

CHAPTER 338

WATER AND IRRIGATION

HOUSE BILL 08-1346

BY REPRESENTATIVE(S) Curry, Borodkin, Fischer, Gardner C., Green, Hodge, Looper, Massey, McFadyen, Roberts, Rose, Solano, Sonnenberg, Stafford, White, King, and Scanlan; also SENATOR(S) Isgar, Brophy, Gibbs, Kester, Kopp, Mitchell S., Penry, Schwartz, Shaffer, Tapia, Taylor, Tochtrop, Ward, and Wiens.

AN ACT

CONCERNING THE FUNDING OF COLORADO WATER CONSERVATION BOARD PROJECTS, AND MAKING APPROPRIATIONS IN CONNECTION THEREWITH.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Water project loan authorizations from the Colorado water conservation board construction fund. (1) Pursuant to section 37-60-122 (1)(b), Colorado Revised Statutes, the Colorado water conservation board is hereby authorized to loan moneys from the Colorado water conservation board construction fund to enable the construction of the following water resources projects or the purchase of water rights with the following priority:

| Priority | Borrower - Project | Loan Amount |
|-----------------|--|---------------------|
| | Pagosa Area Water & Sanitation District Water Activity Enterprise - Dry <u>Gulch Reservoir Project Land Purchase</u> | <u>\$11,217,060</u> |
| | Total | \$11,217,060 |

(2) The Colorado water conservation board may make loans for the construction of the project specified in subsection (1) of this section from such moneys as are or may hereafter become available to the Colorado water conservation board construction fund. Said loans shall be in the amount listed in subsection (1) of this section plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by the engineering cost indices applicable to the types of construction required for each project or as may be

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

justified by reason of changes in the plans for a project due to differing or unforeseen site conditions, errors or omissions in the plans and specifications, changes instituted by regulatory agencies, or changes in material quantities beyond contract limits.

(3) Pursuant to section 37-60-120 (1), Colorado Revised Statutes, the board shall require such terms and conditions in such contracts as will ensure repayment of funds made available by it. The board shall not disburse any moneys for any loan authorized by subsection (1) of this section unless and until it is satisfied, at its sole discretion, that the recipient of any such loan will be able to make repayment pursuant to the terms and conditions established by the board and by subsection (1) of this section.

SECTION 2. Water project loan authorizations from the severance tax trust fund perpetual base account. (1) Pursuant to section 39-29-109 (1) (a) (I), Colorado Revised Statutes, the Colorado water conservation board is hereby authorized to loan moneys from the severance tax trust fund perpetual base account to enable the construction of the following water resources projects with the following priority:

| Priority | Borrower - Project | Loan Amount |
|-----------------|---|---------------------|
| | Republican River Water Conservation District Water Activity Enterprise - Republican River Compact Compliance Pipeline | <u>\$60,600,000</u> |
| | Total | \$60,600,000 |

(2) The Colorado water conservation board may make loans for the construction of the project specified in subsection (1) of this section from such moneys as are or may hereafter become available to the severance tax trust fund perpetual base account. Said loans shall be in the amounts listed in subsection (1) of this section plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by the engineering cost indices applicable to the types of construction required for each project or as may be justified by reason of changes in the plans for a project due to differing or unforeseen site conditions, errors or omissions in the plans and specifications, changes instituted by regulatory agencies, or changes in material quantities beyond contract limits.

(3) Pursuant to section 37-60-120 (1), Colorado Revised Statutes, the board shall require such terms and conditions in such contracts as will ensure repayment of funds made available by it. The board shall not disburse any moneys for any loan authorized by subsection (1) of this section unless and until it is satisfied, at its sole discretion, that the recipient of any such loan will be able to make repayment pursuant to the terms and conditions established by the board and by subsection (1) of this section.

SECTION 3. Satellite monitoring system maintenance - appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any

moneys in the Colorado water conservation board construction fund not otherwise appropriated, to the department of natural resources, for allocation to the division of water resources, for the fiscal year beginning July 1, 2008, the sum of three hundred fifty thousand dollars (\$350,000), or so much thereof as may be necessary, for renovation of existing gauging stations, replacement of outdated collection platforms and upgrading of transmission components of the satellite monitoring system established and operated pursuant to section 37-80-102 (10), Colorado Revised Statutes, stream gage flood hardening projects, and data collection efforts related to flood forecasting and warning.

