

R653. Natural Resources, Water Resources.

R653-2. Financial Assistance from the Board of Water Resources.

R653-2-1. Purpose.

The purpose of this rule is to provide the standards and procedures for providing technical and financial assistance to water users to achieve the highest beneficial use of water resources within the state, and for utilizing the Water Infrastructure Restricted Account described in Title 73, Chapter 10g, Utah Code Annotated.

R653-2-2. Description of Revolving Loan Programs.

(1) The Board of Water Resources (Board) administers three revolving construction funds: the Revolving Construction Fund, the Cities Water Loan Fund, and the Conservation and Development Fund. Funding is available for projects that conserve, protect, or more efficiently use present water supplies, develop new water, or provide flood control. Project facilities may be constructed in another state if project water is to be used within the state of Utah.

(a) The Board will fund projects based on the following prioritization system:

(i) Projects which involve public health problems, safety problems, or emergencies.

(ii) Municipal water projects that are required to meet an existing or impending need.

(iii) Agricultural water projects that provide a significant economic benefit for the local area.

(iv) Projects which will receive a large portion of their funding from other sources.

(v) Projects not included in items 1-4, but which have been authorized by the Board, are funded on a first-come-first-served basis.

(b) The Board will not fund the following types of projects:

(i) Projects that are, in the opinion of the Board, routine or regularly occurring system operation and maintenance.

(ii) Domestic water systems where fewer than 50% of the residents live in the project area year-round.

(iii) Projects sponsored by developers.

(iv) Projects sponsored by individuals or families.

(c) General guidelines of each of the Board's funding programs are:

(i) Revolving Construction Fund (RCF):

(A) In the RCF, the Board will accept applications from incorporated groups such as mutual irrigation and water companies.

(B) The RCF advances financial assistance to the following types of projects:

(1) Irrigation projects costing less than \$1,000,000.

(2) Rural culinary projects costing less than \$1,000,000 that involve mutual irrigation and water companies.

(3) Dam Safety Studies

(C) The staff will recommend repayment terms in the feasibility report it will prepare. Interest will not be charged.

(ii) Cities Water Loan Fund (CWLF):

(A) Through the CWLF, the Board may finance the construction of municipal water facilities for political subdivisions of the state such as cities, towns, and districts.

(B) The staff will recommend repayment terms and interest rates in the feasibility report it will prepare.

(iii) Conservation and Development Fund (C and D):

(A) Through the C and D, the Board may finance the construction of water projects sponsored by incorporated groups, political subdivisions of the state, the federal government, or Indian tribes.

(B) The staff will recommend repayment terms and interest rates in the feasibility report it will prepare.

R653-2-3. Application Procedure.

(1) Applicants shall submit a completed application form directly to the member of the Board residing in the river district in which the project is located. If the Board member determines the application meets general Board guidelines, the Board member will sign the application and forward it to the Division of Water Resources (Division) for action.

(2) Additional information not specifically requested on the application form should also be furnished when such information would be helpful in appraising the merits of the project.

(3) An application form can be obtained from the Division, a Board member, or the Division's website (www.water.utah.gov).

R653-2-4. Project Funding Process.

(1) After the application for assistance has been completed by the sponsor/applicant, signed by the Board member, and forwarded to the Division,

a three-step process will be followed to determine those projects which will be funded by the Board.

(2) The three steps of the funding process are:

(a) APPROVAL for Staff Investigation:

(i) The Board member considers the proposed project to fall within the Board's general statutory authority.

(ii) Division staff will prepare a feasibility report covering the general scope of the proposed project but focusing on technical, financial, legal, and environmental aspects, water needs and rights, and water users' support.

(b) AUTHORIZATION:

(i) The feasibility report will be presented to the Board, which will consider the project for authorization on the basis of its merits and overall feasibility and the contribution the project will make to the general economy of the area and the state.

(ii) As part of its decision-making process, the Board considers it important to discuss the merits of the project with the sponsor. Therefore, representatives of the project sponsor must attend the Board meeting when the project is considered for authorization.

(iii) If the project is authorized by the Board, a letter outlining the engineering and legal requirements for the project and other conditions of the financial assistance will be sent to the sponsor. For example, some of the more common conditions of these projects are:

(A) Obtain all easements, rights-of-way, and permits required to construct, operate, and maintain the project.

(B) Pass a company resolution to assign properties, easements, and water rights required for the project to the Board.

(C) Enter into a contract with the Board for construction of the project and subsequent purchase from the Board.

(D) Obtain approval of final plans and specifications from the Division.

