%	2.22%
Multiple Counties	0	0	0	0				0.00%
Grand Total	40	129	56	225	17.78%	57.33%	24.89%	100.00%

Source: Legislative Service Office analysis of Water Development Office data and Omnibus Water Bills.

Table B.17
Number of Construction Projects by Type¹ of Expected Work, 2005-2015

Description	Number of Projects					Total
	Type 1	Type 2	Type 3	Type 4	Type 5	
Cistern	1					1
Control Building/Station/Pump Station/Pump House/Loading Station	4	13	7	1		25
Corrosion Protection	1					1

Description	Number of Projects					Total
	Type 1	Type 2	Type 3	Type 4	Type 5	
Dam Rehabilitation/Outlets/Spillways	10	1				11
Delivery System	1	1				2
Disinfecting Facility				2		2
Ditch/Pipe Lateral	16	1				17
Diversion Structures	6	1				7
Drainage Structure	1					1
Drop Facility/Gates/Chute/Intake	7	3				10
Engineering and Design Services	1					1
Flume	1					1
Hydroelectric Facility	1					1
Irrigation Well	1					1
Irrigation/Ditch/Canal/Tunnel System or Improvements	30					30
Liner	2					2
Meters	1					1
Monitoring, Automation Equipment	1					1
Permitting, Easement, Mitigation, Acquisition	4	2				6
Power			1		1	2
Pump/Pump Motor/Controls	3	2	1		1	7
Re-grading/Re-forming			1			1
Reservoir	3					3
Siphon	5	1				6
Spring Improvements	1					1
Storage Tank/Facility	27	11	4	1		43
Supply Connection/Valve/	2	1				3

Description	Number of Projects					Total
	Type 1	Type 2	Type 3	Type 4	Type 5	
Telemetry System	1					1
Transmission/Pipeline	68	26	14	1		109
Water Rights	1					1
Well Improvements/Modifications/Connection	25	16	4			45
TOTAL	225	79	32	5	2	343

Source: Legislative Service Office analysis of Water Development Office data and Omnibus Water Bills.

¹ Projects have at least one and have had up to five different work elements for construction. These designations are identified from the “project description” found in each project authorization of the Omnibus Water Construction Bill; each project generally includes language related to “design and construction” as well as “...and include appurtenances necessary to make the project function in the manner intended,” which are not included as separate type of work designations.

Table B.18
Number of Sponsors, Average Appropriations and Construction Project Cost per Sponsor and per Project, Grouped by the
Number of Projects for Individual Sponsors, 2005-2015

Number of Projects Funded Per Sponsor ¹	Number of Sponsors	Appropriations		Total project Cost	
		Cost per Sponsor	Cost per Project	Cost per sponsor	Cost per project
1	105	\$2,124,605	\$2,124,605	\$2,959,783	\$2,959,783
2	21	\$4,140,397	\$2,070,199	\$5,973,833	\$2,986,917
3	11	\$4,720,766	\$1,573,589	\$6,676,141	\$2,225,381
4	10	\$9,983,112	\$2,495,778	\$14,116,225	\$3,529,056
5	2	\$11,360,010	\$2,272,002	\$15,614,773	\$3,122,955
6	1	\$17,441,320	\$2,906,887	\$29,574,000	\$4,929,000
7	0	\$0	\$0	\$0	\$0.00
8	0	\$0	\$0	\$0	\$0.00
9	2	\$11,575,526	\$1,286,170	\$17,817,002	\$1,979,667
	152	\$3,454,630	\$2,067,338	\$4,916,217	\$2,941,989

Source: Legislative Service Office analysis of Water Development Office data and Omnibus Water Bills.

¹ Indicates the total number of projects funded for an individual sponsor (i.e. ten different sponsors had four projects funded, accounting for 40 projects from 2005-2015).

Table B.19
Number of Sponsors, Total Appropriations, and Total Construction Project Costs,
Grouped by the Number of Projects Funded for Individual Sponsors, 2005-2015

Number of Projects Funded¹	Number of Sponsors	Appropriations	Total Project Cost²	Appropriations to Total Cost (%)³
1	105	\$223,083,528	\$310,777,219	71.78%
2	21	\$86,948,340	\$125,450,500	69.31%
3	11	\$51,928,425	\$73,437,560	70.71%
4	10	\$99,831,120	\$141,162,250	70.72%
5	2	\$22,720,020	\$31,229,545	72.75%
6	1	\$17,441,320	\$29,574,000	58.98%
7	0	\$0	\$0	0.00%
8	0	\$0	\$0	0.00%
9	2	\$23,151,052	\$35,634,004	64.97%
Total	152	\$525,103,805	\$747,265,078	70.27%

Source: Legislative Service Office analysis of Water Development Office data and Omnibus Water Bills.

¹ Indicates the total number of projects funded for an individual sponsor (i.e. ten different sponsors had four projects funded, accounting for 40 projects from 2005-2015).

² “Total Project Cost” indicates the estimated “total project budget” for construction projects when authorized in the Omnibus Water Construction Bill, which is higher than the appropriated Account funds.