(2) The moneys appropriated in subsection (1) of this section shall remain available for the designated purposes until they are fully expended.

SECTION 4. Colorado drought mitigation and response plan implementation program - appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the Colorado water conservation board construction fund not otherwise appropriated, to the department of natural resources, for allocation to the Colorado water conservation board, for the fiscal year beginning July 1, 2008, the sum of three hundred thousand dollars (\$300,000), or so much thereof as may be necessary, to implement the major recommendations identified in the 2002 Colorado drought mitigation and response plan. The program will be used to develop and implement a comprehensive and effective state drought plan.

(2) The moneys appropriated in subsection (1) of this section shall remain available for the designated purposes until the project is completed.

SECTION 5. Instream flow engineering and technical support services - appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the Colorado water conservation board construction fund not otherwise appropriated, to the department of natural resources, for allocation to the Colorado water conservation board, for the fiscal year beginning July 1, 2008, the sum of one hundred fifty thousand dollars (\$150,000), or so much thereof as may be necessary, for engineering support services to assist staff in conducting technical analysis and providing expert testimony needed to resolve or defend existing instream flow water rights, establish new instream flow appropriations, and change the use of acquired water rights for instream flow use.

(2) The moneys appropriated in subsection (1) of this section shall remain available for the designated purposes until the project is completed.

SECTION 6. Colorado river augmentation project development - appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the Colorado water conservation board construction fund not otherwise appropriated, to the department of natural resources, for allocation to the Colorado water conservation board, for the fiscal year beginning July 1, 2008, the sum of one hundred fifty thousand dollars (\$150,000), or so much thereof as may be necessary, to support the Colorado river seven basin states in undertaking projects and studies looking at short- and long-term options for augmenting the water supplies of the Colorado river system.

As projects are identified, the Colorado river seven basin states have agreed to cost share in the efforts of which these funds will provide Colorado's share.

(2) The moneys appropriated in subsection (1) of this section shall remain available for the designated purposes until the project is completed.

SECTION 7. Colorado river compact and Mexican treaty issues - appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the Colorado water conservation board construction fund not otherwise appropriated, to the department of natural resources, for allocation to the Colorado water conservation board, for the fiscal year beginning July 1, 2008, the sum of one hundred fifty thousand dollars (\$150,000), or so much thereof as may be necessary, for operating expenses and activities of Colorado's representatives associated with either participation or monitoring the Colorado river issues under the Mexican treaty, including the development of shortage criteria for Mexico, Colorado river system augmentation opportunities, and protections for the Colorado river delta.

(2) The moneys appropriated in subsection (1) of this section shall remain available for the designated purposes until the project is completed.

SECTION 8. Colorado river water availability study - continuation - appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the Colorado water conservation board construction fund not otherwise appropriated, to the department of natural resources, for allocation to the Colorado water conservation board, for the fiscal year beginning July 1, 2008, the sum of five hundred thousand dollars (\$500,000), or so much thereof as may be necessary, for the board to continue the model development phase of the Colorado water needs and alternatives analysis, otherwise known as the Colorado river water availability study, authorized in section 15 of Senate Bill 07-122. The board shall continue to work in full consultation with, and the active involvement of, the basin roundtables and shall continue to consider current and potential future in-basin consumptive and nonconsumptive needs. Further, it is expected that the board will request additional funding in future years to undertake the model implementation phase of the study and recommend whether additional studies or phases of study should be undertaken.

(2) The amounts appropriated in this section are in addition to amounts appropriated previously for the Colorado water needs and alternatives analysis. The moneys appropriated in subsection (1) of this section shall remain available for the designated purposes until the project is completed.

SECTION 9. Continuation of the South Platte decision support system - appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the Colorado water conservation board construction fund not otherwise appropriated, to the department of natural resources, for allocation to the Colorado water conservation board, for the fiscal year beginning July 1, 2008, the sum of one million dollars (\$1,000,000), or so much thereof as may be necessary, for the board to continue development of the South Platte decision support system.

(2) The amounts appropriated in this section are in addition to amounts appropriated previously for the South Platte decision support system. The moneys appropriated in subsection (1) of this section shall remain available for the designated purposes until the project is completed.