(E) Prepare a Water Management and Conservation Plan.

(F) Adopt an ordinance prohibiting municipal irrigation of landscapes between the hours of 10:00 a.m. and 6:00 p.m.

(G) Adopt a progressive water rate schedule (municipal projects).

(H) Submit a letter noting completion and acceptance of a Water Conveyance Facilities Management Plan as described in and within the time frame required by Utah Code 73-10-33 (2010 First Substitute House Bill 60); and

(I) Be in compliance with Utah Code 17-27a-211 (2010 House Bill 298) which requires a canal company or canal operator to provide stated information to the county.

(c) COMMITMENT OF FUNDS:

(i) After the sponsor has complied with the Board requirements and conditions, the project will be presented for final review. If the Board finds the project to be in order and ready for construction, and IF FUNDS ARE AVAILABLE, the Board will commit funds and direct its officers to enter into the necessary agreements to secure project financing.

(ii) The project sponsor will not normally be required to attend the Board meeting at which funds are to be committed for the project. If the project scope or cost estimate has changed substantially, the sponsor may be asked to attend the meeting to discuss the changes with the Board.

R653-2-5. Dam Safety Grants and Loans.

(1) After the application for assistance has been completed and signed by the Board member, the application will be submitted to the Division for review. The Division staff will review the application for compliance with the Dam Safety Act and requirements, if any, placed on the sponsor by the State Engineer.

(2) A report will be prepared by the Division presenting its findings and recommending the amount of the grant and repayment terms for loans.

(3) Grants will be considered when money is appropriated by the Utah State Legislature (legislature) and will be restricted by limitations placed on the funding by the legislature and Board.

(4) The amount of each grant will be based on conditions determined by the legislature on the money appropriated, degree of hazard assigned to the project dam, and/or by analysis of such items as the number of acres irrigated, the number of water users, the size of the reservoir, the use of the waters, and cost of the proposed improvements.

R653-2-6. Financial Arrangements (RCF, CWLF, C and D).

(1) Project Cost Sharing:

(a) The Board desires to optimize available funding through the overall water development programs of the state and therefore requires sponsors to share in the cost of projects.

(b) The sponsor's financial ability to cost share will be determined in the project investigation. On the basis of the investigation, the Division will recommend to the Board the portion of the project cost to be furnished by the sponsoring organization.

(c) If additional funds become available to the sponsor after the project is authorized, and if project costs do not increase, the additional funds will be used to reduce the Board's financial participation.

(2) Alternate Financing:

The Board will consider alternative project funding methods such as letters of credit, bond insurance, and various methods of interest buydown, instead of directly funding construction of project features.

(3) Repayment of Financial Assistance:

(a) The repayment period will generally be less than 25 years.

(b) The minimum annual cost of water for municipal projects will be 1.17% of the region or project area's annual median adjusted gross income. The percentage will increase with income.

(c) When annual payments are to be made with revenues from the sale or use of project water, the Board may allow the sponsor one year's use of the project before the first payment is due.

(4) Security Arrangements:

(a) Depending upon the type of organization sponsoring the project and the Board fund involved, financial assistance may be secured either by a purchase agreement or bond issue.

(i) Projects financed through the RCF must be secured by a purchase agreement.

(ii) Projects financed through the CWLF or the C and D Fund will be secured either by a purchase agreement or by the sale of a bond.

(b) If project financing is secured by a purchase agreement, the following conditions apply:

(i) The Board must take title to the project including water rights, easements, deeded land for project facilities, and other assets subject to security interest.

(ii) An opinion from the sponsor's attorney must be submitted stating the sponsor has complied with its articles and bylaws, state law, and the Board's contractual requirements.

(iii) Title to the project shall be returned to the sponsor upon successful completion of the purchase agreement.

(c) If project financing is secured by the sale of a bond, the following conditions apply:

(i) The procedures for bond approval will be substantially the same as required by the Utah Municipal Bond Act.

(ii) If the sponsor desires to issue a non-voted revenue bond, the sponsor will be required to:

(A) Hold a public meeting to describe the project and its need, cost, and effect on water rates.

(B) Give written notice describing the proposed project to all water users in the sponsor's service area. The notice shall include a solicitation of response to the proposed project. A copy of all written responses received by the sponsor shall be forwarded to the Division. If the area Board member

determines there is substantial opposition to the project, the Board may require the sponsor to hold a bond election before funds will be made available.

R653-2-7. Project Engineering and Construction for projects funded through the RCF, CWLF, and C and D Funds.

