**Notice on Auditing Standards:** Scoping papers are not an auditing standards-based research product. Scoping papers are intended to provide the Management Audit Committee with a summary on a potential evaluation topic (including descriptions of basic agency, program, or procedural functions) on which to decide if a full program evaluation is required. This scoping paper was prepared with information obtained from the agency(ies) and staff listed. The information was not independently verified according to governmental auditing and evaluation standards.

If this topic moves forward to a full evaluation, the evaluation will be conducted as much as practicable according to generally accepted governmental auditing standards promulgated by the Comptroller General of the United States, as required by W.S. 28-8-107(e). Information contained in this paper, as well as all subsequent information gathered during the evaluation will be independently verified and reported according to the auditing standards.
Introduction

Wyomingites see water as one of the State’s most valuable resources. In the last five years, the State has appropriated almost $269 million toward water development administration and projects, about half of which has been expended to date. In January 2015, Governor Mead announced at his State of the State address that he would be prioritizing water as the State’s most precious resource and would release a water strategy (issued January 2015). That strategy, titled Leading the Charge, includes plans for water management, development, conservation, and protection. Such focus on this natural resource will continue to require that the Executive and Legislative branches work cooperatively to efficiently fund and adequately protect Wyoming’s water.

In December 2014, the Management Audit Committee (Committee) directed Legislative Service Office (LSO) staff to conduct a scoping topic review of contract processes, funding amounts, funding allocation, commission membership, statute, policies, and procedures of the Wyoming Water Development Commission (and Water Development Office). LSO staff preliminarily reviewed the assigned areas to determine if the Committee could benefit from a full evaluation.

Background

Beginning of State Water Development Program Started in 1975

In 1975, the Legislature passed the Water Development Program Act. The Act established a water development program to “foster, promote, and encourage the optimum development of the State’s human, industrial, mineral, agricultural, water and recreational resources.” Prior to passage of the Act, the Legislature authorized water projects in separate bills, which did not allow for public hearings or evaluation in the same way projects are evaluated today.

In 1977, the Legislature provided for an excise tax of 1.5% on coal to fund the New Development Program. Two years later (1979) the Legislature reorganized the Water Planning Program of the State Engineers Office and the Interdepartmental Water Conference (IDWC) into a single agency: The Wyoming Water Development Commission (WWDC or Commission). In 1982, Governor Herschler and the Legislature established the Water Development Program to focus water development funds on conducting river basin studies, designing and building new storage facilities, and rehabilitation of older facilities. In addition, that law also created the permanent Select Water Committee of the Legislature.

The Wyoming Water Development Office Established in 1991

During the statewide reorganization in 1991, the WWDC staff was formed into a separate office known as the Wyoming Water Development Office (WWDO). The WWDO currently consists of 26 employees with the FY2015/2016 biennial budget of $8 million. This amount is appropriated
from the Water Development Account I (WDA I), as the agency does not directly receive State General Funds or federal funds for program administration.¹

Currently two annual bills, one for planning and the other for construction, consolidate proposed water development projects for the Legislature to consider. The planning and construction bills are considered separately, outside of the agency’s administrative budget requests and appropriations. The Legislature must appropriate and approve any expenditure of funds from the Water Development Accounts. Further, there are obligated and unobligated funds within each legislative appropriation. For the purposes of this scoping paper, obligated funds are those for which contracts have been executed, while the remaining appropriated funds are unobligated (not officially committed for expenditure).

While the WWDC is the primary body responsible for overseeing the water development program, the WWDC and WWDO also regularly interact with other related entities. These entities include the State Engineer’s Office, the Department of Environmental Quality, the Office of State Lands and Investments (OSLI), the Department of Agriculture, Wildlife and Natural Resource Trust, and the Department of Game and Fish. Each agency is also involved with environmental or agricultural projects that require water use.

**LSO Evaluated the Water Development Program in 1994**

In 1994, LSO conducted an evaluation of the WWDO. At the time of the evaluation, there were two primary components within the water development program: project development, and water development planning. The WWDC was also responsible for duties associated with instream flow, groundwater grant research and water investments. In 2005, the Legislature established a third component for the construction and rehabilitation of dams and reservoirs.