SECTION 10. Colorado river compact - state water right administration issues and options study - appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the Colorado water conservation board construction fund not otherwise appropriated, to the department of natural resources, for allocation to the Colorado water conservation board, for the fiscal year beginning July 1, 2008, the sum of five hundred thousand dollars (\$500,000), or so much thereof as may be necessary, for the board to undertake a study to identify issues associated with the administration of state water rights in the Colorado river basin under the terms of the Colorado river and upper Colorado river compacts, to evaluate options to avoid the curtailment of uses if at all possible, and to evaluate options for curtailing uses in Colorado in an equitable manner should the terms of the Colorado river compact fail to be met. The study is to be used by the state to look at options openly for avoiding curtailments if possible and by the state engineer to develop curtailment rules for use in water right administration should curtailments become necessary under the terms of the Colorado river compact.

(2) The moneys appropriated in subsection (1) of this section shall remain available for the designated purposes until the project is completed.

SECTION 11. Restoration of flood response fund balance. The state treasurer shall transfer a total of three hundred thousand dollars (\$300,000), or so much thereof as may be necessary, from the unreserved cash in the Colorado water conservation board construction fund to the flood response fund created in section 37-60-123.2, Colorado Revised Statutes, in order to restore the unencumbered balance in the flood response fund to three hundred thousand dollars (\$300,000).

SECTION 12. Continuation of the Colorado floodplain map modernization program - appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the Colorado water conservation board construction fund not otherwise appropriated, to the department of natural resources, for allocation to the Colorado water conservation board, for the fiscal year beginning July 1, 2008, the sum of five hundred thousand dollars (\$500,000), or so much thereof as may be necessary, in order to restore the unencumbered balance in the previously appropriated map modernization account to five hundred thousand dollars (\$500,000) and for the board to continue to assist with the preparation of revised and improved floodplain studies and maps for communities throughout Colorado and to participate in federally sponsored floodplain map modernization activities.

(2) The amounts appropriated in this section are in addition to amounts appropriated previously for the Colorado floodplain map modernization program. The moneys appropriated in subsection (1) of this section shall remain available for the designated purposes until the project is completed.

SECTION 13. Continuation of the Colorado flood decision support system

- **appropriation.** (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the Colorado water conservation board construction fund not otherwise appropriated, to the department of natural resources, for allocation to the Colorado water conservation board, for the fiscal year beginning July 1, 2008, the sum of two hundred fifty thousand dollars (\$250,000), or so much thereof as may be necessary, for the board to continue to develop a statewide flood decision support system in order to provide a clearinghouse of flood hazard information, timely and well organized flood outlook data products, weather modification information, stream restoration facts, levee and dam inventories, and other flood-related statistics to be used by a variety of engineers, floodplain managers, and emergency response agencies through an organized web site providing links between data sources, users, and state flood protection staff.

(2) The amounts appropriated in this section are in addition to amounts appropriated previously for the Colorado flood decision support system. The moneys appropriated in subsection (1) of this section shall remain available for the designated purposes until the project is completed.

SECTION 14. Continuation of the weather modification program - appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the Colorado water conservation board construction fund not otherwise appropriated, to the department of natural resources, for allocation to the Colorado water conservation board, for the fiscal year beginning July 1, 2008, the sum of one hundred seventy-five thousand dollars (\$175,000), or so much thereof as may be necessary, for the board to continue to assist water conservation districts, water conservancy districts, and other water providers with the development of cloud seeding programs that provide benefits to all beneficial uses of water through snowpack enhancement.

(2) The amounts appropriated in this section are in addition to amounts appropriated previously for the weather modification program. The moneys appropriated in subsection (1) of this section shall remain available for the designated purposes until the project is completed.

SECTION 15. Continuation of the Cache La Poudre river floodway project - appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the Colorado water conservation board construction fund not otherwise appropriated, to the department of natural resources, for allocation to the Colorado water conservation board, for the fiscal year beginning July 1, 2008, the sum of one hundred fifty thousand dollars (\$150,000), or so much thereof as may be necessary, for the board to continue to participate in a floodplain improvement feasibility study along the Cache La Poudre river in the city of Greeley. The purposes of the study are to define specific improvement projects to reduce flood damage, restore the riparian environment, create recreation opportunities, improve water quality, and other associated environmental watershed and floodplain enhancements.

(2) The amounts appropriated in this section are in addition to amounts appropriated previously for the Cache La Poudre river floodway project. The moneys appropriated in subsection (1) of this section shall remain available for the

designated purposes until the project is completed.

