

WYOMING WATER DISTRICTS

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TYPES OF DISTRICTS

- ❖ Water Conservancy District (W.S. 41-3-701 through 41-3-779)
- ❖ Flood Control District (W.S. 41-3-801 through 41-3-803)
- ❖ Irrigation District (W.S. 41-7-101 through 41-7-718)
- ❖ Public Irrigation and Power District (W.S. 41-7-801 through 41-7-865)

TYPES OF DISTRICTS

- ❖ Watershed Improvement Districts (W.S. 41-8-101 through 41-8-126)
- ❖ Drainage Districts (W.S. 41-9-101 through 41-9-606)
- ❖ Water and Sewer Districts (41-10-101 through 41-10-157)

REASONS FOR SETTING UP A DISTRICT

- ❖ To establish a management structure;
- ❖ Pool resources;
- ❖ To evaluate, construct, manage, operate and maintain water projects;
- ❖ To lobby representatives;
- ❖ To protect resources
- ❖ To be eligible for loans and grants from the WWDC (or other State/Federal Agencies)

STATE FUNDING

❖ Wyoming Constitution, Article 3, Section 36

“No appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation, or community not under the absolute control of the state.”

STATE FUNDING

❖ Wyoming Constitution, Article 16, Section 6:

“Neither the state . . . or any other political subdivision, shall loan or give credit or make donations to or in aid of any individual, association, or corporation.”

WWDC FUNDING CRITERIA

- ❖ “[I]n order to receive consideration for construction funding, the project sponsor must be an entity of local government with taxing and/or assessment authority.”
- ❖ “A project sponsor shall be a public entity that can legally receive state funds, incur debt, generate revenues to repay a state loan, hold title and grant a minimum of a parity position mortgage on the existing water system and improvements appurtenant to the project or provide other adequate security for the anticipated state construction loan. A project sponsor can be a municipality, irrigation district, or other approved assessment district, which will realize the major direct benefits of the project.”

WATER CONSERVANCY DISTRICTS

Water conservancy districts are designed “to provide for the conservation of the water resources of the State of Wyoming.” There are seven (7) statutorily-identified purposes for water conservancy districts (W.S. 41-3-701(a):

- (i) Be essentially for the public benefit and advantage of the people of the state of Wyoming;
- (ii) Indirectly benefit all industries of the state;

WATER CONSERVANCY DISTRICTS

- (iii) Indirectly benefit the state of Wyoming in the increase of its taxable property valuation;
- (iv) Directly benefit municipalities by providing adequate supplies of water for domestic use;
- (v) Directly benefit lands to be irrigated or drained from works to be constructed;
- (vi) Directly benefit lands now under irrigation by stabilizing the flow of water in streams and by increasing flow and return flow of water to such streams; and
- (vii) Promote the comfort, safety and welfare of the people of the state of Wyoming.

WATER CONSERVANCY DISTRICTS - FORMATION

- ❖ File petition with the District Court in which all or a portion of the lands are located;
- ❖ Petition must be signed by 25% of the landowners that have not less than 25% of the irrigated lands susceptible of irrigation;
- ❖ Petition must be signed by not less than 5% of the owners owning not less than 5% of the non-irrigated lands;

WATER CONSERVANCY DISTRICTS - FORMATION

- ❖ The Petition must include the following:
- ❖ The proposed name of said district;
- ❖ That property within the proposed district will be benefitted;
- ❖ A general description of the purpose of the contemplated improvement, and of the territory to be included. *Such description need not be given by metes and bounds or by legal subdivision, but shall be sufficient to enable a property owner to ascertain whether his property is within the territory proposed to be organized as a district. Said territory need not be contiguous, provided it is so situated that the organization of a single district of the territory described is calculated to promote one (1) or more of the purposes enumerated in W.S. 41-3-720;*

WATER CONSERVANCY DISTRICTS - FORMATION

- ❖ The assessed value of all irrigated land within the boundaries of the proposed district;
- ❖ A general designation of divisions of the district and the number of directors of the district proposed for each subdivision; and
- ❖ A prayer for the organization of the district by the name proposed.

