

## CHAPTER 328

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**WATER AND IRRIGATION**

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## SENATE BILL 09-125

BY SENATOR(S) Isgar, Gibbs, Heath, Hodge, Kester, Schwartz, Shaffer B., Tapia, White;  
also REPRESENTATIVE(S) Curry, Baumgardner, Fischer, Looper, Nikkel, Priola, Roberts, Sonnenberg, Vigil.

**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. 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, 2009, 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(\$350,000), or so much thereof as may be necessary, for renovation of existing gauging stations, replacement of outdated collection platforms, and upgrading of transmission components of the satellite monitoring system established and operated pursuant to section 37-80-102 (10),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 gauge 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 2. 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, 2009, the sum of fifty thousand dollars (\$50,000), or so much thereof as may be necessary, for engineering and technical support services to assist staff in conducting technical analysis and providing expert testimony needed to resolve or defend existing instream flow water rights and establish new instream

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

flow appropriations.

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

**SECTION 3. Water resources planning studies - 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, 2009, the sum of one hundred thousand dollars (\$100,000), or so much thereof as may be necessary, to meet unanticipated needs for water planning funds and to provide nonreimbursable funding assistance to local entities related to water planning.

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

**SECTION 4. Continuation of the alternative agriculture water transfer sustainability grant 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, 2009, the sum of one million five hundred thousand dollars (\$1,500,000), or so much thereof as may be necessary, for the board to continue to develop and implement a statewide competitive grant program to advance various agricultural transfer methods as alternatives to permanent agricultural dry-up, including interruptible water supply agreements, long-term agricultural land fallowing, water banks, reduced consumptive use through efficiency or cropping while maintaining historic return flows, and purchase by end users with leasebacks under defined conditions. Projects and programs in all drainage basins are eligible for funding.

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

**SECTION 5. Water adaptation partnership projects - 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, 2009, the sum of five hundred thousand dollars (\$500,000), or so much thereof as may be necessary, to develop and implement a long-term plan addressing the impacts of climate variability on water supplies throughout the state. The plan will be implemented by identifying long-term climate trends, enhancing the climate observation network, updating forecasting methodologies, detecting bias in climate change models, adapting climate change information for use in decision support systems, utilizing federal drought planning requirements, and calculating specific impacts to water rights, including instream flow water rights.

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

**SECTION 6. 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, 2009, 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 recreation, streams, and reservoirs 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 they are fully expended.

**SECTION 7. National oceanic and atmospheric administration statewide precipitation atlas update - 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, 2009, the sum of three hundred thousand dollars (\$300,000), or so much thereof as may be necessary, to participate with the national oceanic and atmospheric administration in the update of the precipitation frequency atlas for the state of Colorado to be used in hydraulic analysis and delineation of floodplains as well as land use decisions and local drainage regulations.

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

**SECTION 8. Dust-on-snow studies - 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, 2009, the sum of thirty thousand dollars (\$30,000), or so much thereof as may be necessary, to participate with the center for snow and avalanche studies in a study of the effects of dust-on-snow on snowmelt timing, intensity, and duration in order to more accurately predict the snowmelt process and stream runoff patterns.

(2) 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 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, 2009, the sum of five hundred thousand dollars (\$500,000), or so much thereof as may be necessary, to restore the unencumbered balance in the

previously appropriated map modernization account of the Colorado water conservation board to five hundred thousand dollars (\$500,000), for the board to continue to assist with the preparation of revised and improved floodplain studies and maps for communities throughout Colorado and 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 10. Continuation of the watershed restoration 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, 2009, the sum of two hundred fifty thousand dollars (\$250,000), or so much thereof as may be necessary, for the board to continue to provide planning and engineering studies, including implementation measures, to address technical needs for watershed restoration and flood mitigation projects throughout the state.

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

**SECTION 11. Continuation of the floodplain technical 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, 2009, the sum of one hundred twenty-five thousand dollars (\$125,000), or so much thereof as may be necessary, for the board to continue to provide floodplain management technical services assisting local governments with high priority flood control study, planning, engineering, and preconstruction activities.