SECTION 16. Climate change effects on Colorado water resources study - appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the Colorado water conservation board construction fund not otherwise appropriated, to the department of natural resources, for allocation to the Colorado water conservation board, for the fiscal year beginning July 1, 2008, the sum of one hundred thousand dollars (\$100,000), or so much thereof as may be necessary, for the board to begin developing and implementing a water adaptation strategy to address potential impacts from climate change and variability on Colorado's water resources. The study will include an analysis of how climate may change in the future and how that may affect the resource upon which the water industry depends.

(2) The moneys appropriated in subsection (1) of this section shall remain available for the designated purposes until the project is completed.

SECTION 17. Purgatoire river channel capacity and improvement study - appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the Colorado water conservation board construction fund not otherwise appropriated, to the department of natural resources, for allocation to the Colorado water conservation board, for the fiscal year beginning July 1, 2008, the sum of fifty thousand dollars (\$50,000), or so much thereof as may be necessary, for the board to participate with the Purgatoire river water conservancy district and the United States Army corps of engineers in a study to determine the actual safe channel capacity of, and remedial measures for, the Purgatoire river downstream of Trinidad dam.

(2) The moneys appropriated in subsection (1) of this section shall remain available for the designated purposes until the project is completed.

SECTION 18. Arkansas river basin water quality baseline study - appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the Colorado water conservation board construction fund not otherwise appropriated, to the department of natural resources, for allocation to the Colorado water conservation board, for the fiscal year beginning July 1, 2008, the sum of one hundred thousand dollars (\$100,000), or so much thereof as may be necessary, for the board to participate with the southeastern Colorado water conservancy district and the United States geological survey to develop a reliable water quality data network for the Arkansas river basin.

(2) The moneys appropriated in subsection (1) of this section shall remain available for the designated purposes until the project is completed.

SECTION 19. Wild and scenic rivers study - appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the Colorado water conservation board construction fund not otherwise appropriated, to the department of natural resources, for allocation to the Colorado water conservation board, for the fiscal year beginning July 1, 2008, the sum of four hundred thousand dollars (\$400,000), or so much thereof as may be necessary, for the board to work with stakeholders within the state of Colorado to explore

alternatives to wild and scenic designation and to explore alternatives that would fall within the wild and scenic designation process.

(2) The moneys appropriated in subsection (1) of this section shall remain available for the designated purposes until the project is completed.

SECTION 20. High resolution gridded sublimation estimate study - appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the Colorado water conservation board construction fund not otherwise appropriated, to the department of natural resources, for allocation to the Colorado water conservation board, for the fiscal year beginning July 1, 2008, the sum of sixty-five thousand dollars (\$65,000), or so much thereof as may be necessary, for the board to participate with the United States geological survey in a study to provide high resolution estimates of processes that remove moisture from snowpack by developing and testing a relatively low-cost network of instruments for measuring snowpack moisture losses in the Colorado river watershed and in the headwaters of the South Platte river basin. The study will have broad applicability to other Colorado river basins and the results will be used to more accurately estimate watershed runoff.

(2) The moneys appropriated in subsection (1) of this section shall remain available for the designated purposes until the project is completed.

SECTION 21. Denver basin pumping optimization model - appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the Colorado water conservation board construction fund not otherwise appropriated, to the department of natural resources, for allocation to the Colorado water conservation board, for the fiscal year beginning July 1, 2008, the sum of eighty-four thousand dollars (\$84,000), or so much thereof as may be necessary, for the board to participate with the United States geological survey in performing ground water flow modeling to optimize pumping locations and rates with respect to model-computed water level declines and storage depletions of the Denver basin aquifer system. The modeling will be used to develop pumping scenarios that minimize water level declines to extend the useful life of aquifers.

(2) The moneys appropriated in subsection (1) of this section shall remain available for the designated purposes until the project is completed.

SECTION 22. Agricultural water conservation clearinghouse and canal efficiency study - appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the Colorado water conservation board construction fund not otherwise appropriated, to the department of natural resources, for allocation to the Colorado water conservation board, for the fiscal year beginning July 1, 2008, the sum of thirty thousand dollars (\$30,000), or so much thereof as may be necessary, for the board to participate with the Colorado water resources research institute in developing an internet web-based searchable database of agricultural water conservation information and to develop management strategies for Sago pondweed, a submersed aquatic plant causing problems in irrigation canals along the front range of Colorado.