The 1994 report provided five findings. They were:

- Finding one: Wyoming’s water development program is shifting its funding emphasis to meet municipal needs.
- Finding two: The WWDC was operated effectively within a broad statutory framework.
- Finding three: The Legislature is using WDA I for purposes not directly related to water development projects.
- Finding four: Weak subdivision laws allow land developers to shift the cost of water systems to the WWDC.

¹ The Legislature has appropriated State General Funds into Water Development Account I, which was used for agency administration.
Finding five: Western states share similar concerns regarding future water policy.

The evaluation report contained two recommendations. The first recommendation suggested that the Legislature consider re-evaluating the intent of the Water Development Program, providing policy considerations as well as financing alternatives, such as bonding and using the PWMTF 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 with subdivision and community development.

Water Development Program Governance and Project Approval

Commission Composition

The WWDC consists of ten people, appointed by the Governor, and under the following statutory requirements:

- Two commissioners from each water division of the State;
- At least one with an adjudicated water right;
- One commissioner representing the public at large; and
- One commissioner who is an enrolled member of the Arapahoe or Shoshone Indian tribes.

No more than five members may be from the same political party and terms are limited to four years with no member serving more than two consecutive terms. In addition to the voting members, the University, the Wyoming Business Council, and the State Engineer are non-voting members of the Commission.

Wyoming law requires that a commissioner publically disclose if he or she has a personal or private interest in any matter proposed or pending before the Commission. The commissioner cannot vote on any such matter pursuant to W.S. 41-2-121. In addition, within 60 days following an appointment, and annually before January 1st, each commissioner is required to file written disclosures with the Secretary of State’s Office relative to all interests held by the commissioner, or his or her spouse. Disclosures must list any interest as part of a partnership or corporation. Those declarations must include any water rights, permits or applications held, and any interest in engineering or construction firms that will be charged with implementing water projects.

According to the WWDO, each new commissioner is provided a copy of the, Protocol and procedures – Wyoming Water Development Commission. The manual specifically states, “Commission members also must be mindful of conflicts of interest or the potential for bias. 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 ability, Commission
member should recuse him or herself.” While it is currently unclear if the commissioners file their disclosures with the Secretary of State, ten commissioners have recused themselves based on personal conflict within the last five years.

**Project Approval Process**

Several entities are involved with the oversight of the Water Development Program. Figure 1, below, illustrates the general approval process for projects.

**Figure 1**

**Water Development Program Approval Process**

<table>
<thead>
<tr>
<th>WWDO</th>
<th>WWDC &amp; Select Water</th>
<th>WWDC</th>
</tr>
</thead>
</table>
| Receives applications and makes funding recommendations  
- New project due 8/15  
- Existing project due 10/1 | November Joint Meeting  
- Project sponsors respond to WWDO recommendations | Develops Preliminary Funding Recommendation |

<table>
<thead>
<tr>
<th>Public Hearings</th>
<th>Governor</th>
<th>WWDO &amp; LSO</th>
</tr>
</thead>
</table>
| Controversial Level I and Level II and all Level III  
(see following sections for level descriptions) | Preliminary Funding Recommendation and financial report presented to the Governor for input | Draft preliminary "Omnibus" Planning and Construction bills. |

<table>
<thead>
<tr>
<th>WWDC</th>
<th>Select Water Committee</th>
<th>Legislature</th>
</tr>
</thead>
<tbody>
<tr>
<td>December or January meeting to make final recommendations. Considers input from sponsors and public input</td>
<td>Prior to session, votes to sponsor, or not, the proposed &quot;Omnibus&quot; Planning and Construction bills</td>
<td>During Session, authorizes the allocation of funds from the water development accounts to projects.</td>
</tr>
</tbody>
</table>

**Source:** Legislative Service Office analysis of Water Development Program documents.

The WWDO administers the Water Development Program under WWDC-approved criteria titled *The Operating Criteria of the Wyoming Development Program*. This manual provides the program philosophy, statutorily based policy, and procedures for how water projects are evaluated and funded. According to the criteria, “[t]he Water Development program was founded on the philosophy of utilizing a portion of the financial resources the state receives from the development and use of it non-renewable resources, such as coal, oil, and gas to develop a renewable resource, water.” The WWDO does not use score sheets or rating systems when recommending projects to the WWDC. The WWDO staff rely on professional expertise and judgement when recommending
projects for approval. Table 1, below, summarizes the projects that are and are not considered within the Water Development Program.

