

Wyoming Administrative Rules

Lands and Investments, Office of

Loan and Investment Board

Chapter 34: Hydro-Power Development Project Loans

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**RULES AND REGULATIONS
STATE LOAN AND INVESTMENT BOARD**

**Chapter 34
Hydro-Power Development Project Loans**

Section 1. Authority.

(a) These Rules and Regulations of the State Loan and Investment Board are adopted pursuant to Wyoming Statutes 11-34-103(a) and 11-34-306. This Chapter only pertains to hydro-power development loans.

Section 2. Definitions.

As used in this chapter:

- (a) "Board" means the State Loan and Investment Board.
- (b) "Borrower" means an applicant for a loan for a hydro-power development project; borrowers may include any entity that is a legal subdivision of the state of Wyoming.
- (c) "Director" means the Director of the Office of State Lands and Investments.
- (d) "Office" means the Office of State Lands and Investments.
- (e) ~~W~~WDO means the Wyoming Water Development Office.
- (f) "Hydro-power development project" means a project for development and use of energy generated by water flowing through hydro-turbines.
- (g) ~~M~~Municipalities means incorporated towns and cities in Wyoming.
- (h) "Special district" means irrigation, water, improvement and service, and water and sewer districts.

Section 3. Purpose.

(a) The Board may make loans to municipalities, irrigation districts and special districts duly organized in this state, all hereinafter referred to as the borrower, to finance the construction of hydro-power development projects.

(b) The Board shall extend loans under the provisions of this chapter in such a manner and to such applicants as shall, in the judgment of the Board, inure to the greatest benefit of the citizens of the state and represent a prudent use of loan funds.

Section 4. Eligible Applicants.

(a) Applicants. Municipalities and special districts in Wyoming shall be eligible applicants for loans under this Chapter. If the applicant is a special district, it must be legally formed and approved prior to submitting an application. An applicant must be in compliance with all applicable reporting requirements with the State Loan and Investment Board, Wyoming Department of Audit and with the Department of Revenue prior to its application being considered by the Board.

Section 5. Application Procedure.

(a) Applications. Applicants shall submit separate applications for each project. Applicants shall submit a completed application on a form provided by the Office.

(b) All loan applications shall be accompanied by the feasibility study completed by the Wyoming water development commission created by W.S. 41-2-117.

(c) Timing of Board Consideration. The Board may consider applications for loans under this Chapter at any official meeting of the Board.

(d) Preliminary Review. Within forty-five (45) days of receipt of any application, the Director shall notify the applicant, in writing, if the application lacks any of the information required.

(e) Incomplete Applications. Incomplete applications shall not be presented to the Board for consideration.

Section 6. Evaluation.

(a) All applications will be reviewed and evaluated based upon:

(i) All credit factors including, but not limited to, repayment ability, financial strength and stability, and adequacy of security offered.

(ii) The sufficiency of the water supply and the engineering and economic feasibility of the project. Advice from the WWDO, State Engineer, other State or Federal Agencies and/or individuals will be used as deemed appropriate;

(iii) Whether the applicant is current on all its repayment obligations to the Board;

(iv) Whether the applicant's dedicated source of revenue will be sufficient to provide security to repay the loan;

(v) Whether the applicant is ready to proceed with construction or implementation of the project; and

(b) The Director will review each application and make a recommendation to the Board, for consideration at a regularly scheduled meeting.

Section 7. Loan Terms.

(a) Interest rates shall be pursuant to Chapter 14 of the rules as established by the Board. In no event shall the rate be less than 4% or greater than 6%.

(b) The term of the loan shall not exceed Thirty (30) years and may be for a shorter term as determined by financial strength, repayment ability, security, and other factors.

(c) Loans shall be repaid in annual installments. However, upon application of the borrower, the Board may provide for interest only during any period in which the governor has declared that a drought or other emergency exists in the state. Once the emergency is declared to be over, repayment is to be according to the original note. The loan maturity date will remain the same.

Section 8. Security.

