

IC 14-25-2

Chapter 2. Minimum Stream Flow and Water Sale Contracts

IC 14-25-2-1

Provision of minimum stream flow; sale of water

Sec. 1. (a) Except as provided in section 8 of this chapter, the commission may provide certain minimum quantities of stream flow or sell water on a unit pricing basis for water supply purposes from the water supply storage in reservoir impoundments or parts of the impoundments that are financed by the state. The water may be made available for direct withdrawal from the reservoir impoundment or released from the reservoir impoundment to create increased flowage beyond normal stream flow for use by the contracting party or purchaser at a downstream point. The withdrawals or releases may not exceed the storage allocated to water supply purposes in the authorizing legislation for water supply or multiple purpose reservoir projects.

(b) This section does not abrogate, limit, or affect in any manner prior or future sales of water from reservoirs constructed for or by the department in which adequate water for incidental water supply purposes is available.

As added by P.L.1-1995, SEC.18.

IC 14-25-2-2

Contracts on unit pricing basis

Sec. 2. (a) Except as provided in section 8 of this chapter and subject to section 2.5 of this chapter, the commission may contract with a person for the provision of certain minimum quantities of stream flow or for the sale of water on a unit pricing basis. A contract for the provision of minimum stream flows or for the sale of water on a unit pricing basis:

- (1) must be executed by the commission; and
- (2) is subject to approval by the following:
 - (A) The attorney general.
 - (B) The governor.
 - (C) The person desiring the use.

(b) A contract entered into under this chapter may not cover a period of more than fifty (50) years.

(c) Before the submission of the contract to the governor for approval, the commission shall submit a copy of the contract to the department. The department shall, within twenty (20) days of receipt, do the following:

- (1) Prepare a memorandum relative to the effect that the contract might have on recreational facilities.
- (2) Submit the memorandum to the governor for the governor's consideration.

As added by P.L.1-1995, SEC.18. Amended by P.L.231-2007, SEC.1.

IC 14-25-2-2.5

Request for water from reservoir; notice of request and public

meeting; affected water utilities

Sec. 2.5. (a) As used in this chapter, "water utility" means:

- (1) a public utility (as defined in IC 8-1-2-1(a));
- (2) a municipally owned utility (as defined in IC 8-1-2-1(h));
- (3) a not-for-profit utility (as defined in IC 8-1-2-125(a));
- (4) a cooperatively owned corporation;
- (5) a conservancy district established under IC 14-33; or
- (6) a regional water district established under IC 13-26;

that provides water service to the public.

(b) A person that seeks to contract with the commission for the provision of certain minimum quantities of stream flow or the sale of water on a unit pricing basis under section 2 of this chapter must submit a request to the commission and the department. The commission shall not make a determination as to whether to enter into a contract with the person making the request until:

- (1) the procedures set forth in this section have been followed; and
- (2) the commission has reviewed and considered each report submitted to the commission under subsection (i).

(c) Not later than thirty (30) days after receiving a request under subsection (b), the department shall provide, by certified mail, written notice of the request to the following:

(1) Each person with whom the commission holds a contract for:

- (A) the provision of certain minimum quantities of stream flow; or
- (B) the sale of water on a unit pricing basis;

as of the date of the request.

(2) The executive and legislative body of each:

- (A) county;
 - (B) municipality, if any; and
 - (C) conservancy district established under IC 14-33, if any;
- in which the water sought in the request would be used.

(3) The executive and legislative body of each:

- (A) county;
 - (B) municipality, if any; and
 - (C) conservancy district established under IC 14-33, if any;
- in which the affected reservoir is located.

(d) Not later than seven (7) days after receiving a notice from the department under subsection (c), each person described in subsection (c)(1) shall, by certified mail, provide written notice of the request to each:

- (1) water utility; or
- (2) other person;

that contracts with the person described in subsection (c)(1) for the purchase of water for resale. Each person to whom notice is mailed under this subsection is in turn responsible for providing written notice by certified mail to each water utility or other person that purchases water from that person for resale. A water utility or another person required to provide notice under this subsection shall mail the

required notice not later than seven (7) days after it receives notice of the request from the water utility or other person from whom it purchases water for resale.

(e) At the same time that:

(1) a person described in subsection (c)(1); or

(2) a water utility or another person described in subsection (d); mails any notice required under subsection (d), it shall also mail to the department, by certified mail, a list of the names and addresses of each water utility or other person to whom it has mailed the notice under subsection (d).

(f) In addition to the mailed notice required under subsection (c), the department shall publish notice of the request, in accordance with IC 5-3-1, in each county:

(1) in which a person described in section (c)(1) is located;

(2) in which the affected reservoir is located;

(3) in which the water sought in the request would be used; and

(4) in which a water utility or other person included in a list received by the department under subsection (e) is located.

Notwithstanding IC 5-3-1-6, in each county in which publication is required under this subsection, notice shall be published in at least one (1) general circulation newspaper in the county. The department may, in its discretion, publish public notices in a qualified publication (as defined in IC 5-3-1-0.7) or additional newspapers to provide supplementary notification to the public. The cost of publishing supplementary notification is a proper expenditure of the department.

(g) A notice required to be mailed or published under this section must:

(1) identify the person making the request;

(2) include a brief description of:

(A) the nature of the pending request; and

(B) the process by which the commission will determine whether to enter into a contract with the person making the request;

(3) set forth the date, time, and location of the public meeting required under subsection (h); and

(4) in the case of a notice that is required to be mailed under subsection (c)(1) or (d), a statement of the recipient's duty to in turn provide notice to any:

(A) water utility; or

(B) other person;

that purchases water for resale from the recipient, in accordance with subsection (d).