W.S. 41-3-721(d).

WATER CONSERVANCY DISTRICTS - FORMATION

- ❖ The District Court shall hold a hearing after the Petition is filed;
- ❖ The Wyoming State Engineer is automatically considered an “interested party,” and notifies the Court as to whether he approves or disapproves of the formation; and
- ❖ The District Court either declares the District to be organized and gives it a corporate name, or rejects the Petition.

WATER CONSERVANCY DISTRICTS - FORMATION

❖ Once formed, such a District shall be a political subdivision of the State of Wyoming “and a body corporate with all the powers of a public or municipal corporation.” W.S. 41-3-724(g).

❖ Within thirty (30) days the Court must appoint a board of directors consisting of between five (5) and nine (9) persons, all of whom must be residents of the counties in which the District is situated, and all of whom must be owners of real property in the District.

WATER CONSERVANCY DISTRICTS – POWERS

- ❖ Perpetual succession;
- ❖ To hold water rights, to hold real and personal property, to operate water works and facilities, and “to do and perform any and all things necessary or convenient to the full exercise of the power herein granted”;
- ❖ To have and exercise the power of eminent domain;
- ❖ To construct and maintain works and facilities;

WATER CONSERVANCY DISTRICTS - POWERS

- ❖ To enter into contracts, to create and maintain offices; to elect, appoint and employ officers, attorneys, agents, and employees;
- ❖ To identify the lands that are susceptible of irrigation from district sources, to allocate water to all such lands; and to levy assessment;
- ❖ To fix rates for selling or leasing water;
- ❖ To adopt plans and specifications for the works for which the District was organized;
- ❖ To appropriate and otherwise acquire water and water rights and related activities;
- ❖ To subscribe for, purchase and acquire stock in canal and similar companies;

WATER CONSERVANCY DISTRICTS - POWERS

- ❖ To provide, sell, lease, and deliver water for municipal, domestic, transportation, industrial, manufacturing, irrigation, power, recreation, and any and all other beneficial uses and to derive revenue and benefits therefrom;
- ❖ To invest surplus money;
- ❖ To refund bonded indebtedness incurred by the District;
- ❖ To borrow money and incur indebtedness and to issue bonds; and
- ❖ To adopt bylaws.
- ❖ To levy and collect taxes and special assessments.

FLOOD CONTROL DISTRICTS

- ❖ Purpose: the control or eradication of floods.
W.S. 41-3-803(a).
- ❖ Formation: pursuant to the procedures for petitioning, hearing and election of special districts.
- ❖ Description of Lands: by metes and bounds, “following as nearly as possible established school district boundaries.” W.S. 41-3-801.

FLOOD CONTROL DISTRICTS

- ❖ Board of Directors: Shall consist of six (6) members.
- ❖ Taxes and Assessments: A flood control district DOES NOT have the power to directly levy taxes and assessments; the expenses of a flood control district are included as a special mill levy in the County Commission's yearly budget. W.S. 41-3-802.

IRRIGATION DISTRICTS

Purpose:

“The provisions of [Chapter 7 of the Wyoming Water Code for the establishment of irrigation districts] shall be liberally construed to promote the public welfare by reclaiming and irrigating lands, constructing and completing reservoirs, canals, ditches, or other works specified in the petition and the preservation of or operation of any irrigation system heretofore or hereafter constructed according to law.” W.S. 41-7-102.

IRRIGATION DISTRICTS - FORMATION

An Irrigation District may be formed whenever a majority of those landowners who represent one-third ($1/3$) of the lands within the proposed district desire to provide for the irrigation of the same; or to improve the existing water supply for said lands; or to purchase, extend, operate, or maintain constructed irrigation works; or to cooperate with the United States under the reclamation laws.

W.S. 41-7-201(a).