³ While most project authorizations generally allow for 67% (or statutorily up to 75%) of funding to be issued as a grant, some projects may receive the remainder of funding from a loan of Account funds, which may allow state funds to cover more than 67% of project costs.

Other or Non-Project Funding

Table B.20
Non-Project Appropriations from Water Development Accounts, 2005-2015

Category	Account I	Account II	Account III	Total
Water Development Administration/Special Projects	\$39,155,530	\$0	\$0	\$39,155,530
Weather Modification/Maximum Probable Precipitation	\$16,232,500	\$0	\$800,000	\$17,032,500

Category	Account I	Account II	Account III	Total
Drinking Water SRF Fund	\$10,357,770	\$0	\$0	\$10,357,770
Platte River Recovery	\$6,000,000			\$6,000,000
Small Water Projects	\$2,400,000	\$1,500,000	\$0	\$3,900,000
Sponsors Contingency Funds	\$2,000,000	\$1,800,000		\$3,800,000
University of Wyoming Research	\$3,741,338	\$0	\$0	\$3,741,338
Department of Agriculture	\$3,375,000	\$0	\$0	\$3,375,000
Attorney General's Office	\$2,461,907	\$0	\$0	\$2,461,907
Groundwater Grants	\$2,300,000			\$2,300,000
Other (SEO, CBM Task Force, Tribal Summit, Conservation, Geological Survey)	\$1,315,162	\$0	\$0	\$1,315,162
UW Water Library	\$836,000			\$836,000
Total	\$90,175,207	\$3,300,000	\$800,000	\$94,275,207

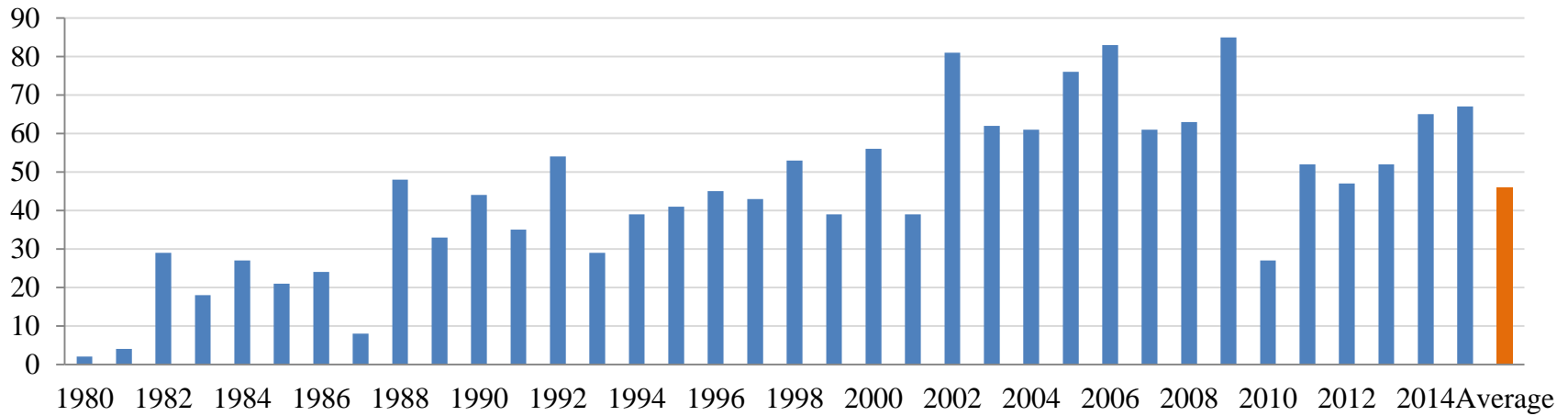
Source: Legislative Service Office analysis of Water Development Office data and Omnibus Water Bills.

Water Development Office Database 1980-2015

Notes:

