

CHAPTER 243

**WATER AND IRRIGATION**

**SENATE BILL 94-203**

BY SENATORS Ament, Traylor, Lacy, Rizzuto, Wattenberg, Bishop, Blickensderfer, Cassidy, Johnson, Mutzebaugh, Norton, Owens, L. Powers, R. Powers, Roberts, Schroeder, and Wells;  
also REPRESENTATIVES Owen, Grampas, Romero, Acquafresca, Eisenach, Entz, George, Kaufman, Lawrence, Reeser, and Taylor.

**AN ACT**

**CONCERNING THE TRANSFERS OF GENERAL FUND MONEYS FOR WATER PURPOSES PURSUANT TO 37-60-121 (6), COLORADO REVISED STATUTES, AS AMENDED, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.**

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

**SECTION 1.** 37-60-121 (6) (d), (6) (e), and (6) (f), Colorado Revised Statutes, 1990 Repl. Vol., as amended, are amended, and the said 37-60-121 is further amended BY THE ADDITION OF A NEW SUBSECTION, 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.** (2.5) (a) THE BOARD IS AUTHORIZED TO EXPEND, PURSUANT TO CONTINUOUS APPROPRIATION AND SUBJECT TO THE REQUIREMENTS OF PARAGRAPH (b) OF THIS SUBSECTION (2.5), A TOTAL SUM NOT TO EXCEED FOUR MILLION DOLLARS FROM THE LITIGATION ACCOUNT WHICH IS HEREBY CREATED IN THE COLORADO WATER CONSERVATION BOARD CONSTRUCTION FUND, FOR THE PURPOSE OF LITIGATION IN SUPPORT OF WATER USERS WHOSE WATER SUPPLY YIELD IS OR MAY BE DIMINISHED OR THE COST OF SAID YIELD IS OR MAY BE MATERIALLY INCREASED AS A RESULT OF CONDITIONS IMPOSED OR WHICH MAY BE IMPOSED BY ANY AGENCY OF THE UNITED STATES ON PERMITS FOR EXISTING OR RECONSTRUCTED WATER FACILITIES LOCATED ON FEDERALLY OWNED LANDS.

(b) PURSUANT TO THE SPENDING AUTHORITY SET FORTH IN PARAGRAPH (a) OF THIS SUBSECTION (2.5), MONEYS MAY BE EXPENDED FROM THE LITIGATION ACCOUNT IN THE COLORADO WATER CONSERVATION BOARD CONSTRUCTION FUND AT THE DISCRETION OF THE BOARD IF:

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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.*

(I) THE COLORADO ATTORNEY GENERAL REQUESTS THAT THE BOARD AUTHORIZE THE EXPENDITURE OF MONEYS IN A SPECIFIED AMOUNT NOT TO EXCEED FOUR MILLION DOLLARS FOR THE COSTS OF LITIGATION ASSOCIATED WITH AN ON-GOING LAWSUIT AND:

(A) THE CHARACTERISTICS OF THE LAWSUIT MEET THE CRITERIA SET FORTH IN PARAGRAPH (a) OF THIS SUBSECTION (2.5) AND PRESENTS A QUESTION OF LAW WHICH IS OF A GENERAL STATEWIDE INTEREST THE RESOLUTION OF WHICH MAY PREVENT FURTHER LITIGATION; AND

(B) THE BOARD, IN ITS OWN DISCRETION, DETERMINES THAT IT WOULD BE IN THE BEST INTEREST OF THE STATE AND THE WATER USERS IN THE STATE TO INTERVENE; AND

(II) THE APPROPRIATIONS TO THE DEPARTMENT OF LAW ARE INADEQUATE FOR THE ATTORNEY GENERAL TO COMPLETE LITIGATION OF THE LAWSUIT.

(c) ANY INTEREST EARNED ON THE MONEYS IN THE LITIGATION ACCOUNT SHALL BE CREDITED ON AN ANNUAL BASIS IN EQUAL PORTIONS TO THE COLORADO WATER CONSERVATION BOARD CONSTRUCTION FUND CREATED IN SUBSECTION (1) OF THIS SECTION AND THE DOMESTIC WATER SUPPLY PROJECT REVOLVING FUND CREATED IN SECTION 37-95-107.7.