(2) The moneys appropriated in subsection (1) of this section shall remain

available for the designated purposes until the project is completed.

SECTION 23. Estimated 2005 water use in Colorado - appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the Colorado water conservation board construction fund not otherwise appropriated, to the department of natural resources, for allocation to the Colorado water conservation board, for the fiscal year beginning July 1, 2008, the sum of sixty-seven thousand dollars (\$67,000), or so much thereof as may be necessary, for the board to participate with the United States geological survey to present the 2005 Colorado water-use data compiled for the national water use information program of the United States geological survey in a published report specifically for Colorado. The board will develop in cooperation with the geological survey a detailed project scope of work to ensure that the published data is in a useful format that can be used in the Colorado decision support system and other Colorado water conservation board activities.

(2) The moneys appropriated in subsection (1) of this section shall remain available for the designated purposes until the project is completed.

SECTION 24. Subsection (1) of section 15 of chapter 224, Session Laws of Colorado 2005, is amended to read:

Section 15. **Oak creek flood control mitigation feasibility study - appropriation.** (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the Colorado water conservation board construction fund not otherwise appropriated, to the Colorado water conservation board, for the fiscal year beginning July 1, 2005, the sum of one hundred sixty-seven thousand dollars (\$167,000), or so much thereof as may be necessary, for the board to participate with the city of Florence, Colorado, in the Oak creek reservoir FLOOD CONTROL MITIGATION feasibility study to be prepared by the United States Army corps of engineers. ~~Other participating entities include the town of Coal Creek, the town of Rockvale, and the town of Williamsburg.~~

SECTION 25. Article 60 of title 37, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

37-60-120.1. Chatfield reservoir reallocation project - authority - repeal. (1) IN ORDER TO PROMOTE THE GENERAL WELFARE AND SAFETY OF THE CITIZENS OF THIS STATE AND UTILIZE REALLOCATED STORAGE SPACE AVAILABLE IN THE FEDERAL FLOOD CONTROL PROJECT KNOWN AS CHATFIELD RESERVOIR, THE BOARD HAS UNDERTAKEN THE CHATFIELD RESERVOIR REALLOCATION PROJECT, REFERRED TO IN THIS SECTION AS THE "PROJECT", IN COORDINATION AND COOPERATION WITH A LOCAL COALITION AND WITH PARTICIPANTS WHO HAVE EXECUTED LETTERS OF COMMITMENT WITH THE BOARD. THE IMPLEMENTATION OF THE PROJECT WILL RESULT IN BENEFITS TO SOUTH PLATTE RIVER WATER USERS AND THE DOWNSTREAM ENVIRONMENT WITHOUT ADVERSELY IMPACTING OTHER RIVER BASINS. THE IMPLEMENTATION OF THE PROJECT WILL REQUIRE THE BOARD TO CONTRACT WITH THE UNITED STATES ARMY CORPS OF ENGINEERS, REFERRED TO IN THIS SECTION AS THE "CORPS", TO HOLD AND ALLOCATE STORAGE SPACE IN THE RESERVOIR AND TO UNDERTAKE SUBSTANTIAL ACTIVITIES RELATED TO THE MITIGATION OF ENVIRONMENTAL AND RECREATION IMPACTS CAUSED BY THE INCREASE IN

RESERVOIR WATER LEVELS.