(1) Engineering.

To expedite projects and facilitate the coordination of project development, sponsors are encouraged to select a design engineer prior to making application to the Board.

(2) Staff and Legal Costs:

(a) Costs incurred by the Division for investigation, administration, engineering, and construction inspection will be paid to the Board according to the terms set by the Board.

(b) Costs incurred by the Division during project investigation will not become a charge to the sponsor if the project is found infeasible, denied by the Board, or if the sponsor withdraws the application.

(c) Legal fees incurred in the review of a sponsor's bonding documents will be billed directly to the sponsor by the legal firm doing the review for the Board.

(3) Design Standards and Approval:

(a) All projects funded by the Board shall be designed according to appropriate technical standards and shall be stamped and signed by a Utah Registered Professional Engineer responsible for the work.

(b) Prior to soliciting construction bids, plans and specifications must be approved by the Division and all other state and federal agencies that have regulatory or funding involvement in the project.

(4) Project Bidding and Construction:

(a) The Board desires that all project construction be awarded to qualified contractors based on competitive bids. The Board may waive this requirement and allow a sponsor to act as its own contractor on small projects. However, in all cases the sponsor must comply with the laws governing its operation as well as the statutory requirements placed on the Board and Division.

(b) The design engineer shall coordinate the project bidding process.

(c) Construction inspection will be performed under the direction of the Registered Professional Engineer having responsible charge of project construction.

R653-2-8. Description of Water Infrastructure Restricted Account (WIRA).

(1) The Board administers the Water Infrastructure Restricted Account (WIRA) for development of the state's undeveloped share of the Colorado and Bear rivers, pursuant to existing interstate compacts governing both rivers as described in Title 73, Chapter 28, Lake Powell Pipeline Development Act and Chapter 26, Bear River Development Act.

(a) The Board will determine the need for funding investigation and construction aspects of developing the Colorado and Bear rivers.

(b) The Board will authorize expenditures from the WIRA.

(c) Any money utilized to construct water infrastructure to develop the state's share of the Colorado and Bear rivers is subject to the repayment provisions of the Lake Powell Pipeline Development Act and the Bear River Development Act.

(i) Beneficiaries of projects to develop the Colorado and Bear rivers as described in the Lake Powell Pipeline Development Act and Bear River Development Act will be required to provide at least 10% of the project cost.

(ii) Funding for the Lake Powell Pipeline and Bear River Development will be secured by a water sales agreement as described in the Lake Powell Pipeline Development Act and the Bear River Development Act.

(2) The Board administers the WIRA for the repair, replacement, or improvement of federal water infrastructure projects developed for local sponsors in the State of Utah when federal funds are not available. Local sponsors may apply for this funding whether the project is owned or operated by the U.S. government or local sponsor.

(a) Any money utilized for the repair, replacement, or improvement of federal water infrastructure projects when federal funds are not available shall be repaid pursuant to the terms and conditions established by the Board and Division by rule, as specified under Section 73-10g-105, Utah Code Annotated.

(b) Applicants shall apply for WIRA funds for federal water infrastructure projects through the same procedure as stated in R653-2-3, Application Procedure.

(c) Federal water infrastructure projects will be funded through the same process as stated in R653-2-4, Project Funding Process.

(d) Federal water infrastructure projects or phases of such projects will be prioritized based the same criteria as stated in R653-2-2.1(a).

(e) Projects financed through WIRA for the replacement and improvement of federal water infrastructure projects will be secured by the sale of a bond by the local sponsor to the Board.

R653-2-9. Financial Arrangements (WIRA).

(1) For State projects to develop the Colorado and Bear rivers, the Board and contracting entity shall, by contractual agreement, establish when water developed by the project will be delivered, the quantity of water

delivered, the cost sharing between the Board and the sponsor, and the terms for repaying the Board's share of the project cost including the purchase term, interest rate, and cost per acre-foot of water purchased.

(2) For Federal water infrastructure projects, the sponsor's financial ability to cost share will be determined in the project investigation. On the basis of the investigation the Division will recommend to the Board the portion of the project cost to be furnished by the sponsoring organization. If additional funds become available to the sponsor for the project after the Board has authorized it, and if project costs do not increase, the additional funds will be used to reduce funding from the WIRA.

(3) Alternate Financing:

The Board will consider alternative project funding methods such as letters of credit, bond insurance, and various methods of interest buydown, instead of directly funding construction of project features.

(4) Repayment of Financial Assistance:

(a) The repayment period will be determined in the project investigation.