(d) THE BOARD, IN CONJUNCTION WITH THE ATTORNEY GENERAL, SHALL REPORT ANNUALLY TO THE GENERAL ASSEMBLY ON ANY LITIGATION WHICH INVOLVES THE USE OF ANY MONEYS FROM THE LITIGATION ACCOUNT CREATED IN PARAGRAPH (a) OF THIS SUBSECTION (2.5).

(e) ANY MONEYS REMAINING IN THE LITIGATION ACCOUNT AT SUCH TIME AS THE GENERAL ASSEMBLY ACTS TO CLOSE THE ACCOUNT SHALL BE EQUALLY DIVIDED AND CREDITED TO THE COLORADO WATER CONSERVATION BOARD CONSTRUCTION FUND CREATED IN SUBSECTION (1) OF THIS SECTION AND THE DOMESTIC WATER SUPPLY PROJECT REVOLVING FUND CREATED IN SECTION 37-95-107.7.

(6) As of July 1, 1988, and July 1 of each year thereafter through July 1, 1996, fifty percent of the sum specified in this subsection (6) shall accrue to the fish and wildlife resources account, which account is hereby created in the Colorado water conservation board construction fund, twenty-five percent of such sum shall accrue to the Colorado water conservation board construction fund, and twenty-five percent of such sum shall accrue to the Colorado water resources and power development authority. The state treasurer and the controller shall transfer such sum out of the general fund and into said fish and wildlife resources account, construction fund, and authority as moneys become available in the general fund during the fiscal year beginning on said July 1. Transfers between funds pursuant to this subsection (6) and subsection (7) of this section shall not be deemed to be appropriations subject to the limitations of section 24-75-201.1, C.R.S. Subject to the provisions of subsection (7) of this section, the amount which shall accrue pursuant to this subsection (6) shall be as follows:

(d) On July 1, 1994, ~~thirteen million six hundred thousand dollars. In distributing~~

~~said sum, the formula in the introductory portion to this subsection (6) shall be applied to the sum of fifteen million dollars, which is the total amount of accruals on July 1, 1989, July 1, 1990, and July 1, 1994, with the four-hundred-thousand-dollar accrual to the fish and wildlife resources account on July 1, 1989, and the one-million-dollar accrual to such account on July 1, 1990, being considered as a partial distribution of the fifty percent share of the fish and wildlife resources account in said fifteen million dollars~~ THIRTY MILLION DOLLARS. IN DISTRIBUTING SAID SUM, THE FORMULA IN THE INTRODUCTORY PORTION TO THIS SUBSECTION (6) SHALL NOT APPLY, AND SAID SUM SHALL ACCRUE AS FOLLOWS:

(I) TEN MILLION FIVE HUNDRED THOUSAND DOLLARS TO THE COLORADO WATER CONSERVATION BOARD CONSTRUCTION FUND;

(II) FOUR MILLION FIVE HUNDRED FIFTY-TWO THOUSAND NINE HUNDRED SIXTY DOLLARS TO THE FISH AND WILDLIFE ACCOUNT IN THE COLORADO WATER CONSERVATION BOARD CONSTRUCTION FUND;

(III) ONE MILLION FIVE HUNDRED THOUSAND DOLLARS TO THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY;

(IV) SIX MILLION TWO HUNDRED THOUSAND DOLLARS TO THE DOMESTIC WATER SUPPLY PROJECT REVOLVING FUND CREATED IN SECTION 37-95-107.7, C.R.S.;

(V) TWO MILLION EIGHT HUNDRED THOUSAND DOLLARS TO THE COLORADO WATER CONSERVATION BOARD CONSTRUCTION FUND FOR A PORTION OF THE CONSTRUCTION COSTS OF THE RIDGES BASIN DAM OF THE ANIMAS-LA PLATA PROJECT;

(VI) FOUR HUNDRED FORTY-SEVEN THOUSAND FORTY DOLLARS TO THE COLORADO WATER CONSERVATION BOARD CONSTRUCTION FUND FOR ACTIVITIES RELATING TO THE ARKANSAS RIVER LITIGATION; AND

(VII) FOUR MILLION DOLLARS TO THE LITIGATION ACCOUNT CREATED IN SUBSECTION (2.5) OF THIS SECTION IN THE COLORADO WATER CONSERVATION BOARD CONSTRUCTION FUND.