(2) THE BOARD IS HEREBY AUTHORIZED TO ACT AS AN AGENT OF THE PROJECT PARTIES TO IMPLEMENT THIS SECTION. THROUGH AN AGENCY FUND THE BOARD MAY COLLECT AND DISBURSE MONEY FROM ANY ENTITY TO IMPLEMENT THE PROJECT AND TO MEET THE OBLIGATIONS CONTAINED IN AN INTERGOVERNMENTAL AGREEMENT, PROJECT PARTNERSHIP AGREEMENT, OR OTHER CONTRACT, REFERRED TO IN THIS SECTION AS AN "AGREEMENT", WITH THE CORPS OR OTHER ENTITY THAT IS REQUIRED TO IMPLEMENT THE PROJECT. NOTWITHSTANDING ANY OTHER LAW, INCLUDING SECTION 24-30-1303, C.R.S., THE BOARD AND THE DEPARTMENT OF NATURAL RESOURCES ACTING THROUGH ITS AGENCIES SHALL HAVE THE AUTHORITY TO ENTER INTO ANY AGREEMENT WITH THE CORPS OR OTHER ENTITIES, INCLUDING CONSULTANTS AND CONTRACTORS, THAT IN THE BOARD'S DISCRETION IS NECESSARY TO IMPLEMENT THE PROJECT; HOWEVER, SUFFICIENT FUNDS SHALL HAVE BEEN MADE AVAILABLE TO THE BOARD FOR SUCH PURPOSES. THE AUTHORITY GRANTED BY THIS SUBSECTION (2) INCLUDES: THE ABILITY TO HOLD STORAGE SPACE IN THE RESERVOIR; TO CONTRACT WITH, AND ALLOCATE STORAGE TO, LOCAL ENTITIES WHO WILL UTILIZE THE RESERVOIR STORAGE SPACE; TO UNDERTAKE MITIGATION AND LONG-TERM OPERATION AND MAINTENANCE OF THE PROJECT; TO PAY THE COSTS OF STORAGE OR OTHER NECESSARY EXPENSES; AND TO OTHERWISE IMPLEMENT THE PROJECT. THE BOARD HAS THE EXPRESS AUTHORITY, IN EQUITABLE PARTNERSHIP WITH THE PARTICIPANTS, TO UNDERTAKE SUCH ACTION AS IS NECESSARY, INCLUDING THE AWARD OF CONTRACTS TO PUBLIC AND PRIVATE ENTITIES, TO UNDERTAKE MITIGATION CONSTRUCTION AND LONG-TERM OPERATION AND MAINTENANCE AND RELATED ACTIVITIES; TO LEASE, SUBLEASE, OR ASSIGN STORAGE SPACE RIGHTS; AND TO OTHERWISE EFFECTUATE THE STORAGE OF WATER IN THE RESERVOIR. IN THE EVENT OF A CONFLICT BETWEEN THE APPLICATION OF STATE OR FEDERAL LAW OR RULES, INCLUDING CHAPTER 3 OF THE STATE FISCAL RULES IN EXISTENCE AS OF THE EFFECTIVE DATE OF THIS SECTION, FEDERAL LAWS AND RULES SHALL APPLY.

(3) THIS SECTION IS REPEALED, EFFECTIVE AT THE END OF THE PROJECT. SUCH REPEAL SHALL NOT AFFECT THE VALIDITY OF ANY ACTION TAKEN PURSUANT TO THIS SECTION. THE DIRECTOR OF THE BOARD SHALL, IN WRITING, PROMPTLY NOTIFY THE STATE TREASURER AND THE REVISOR OF STATUTES WHEN THE PROJECT IS COMPLETED.

SECTION 26. Chatfield reservoir reallocation project - appropriation.

(1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the Colorado water conservation board construction fund not otherwise appropriated, to the department of natural resources, for allocation to the board, for the fiscal year beginning July 1, 2008, the sum of two million dollars (\$2,000,000), or so much thereof as may be necessary, to implement the project. The moneys appropriated in this section shall remain available for the designated purposes until the project is completed.

(2) Any remaining balance from the moneys appropriated in this section shall revert to the Colorado water conservation board construction fund at the end of the project.

SECTION 27. The introductory portion to 37-92-102 (3), Colorado Revised Statutes, is amended to read:

37-92-102. Legislative declaration - basic tenets of Colorado water law.