(b) When annual payments are to be made with revenues from the sale or use of project water, the Board may allow the sponsor one year's use of the project before the first payment is due.

(5) Security Arrangements:

(a) WIRA funding will be secured by a bond issue.

(b) The procedures for bond approval will be substantially the same as required by the Utah Municipal Bond Act.

(c) If the sponsor desires to issue a non-voted revenue bond, the sponsor will be required to:

(i) Hold a public meeting to describe the project and its need, cost, and effect on water rates.

(ii) Give written notice describing the proposed project to all water users in the sponsor's service area. The notice shall include a solicitation of response to the proposed project. A copy of all written responses received by the sponsor shall be forwarded to the Division. If the area Board member determines there is substantial opposition to the project, the Board may require the sponsor to hold a bond election before funds will be made available.

(6) Priority Master List:

(a) The owners/operators of eligible federal water infrastructure projects will submit a list of anticipated repairs, replacements, or improvements of their federal water infrastructure projects, including the expected construction dates, project costs, and WIRA fund requests. These lists will be incorporated into a master list of potential projects, which will be prioritized according to R653-2-8, Subsection 2(d) and subject to the availability of funds.

(b) A master list of potential projects will be prioritized by the Division of Water Resources by July 1, 2017 and every two years thereafter, and will be maintained for all potential sponsors.

(c) Funding of projects will be prioritized by the Board.

R653-2-10. Project Engineering and Construction for projects funded through the Water Infrastructure Restricted Account (WIRA).

(1) For State projects to develop the Colorado and Bear rivers:

(a) Once a project has moved from planning stage to development stage:

(i) Costs incurred by the Division for engineering, environmental and cultural resource studies, permitting, design and construction engineering, and construction inspection will be paid to the Board according to the terms set by Title 73, Chapter 26 and Chapter 28.

(ii) Costs for Division staff time during project planning will not become a charge to the sponsor.

(b) Design Standards and Approval for State projects:

(i) State projects for the development of the Colorado and Bear rivers, shall be designed according to appropriate technical standards and shall be stamped and signed by a Utah Registered Professional Engineer responsible for the work.

(ii) Prior to soliciting construction bids, plans and specifications must be approved by the Division and all other state, neighboring state, and federal agencies which have regulatory or funding involvement in the project. Additionally, all required records of decision, permits, authorizations, and agreements must be obtained from these agencies.

(2) For Federal water infrastructure projects:

(a) Costs incurred by the Division for planning and development will be paid to the Board pursuant to the terms and conditions established by the Board and Division under Section 73-10g-105.

(b) Design Standards and Approval for Federal projects:

(i) All Federal water infrastructure projects shall be designed according to appropriate technical standards and shall be stamped and signed by a Utah Registered Professional Engineer responsible for the work.

(ii) Prior to soliciting construction bids for any phase of a project, plans and specifications for that phase must be approved by the Division and all other state and federal agencies which have regulatory or funding involvement in the project. Additionally, all required local, state, and federal licenses and permits for that phase of the project must be obtained before construction of that phase begins.

(iii) All required local, state, and federal licenses and permits for a phase of a project must be obtained before construction of that phase begins.

(3) Project Bidding and Construction:

(a) The Board will require that all project construction be awarded to qualified contractors based on competitive bids. Alternative project delivery methods may be considered instead of traditional 'design-bid-build' methods; however, these must be done in compliance with industry-approved standards and must be first approved by the Board.

(b) The design engineer or project manager shall coordinate the project bidding process.

(c) Construction inspection will be performed under the direction of the project manager who shall be a Registered Professional Engineer licensed in Utah, and any other applicable state.

(4) Staff and Legal Costs:

(a) Costs incurred by the Division for investigation and administration will be paid to the Board according to the terms set by the Board.

(b) Costs incurred by the Division during project investigation will not become a charge to the sponsor if the project is found infeasible, denied by the Board, or if the sponsor withdraws the application.

(c) Legal fees incurred in the review of a sponsor's bonding documents will be billed directly to the sponsor by the legal firm doing the review for the Board.

R653-2-11. Qualifications to Guidelines.

The foregoing guideline statements are meant as a guide for the Board, staff, and sponsor to provide an orderly and effective procedure for preparing projects for construction. The Board reserves the right to consider each project on its own merits and may consider and authorize a project that does not meet all requirements of the guidelines.

KEY: water funding

Date of Enactment or Last Substantive Amendment: November 23, 2015

Notice of Continuation: October 4, 2012

Authorizing, and Implemented or Interpreted Law: 73-10