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

**SECTION 12. 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 13. Water resource information center and data harvesting initiative - 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, 2009, the sum of five hundred fifty thousand dollars (\$550,000), or so much thereof as may be necessary, to continue the operation of a consolidated water resources information center and to collaborate with Colorado state university by combining document management systems to provide statewide on-line access to imaged water-related documents including publications, maps, audio files, reports, water right decrees, historical documents and collections, flood insurance studies, and other water information.

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

**SECTION 14. Modflow enhancement for Colorado decision support systems - 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, 2009, the sum of fifty thousand dollars (\$50,000), or so much thereof as may be necessary, to participate with the United States geological survey in the enhancement of modflow, a USGS ground water model, to make the ground water modeling process more efficient and river decision support systems more accurate and reliable throughout the state.

(2) 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 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, 2009, the sum of one hundred fifty thousand dollars (\$150,000), 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 16. Continuation of the Colorado river water availability study - Phase 2 - 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, 2009, the sum of one million dollars (\$1,000,000), 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.

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

**SECTION 17. Arkansas river surface water rules technical and financial assistance - 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, 2009, the sum of two hundred fifty thousand dollars (\$250,000), or so much thereof as may be necessary, to provide technical and financial assistance in addressing the effects of increasing agricultural water use efficiency in the Arkansas river basin, as established by the Colorado state engineer's promulgated rules, and formulate and implement cost-effective means to comply with the rules and specific measures to prevent potential compact violations.

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

**SECTION 18. Restoration of litigation fund cash balance.** The state treasurer shall transfer a total of two million two hundred thousand dollars (\$2,200,000), or so much thereof as may be necessary, from the unreserved cash in the Colorado water conservation board construction fund to the litigation fund created in section 37-60-121 (2.5), Colorado Revised Statutes, in order to restore the unencumbered balance in the litigation fund to four million dollars (\$4,000,000).

**SECTION 19. Appropriation - adjustments to the 2009 long bill.** (1) For the implementation of this act, appropriations made in the annual general appropriation act for the fiscal year beginning July 1, 2009, shall be adjusted as follows:

(a) The appropriation to the department of natural resources, Colorado water conservation board, special purpose, for H.B. 05-1254 water efficiency grant program, is decreased by one hundred thousand dollars (\$100,000) cash funds. Said sum shall be from the water efficiency grant program cash fund created in section 37-60-126 (12) (a), Colorado Revised Statutes;

(b) In addition to any other appropriation, there is hereby appropriated, to the department of natural resources, Colorado water conservation board, special purpose, for H.B. 05-1254 water efficiency grant program, for the fiscal year beginning July 1, 2009, one hundred thousand dollars (\$100,000) cash funds. Said sum shall be from the Colorado water conservation board construction fund established pursuant to section 37-60-121 (1) (a), Colorado Revised Statutes.

(c) The appropriation to the department of natural resources, Colorado water conservation board, special purpose, for interbasin compacts, is decreased by four hundred thousand dollars (\$400,000) cash funds. Said sum shall be from the interbasin compact committee operation fund created in section 37-75-107, Colorado Revised Statutes.

(d) In addition to any other appropriation, there is hereby appropriated, to the

department of natural resources, Colorado water conservation board, special purpose, for the fiscal year beginning July 1, 2009, four hundred thousand dollars (\$400,000) cash funds. Said sum shall be from the Colorado water conservation board construction fund established pursuant to section 37-60-121 (1) (a), Colorado Revised Statutes.

**SECTION 20.** 37-60-121 (1) (b) (IV), Colorado Revised Statutes, is amended to read:

**37-60-121. Colorado water conservation board construction fund - creation of - nature of fund - funds for investigations - contributions - use for augmenting the general fund - funds created.** (1) (b) In the consideration of making expenditures from the fund, the board shall be guided by the following criteria:

(IV) The board shall participate in only those projects that can repay the board's investment. Service charges and other terms of repayment shall be established by the board. Grants shall not be made, unless specifically authorized by the general assembly acting by bill; HOWEVER, THE BOARD SHALL HAVE THE AUTHORITY TO DEAUTHORIZE SUCH GRANTS AND USE ANY REMAINING FUNDS FOR OTHER STATUTORILY AUTHORIZED PURPOSES IF THE GRANT PROJECT HAS BEEN COMPLETED OR IS NO LONGER FEASIBLE.