IRRIGATION DISTRICTS - FORMATION

To initiate formation, the landowners must file a petition with the District Court. Such petition must include the following information:

- ❖ The name of the proposed irrigation district;
- ❖ The necessity of the proposed work;
- ❖ The object and purpose of the system proposed to be constructed, together with a general description;

IRRIGATION DISTRICTS - FORMATION

- ❖ A general description of the lands proposed to be included;
- ❖ A preliminary engineering report on the feasibility of the project, including a report on the sufficiency of its water supply; the approximate area of irrigable land within the district, including an estimate of the cost of construction; all of which shall be approved by the state engineer;
- ❖ The names of all [landowners] in said district, when known;
- ❖ Whether or not the petitioners desire and propose to cooperate with the United States;
- ❖ A general prayer for the organization of the district.

W.S. 41-7-201(a).

IRRIGATION DISTRICTS - FORMATION

“The lands proposed to be included in any irrigation district, need not be contiguous provided that the benefit of the proposed work in each part will exceed the damages from costs of said proposed work in each part; and provided further that the court shall be satisfied that said proposed work can be more cheaply done if in a single district than otherwise; and provided further that lands within a town or city may be included within the limits of any irrigation district, if the creation of such district will benefit such town or city in any amount equal to or in excess of the amount of assessment for construction against the lands therein.”

W.S. 41-7-203.

IRRIGATION DISTRICTS - FORMATION

If the petition is granted, the court shall:

- ❖ Enter an order approving the petition,
- ❖ Define the boundaries of the district;
- ❖ Divide the irrigation district into three (3) or five (5) subdivisions as appropriation (with each being of approximate equal size);
- ❖ Establish the district as a corporation by the proposed name with the following powers:
 - a. to sue and be sued,
 - b. to adopt a corporate seal,
 - c. to have perpetual succession,
 - d. to “file on and acquire the right to use of water for domestic and irrigation purposes; to acquire sites for reservoirs, and rights of way for ditches, canals and laterals,”
 - e. to exercise the power of eminent domain;
 - f. to contract with the State of Wyoming for various reclamation activities, including the purchase of State lands;
 - g. to acquire irrigation works, water rights, land and other property; and to buy, develop, sell and distribute electrical energy.
- ❖ To appoint one (1) commissioner from each commissioner district.

W.S. 41-7-210.

IRRIGATION DISTRICTS - COMMISSIONERS

- ❖ District Commissioners are declared public officers and constitute the corporate authority of the Irrigation District.
- ❖ Board members must take an oath to support the Constitutions of the United States and the State of Wyoming, and execute a bond running to the clerk of the District Court.
- ❖ The Commissioners are required to organize as a board, elect a president and appoint a secretary-treasurer.
- ❖ The Commissioners enjoy broad power and authority to exercise the business affairs of the District.
- ❖ Must file with the District Court an annual itemized statement of all receipts and disbursements.

IRRIGATION DISTRICTS - REPORTS

Soon after formation, the Commissioners are required to proceed “to have all necessary levels taken and surveys made, and shall lay out said proposed work, make a map thereof and plans, profiles and other specifications thereof, and report in writing to the court”:

- ❖ The extent and character of the proposed work and the sufficiency of the water supply;
- ❖ What lands within the district will be injured by the proposed work, if any;
- ❖ What lands within the District will benefit by the proposed work, which will then be assessed by the amount of benefit; the benefits assessed is referred to as the “assessment roll.”
- ❖ Any proposed changes to the boundaries of the proposed District;

IRRIGATION DISTRICTS - REPORTS

- ❖ The estimated costs of construction of the project;
- ❖ The amount of water to be apportioned to each tract;
- ❖ Estimated costs for maintenance; and
- ❖ Maps, plans and specifications

IRRIGATION DISTRICTS – HEARING

“Upon the filing of said report, the court or judge thereof, shall make and enter an order fixing the time and place when and where all persons interested may appear and object to the confirmation thereof. ... The clerk of said court shall cause notice of the time and place for such hearing to be given to all parties interested, which notice shall contain a brief description of the lands benefited and damaged, together with the net damage awarded the several tracts, parcels, easements and corporations to which damages are awarded, and the sum in each case assessed for benefits and cost of construction against the several benefited parcels, tracts, easements and corporations, and the amount of water apportioned to each acre of land in the district.”

