

CHAPTER 101

Original House Bill No. 334

SULPHUR CREEK PROJECT

AN ACT to authorize the Sulphur Creek Reservoir Enlargement Project; describing the project; providing for financing from the water development account through the department of economic planning and development; providing restrictions on the sale of water, sale of the project and the operation of the project; providing for an appropriation; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. Definitions.

(a) As used in this act:

(i) "Commission" means the Wyoming water development commission;

(ii) "Department" means the Wyoming department of economic planning and development;

(iii) "City" means the City of Evanston, Wyoming;

(iv) "Project" means the enlargement of Sulphur Creek Reservoir as described in Section 2 of this act;

(v) "Water development account" means the account created by W.S. 39-6-302(c) and 39-6-305(g).

Section 2. Project components.

(a) The Sulphur Creek Enlargement Project consists of the following components:

(i) The enlargement of the existing Sulphur Creek dam to ensure the safe impoundment of an additional twelve thousand five hundred (12,500) acre-feet of water;

(ii) An emergency spillway;

(iii) Outlet works consisting of a principal spillway and operating spillways for agricultural and municipal purposes;

(iv) Dam access roads;

(v) Embankment instrumentation;

(vi) Remote sensing and control features;

(vii) Gaging stations;

(viii) Power supply facilities;

(ix) A fenced wildlife easement which shall not exceed the amount of land inundated by the project;

(x) Utility and road relocations as necessary to construct and implement the project;

(xi) A boat ramp, a parking area for the boat ramp area and an access road to the boat ramp;

(xii) Appurtenances necessary to make the project complete and function in the manner intended.

Section 3. Authorization.

(a) The commission is authorized to expend remaining funds in the appropriation for this project provided by Chapter 52, Section 5(d)(iii), 1984 Wyoming Session Laws, to perform the following:

(i) Prepare environmental impact statements or assessments, as required;

(ii) Perform final designs;

(iii) Prepare plans and specifications;

(iv) Obtain options, land exchanges or purchase agreements for the necessary project lands and easements;

(v) Procure the 404 Permit from the United States Army Corps of Engineers, the 401 Permit from the department of environmental quality and the permit to construct from the state engineer's office;

(vi) Perform other incidental work required to prepare the project for construction.

(b) The department shall contract with the city for the implementation, construction and operation of the project in a manner consistent with Sections 4 and 5 of this act and to administer the contract on behalf of the state of Wyoming.

(c) Upon completion of tasks outlined in Section 3 (a) and (b) of this act, the city may purchase necessary project lands and easements, construct and operate the project in a manner consistent with the terms and conditions outlined in the contract provided for in Sections 3(b) and 4 of this act.

Section 4. Project financing.

(a) The state of Wyoming shall loan to the city from the water development account through the department as authorized by W.S. 9-2-206 for the construction engineering, permit procurement, land acquisition and construction of the project an amount not to exceed five million dollars (\$5,000,000.00) or twenty-five percent (25%) of the actual development costs, whichever is less, for a term of fifty (50) years at an annual interest rate of four percent (4%) provided:

(i) The city offers security as deemed adequate and acceptable to the attorney general;

(ii) The department establishes a repayment schedule in accordance with the conditions prescribed in this act;

(iii) The city establishes a sinking fund for repair and maintenance of the project as deemed appropriate by the department;

(iv) Upon substantial completion of the project as determined by the department, the total amount of the loan shall be determined and the term of the loan shall commence. An amount not to exceed two hundred twenty-five thousand dollars (\$225,000.00) shall be added to the principal loan balance at the time the loan amount for construction is determined thereby requiring the city to reimburse the state for twenty-five percent (25%) of the actual Level III study costs;

(v) Principal and interest payments made in repayment of the loan shall be deposited in the Wyoming water development account funded by revenues under W.S. 39-6-305(g).

(b) The state of Wyoming shall grant to the city from the water development account through the department as authorized by W.S. 9-2-206 for the design, permit procurement, land acquisition, plans and specifications and construction of the project an amount not to exceed fifteen million dollars (\$15,000,000.00) or seventy-five percent (75%) of the development costs, whichever is less.