**SECTION 21.** Part 1 of article 60 of title 37, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**37-60-122.3. Wild and scenic rivers fund - created.** THERE IS HEREBY CREATED IN THE STATE TREASURY THE WILD AND SCENIC RIVERS FUND, REFERRED TO IN THIS SECTION AS THE "FUND". THE STATE TREASURER SHALL TRANSFER FOUR HUNDRED THOUSAND DOLLARS FROM PREVIOUSLY UNAPPROPRIATED COLORADO WATER CONSERVATION BOARD CONSTRUCTION FUND MONEYS TO THE FUND. THE MONEYS IN THE FUND ARE HEREBY CONTINUOUSLY APPROPRIATED TO THE BOARD TO WORK WITH STAKEHOLDERS WITHIN THE STATE OF COLORADO TO DEVELOP PROTECTION OF RIVER-DEPENDENT RESOURCES AS AN ALTERNATIVE TO WILD AND SCENIC RIVER DESIGNATION UNDER THE FEDERAL "WILD AND SCENIC RIVERS ACT", 16 U.S.C. SEC. 1271 ET SEQ. IN ADDITION TO ANY REMAINING BALANCE IN THE FUND AT THE END OF ANY FISCAL YEAR, THE BOARD IS HEREBY AUTHORIZED TO ANNUALLY PROVIDE, FROM THE COLORADO WATER CONSERVATION BOARD CONSTRUCTION FUND, UP TO FOUR HUNDRED THOUSAND DOLLARS IN ORDER TO RESTORE THE UNENCUMBERED BALANCE IN THE FUND UP TO FOUR HUNDRED THOUSAND DOLLARS. ALL INTEREST DERIVED FROM THE INVESTMENT OF MONEYS IN THE FUND SHALL BE CREDITED TO THE COLORADO WATER CONSERVATION BOARD CONSTRUCTION FUND. THE BOARD SHALL REVIEW THE PURPOSE OF THE FUND ANNUALLY AND IS HEREBY AUTHORIZED TO CEASE PROVIDING MONEYS IN THE FOLLOWING YEAR IF, IN ITS DISCRETION, THE BOARD DETERMINES THAT THE PURPOSES FOR WHICH THE FUND WAS ESTABLISHED HAVE CEASED. THE BOARD MAY SET TERMS AND CONDITIONS AS IT DEEMS APPROPRIATE CONCERNING THE ANNUAL EXPENDITURES OF MONEYS FROM THE FUND.

**SECTION 22.** 39-29-109.3 (2) (i), Colorado Revised Statutes, is amended 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) To the interbasin compact committee operation fund created in section 37-75-107, C.R.S., THE FOLLOWING AMOUNTS:

(I) (A) For the state fiscal year commencing July 1, 2008, ~~and for each state fiscal year thereafter~~, one million one hundred forty-five thousand sixty-seven dollars.

(B) THIS SUBPARAGRAPH (I) IS REPEALED, EFFECTIVE JULY 1, 2010.

(II) FOR THE STATE FISCAL YEAR COMMENCING JULY 1, 2009, AND FOR EACH STATE FISCAL YEAR THEREAFTER, SEVEN HUNDRED FORTY-FIVE THOUSAND SIXTY-SEVEN DOLLARS.

**SECTION 23.** Section 2 (1) of chapter 352, Session Laws of Colorado 2007, 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)(1)~~ (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:

Priority	Borrow - Project	Loan Amount
(a)	Southeastern Colorado Water Conservancy District Water Activity Enterprise* Arkansas Valley Conduit Project	\$60,600,000
(b)	Penrose Water District Water Activity Enterprise Water Rights Purchase and Raw Water Pipeline	<u>\$8,844,570</u>
	<b>Total</b>	\$69,444,570

\* The moneys appropriated for this project shall remain available for the designated purposes until the project is completed; except that, if the project sponsor does not enter into a loan contract with the Colorado water conservation board within ~~two~~ TWELVE years after the effective date of this section, then the moneys appropriated in this subsection (1) shall no longer be available for the designated purposes and shall become available for other lawful uses.



**SECTION 24. 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: June 1, 2009