~~(e) On July 1, 1995, fifteen million dollars;~~

~~(f) On July 1, 1996, twenty million dollars.~~

**SECTION 2.** 37-95-103, Colorado Revised Statutes, 1990 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**37-95-103. Definitions.** As used in this article:

(4.7) "DOMESTIC WATER SUPPLY PROJECT" MEANS ANY FACILITY THAT PROVIDES WATER SUPPLY FOR DOMESTIC OR MUNICIPAL USES, INCLUDING BUT NOT LIMITED TO ALL USES MADE OF WATER IN AND THROUGH MUNICIPAL WATER SUPPLY SYSTEMS.

**SECTION 3.** Article 95 of title 37, Colorado Revised Statutes, 1990 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

**37-95-107.7. Creation and administration of domestic water supply project revolving fund.** (1) THERE IS HEREBY CREATED IN THE STATE TREASURY THE DOMESTIC WATER SUPPLY PROJECT REVOLVING FUND, WHICH SHALL CONSIST OF ALL MONEYS THAT MAY BE TRANSFERRED OR APPROPRIATED THERETO BY THE GENERAL ASSEMBLY OR THAT MAY OTHERWISE BE MADE AVAILABLE TO IT PURSUANT TO LAW. ALL INTEREST OR OTHER RETURN ON THE INVESTMENT OF MONEYS IN THE FUND AND ALL PAYMENTS OF PRINCIPAL AND INTEREST MADE TO THE FUND AS REPAYMENT OF LOANS AND OTHER FINANCIAL ASSISTANCE PROVIDED FROM THE FUND PURSUANT TO THIS SECTION SHALL BE CREDITED TO THE FUND. THE STATE TREASURER SHALL BE AUTHORIZED TO INVEST MONEYS IN THE DOMESTIC WATER SUPPLY PROJECT REVOLVING FUND SO LONG AS SUCH MONEYS ARE NOT NEEDED FOR THE PURPOSES OF THE FUND. MONEYS IN THE DOMESTIC WATER SUPPLY PROJECT REVOLVING FUND ARE CONTINUOUSLY APPROPRIATED TO THE STATE TREASURER FOR THE PURPOSES SET FORTH IN THIS SECTION. ANY MONEYS CREDITED TO THE DOMESTIC WATER SUPPLY PROJECT REVOLVING FUND SHALL REMAIN IN THE FUND AND SHALL NOT REVERT TO THE GENERAL FUND AT THE END OF ANY GIVEN FISCAL YEAR.

(2) MONEYS IN THE DOMESTIC WATER SUPPLY PROJECT REVOLVING FUND MAY BE USED FOR THE FOLLOWING PURPOSES:

(a) TO PROVIDE ASSISTANCE TO GOVERNMENTAL AGENCIES FOR THE ACQUISITION OR CONSTRUCTION OF DOMESTIC WATER SUPPLY PROJECTS THAT ARE ON THE DOMESTIC WATER SUPPLY PROJECT ELIGIBILITY LIST. SUCH ASSISTANCE INCLUDES, BUT IS NOT LIMITED TO, THE MAKING OF LOANS AND THE PURCHASING OR REFUNDING OF INDEBTEDNESS OF GOVERNMENTAL AGENCIES;

(b) TO PAY THE COSTS INCURRED BY THE STATE TREASURER AND THE AUTHORITY IN THE PERFORMANCE OF DUTIES PURSUANT TO THIS SECTION; AND

(c) ANY OTHER PURPOSE CONSISTENT WITH THE PROVISIONS OF THIS SECTION.