Table 1
Water Development Program Projects

<table>
<thead>
<tr>
<th>Projects Considered by the WWDC</th>
<th>Projects Not considered by the WWDC</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Multipurpose;</td>
<td>• Refinancing previously completed improvements;</td>
</tr>
<tr>
<td>• Storage projects;</td>
<td>• Wastewater projects;</td>
</tr>
<tr>
<td>• Irrigation and municipal water supply projects;</td>
<td>• Recreation;</td>
</tr>
<tr>
<td>• Irrigation and municipal water supply systems;</td>
<td>• Environmental enhancement;</td>
</tr>
<tr>
<td>• Rural domestic projects;</td>
<td>• Flood control;</td>
</tr>
<tr>
<td>• Rural domestic projects with independent water supplies;</td>
<td>• Rehabilitation of hydropower projects;</td>
</tr>
<tr>
<td>• Hydropower projects;</td>
<td>• Erosion control;</td>
</tr>
<tr>
<td>• Purchase of existing storage;</td>
<td>• Distribution systems;</td>
</tr>
<tr>
<td>and,</td>
<td>• Water Treatment Facilities; and,</td>
</tr>
<tr>
<td>• Municipal and rural domestic raw water projects.</td>
<td>• Subdivisions.</td>
</tr>
</tbody>
</table>

Source: Legislative Service Office summary of Wyoming Water Development Commission operating criteria.

Statutes regarding the Water Development Program are broad in nature; W.S. 41-2-112 states that 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.”

The WWDC’s promulgation of operating procedures and criteria for recommending, prioritizing, and disqualifying projects are specifically exempt from the Wyoming Administrative Procedure Act (W.S. 16-3-114 and 16-3-115), including provisions for judicial review.

Level I (Reconnaissance) and Level II (Feasibility)

By statute, the WWDC/O classifies project proposals according to three “levels:” Level I projects include planning studies and reconnaissance; Level II projects cover feasibility studies; and Level III is the design and construction phase for projects.

Any municipality, irrigation district, joint powers board, or other approved assessment district can apply for funding from Water Development Program. With few exceptions, all Level I and II applicants must be a government entity with taxing and/or assessment authority except
In the most recently approved projects (2015 SEA69), the Legislature approved a Level I project for a master plan with a private Property Owners Association (POA) in Lincoln County. The POA requested the study to identify parts of the existing water system that are deficient and to provide a schedule for improvements. The plan will also identify the steps needed for the POA to become a public entity. The WWDC selected consultants for this project in May 2015, with several commissioners voting against selection given that the applicant was not a public entity.

Applicants for dams and reservoirs. Once an application has been approved, the applicants are known as project “sponsors.” Private corporations and individuals are not eligible for assistance, but see the summary at left for recent WWDC concerns.

For all three levels, each application requests information about the purpose of the project, about the existing water supply system, financial information, and information about the district or water systems operations. The WWDC requests rural domestic water system applicants to provide additional information on the entity status, including whether the entity is an approved subdivision(s) or un-platted development and whether a local government, such as a water district, exists.

**Level III (Construction)**

The program sponsors for Level III applications must be an entity of local government with taxing and/or assessment authority. The requested information in the Level III applications is separated into the following three categories:

- **Financial Plan** — Requested amount of funding;
- **Existing Water Supply System** — Details about existing system; and,
- **Financial Information** — Details about system capacity, water usage, financing, and pre- and post-project financial conditions.

W.S. 41-2-114(a)(ii) requires public hearings for Level III projects. According to WWDO staff, hearings are held after the Commission makes its preliminary recommendation at their November meeting. The WWDO advertises the hearings in the Casper Star Tribune newspaper and the local newspaper within the project area at least three consecutive weeks prior to the hearing. The intent is for the Commission and Select Water Committee to provide an additional opportunity for public comment to consider in the final decision-making process regarding design, permitting, and construction funding.