W.S. 41-7-308.

IRRIGATION DISTRICTS - FORMATION

According to W.S. 41-7-311, if the court finds in favor of the petition to form the district, “the court shall confirm the report and the order of the confirmation shall be final and conclusive, the proposed work shall be established and authorized, and the proposed assessments approved and confirmed,” unless an appeal is taken to the Wyoming Supreme Court within thirty (30) days.

IRRIGATION DISTRICTS - ASSESSMENTS

- ❖ The Commissioners shall prepare an annual assessment roll that contains the name of all landowners, a description of the land, and the aggregate assessments of benefits, which must be confirmed by the District Court.
- ❖ The Commissioners have the power to enforce payment of the assessments by shutting off the supply of water to any and all lands upon which assessments are due and unpaid, and may refuse to deliver water to such lands until such assessments are paid.
- ❖ All assessments, together with all interest and all penalties for default, and all costs of collecting the same, shall constitute a perpetual lien upon the land and other property against which such assessments were levied.
- ❖ All irrigation district assessments are collected by the same officer and in the same manner and at the same time as State and County taxes are collected and, when collected, are then paid to the Treasurer of the irrigation district.

PUBLIC IRRIGATION AND POWER DISTRICTS

Purpose:

Conservation of the state's water resources is declared to be a state function, and the public interest, welfare, convenience and necessity require the creation of public irrigation districts and the construction of a system of works for the conservation, storage, distribution and utilization of water.

W.S. 41-7-801.

PUBLIC IRRIGATION AND POWER DISTRICTS - FORMATION

A Petition for formation must be filed with the state engineer and is subject to the approval of the state engineer. The Petition must include the following:

- ❖ Name of the district;
- ❖ The object and purpose of the system proposed to be constructed, together with a general description of the nature, location and method of operation of the proposed irrigation works;
- ❖ A description of the lands constituting the proposed district and of the boundaries thereof;
- ❖ The location of the principal place of business of the district;

PUBLIC IRRIGATION AND POWER DISTRICTS - FORMATION

- ❖ A statement that the proposed district shall *not* have the power to levy taxes; and
- ❖ The names and addresses of the interim board of directors (not less than five (5) nor more than thirteen (13)).

W.S. 41-7-804(a)(i).

The petition must be signed by twenty-five percent (25%) of the landowners of the area constituting the proposed district.

PUBLIC IRRIGATION AND POWER DISTRICTS - FORMATION

- ❖ Upon receipt of the Petition, the state engineer shall:
 - a. Make an immediate investigation of the proposed district and of its proposed works, systems or plans;
 - b. If deemed feasible and conforming to public convenience and welfare, and within ninety (90) days after receipt of the Petition, execute a certificate declaring that said Petition has been approved.

- ❖ The certificate is to be filed with the Secretary of State and the County clerk in which the principal place of business for the district is located.

- ❖ The district shall thereafter, under its designated name, constitute a “body politic” and corporate and shall be a public corporation of the State of Wyoming.

PUBLIC IRRIGATION AND POWER DISTRICTS - POWERS

- ❖ “[T]he usual powers of a corporation for public purposes,” and may purchase, hold, sell and lease personal property and real estate reasonably necessary for the conduct of its business. W.S. 41-7-807(a)(i).
- ❖ The power to own, construct, reconstruct, improve, purchase, lease or otherwise acquire, extend, manage, use or operate any “irrigation works,” and every kind of property (personal or real) necessary, useful or incident to such acquisition, extension, management, and use and operation. W.S. 41-7-807(a)(ii).

PUBLIC IRRIGATION AND POWER DISTRICTS - POWERS

- ❖ The power to enter into any contract, lease, agreement or arrangement with any State, County, City, village, government or public corporation or association, or with any person, firm or corporation (public or private), or with the government of the United States;
- ❖ The right to appropriate waters of the State;
- ❖ The power of eminent domain;
- ❖ The power to borrow money and incur debt;

PUBLIC IRRIGATION AND POWER DISTRICTS - POWERS

- ❖ The power to obtain grants, loans, or both from any federal agency;
- ❖ The power to accept gifts;
- ❖ The power to purchase and acquire lands, water rights, rights of way, and real and personal property.