(a) The Board shall require such security as it deems advisable. Security for loans may include, but is not limited to, the pledge and assignment of designated special property assessments within a district, the pledge and assignment of user fees, the pledge and assignment of hydro-power generated revenue, and/or first lien on equipment and fixtures.

(b) Appraisals of offered security will be done by staff appraisers from the Office.

(c) Every loan will be evidenced by a promissory note for the principal sum of the loan signed by the borrower(s).

(d) The loan agreement shall provide a legal right of access to the Board and its agents for the purposes of inspection, maintenance, inventory, retrieval of personal property and fixtures, and foreclosure proceedings. Such right shall be assignable to the purchaser at any foreclosure sale.

(e) All loan documents including, but not limited to, notes, mortgage deeds, and security instruments shall be executed in the form and manner acceptable to the Wyoming Attorney General.

Section 9. Disbursement of Loan Proceeds.

(a) Requests for reimbursement shall be submitted on a Loan Draft Request form provided by the Office. Requests for disbursements shall only be for eligible project costs which have been incurred and shall be subject to review by the Office and WWDO.

(b) Ineligible Project Costs. The following project costs shall be ineligible for reimbursement:

- (i) Costs for any asset that is owned by a private property owner;
- (ii) Costs for tap fees, sewer and water fees, and plant investment fees;
- (iii) Engineering fees, including design, inspection and contract administration costs, over twenty percent (20%) of Board approved funding;
- (iv) All non-cash costs except land which is integral to the hydro-power process but not costs for land in excess of current fair market value and/or costs for an amount of land in excess of that needed for project purposes. Lands costs not defined in the application will be ineligible for reimbursement;
- (v) Costs for preparation or presentation of grant or loan applications for any source of funding;
- (vi) Costs for transportation, meals and lodging incurred anywhere away from the site of the project;
- (vii) Costs of tools, supplies and furnishings for capital projects not included in WWDO approved construction contract documents, including but not limited to, capital equipment, hammers, tanks, tools, furniture, drapes, blinds, file cabinets, file folders and survey stakes;
- (viii) Legal fees, except as pre-approved by the Office and WWDO;
- (ix) Costs related to the issuance of bonds;
- (x) Costs of elections;
- (xi) Costs to establish and form districts;
- (xii) Costs incurred prior to loan award, except costs incurred for architectural and engineering design, surveying, state environmental review process (SERP) requirements or in emergency circumstances;
- (xiii) Costs for change orders not approved by the Office and WWDO;

- (xiv) Lump sum contracts unless approved by the Office and WWDO; and
- (xv) Costs for meals and incidental expenses in excess of federal per diem rates.

Section 10. Audits and Inspections.

(a) The Board shall ensure compliance with the provisions of the Federal Single Audit Act, 1966 Amendments and Office of Management and Budget (OMB) Circular A-133. On an annual basis records of loan recipients shall be, at a minimum, compiled by an independent accounting firm. Notification of compliance shall be made to the Board in the form of a Compilation, Review, or Audited Financial Statement prepared by an independent accounting firm. On an annual basis, recipients receiving five hundred thousand dollars (\$500,000) or more in federal funds in any fiscal year shall have their records audited by an independent accounting firm. Notification of compliance shall be made to the Board in the form of an Audited Financial Statement. The Board may, at its expense, conduct an independent audit of the loan recipients' records and inspect the construction and operation of the project. Loan recipients shall maintain project accounts in accordance with Generally Accepted Accounting Principals (GAAP).

Section 11. Defaults.

(a) If an annual payment is not received within thirty (30) days following the due date, the Office shall immediately notify the borrower of the default.

(b) If the borrower does not submit payment to the Board within thirty (30) days after the default notice, the Board will immediately initiate foreclosure on the defaulted loan.

Section 12. Fees

(a) A fee of one percent (1%) of each loan made shall be paid by the borrower to the Board. Such fee is to be credited to the loss reserve account as proved by W.S. 11-34-202(e).