(3) (a) THE INITIAL DOMESTIC WATER SUPPLY PROJECT ELIGIBILITY LIST SHALL BE DEVELOPED BY THE DIVISION OF LOCAL GOVERNMENT IN THE DEPARTMENT OF LOCAL AFFAIRS, THE DIVISION OF ADMINISTRATION IN THE DEPARTMENT OF HEALTH, AND THE AUTHORITY AND SHALL BE SUBMITTED TO THE GENERAL ASSEMBLY ON OR BEFORE APRIL 30, 1994. THE INITIAL ELIGIBILITY LIST SHALL CONSIST OF DOMESTIC WATER SUPPLY PROJECTS OF GOVERNMENTAL AGENCIES THAT DO NOT QUALIFY FOR FINANCIAL ASSISTANCE THROUGH THE EXISTING PROGRAMS OF THE AUTHORITY. ON OR BEFORE MAY 31, 1994, THE INITIAL DOMESTIC WATER SUPPLY PROJECT ELIGIBILITY LIST SHALL BE ADOPTED BY THE PASSAGE OF A JOINT RESOLUTION WHICH IS APPROVED BY A MAJORITY VOTE OF BOTH HOUSES OF THE GENERAL ASSEMBLY AND WHICH IS APPROVED BY THE GOVERNOR IN ACCORDANCE WITH SECTION 39 OF ARTICLE V OF THE STATE CONSTITUTION.

(b) ADDITIONS AND MODIFICATIONS TO THE DOMESTIC WATER SUPPLY PROJECT ELIGIBILITY LIST SHALL BE DEVELOPED BY THE DIVISION OF LOCAL GOVERNMENT IN THE DEPARTMENT OF LOCAL AFFAIRS, THE DIVISION OF ADMINISTRATION IN THE DEPARTMENT OF HEALTH, AND THE AUTHORITY AND SHALL BE SUBMITTED TO THE GENERAL ASSEMBLY ON OR BEFORE JANUARY 15 OF EACH YEAR. ANY ADDITIONS OR MODIFICATIONS TO THE ELIGIBILITY LIST SHALL CONSIST OF DOMESTIC WATER SUPPLY PROJECTS OF GOVERNMENTAL AGENCIES THAT DO NOT QUALIFY FOR FINANCIAL

ASSISTANCE THROUGH THE EXISTING PROGRAMS OF THE AUTHORITY. ON OR BEFORE APRIL 1 OF EACH YEAR, SUCH ADDITIONS OR MODIFICATIONS SHALL BE ADOPTED BY THE PASSAGE OF A JOINT RESOLUTION WHICH IS APPROVED BY A MAJORITY VOTE OF BOTH HOUSES OF THE GENERAL ASSEMBLY AND WHICH IS APPROVED BY THE GOVERNOR IN ACCORDANCE WITH SECTION 39 OF ARTICLE V OF THE STATE CONSTITUTION.

(c) NO FINANCIAL ASSISTANCE SHALL BE PROVIDED FROM THE DOMESTIC WATER SUPPLY REVOLVING FUND FOR ANY DOMESTIC WATER SUPPLY PROJECT UNLESS SUCH PROJECT IS ON THE DOMESTIC WATER SUPPLY PROJECT ELIGIBILITY LIST APPROVED IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH (b) OF THIS SUBSECTION (3). FINANCIAL ASSISTANCE FOR A DOMESTIC WATER SUPPLY PROJECT ON THE ELIGIBILITY LIST MAY BE PROVIDED REGARDLESS OF THE RANK OR ORDER OF SUCH PROJECT ON THE ELIGIBILITY LIST.

(4) FINANCIAL ASSISTANCE FROM THE DOMESTIC WATER SUPPLY PROJECT REVOLVING FUND SHALL BE PROVIDED TO PROJECTS ON THE DOMESTIC WATER SUPPLY PROJECT ELIGIBILITY LIST AS FOLLOWS:

(a) THE GOVERNMENTAL AGENCY SEEKING FINANCIAL ASSISTANCE FOR A DOMESTIC WATER SUPPLY PROJECT ON THE ELIGIBILITY LIST SHALL FILE AN APPLICATION FOR ASSISTANCE WITH THE AUTHORITY. THE AUTHORITY SHALL REVIEW SUCH APPLICATION AND DETERMINE WHETHER FINANCIAL ASSISTANCE SHOULD BE PROVIDED AND, IF SO, UPON WHAT TERMS AND CONDITIONS.