PUBLIC IRRIGATION AND POWER DISTRICTS - TAXATION

The district shall have no power of taxation and no governmental authority shall have the power to levy or collect taxes for the purpose of paying, in whole or in part, any indebtedness or obligation of or incurred by the district.

W.S. 41-7-812.

PUBLIC IRRIGATION AND POWER DISTRICTS – CONVERSION

- ❖ The landowners in a public irrigation and power district shall have the right to convert such district into an irrigation district, having all the rights and powers as though originally created as an irrigation district. W.S. 41-7-830.
- ❖ In order to effectuate such change, the Board must pass a resolution stating that it is the desire of the Board to transform the District into an irrigation district. That resolution must then set the time and place for an election within the District to determine whether the change should be made. W.S. 41-7-831.

WATERSHED IMPROVEMENT DISTRICTS

Purpose:

To provide for the prevention and control of erosion, floodwater and sediment damages, for agricultural uses, and the storage, conservation development, utilization of disposal of water, and thereby to preserve and protect land and water resources, and protect and promote the health, safety and general welfare of the people of this state.

W.S. 41-8-102.

Recreational use may be included in conjunction with projects developed in compliance with the purposes of the act, but there is no initial power of condemnation for recreational purposes. Id.

WATERSHED IMPROVEMENT DISTRICTS - FORMATION

Watershed Improvement Districts are formed as subdistricts of conservation districts. The conservation district in which the water improvement district is formed shall cooperate, advise and consult with the State conservation commission in matters pertaining to the organization, operation and maintenance of the watershed improvement district. W.S. 41-8-103.

WATERSHED IMPROVEMENT DISTRICTS - FORMATION

- ❖ The land area embraced in a watershed improvement district must lie within the same or adjoining watershed or subwatershed areas.
- ❖ A watershed improvement district may embrace land lying in one or more conservation districts.
- ❖ Land lying within the boundaries of one watershed improvement district shall not be included in another watershed improvement district.

W.S. 41-8-104.

WATERSHED IMPROVEMENT DISTRICTS - FORMATION

- ❖ A petition to establish a watershed improvement district shall be filed with the board of supervisors of the conservation district in which the proposed watershed improvement district is situated. W.S. 41-8-105.
- ❖ The board of supervisors of the conservation district shall act upon the petition for formation after conducting a hearing. Lands may be excluded or added to the proposed district by following the defined procedures. W.S. 41-8-107.
- ❖ The board of supervisors is tasked with determining whether there is a need for such a district and, if so, whether its operation is practicable and feasible. W.S. 41-8-108.
- ❖ The board of supervisors will also hold a referendum of all qualified electors of the district and owners of land lying within the boundaries of the proposed district. W.S. 41-8-109.

WATERSHED IMPROVEMENT DISTRICTS - FORMATION

- ❖ If, after the referendum, the board of supervisors determines that the operation of the watershed improvement district is not administratively practicable and feasible, it shall record such determination and deny the petition. W.S. 41-8-110.
- ❖ If the board of supervisors determines that the operation of the watershed improvement district is Feasible, it shall declare the district to be created, provided however, that at least a majority of the votes cast in the referendum (representing a majority of the acreage contained in the proposed district) favor creation of the watershed improvement district. *Id.*
- ❖ The district is then a governmental subdivision of the state and public body corporate and politic. *Id.*

WATERSHED IMPROVEMENT DISTRICTS - POWERS

- ❖ Levy and collect assessments for special benefits accruing to land;
- ❖ Acquire real or personal property, maintain, administer, and improve any such property, and sell, lease, or otherwise dispose of any such property in furtherance of the purposes and provisions of the act;
- ❖ Exercise the power of eminent domain;
- ❖ Construct, improve, operate and contract for the maintenance of such structures as may be necessary for the performance of any authorized function of the watershed improvement district;
- ❖ Borrow money; and
- ❖ Cooperate with State and Federal agencies.