(c) The city shall supervise construction of the project and submit all requests for payment to the department for approval.

(d) The department shall, upon review and approval of the city's request, make payments directly to the city.

Section 5. Terms; management plan; restriction on sale of water and the project; loan acceleration.

(a) There shall be no lease, sale, assignment or transfer of ownership of water from the project for purposes other than the city's municipal use without written prior approval of the department and the state engineer or board of control. If such a transaction is approved, the revenues generated by the lease, sale, assignment or transfer of ownership of water from the project shall be utilized to retire principal on the loan described in Section 4(a) of this act. After that loan is paid in full the city shall receive twenty-five percent (25%) of the revenues generated by the lease, sale, assignment or transfer of ownership of water from the project and the state of Wyoming shall receive seventy-five percent (75%) of the revenues generated by the lease, sale, assignment or transfer of ownership of water from the project. After the loan described in Section 4(a) of this act is paid in full, there are no restrictions on the city's use of their portion of the revenue.

(b) There shall be no lease, sale, assignment or transfer of ownership of the project until the loan described in Section 4(a) of this act is paid in full, and until prior written approval is obtained from the department and the commission. If these conditions are met, the city shall receive twenty-five percent (25%) and the state of Wyoming shall receive seventy-five percent (75%) of the revenues generated by the lease, sale, assignment or transfer of ownership of the project. Before the city may lease, sell, assign or transfer ownership of the project, the state of Wyoming shall be given a one (1) year first right of refusal option to purchase the city's interest in the project for an amount equal to the principal, interest, maintenance and replacement costs incurred by the city at the date the option is exercised.

(c) After the loan described in Section 4(a) of this act is paid in full, the city may purchase the position of the state of Wyoming, as described in subsections (a) and (b) of this section, for the amount of the grant described in Section 4(b) of this act plus the interest that would have accrued on the grant amount in the water development account from the date the project was substantially completed as defined by the department. The interest that would have accrued on the grant amount shall be established by the state auditor's office.

(d) Any revenues received by the state from the lease, sale, assignment or transfer of ownership of project water or the project itself shall be deposited in the Wyoming water development account fund by revenues under W.S. 39-6-305(g).

(e) No lease, sale, assignment or transfer of ownership of project water or the project itself shall affect the project operation requirements outlined in subsections (f) through (o) of this section.

(f) The city shall be responsible for operation and maintenance of the project and may charge a fee for public use.

(g) The city shall ensure public access to the reservoir and wildlife easements.

(h) The city shall not divert water into the Sulphur Creek supply system when the flow of the Bear River is less than thirty-five (35) cubic feet per second beginning November 1 and ending March 31 each year. The city shall not divert water into Bear Canal when the flow of the Bear River is less than one hundred fifteen (115) cubic feet per second beginning April 1 and ending October 31 each year.

(j) After initial filling of the enlarged reservoir, the project shall be operated so as to provide minimum releases of nine (9) cubic feet per second or reservoir inflow, whichever is less, from the enlarged dam to the Sulphur Creek Channel unless making these releases will affect the project's capability to meet municipal demands.

(k) No lease, sale, assignment or transfer of ownership of water by the city shall affect the releases outlined in subsection (j) of this section in Sulphur Creek for one and one-half (1 1/2) miles downstream of the enlarged Sulphur Creek dam.

(m) After the initial filling of the enlarged reservoir, the city shall ensure that a minimum pool of four thousand one hundred eighty (4,180) acre-feet is maintained until the municipal storage water demand exceeds eight thousand three hundred twenty (8,320) acre-feet per year, out of the enlarged reservoir. If the city leases, sells, assigns or transfers ownership of the project, the terms of the transaction shall ensure that a minimum pool of four thousand one hundred eighty (4,180) acre-feet will be maintained in the reservoir by the city's successor.

(n) Nothing in this section shall interfere with the administration of Bear River, Sulphur Creek and its tributaries pursuant to state law and the Bear River Compact.

Section 6. There is appropriated from that portion of the water development account funded by revenues under W.S. 39-6-305(g) to the department twenty million dollars (\$20,000,000.00) or as much thereof as is necessary to carry out the purpose of this act.

Section 7. This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

Approved February 18, 1985.