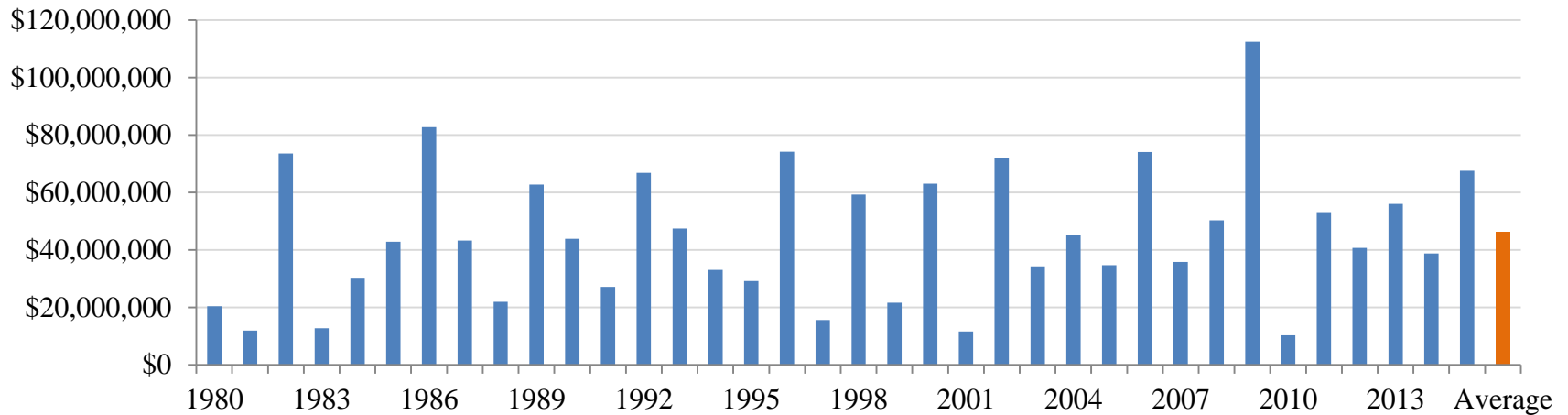
- Information represents a summary of data from the Office's "project" database (updated as of June 30, 2015), which was not verified against omnibus water bills or other legislation prior to 2005.
- The Office tracks each separate appropriation as "project" record in the database.
- Information includes appropriations made/authorized under the Program as well as other legislation such as administrative or other appropriations from the biennial and supplemental Budget Bill.

Figure B.2
Annual Number of Water Development Projects, 1980-2015



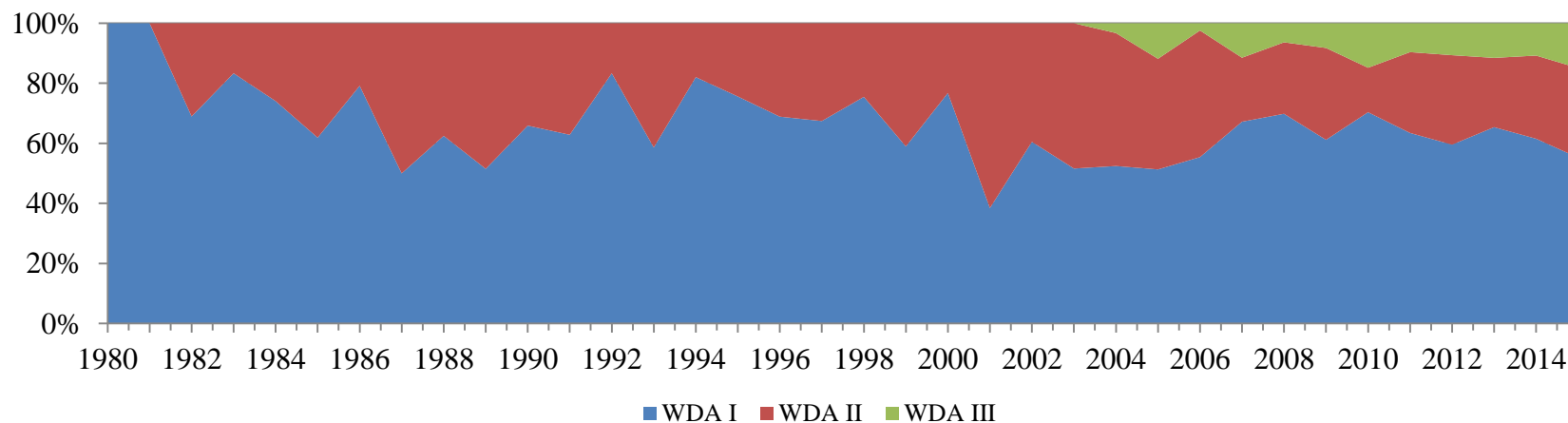
Source: Legislative Service Office analysis of the Water Development Office project database.

Figure B.3
Annual Amount of Water Development Appropriations, 1980-2015



Source: Legislative Service Office analysis of the Water Development Office project database.

Figure B.4
Distribution of Projects by Water Development Account, 1980-2015



Source: Legislative Service Office analysis of the Water Development Office project database.

Table B.21
Amount of Water Development Appropriation by Office's Type of Use Category, 1980-2015

Year	Municipal	Agricultural	Multi-Purpose	Special District	Legal	Non-Project	Total
1980	\$20,000,000		\$400,000				\$20,400,000
1981	\$8,000,000	\$3,750,000				\$200,000	\$11,950,000
1982	\$21,120,000	\$2,995,834	\$48,900,000			\$545,000	\$73,560,834
1983	\$1,193,000	\$9,831,000	\$725,000		\$977,500		\$12,726,500
1984	\$8,820,000	\$14,956,000	\$6,006,000	\$50,000		\$195,001	\$30,027,001
1985	\$11,570,000	\$27,020,000	\$2,713,000	\$180,000	\$500,000	\$880,000	\$42,863,000
1986	\$58,760,000	\$18,200,000	\$3,750,000	\$275,000	\$135,000	\$1,655,435	\$82,775,435
1987	\$39,896,400	\$207,815		\$126,000	\$3,000,000		\$43,230,215
1988	\$3,022,000	\$10,306,000	\$151,000	\$1,625,000	\$150,000	\$6,721,268	\$21,975,268
1989	\$44,306,000	\$7,042,000	\$5,444,000	\$980,000	\$280,000	\$4,740,000	\$62,792,000
1990	\$28,295,200	\$5,032,000	\$2,054,000	\$900,000	\$3,000,000	\$4,656,516	\$43,937,716