(3) Further recognizing the need to correlate the activities of mankind with some reasonable preservation of the natural environment, the Colorado water conservation board is hereby vested with the exclusive authority, on behalf of the people of the state of Colorado, to appropriate in a manner consistent with sections 5 and 6 of article XVI of the state constitution, such waters of natural streams and lakes as the board determines may be required for minimum stream flows or for natural surface water levels or volumes for natural lakes to preserve the natural environment to a reasonable degree. In the adjudication of water rights pursuant to this article and other applicable law, no other person or entity shall be granted a decree adjudicating a right to water or interests in water for instream flows in a stream channel between specific points, or for natural surface water levels or volumes for natural lakes, for any purpose whatsoever. The board also may acquire, by grant, purchase, donation, bequest, devise, lease, exchange, or other contractual agreement, from or with any person, including any governmental entity, such water, water rights, or interests in water in such amount as the board determines is appropriate for stream flows or for natural surface water levels or volumes for natural lakes to preserve or improve the natural environment to a reasonable degree. At the request of any person, including any governmental entity, the board shall determine in a timely manner, not to exceed one hundred twenty days unless further time is granted by the requesting person or entity, what terms and conditions it will accept in a contract or agreement for such acquisition. Any contract or agreement executed between the board and any person or governmental entity that provides water, water rights, or interests in water to the board shall be enforceable by either party thereto as a water matter under this article, according to the terms of the contract or agreement. The board may not accept a donation of water rights that either would require the removal of existing infrastructure without approval of the current owner of such infrastructure or that were acquired by condemnation. The board may use any funds available to it ~~other than the construction fund created in section 37-60-121~~, for acquisition of water rights and their conversion to instream flow rights. The board may initiate such applications as it determines are necessary or desirable for utilizing water, water rights, or interests in water appropriated, acquired, or held by the board, including applications for changes of water rights, exchanges, or augmentation plans. Prior to the initiation of any such appropriation or acquisition, the board shall request recommendations from the division of wildlife and the division of parks and outdoor recreation. The board also shall request recommendations from the United States department of agriculture and the United States department of the interior. Nothing in this article shall be construed as authorizing any state agency to acquire water by eminent domain or to deprive the people of the state of Colorado of the beneficial use of those waters available by law and interstate compact. Nothing in this subsection (3) shall impact section 37-60-121 (2.5). Any appropriation made pursuant to this subsection (3) shall be subject to the following principles and limitations:

SECTION 28. Article 60 of title 37, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

37-60-123.7. Acquisitions of water for instream flows. (1) IN ADDITION TO ANY OTHER MONEYS APPROPRIATED FROM THE COLORADO WATER CONSERVATION BOARD CONSTRUCTION FUND, UP TO ONE MILLION DOLLARS IN THE FUND ARE CONTINUOUSLY APPROPRIATED TO THE BOARD ANNUALLY TO PAY FOR THE COSTS

OF ACQUIRING WATER, WATER RIGHTS, AND INTERESTS IN WATER FOR INSTREAM FLOW USE. THE TOTAL AMOUNT OF SUCH CONTINUOUS APPROPRIATION THAT IS UNENCUMBERED IN ANY FISCAL YEAR SHALL NOT EXCEED ONE MILLION DOLLARS. THE PRIMARY PRIORITY FOR EXPENDITURES OF THESE REVENUES SHALL BE THE COSTS OF WATER ACQUISITIONS FOR EXISTING OR NEW INSTREAM FLOW WATER RIGHTS TO PRESERVE THE NATURAL ENVIRONMENT TO A REASONABLE DEGREE. THESE REVENUES ALSO MAY BE USED IN LIMITED CIRCUMSTANCES FOR THE COSTS OF WATER ACQUISITIONS TO PRESERVE THE NATURAL ENVIRONMENT OF SPECIES THAT HAVE BEEN LISTED AS THREATENED OR ENDANGERED UNDER STATE OR FEDERAL LAW, OR ARE CANDIDATE SPECIES OR ARE LIKELY TO BECOME CANDIDATE SPECIES, SUPPORT WILD AND SCENIC ALTERNATIVE MANAGEMENT PLANS, OR PROVIDE FEDERAL REGULATORY CERTAINTY.

(2) PRIOR TO ANY EXPENDITURE OF FUNDS UNDER THIS SECTION, THE BOARD SHALL ADOPT CRITERIA AND GUIDELINES REGARDING ITS IMPLEMENTATION OF THIS SPENDING AUTHORITY. THE BOARD SHALL APPROVE ANY EXPENDITURE OF FUNDS PURSUANT TO THIS SECTION. WITHIN THREE MONTHS AFTER THE END OF ANY FISCAL YEAR DURING WHICH THE SPENDING AUTHORITY CREATED PURSUANT TO THIS SECTION IS EXERCISED, THE BOARD SHALL REPORT TO THE GENERAL ASSEMBLY REGARDING HOW SUCH SPENDING AUTHORITY WAS EXERCISED.

SECTION 29. Tamarisk control cost-sharing grant program - appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the severance tax trust fund operational account not otherwise appropriated, to the department of natural resources, for allocation into the Colorado water conservation board construction fund, for the fiscal year beginning July 1, 2008, the sum of one million dollars (\$1,000,000), or so much thereof as may be necessary, for the board to finance a tamarisk control cost-sharing grant program.