**Other Projects/Programs**

In addition to the three levels listed above for the primary water development program, statute also authorizes the Commission to provide groundwater exploration grants and funding for small water projects. Groundwater exploration grants are limited to $400,000 maximum per project. The sponsor is required to provide 25% of the cost, as well as anything that exceeds the $400,000 project cap.

The WWDC also has a role in the authorization of small water projects. For the WWDC to consider a project under this program the total project cost cannot exceed $135,000. Statute caps the Commission’s contributions at $35,000. In order for projects to be prioritized under the Small Water Project Program there must be a Water Development Commission Watershed Study completed where proposed projects are
located. In addition, the project must improve watershed condition and function, provide multiple benefits, and meet program criteria.

Once the WWDC, the Select Water Committee, and the Legislature approve a project, the WWDO utilizes a formal process for tracking projects from start to finish. Once a project is complete, the WWDO states that it does not experience problems in management and maintenance of projects built through its agency. According to WWDO staff, “[o]ur project agreements require the sponsor to maintain repair and maintenance accounts and require the sponsor to provide for normal maintenance for the life of the project. The project agreements also stipulate that the sponsor is responsible for all operational costs associated with the project.”

Program Funding

Water Development Accounts

Three separate distributions from the Severance Tax Distribution Account fund the Water Development Program. Water Development Accounts (WDA) I, II and III accounts, created under W.S. 41-2-124, receive the distributions. This statute also requires some of that funding to go to the State Drinking Water Revolving Loan Account established under W.S. 16-1-302, which assists with state matching requirements for the program administered through the OSLI.

Statute (W.S. 41-2-124) requires the State Treasurer to invest unexpended WDA balances and credit any interest earned to each respective account. The earned interest provides a large portion of revenue used in funding additional projects. Statute also limits the size and capacity of dams built with WDA III funds and prohibits the diversion of funds in this account without legislative approval.

There are annual limitations on the deposits from severance taxes. The annual limitations and account uses are listed in Table 2, below.

<table>
<thead>
<tr>
<th>Fund</th>
<th>Purpose</th>
<th>Percent of Severance Tax Collections</th>
<th>Annual Cap</th>
</tr>
</thead>
<tbody>
<tr>
<td>WDA I</td>
<td>New Developments</td>
<td>12.45%</td>
<td>$19,297,500</td>
</tr>
<tr>
<td>WDA II</td>
<td>Rehabilitation</td>
<td>2.1%</td>
<td>$3,255,000</td>
</tr>
<tr>
<td>WDA III</td>
<td>Dam and Reservoir</td>
<td>0.5%</td>
<td>$775,000</td>
</tr>
</tbody>
</table>

Source: Legislative Service Office summary.

The severance tax distribution appears to be the baseline operation funding source for the Commission and WWDO. However, there are additional revenue sources provided to each account. Past revenue sources have included General Fund appropriations, Budget Reserve Account appropriations, coal lease bonus revenue, and interest from previous loans.
The WWDO and Commission consider the additional revenue sources when planning their request for funding. While the type of project (new, rehabilitation or dam/reservoir) determines the funding source, each project, from beginning to end, has the potential to go through every level of project development (planning, feasibility, and construction).

**WDA Revenues**

As illustrated in Figure 2, below, revenues from the severance tax have been consistent. WDA I receives continual revenue from severance taxes and total funding per fiscal year ranges between $26 million for FY2014 and $33 million in FY2011. Over half the revenue for WDA I is provided through the severance tax distribution each year.

**Figure 2**

WDA I Revenue by FY (FY2009-FY2014)

<table>
<thead>
<tr>
<th>FY</th>
<th>Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY09</td>
<td>$30,021,792</td>
</tr>
<tr>
<td>FY10</td>
<td>$31,720,640</td>
</tr>
<tr>
<td>FY11</td>
<td>$33,092,206</td>
</tr>
<tr>
<td>FY12</td>
<td>$27,759,976</td>
</tr>
<tr>
<td>FY13</td>
<td>$32,378,825</td>
</tr>
<tr>
<td>FY14</td>
<td>$26,205,360</td>
</tr>
</tbody>
</table>