Year	Municipal	Agricultural	Multi-Purpose	Special District	Legal	Non-Project	Total
1991	\$9,335,000	\$2,250,000	\$1,467,270	\$11,345,000	\$1,444,500	\$1,322,151	\$27,163,921
1992	\$21,763,804	\$10,996,000	\$211,000	\$6,416,000	\$6,969,892	\$20,531,319	\$66,888,015
1993	\$17,847,700	\$24,899,500	\$150,000	\$4,603,400			\$47,500,600
1994	\$6,024,000	\$4,600,000	\$29,000	\$4,555,000	\$4,000,000	\$13,845,681	\$33,053,681
1995	\$20,914,000	\$4,903,000		\$2,599,000		\$818,622	\$29,234,622
1996	\$21,304,250	\$30,340,458	\$15,000	\$7,190,000	\$268,679	\$15,117,694	\$74,236,081
1997	\$7,812,210	\$1,140,000	\$310,000	\$1,075,000	\$5,077,000	\$250,000	\$15,664,210
1998	\$19,438,783	\$780,000	\$14,002,000	\$1,790,900	\$5,298,459	\$18,000,795	\$59,310,937
1999	\$9,754,300	\$446,600	\$1,885,000	\$6,850,100		\$2,714,390	\$21,650,390
2000	\$25,793,000	\$2,676,150	\$2,010,000	\$2,670,776	\$8,269,213	\$21,606,634	\$63,025,773
2001	\$3,551,966	\$4,265,000	\$1,550,000	\$1,702,000		\$590,000	\$11,658,966
2002	\$26,525,928	\$3,143,772	\$850,000	\$410,000	\$5,281,240	\$35,630,226	\$71,841,166
2003	\$22,193,500	\$2,764,500	\$800,000	\$6,563,450		\$1,945,720	\$34,267,170
2004	\$23,617,250	\$12,359,213	\$365,000	\$1,500,250		\$7,222,948	\$45,064,661
2005	\$11,980,500	\$7,015,750	\$11,400,000	\$2,554,100		\$1,758,850	\$34,709,200
2006	\$28,114,500	\$10,275,395	\$21,931,720	\$3,109,744	\$500,000	\$10,190,030	\$74,121,389
2007	\$29,060,045	\$2,075,000	\$1,205,000	\$2,945,909		\$498,250	\$35,784,204
2008	\$29,746,355	\$5,083,465	\$2,035,000	\$1,435,000		\$12,062,887	\$50,362,707
2009	\$85,274,840	\$17,202,320	\$4,680,000	\$4,957,750		\$300,000	\$112,414,910
2010	\$1,975,000	\$1,990,000	\$3,600,000	\$2,175,000		\$553,690	\$10,293,690
2011	\$29,031,950	\$11,687,700	\$800,000	\$415,960		\$11,221,531	\$53,157,141
2012	\$25,999,900	\$10,627,500	\$2,825,000	\$875,000		\$400,000	\$40,727,400
2013	\$24,633,487	\$18,560,900	\$950,000	\$765,000		\$11,111,420	\$56,020,807
2014	\$18,707,900	\$7,739,450	\$1,540,000	\$771,000		\$9,999,184	\$38,757,534
2015	\$27,660,570	\$25,877,791	\$4,267,500	\$7,862,800		\$1,871,865	\$67,540,526
Total	\$793,043,338	\$323,040,113	\$149,021,490	\$91,274,139	\$45,151,483	\$219,157,107	\$1,620,687,670
% of Total	49%	20%	9%	6%	3%	14%	100%