(2) The moneys appropriated in subsection (1) of this section shall remain available for the designated purposes until the project is completed and shall not be subject to the two-year reserve requirement contained in section 39-29-109 (1) (c) (III) (A), Colorado Revised Statutes.

SECTION 30. The introductory portion to 37-60-126 (4), Colorado Revised Statutes, is amended to read:

37-60-126. Water conservation and drought mitigation planning - programs - relationship to state assistance for water facilities - guidelines - water efficiency grant program - repeal. (4) A plan developed by a covered entity pursuant to subsection (2) of this section shall, at a minimum, ~~consider~~ INCLUDE A FULL EVALUATION OF the following plan elements:

SECTION 31. Section 7 (1) of chapter 352, Session Laws of Colorado 2007, is amended to read:

Section 7. Arkansas river basin decision support system feasibility study - appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the Colorado water conservation board construction fund not otherwise appropriated, to the department of natural

resources, for allocation to the Colorado water conservation board, for the fiscal year beginning July 1, 2007, the sum of two hundred thousand dollars (\$200,000), or so much thereof as may be necessary, for the board to complete a feasibility study for a decision support system in the ~~upper~~ Arkansas river basin. ~~upstream of Pueblo reservoir~~. The study shall determine the feasibility of developing a decision support system for the ~~upper~~ Arkansas river basin, taking into account the basin-specific needs and water resource challenges and shall identify the scope, functions, and elements of the decision support system as well as the data needs, costs, and schedule to develop the decision support system.

SECTION 32. The introductory portion to section 2 (1) of House Bill 08-1346, enacted at the Second Regular Session of the Sixty-sixth General Assembly, is amended to read:

Section 2. **Water project loan authorizations from the severance tax trust fund perpetual base account.** (1) Pursuant to ~~section 39-29-109 (1) (a) (f)~~ SECTION 39-29-109 (2) (a), Colorado Revised Statutes, the Colorado water conservation board is hereby authorized to loan moneys from the severance tax trust fund perpetual base account to enable the construction of the following water resources projects with the following priority:

SECTION 33. 39-29-109.3 (2), Colorado Revised Statutes, as enacted by House Bill 08-1398, enacted at the Second Regular Session of the Sixty-sixth General Assembly, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

39-29-109.3. Operational account of the severance tax trust fund - repeal. (2) Subject to the requirements of subsections (3) and (4) of this section, if the general assembly chooses not to spend up to one hundred percent of the moneys in the operational account as specified in subsection (1) of this section, the state treasurer shall transfer the following:

(I) (I) TO THE COLORADO WATER CONSERVATION BOARD CONSTRUCTION FUND CREATED IN SECTION 37-60-121 (1), C.R.S., FOR THE BOARD TO FINANCE A TAMARISK CONTROL COST-SHARING GRANT PROGRAM, FOR THE STATE FISCAL YEAR COMMENCING JULY 1, 2008, ONE MILLION DOLLARS.

(II) THIS PARAGRAPH (I) IS REPEALED, EFFECTIVE JULY 1, 2010.

SECTION 34. Section 29 of House Bill 08-1346, enacted at the Second Regular Session of the Sixty-sixth General Assembly, is amended to read:

Section 29. **Tamarisk control cost-sharing grant program - appropriation.** (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the ~~severance tax trust fund operational account~~ COLORADO WATER CONSERVATION BOARD CONSTRUCTION FUND not otherwise appropriated, to the department of natural resources, for allocation to the Colorado water conservation board, ~~construction fund~~; for the fiscal year beginning July 1, 2008, the sum of one million dollars (\$1,000,000), or so much thereof as may be necessary, for the board to finance a tamarisk control cost-sharing grant program.

(2) The moneys appropriated in subsection (1) of this section shall remain

available for the designated purposes until the project is completed and shall not be subject to the two-year reserve requirement contained in section 39-29-109 (1) (c) (A), Colorado Revised Statutes. COMPLETED.

SECTION 35. Effective date. (1) This act shall take effect upon passage; except that:

(a) Section 29 of this act shall not take effect if House Bill 08-1398 is enacted at the Second Regular Session of the Sixty-sixth General Assembly and becomes law;

(b) Sections 32, 33, and 34 of this act shall take effect only if House Bill 08-1398 is enacted at the Second Regular Session of the Sixty-sixth General Assembly and becomes law.

SECTION 36. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 29, 2008