**Source:** Legislative Service Office analysis of WWDC Legislative Reports.

Shown in Figure 3, below, interest earned on the WDA I provides roughly 17% of the total revenue for the account for FY 14. The amount of investment income varies from year-to-year and depends on the amount of funds expended in any given year. According to the WWDO, WDA I is adequately funded for both short and long-term anticipated needs for the New Development Program.
For WDA II, Figure 5, below, indicates severance taxes make up just over half of the total revenue for the account. Interest dipped more in FY2014 than in other years, but revenue from loans and interest payments remains fairly consistent. Total revenue for WDA II ranged between $6 million in FY2014 and $8.6 million in FY2009 and FY2012.
According to the WWDO, the WDA II is not adequately funded for short or long-term rehabilitation project needs. The WWDO is anticipating large rehabilitation projects for FY2016 that, coupled with smaller rehabilitation projects, will exceed available funding for projects funded from this account. According to WWDO staff, without additional revenue, future projects will be delayed due to insufficient funding.

Source: Legislative Service Office analysis of WWDC Legislative Reports.

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**Figure 5**

WDA II Revenue by Source FY 2014

Source: Legislative Service Office analysis of WWDC Legislative Reports.

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**Figure 6**

WDA III Revenue by FY (FY2009-FY2014)

Source: Legislative Service Office analysis of WWDC Legislative Reports.
WDA III receives $775,000 yearly from severance taxes. WDA III is unique in that interest earned from the account appears to be the primary source of income, which may become a problem should an increase in projects and spending occur. However, that issue could be offset by the return of loan interest.

**Figure 7**

**WDA III Revenue by Source FY 2014**

Source: Legislative Service Office analysis of WWDC Legislative Reports.

**WDA Expenditures**

As shown in Tables 3-5, below, expenditures out of each account vary from year-to-year. Since FY2009, WDA I expenditures ranged from just over $24 million to over $37 million. The uncommitted balance is the amount available in each account after active appropriations and other obligations are satisfied; a negative uncommitted balance may result in an additional budget request. As noted earlier, that WDA I receives about 10% more of the severance tax distribution annually than WDA II.

**Table 3**

**WDA I Historical Expenditures and Balances, FY2009-FY2014**

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>WDA I Expenditures</th>
<th>Active appropriations</th>
<th>WDA I Cash Balance</th>
<th>Uncommitted Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY2009</td>
<td>$30,334,437</td>
<td>$133,349,706</td>
<td>$119,533,795</td>
<td>($13,815,911)</td>
</tr>
<tr>
<td>FY2010</td>
<td>$37,491,677</td>
<td>$128,768,565</td>
<td>$110,762,758</td>
<td>($18,005,807)</td>
</tr>
<tr>
<td>FY2011</td>
<td>$36,807,850</td>
<td>$116,518,061</td>
<td>$107,047,114</td>
<td>($9,470,947)</td>
</tr>
<tr>
<td>FY2012</td>
<td>$30,717,201</td>
<td>$112,017,589</td>
<td>$104,089,889</td>
<td>($7,927,700)</td>
</tr>
<tr>
<td>FY2013</td>
<td>$24,594,251</td>
<td>$112,913,515</td>
<td>$111,874,463</td>
<td>($1,039,052)</td>
</tr>
<tr>
<td>FY2014</td>
<td>$36,491,351</td>
<td>$95,739,277</td>
<td>$107,438,227</td>
<td>$11,698,950</td>
</tr>
</tbody>
</table>

Source: Wyoming Water Development Commission Annual Legislative Reports.
### Table 4
**WDA II Historical Expenditures and Balances, FY2009-FY2014**

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>WDA II Expenditures</th>
<th>Active Appropriations</th>
<th>WDA II Cash Balance</th>
<th>Uncommitted Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY2009</td>
<td>$7,576,780</td>
<td>$45,043,553</td>
<td>$44,265,824</td>
<td>($777,729)</td>
</tr>
<tr>
<td>FY2010</td>
<td>$11,432,901</td>
<td>$39,355,081</td>
<td>$40,247,858</td>
<td>$892,777</td>
</tr>
<tr>
<td>FY2011</td>
<td>$11,505,034</td>
<td>$40,062,282</td>
<td>$36,566,209</td>
<td>($3,496,073)</td>
</tr>
<tr>
<td>FY2012</td>
<td>$19,509,374</td>
<td>$28,188,027</td>
<td>$25,707,267</td>
<td>($2,480,760)</td>
</tr>
<tr>
<td>FY2013</td>
<td>$8,653,694</td>
<td>$24,479,613</td>
<td>$24,221,675</td>
<td>($257,938)</td>
</tr>
<tr>
<td>FY2014</td>
<td>$9,408,566</td>
<td>$23,094,670</td>
<td>$18,805,540</td>
<td>($4,289,130)</td>
</tr>
</tbody>
</table>