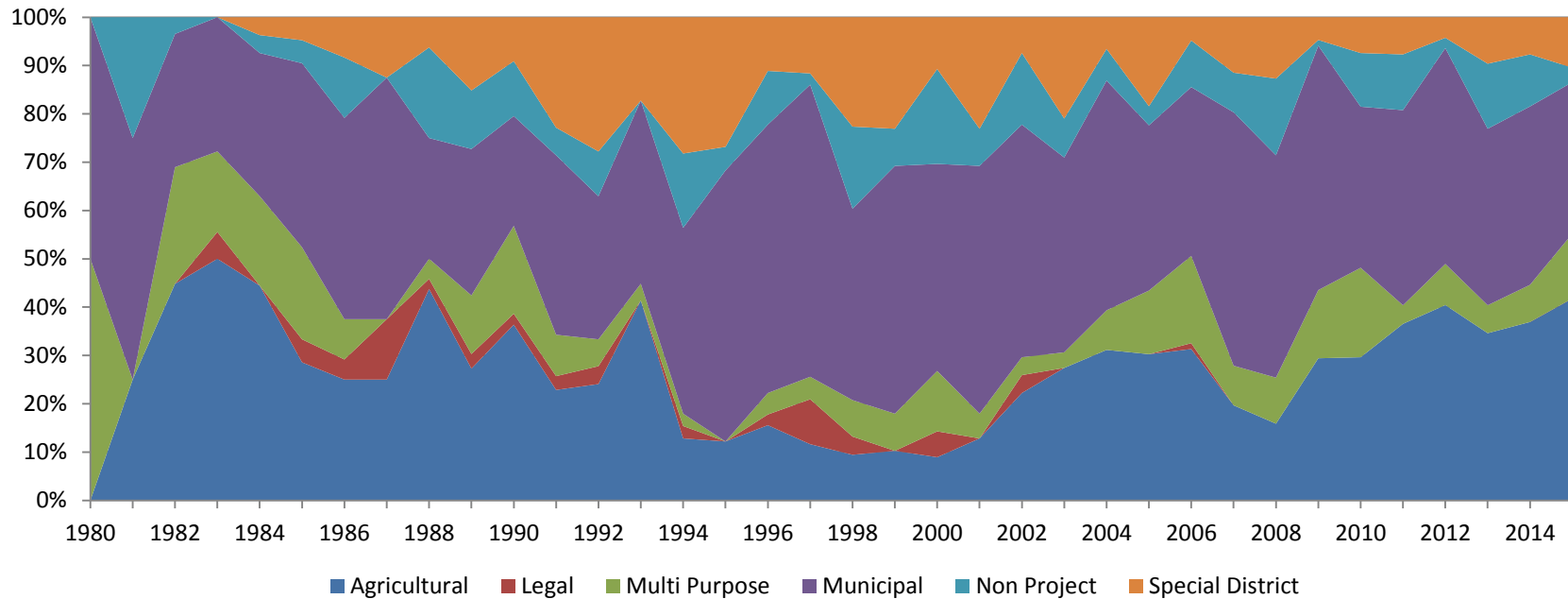
Source: Legislative Service Office analysis of the Water Development Office project database.

Table B.22
Number of Projects and Appropriations by Office's Type of Use Category, 1980-2015

	Agricultural	Legal	Multi-Purpose	Municipal	Non-Project	Special District
Total Appropriation	\$323,040,113	\$45,151,483	\$149,021,490	\$793,043,338	\$219,157,107	\$91,274,139
Total Projects	435	25	150	659	146	198
Average Appropriation per Project	\$742,621	\$1,806,059	\$993,477	\$1,203,404	\$1,501,076	\$460,981

Source: Legislative Service Office analysis of the Water Development Office project database.

Figure B.5
Distribution and Percent of Water Development Funding by Office's Type of Use Category, 1980-2015



Source: Legislative Service Office analysis of the Water Development Office project database.

Appendix C

LSO Commission Survey Questionnaire

Wyoming Legislative Service Office, Program Evaluation Division

Water Development Commissioner Survey Questions

The aggregate results of this survey may be used in our program evaluation of the Wyoming Water Development Program, but your individual response will remain confidential. If you would you like to discuss any additional concerns you have regarding this evaluation or survey questions, please contact Samantha.mills@wyoleg.gov or 307-777-7980

Question 1. How long have you served on the Water Development Commission (WWDC)?

Question 2. Do you now participate, or have you in the past participated, with a local entity (special district, municipality, county, etc.) that has requested project funding through the WWDC? (Yes or No)

Question 3. If you answered yes to question 2, do you or did you act as the primary contact for a project application? (Yes or No)

Please list the project.

Question 4. Please describe whether the information you receive from the Water Development Office (WWDO) in order to vote on actions and recommendations is sufficient or insufficient.

Question 5. Please identify if training has been provided to you on the following activities.

Training Levels included: No Training; Limited Training; Sufficient Training to make informed decisions; Continuous Training is provided; and I feel more training is needed.

For the following questions:

- Responsibility to file personal disclosures with the Secretary of State's office upon your appointment to the WWDC
- Roles and responsibilities of the Commission
- Roles and responsibilities of the WWDO
- Roles and responsibilities of the Select Water Committee
- Requirements under the open meetings law
- Commissioner ethics, including declaration of conflicts of interest
- Need for and purpose of Operating Criteria promulgated by the Commission
- Responsibilities with respect to consultant selection process and evaluation criteria

Please provide comments to clarify any of the above items.

