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ADJUDICATION OF PROOFS

Section 1. Surface Water Proofs.

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

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

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

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

e. The superintendent or a designated hydrographer commissioner will make an on-the-ground inspection of the facility to determine if it has been completed within the terms of the permit. An adjustment will be made on the proof form to reflect the actual irrigated acreage, and the remaining lands

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not irrigated under the permit must be eliminated by the owner through submittal of an elimination request. The person conducting the inspection will submit a written inspection report to the Board for its consideration.

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

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

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

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

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

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

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

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

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

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

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

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

Section 2. Ground Water Proofs.

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

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

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

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

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

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

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

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

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

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

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(6) After proper advertisement of the water right, and if no protest is received, the proof is submitted to the State Board of Control for final consideration. If the proof is adjudicated, a certificate of appropriation is issued and recorded in the county in which the place of use is located and forwarded to the ground water right owner.

Section 3. Instream Flow Proofs.

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

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

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

Section 4. Contested Proofs.

a. Any person, corporation, or association of persons owning a valid water right to the use of water from any source involved in the adjudication may contest the rights of any person, corporation, or association, which has submitted a proof to the superintendent, provided that the contestant notifies the

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superintendent of the appropriate water division in writing within fifteen days after the proofs have been made available for public inspection and states the grounds of the contest (see W.S. 41-4-312 through 41-4-315, and 41-4-511).

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

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

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

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