*Source: Wyoming Water Development Commission Annual Legislative Reports.*

### Table 5
**WDA III Historical Expenditures and Balance, FY2009-FY2014**

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>WDA III Expenditures</th>
<th>Active Appropriations</th>
<th>WDA III Cash Balance</th>
<th>Uncommitted Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY2009</td>
<td>$825,514</td>
<td>$11,183,710</td>
<td>$131,374,903</td>
<td>$120,191,193</td>
</tr>
<tr>
<td>FY2010</td>
<td>$1,268,566</td>
<td>$27,362,380</td>
<td>$135,752,193</td>
<td>$108,389,813</td>
</tr>
<tr>
<td>FY2011</td>
<td>$2,950,723</td>
<td>$25,961,892</td>
<td>$143,064,945</td>
<td>$117,103,053</td>
</tr>
<tr>
<td>FY2012</td>
<td>$5,197,679</td>
<td>$22,187,893</td>
<td>$127,621,986</td>
<td>$105,434,093</td>
</tr>
<tr>
<td>FY2013</td>
<td>$2,018,217</td>
<td>$28,241,677</td>
<td>$150,279,730</td>
<td>$122,038,053</td>
</tr>
<tr>
<td>FY2014</td>
<td>$1,265,091</td>
<td>$26,201,291</td>
<td>$153,131,207</td>
<td>$126,929,916</td>
</tr>
</tbody>
</table>

*Source: Wyoming Water Development Commission Annual Legislative Reports.*

As noted previously, the rehabilitation project fund WDA II, has increased funding needs. WDA II receives 2.1% of the severance tax distribution and has a negative uncommitted balance.

Water Development Account III maintains consistent cash balances. However, the cash balance is due to what WWDO staff say are the federal requirements and timeframes that go hand-in-hand with dam and reservoir projects. Should the federal government approve all permits for projects, the State would see a significant decrease to the account balance.

### Project Financing

Fiscal staff at the WWDO maintain an Excel spreadsheet to track appropriations and expenditures for the water accounts and water projects at a broad level. Fiscal staff link the Project Report spreadsheet to other spreadsheets maintained and consistently updated by the respective project manager. The Commission can fund Level I and II projects up to 100%. The Commission typically funds Level III projects through a 67% grant, and 33% loan option with an interest rate of 4% for up to 50 years. Sometimes communities will pay for their 33% loan share through other means (grant from another agency, sponsor reserves, or loan from another agency). Even if approved by the Legislature, the WWDO cannot move
forward on a project until it secures the entire financial package. The criteria for evaluating loan applications is the same as the project grants with the additional review of the sponsor’s ability to cover debt service costs.

Each project appropriation has a reversion date assigned, which is typically July 1st of the fifth year after the appropriation date (not construction date or project approval date). If the sponsor has not secured its 33% cost share by that date, the funds revert and the WWDC cancels the project. In some cases, the WWDO may ask the WWDC to revert funds before the five-year period has elapsed due to insufficient progress by the sponsor to secure the sponsor’s share. The WWDC may also request the Legislature to extend reversion dates.

The WWDC has not cancelled any projects in the last five years due to the sponsor not securing its share of project funding. However, according to the WWDO, a few sponsors are still attempting to secure financing prior to their projects moving forward. Those projects include:

- **2013 Cottonwood Lake Enlargement in Lincoln County** - The local share is in the form of a $1,221,000 WWDC loan. The sponsor has not exercised the loan because they consider that amount of debt load too much for their small district.

- **2013 Jeffery City Water System Improvements in Fremont County** – The sponsor pursued Mineral Royalty Grant financing thru OSLI. The sponsor was declared ineligible for the MRG program because it failed to maintain their property tax mill levy the previous year.