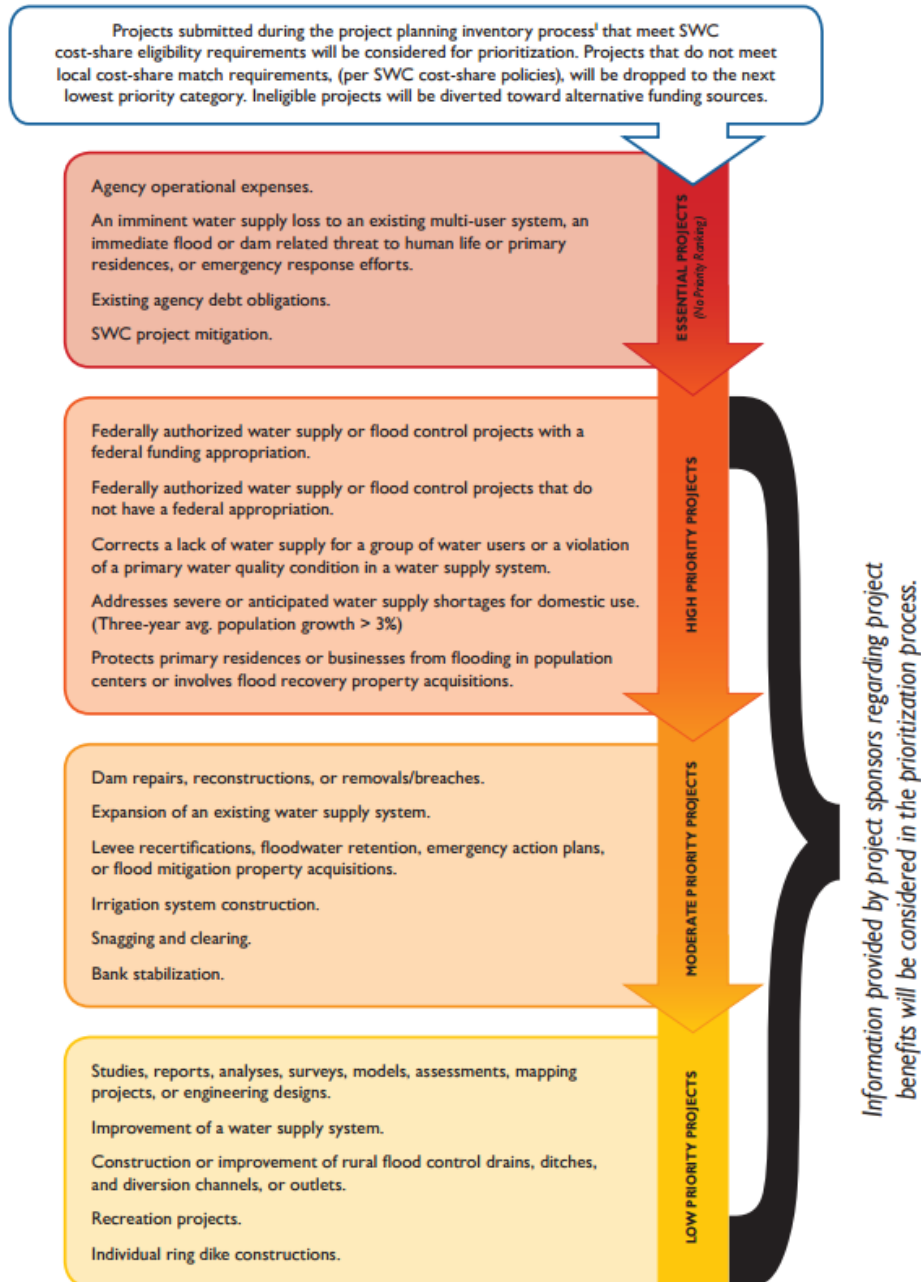
- Question 6. Within the operating criteria, there are two lists of project types that the WWDC either will or will not consider for funding. In the time you have served as commissioner, has the WWDC reviewed these lists? (Yes or No)
- If yes, please describe when, what was reviewed, and what, if any changes resulted.*
- Question 7. Please describe any issues or concerns with the management of the eligible project lists.
- Question 8. Please describe any areas in which the Commission, Select Water Committee or WWDO could improve its processes related to project application, prioritization, review and recommendations.
- Question 9. Please describe any areas in which the Commission, Select Water Committee or WWDO could improve its processes related to current consultant selection, review and approval process.
- Question 10. What are the strengths and weaknesses of the WWDC business practices in relation to the following:
- Project review and decision making
 - Consultant selection and contracting
 - Budgeting planning and financial oversight
 - Local/regional/statewide water development planning
- Question 11. How do you currently approach evaluation for projects to recommend for the Omnibus Water Bills (planning or construction)?
- Question 12. What would change about your evaluation of projects and recommendations if funding were restricted or lower than anticipated?
- Question 13. Please describe your understanding of what constitutes a conflict of interest which would require you to abstain or recuse yourself from discussion or voting on a project.
- Question 14. Please describe areas where the Commission, WWDO, and/or Select Water Committee could improve to better implement and manage the Water Development Program.
- Question 15. Please provide any additional comments or concerns you have related to the Water Development Program, Commission, Office, and/or Select Committee.