(h) The advisory council established by IC 14-9-6-1 shall hold a public meeting in each county in which notice is published under subsection (f). A public meeting required under this subsection must include the following:

(1) A presentation by the department describing:

(A) the nature of the pending request; and

(B) the process by which the commission will determine whether to enter into a contract with the person making the

request.

(2) An opportunity for public comment on the pending request. The advisory council may appoint a hearing officer to assist with a public meeting held under this subsection.

(i) Not later than thirty (30) days after a public meeting is held under subsection (h), the advisory council shall submit to the commission a report summarizing the public meeting.

As added by P.L.231-2007, SEC.2. Amended by P.L.3-2008, SEC.102.

IC 14-25-2-3

Rate of compensation

Sec. 3. A contract for the sale of water on a unit pricing basis that is entered into under this chapter or under IC 13-2-1-7 (before its repeal) after June 30, 1991, must provide for compensation to the state at the rate of thirty-three dollars (\$33) per one million (1,000,000) gallons of water.

As added by P.L.1-1995, SEC.18.

IC 14-25-2-4

Water resources development fund

Sec. 4. (a) As used in this section, "fund" refers to the water resources development fund created by this section.

(b) The water resources development fund is created. Money paid to the state under a contract entered into under this chapter shall be deposited in the fund.

(c) The proceeds of the fund do not revert to the state general fund but constitute a revolving fund to be used exclusively for the purposes of this chapter.

(d) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from the investments shall be deposited in the fund.

(e) Money in the fund may be used for any of the following purposes:

- (1) The development of new reservoirs.
- (2) The investigation, development, and improvement of existing reservoirs.
- (3) The acquisition of easements or purchase in fee simple of land and property to be used as reservoir sites.
- (4) The financing, construction, operation, and maintenance of reservoir impoundments or parts of impoundments for water supply storage and uses, either independently or in cooperation with any person.
- (5) The investigation of water resource availability, quality, and water supply needs.
- (6) Watershed protection.
- (7) River enhancement.
- (8) The preparation of a compilation and mapping of all community public water supplies under IC 14-25-7-13(d).

(9) The operation of the division of water.

(f) The department shall administer the fund.

As added by P.L.1-1995, SEC.18. Amended by P.L.184-1995, SEC.1; P.L.186-2003, SEC.68.

IC 14-25-2-5

Adoption of rules

Sec. 5. The commission shall adopt rules under IC 4-22-2 that are considered necessary for the proper administration of the following:

(1) The water resources development fund.

(2) This chapter.

As added by P.L.1-1995, SEC.18.

IC 14-25-2-6

Employment of personnel

Sec. 6. The commission may, subject to the approval of the budget agency, employ personnel necessary for the efficient administration of this chapter.

As added by P.L.1-1995, SEC.18.

IC 14-25-2-7

Contracts entered into before July 1, 1991, binding

Sec. 7. Except as provided in section 8 of this chapter, a contract for the sale of water on a unit pricing basis that was entered into under this chapter before July 1, 1991, is binding upon the commission. However, notwithstanding the terms of the contract, the rate of compensation for water sold under the contract on a unit pricing basis is thirty-three dollars (\$33) per one million (1,000,000) gallons of water.

As added by P.L.1-1995, SEC.18.

IC 14-25-2-8

Primary source of water; compensation not required

Sec. 8. The state may not require compensation for water that:

(1) comes from a reservoir impoundment financed by the state; and

(2) is provided to water users in an area in which the outlet of the reservoir impoundment has been the primary source of water for domestic, industrial, and public use for at least fifty (50) years.

As added by P.L.1-1995, SEC.18.

IC 14-25-2-9

Primary source of water; contracts entered into before July 1, 1991, binding

Sec. 9. A contract that:

(1) was entered into under IC 13-2-1-7 (before its repeal) before July 1, 1991; and

(2) provides for the sale of water on a unit pricing basis in an area described in section 8 of this chapter;

is binding upon the commission. However, the opposite party to the contract is not required to pay compensation to the state for water provided in the area.

As added by P.L.1-1995, SEC.18.

IC 14-25-2-10

Primary source of water; contracts on measured basis

Sec. 10. The commission may enter into contracts under this chapter to provide certain minimum quantities of stream flow or to provide water on a measured basis in an area described in section 8 of this chapter. However, the opposite party to the contract is not required to pay compensation to the state for water provided in the area described in section 8 of this chapter.

As added by P.L.1-1995, SEC.18.

IC 14-25-2-11

Compensation owed by conservancy districts

Sec. 11. (a) As used in this section, "conservancy district" refers to a conservancy district established under IC 14-33 or under IC 13-3-3 (before its repeal) for the purpose of furnishing water supply for domestic, industrial, and public use.

(b) The state may not obtain compensation from a conservancy district under a contract for the sale of water on a unit pricing basis upon the basis of an estimate of the quantity of water provided to the conservancy district.

(c) The calculation of the compensation owed by a conservancy district under a contract must be based upon either of the following:

(1) The measurement of the quantity of water provided to the conservancy district.

(2) The measurement of the water furnished by the conservancy district to the persons who obtain water from the conservancy district, with a reasonable allowance made for water lost by the conservancy district in the process of obtaining, treating, and furnishing the water.

(d) This section does not affect the obligation of a conservancy district to pay a minimum yearly fee in a certain amount established by a contract.

As added by P.L.1-1995, SEC.18.