- **2013 Eden Valley Farson Lateral Rehabilitation in Sweetwater County** – The sponsor pursued its share of funding from the Basin Wide Salinity Control Program. In 2013, these funds were retracted due to federal budget sequestration.

**Consultant Selection**

The WWDC consultant selection process most recently occurred between January and May 2015. The WWDC retains consultants for purposes of conducting Level I and Level II studies. For Level III projects, the project sponsors seeking to construct a facility secure their own contractor through the selection and review process discussed below. The selection process for the WWDC follows W.S 9-2-1030 and W.S 9-2-1031. These statutes provide that “consideration in each selection process by the principal representative shall be based upon 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.” Figure 8, below, provides a general illustration of the consultant selection and review process.
For Level III projects, the sponsor has three options in hiring a consulting firm. First, with the approval of the Agency Director, the sponsor can hire the consulting firm that completed the Level I/II study, provided they are a Wyoming resident firm. Second, the sponsor can follow the State Project consultant selection process. Or, third, the sponsor can submit a consultant selection plan to the Governor’s Office.

**Contract Amendments**

The WWDO considers all contract amendments for consultants. When determined by the WWDO to be appropriate, the director presents the contract amendments to the Commission for approval at one of its regularly scheduled meetings. According to WWDO staff, a common reason for amendments occurs when unforeseeable project conditions dictate a change in scope, which may also include an increase or decrease in the contract amount. The length of reservoir projects also creates the need for contract amendments. Since these projects can occur over many years, additional tasks and budget are added as milestones are achieved and the project advances. According to WWDO staff, the additional tasks often warrant increased rates over time.

**Source:** Legislative Service Office analysis of WWDO documents and observation of selection process.
Recent Legislation and the State Water Strategy

During the most recent session, the Legislature cut the WWDC supplemental budget request of $18.6 million in half, and provided alternative funding from the Buffalo Bill Account. However, WWDO staff explained that in effect, this supplemental request took funds eligible for WDA I projects and moved them to WDA II. Additionally, seven projects within the construction bill were contingent upon the supplemental request. WWDO staff explained that with available appropriations for ongoing and expected projects, WDA II is in a deficit of $1.6 million dollars.

The WWDO professional and expert staff use their judgment to evaluate projects before, during, and after Levels I and II. When determining if a project is ‘ready’ to progress to the construction phase, the WWDO uses the initial review and analysis of a project application. Contributing questions and considerations include:

- Is the feasibility study (Level II report) for the project complete?
- Does the sponsor have adequate financial resources to fund their local share?
- If the sponsor plans to fund their local share with a loan, are they prepared to increase rates to cover debt service costs?

If the WWDO determines that a project is not ready, then the Director recommends against funding a project. To resolve the current issue with the smaller supplemental budget, WWDO staff advised the Commission to postpone one of three projects to satisfy that $1.6 million deficit.

However, commissioners expressed concern with how the Commission will ensure future funding, as the WWDO director stated that, “WDA II is in distress.” He also noted that the severance tax would not fund the level of projects that the WWDC has planned. Commissioners and Select Water Committee members discussed a possible need for prioritization of applications. There was also discussion of a possible waitlist to keep projects in the pipeline so that the Commission can maintain funding for projects in the event that the Commission does not receive more funding. One commissioner noted, “we need a plan.” Both the Commission and Select Committee members agreed to further the discussion on project prioritization at a later meeting.

Without additional funding, Governor Mead’s recently released water strategy may further strain the water development accounts. While the WWDC believes that statute grants the WWDC authority to implement the Wyoming Water Strategy initiatives, the Legislature has not authorized additional funding. One initiative recommends building ten reservoir projects in the next ten years. Currently the WDA III, from which these projects would be funded, only has enough funding to complete four or five reservoirs.
Current Issues

**Moving funds between projects**

According to the WWDO, moving funding between projects is rare and only occurs with Level I and II projects that have been previously approved through the Omnibus Planning bill; the WWDO does not have the authority to move funding between construction projects. The WWDO moves funding between planning projects per the following language in the yearly planning bill, and only with approval of the Select Water Committee.

> “Funds appropriated under this section for a particular project which are in excess of the actual amount necessary to complete the study may, subject to the review of the select water committee, be expended by the commission to complete the reconnaissance/feasibility study for any other project listed in this section.”