Appendix D

Project Prioritization Examples

North Dakota Water Project Prioritization Guide¹¹

SWC WATER PROJECT PRIORITIZATION GUIDANCE CONCEPT



¹¹ <http://www.swc.nd.gov/Data/swcftp/webfiles/Prioritization%20Process.pdf>

Wyoming Aeronautics Commission 2014 PRM Six Weighted Categories for project prioritization and evaluation

Category	Category Weight	Sub-Category	Sub-Category Weight	Maximum Points Available	Percent of Total Points Available
1. Purpose of Project	5			20	21
		Safety	4		
		Security, Maintenance	3		
		Airport Enhancement and Planning	2		
		Not used ¹	1		
		Not used ¹	0		
2. Project Component	3			12	12
		Airside Primary Runway or Taxiway, Airfield Fencing	4		
		Airside Secondary Runway or Taxiway	3		
		Airside Aprons, Structures, and Equipment	2		
		Airside Taxilanes (other than Apron), Landside and Other (any purpose of project w/o identified component)	1		
3. Type of Federal Funding	5			20	21
		Discretionary Funding	4		
		State Apportionment Funding	3		
		Entitlement Funding	2		
		Not Used ¹	1		
		No Federal Funds	0		
4. Systems Impact (points awarded based on professional judgment of Aero Division staff)	3			24	25
	Overall Impact to State Aviation System Plan (3 points max)	Supports system performance measures in State Aviation System Plan (SASP), the Air Service Enhancement Benchmark Report, or Commission priorities	2		
		Supports current classification facility and	1		

Category	Category Weight	Sub-Category	Sub-Category Weight	Maximum Points Available	Percent of Total Points Available
		service objectives in airport's individual SASP Report card			
		Neither of the above conditions are met	0		
	Optimal timing for effective use of available funding (3 points max)	Determined to be most effective if funded and occurs in selected year ("shovel ready")	3		
		Determined to be most effective if funded and occurs within 1-2 years of selected year	2		
		Determined to be most effective and occurs within 3-4 years of selected year	1		
		Determined to be most effective and occurs more than 5 years from selected year	0		
	Local Priority (2 points max)	High Priority as noted by sponsor (limited to 2 projects unless multi-phased)	2		
		Medium Priority as noted by sponsor (limited to 2 projects unless multi-phased)	1		
		Low Priority as noted by sponsor	0		
5. Airport Usage ²	3			12	12
		Commercial Service Airport	4		
		Business Airport	3		
		General aviation – Intermediate	2		
		General aviation – Local	1		
6. Status of Airport Protection ³	1			9	9
	Land ownership control (4 points max)	Airport owner owns 100% acreage in RPZ in fee title	4		
		Airport owner has 100% land use and airspace protections for RPZ through any combo of	3		

Category	Category Weight	Sub-Category	Sub-Category Weight	Maximum Points Available	Percent of Total Points Available
		ownership, lease or easement			
		Airport owner has greater than 75%-99% land use and airspace protections for RPZ through any combo of ownership, lease or easement	2		
		Airport owner has greater than 25%-75% land use and airspace protections for RPZ through any combo of ownership, lease or easement	1		
	Airspace Protections (3 points max)	Airport owner adopted zoning ordinance approved by Aero Division w/height restrictions in <i>Approach Zone</i> of AIA	1		
		Airport owner adopted zoning ordinance approved by Aero Division w/height restrictions in AIA	1		
		Airport owner adopted zoning ordinance approved by Aero Division that restricts non-compatible land uses in the AIA	1		
	Plan Integration (1 point max)	Airport zoning ordinance incorporated into municipality and/or county comprehensive land use plan	1		
	Disclosure Statement (1 point max)	Municipality and/or county has passed a resolution and adopted an ordinance requiring that a Real Estate Disclosure Statement be provided to the purchaser of any property within the AIA	1		
			Summary	97 points	100%

Notes: *no explanation why the Task Force elected to award one point between the two subs that are noted as “not used.”

² Now consider use of airport’s state system plan classification, which is assigned based on airport’s type and level of usage, the role of the airport in the overall system, and facilities and services offered at the airport.

³ Noted as “importance of safeguarding airport operations and minimizing impact to properties in proximity to the airport by implementing land use protections and airspace protections for the runway protection zone (RPZ) and/or airport influence area (AIA).”