W.S. 41-8-113

WATERSHED IMPROVEMENT DISTRICTS - TAXES

❖ The board of directors shall certify to the County Commissioners the amount of the annual installments of assessments against the land, together with a fair proportionate amount of the estimated operating and maintenance charges apportioned to the land for the upcoming year. The County Commissioners shall certify to and deliver the assessment roll to the County Assessor of the County and the County Assessor shall extend the amounts so certified on the tax roll as a flat special assessment against the land benefited. W.S. 41-8-121(a).

WATERSHED IMPROVEMENT DISTRICTS - TAXES

All taxes and assessments levied against any land together with all interest and penalties for default in payment, and all collection costs, shall, until paid, constitute a perpetual lien upon such land on a parity with the tax lien of general, State, County, City, Town or school taxes and no sale of such land to enforce any general, State, County, City, Town or school tax or other liens shall extinguish the perpetual lien of the taxes and assessments. If the taxes and assessments levied are not paid, then such land shall be sold at the regular tax sale for the payment of the taxes and assessments, interest and penalties, in the manner provided by the statutes of this state for selling real property for nonpayment of general taxes. W.S. 41-8-123.

DRAINAGE DISTRICTS

Purpose:

Drainage districts are formed for the construction or maintenance of drains, ditches, levees or other works, over the lands of others, to promote the public health or welfare, and the drainage of lands. W.S. 41-9-101(a).

WATER AND SEWER DISTRICTS - DEFINITIONS

❖ A “Water District” is defined as “any district organized to acquire any water project for the purpose of supplying water for domestic purposes by any available means, the treatment of such water, and its distribution, for which purposes the district shall have power to acquire water rights, treatment facilities and lines for a water system, and appurtenant facilities, within and without its corporate limits.” W.S. 41-10-101(a)(ii).

WATER AND SEWER DISTRICTS - DEFINITIONS

A “Sewer District” is defined as “any district organized to acquire any sewer project for the purpose of providing sanitary sewers, treatment facilities, disposal plant or other treatment and disposal works, and appurtenant facilities, or storm sewers, flood and surface drainage works, and appurtenant facilities, or providing both such sanitary and storm sewers, works and facilities, and providing all necessary, proper or desirable equipment and appurtenances incident thereto. . . .” W.S. 41-10-101(a)(iii).

WATER AND SEWER DISTRICTS - DEFINITIONS

A “Water and Sewer District” is defined as “any district organized to acquire any such water and sewer project. A district may or may not be created for a combination of water and sewer purposes.” W.S. 41-10-101 (a)(iv).

DITCH COMPANIES

- ❖ Ditch companies are the one water entity that is not discussed within Title 41 of the Wyoming Statutes.
- ❖ According to W.S. 17-12-101, “[w]henever any three (3) or more persons associate under the provisions of this article, to form a company for the purpose of constructing a ditch or ditches for the purpose of conveying water to any . . . lands to be used for . . . irrigation of lands, they shall in their certificate . . . specify as follows: the stream or streams from which the water is to be taken out; the line of said ditch or ditches, as near as may be, and the use to which said water is intended to be applied.”

GOVERNMENTAL IMMUNITY

- ❖ The Wyoming Supreme Court ruled in *Krenning v. Heart Mountain Irrigation District*, 200 P.3d 774 (Wyo. 2009) that irrigation districts are “public corporations” for purposes of the Governmental Claims Act (“WGCA” or “Act”).
- ❖ The Court noted that *Krenning* was the first case in which it had been “squarely presented with the question of whether the WGCA provides governmental immunity to an irrigation district.” *Id.* at 778.
- ❖ The Court undertook an in-depth interpretation of the statutory language of the WGCA in an attempt to determine the Legislature’s intent “based primarily on the plain and ordinary meaning of the words used in the statute.” *Id.*

SUMMARY INFORMATION

❖ Handouts

Article re: *Krenning v. Heart Mountain Irrigation District*, 200 P.3d 774 (Wyo. 2009);

Table comparing specific attributes of the different Title 41 Districts

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