In addition, W.S. 41-2-123(e), permits the use of unobligated Level I funds to begin a Level II project if specific requirements are met, and again, only upon approval of the Select Water Committee.

**Movement of funds between Water Development Accounts**

The WWDO does not have the authority to move funding between WDA I, II, and III. W.S. 41-2-124 requires approval of the Legislature for appropriations from the water development accounts. *The Operating Criteria of the Wyoming Water Development Program* manual also reiterates this prohibition. However, the WWDC may move excess funds to meet the obligations of the Fontenelle, Buffalo Bill, Palisades, Miscellaneous, Keyhole Reservoir, and High Savery accounts to WDA I.

In addition, W.S. 99-99-1001(e) allows the WWDC to use funds in excess of $500,000 or the amount necessary to meet the obligations of the Buffalo Bill dam project, whichever is greater, to meet the obligations for any of the accounts in W.S. 99-99-1001(a) (reservoir accounts noted above). Moving funds from the Buffalo Bill dam account to another account established by W.S. 99-99-1001 requires the use of the “B-11” interim appropriation modification process.

**Amending Consultant Contracts**

When LSO observed the WWDC meetings, some commissioners expressed concern regarding the rate increase for existing contracts. However, WWDO staff explained that when the Commission hires a consultant at the beginning of a project (Level I and II) there is a set amount of work in their contract. Reservoir projects tend to have numerous amendments because the WWDO tries to keep the same consultant for the entire project. After four years, the hired consultant has a wealth of information on a project, but as the WWDO adds additional duties to the scope of a project, prices rise.
The WWDC cannot expend any funding until projects are approved by the Select Water Committee and funds are appropriated by the Legislature through the Omnibus bills. Therefore, it is unlikely that any increase to a contract would exceed the approved project costs. In addition, Commission members expressed that rates for consultants should be consistent with the market and staff should ensure they review market pay when bringing contract amendments before the Commission. At the May 2015 Commission meeting, one commissioner made a formal motion to ensure that contract amendments are carefully considered and not automatically approved. That motion passed unanimously.

**WWDC-Governor-Legislature Relationship**

When asked about the relationship between the WWDC and the Select Water Committee, WWDO staff explained that while there may be differences of opinion between individuals that serve on the Commission and the Select Water Committee, those differences have not manifested in formal commission actions objecting to Select Water Committee or the Legislature’s actions. WWDO officials explained that while the WWDC serves an advisory role to the Select Water Committee and ultimately, the Legislature, they have requested in the past that the WWDO Director arrange a meeting between the WWDC Chairperson and the Select Water Committee Chairman to further communications related to issues on which the two entities have not entirely agreed.

When asked about the relationship between the WWDC and the Governor, WWDO staff stated that the Governor reviews the WWDO Director’s project recommendations in the same period that the WWDC reviews the projects. To date, the WWDO is not aware of any disagreements between the WWDC and the Governor. Likewise, the WWDO is not aware of any projects vetoed by the Governor.

**The WWDC and the WWDO Loan Denials**

Based on recent funding issues and some projects’ circumstances, the WWDC has made an administrative choice to deny the loan portion for some projects. The WWDO has directed municipalities to the OSLI and State Loan and Investment Board for State Revolving Fund programs (Drinking Water and Clean Water programs). The WWDO implemented this practice to benefit the State and the OSLI in getting federal dollars expended with the understanding that if unused, the federal government may pull some funding from Wyoming’s programs.

**Possible Evaluation Questions**

Should the Management Audit Committee wish to move forward with a full evaluation, possible research questions could include:

1. Are current revenue allocations to the three Water Development Accounts adequate to meet current community/project demand? If not, how could revenue allocations be altered to these accounts?
2. How does the WWDC determine the types of projects it will fund and what may be the impact on the timing and amount of funding requests to the Legislature?
   
   a. Are projects approved prior to being fully ready to advance?

3. Is funding of Level I studies for private entities within the authority of the Water Development Program?

4. How do WWDC and WWDO authorizing statutes contribute to or hinder program administration and oversight?

5. How does the current governance structure (Governor-Commission-Select Water Committee) function and is this structure conducive to efficient and effective program oversight?