Wyoming Wildlife and Natural Resource Trust Project Selection Matrix

PROJECT APPLICATION WORKSHEET			
Habitat and Natural Resources		Feasibility	Financing and Permitting
DIRECT benefit to fish & wildlife	NATURAL RESOURCES	METHODOLOGY	MATCHING FUNDS
benefits both =3	water quality/quantity +1	well-designed, achievable +2	matching > 80% =10
benefits aquatic & fish =1.5	soil loss +1	methods proven & sound +1	matching > 60% =8
benefits terrestrial =1.5	air quality +1	reasonable size & scale +1	matching > 40% =6
benefits non-game +1	other +1	highly innovative =2	matching > 20% =4
			matching < 20% =2
SCALE of multiple habitats	OPEN SPACE	PROJECT LIFE	
wetland, riparian, aquatic +1	conserves open space =4	permanent =4	FUND COMMITMENT
grassland, shrub, desert +1		life > 50 years =3	> 50% committed =5
aspen, conifer, forest +1	MULTIPLE USE BENEFITS	life > 25 years < 50 years =2	< 50% committed =3
unique habitat types +1	maintains multiple uses =4	life < 25 years =1	
			PERMITTING
EXPANSION potential	Cooperative Effort	ASSURANCES	all permits approved =5
connects to existing =4		easement, covenant, etc. =4	all permits submitted =3
documented potential =3	PARTNERSHIPS in place	transferrable agreements =3	permit status varies =1
potential exists, uncertain =2	landowners +2	other =2	
limited potential =1	county government +2		
	state government +2	SUSTAINABILITY	RAW SCORE
VULNERABLE habitats	federal land agencies +2	little or no maintenance =4	0
migration or connectivity +1	non-government +2	occasional maintenance =3	Other Considerations +1-3
crucial seasonal habitat +1		annual maintenance =2	geographic distribution
disease or health +1		more than annual =1	project diversity
potential human conflict +1	OUTREACH POTENTIAL		urgency (biological)
	easily replicated +1	ECONOMIC RETURN	urgency (social)
EXISTING THREATS	demonstration plan +1	project enhances uses =4	other (note reason)
currently being altered =4	monitoring in place +1	project allows uses =2	
adjacent habitats altered =3	research potential +1		TOTAL SCORE
serious threat < 5 years =2	educational potential +1	COST-EFFECTIVENESS	0
serious threat > 5 years =1		long-term, high leverage =4	
	PUBLIC ACCESS	long-term, mod. leverage =2	
DIRECT CAUSE OF LOSS	expands current access =5	short-term, high leverage =3	
addresses direct threat =4	maintains current access =3	short-term, mod. leverage =1	
	allows limited access =2		

State Loan and Investment Board Municipal Solid Waste Facilities Cease and Transfer Loan and Grant Program
Section 5 Grant and Loan Prioritization

Section 5(a)	Grants and/or loans shall be prioritized based on the following criteria
(i)	Funding availability
(ii)	Cost efficiencies achieved by allocation of resources
(iii)	Opportunities for increased cost sharing between cease and transfer actions at multiple leaking municipal solid waste facilities
(iv)	Timeliness of cease and transfer actions in reducing risk to public health, safety and welfare of the environment
(v)	Remaining life of the existing municipal solid waste facility
(vi)	Whether the proposed actions are a cost-effective alternative in accordance with the integrated solid waste management plan approved for the municipal solid waste facility
(vii)	Whether the proposed action is reasonable and appropriate for the current and projected volumes of all solid waste for the areas served by the facility
(viii)	Whether the proposal contains recycling and other forms of waste diversion as a component of the proposed facilities and management practices
(ix)	The likelihood that the cease and transfer actions will reduce or eliminate the threat posed to public health, safety and welfare of the environment by continuing releases

Recent Program Evaluations

Wyoming State Archives	May 2000
Turnover and Retention in Four Occupations	May 2000
Placement of Deferred Compensation	October 2000
Employees' Group Health Insurance	December 2000
State Park Fees	May 2001
Childcare Licensing	July 2001
Wyoming Public Television	January 2002
Wyoming Aeronautics Commission	May 2002
Attorney General's Office: Assignment of Attorneys and Contracting for Legal Representation	November 2002
Game & Fish Department: Private Lands Public Wildlife Access Program	December 2002
Workers' Compensation Claims Processing	June 2003
Developmental Disabilities Division Adult Waiver Program	January 2004
Court-Ordered Placements at Residential Treatment Centers	November 2004
Wyoming Business Council	June 2005
Foster Care	September 2005
State-Level Education Governance	December 2005
HB 59: Substance Abuse Planning and Accountability	January 2006
Market Pay for State Employees	July 2006
Wyoming Drug Courts	July 2006
A&I HRD Role in State Hiring	December 2006
Kid Care CHIP: Wyoming's State Children's Health Insurance Program	June 2007
Wyoming Retirement System: Public Employee Plan	August 2007
WYDOT and General Fund Appropriations for Highways	May 2008
Wyoming Child Protective Services	September 2008
Department of Fire Prevention and Electrical Safety	December 2008
Office of Health Care Licensing and Surveys	July 2009
Victim Services Division: Phase I	August 2009

Victim Services Division: Phase II	February 2010
Reading Assessment and Intervention Program	February 2010
Office of State Lands & Investments: Management of State Trust Lands	June 2010
Proficiency Assessments for Wyoming Students (PAWS)	December 2010
Wyoming Unemployment Insurance Program	December 2010
Department of Administration and Information: Information Technology Division and Office of Chief Information Officer	July 2011
Wyoming Department of Health: Veterans' Home of Wyoming	November 2011
Wyoming Aeronautics Commission	September 2012
Wyoming Boards and Commissions	June 2013
Wyoming's Interim Budget Process to Modify Legislatively Appropriated Funds	November 2013
Wyoming Aeronautics Commission (Follow-up Evaluation)	November 2013
University of Wyoming: Effectiveness of Block Grant Funding (with Supplement)	January 2015
Wyoming Public Purpose Investments (PPIs)	August 2015

Evaluation reports can be obtained from:

Wyoming Legislative Service Office
213 State Capitol Building Cheyenne, Wyoming 82002
Telephone: 307-777-7881 Fax: 307-777-5466
Website: <http://legisweb.state.wy.us>