(b) (I) THE AUTHORITY SHALL NOTIFY THE STATE TREASURER OF ANY PROPOSED FINANCIAL ASSISTANCE APPROVED BY THE AUTHORITY AND SHALL RECOMMEND THAT MONEYS IN THE DOMESTIC WATER SUPPLY PROJECT REVOLVING FUND BE USED TO PROVIDE THE PROPOSED FINANCIAL ASSISTANCE. UPON RECEIVING SUCH NOTIFICATION AND RECOMMENDATION, THE STATE TREASURER MAY LOAN MONEYS IN THE DOMESTIC WATER SUPPLY PROJECT REVOLVING FUND TO THE GOVERNMENTAL AGENCY IN ACCORDANCE WITH THE RECOMMENDATION OF THE AUTHORITY. THE STATE TREASURER SHALL NOT MAKE ANY LOANS FROM THE FUND FOR ANY DOMESTIC WATER SUPPLY PROJECTS THAT HAVE NOT BEEN RECOMMENDED BY THE AUTHORITY.

(II) LOANS MADE FROM THE DOMESTIC WATER SUPPLY PROJECT REVOLVING FUND SHALL BE EVIDENCED BY NOTES, BONDS, OR OTHER OBLIGATIONS ISSUED IN ACCORDANCE WITH LAW BY THE GOVERNMENTAL AGENCY TO THE STATE OF COLORADO FOR THE BENEFIT OF THE DOMESTIC WATER SUPPLY PROJECT REVOLVING FUND. NOTES AND BONDS RECEIVED PURSUANT TO THIS PARAGRAPH (b):

(A) MAY BE SOLD AT PRIVATE SALE TO THE STATE FOR THE BENEFIT OF THE REVOLVING FUND ON SUCH TERMS AND CONDITIONS AS MAY BE APPROVED BY THE TREASURER, WHETHER OR NOT FOR LESS THAN PAR VALUE; AND

(B) SHALL BE SUBJECT TO REDEMPTION OR PREPAYMENT PRIOR TO MATURITY AT SUCH TIMES AND AT SUCH PRICES AS THE STATE TREASURER AND THE GOVERNMENTAL AGENCY MAY AGREE.

(III) ANY LOAN MADE TO A GOVERNMENTAL AGENCY PURSUANT TO THIS PARAGRAPH (b), AND THE NOTES, BONDS, OR OTHER OBLIGATIONS ISSUED PURSUANT

THERE TO, SHALL BEAR INTEREST AT THE RATE OF FOUR AND ONE-HALF PERCENT PER ANNUM, COMPOUNDED ANNUALLY, AND SHALL INCLUDE SUCH TERMS AS THE STATE TREASURER AND THE GOVERNMENTAL AGENCY MAY AGREE.

(c) THE STATE TREASURER SHALL SUPERVISE DISBURSEMENT AND COLLECTION OF ALL LOANS AND OTHER FINANCIAL ASSISTANCE PROVIDED FROM THE DOMESTIC WATER SUPPLY PROJECT REVOLVING FUND. REPAYMENTS OF LOANS OR OTHER FINANCIAL ASSISTANCE MADE PURSUANT TO THIS SECTION SHALL BE CREDITED DIRECTLY TO THE DOMESTIC WATER SUPPLY PROJECT REVOLVING FUND AND SHALL NOT BE CONSTRUED TO CONSTITUTE A GRANT OR SUBSIDY TO THE AUTHORITY.

(d) (I) THE STATE TREASURER SHALL PAY TO THE AUTHORITY FROM THE DOMESTIC WATER SUPPLY PROJECT REVOLVING FUND AN AMOUNT TO REIMBURSE THE AUTHORITY FOR REASONABLE EXPENSES INCURRED IN PROCESSING AND REVIEWING APPLICATIONS AND IN RECOMMENDING LOANS AND FINANCIAL ASSISTANCE PURSUANT TO THE PROVISIONS OF THIS SECTION.

(II) THE STATE TREASURER SHALL DEDUCT FROM THE DOMESTIC WATER SUPPLY PROJECT REVOLVING FUND AN AMOUNT TO REIMBURSE THE STATE TREASURER FOR REASONABLE EXPENSES INCURRED IN PERFORMING DUTIES PURSUANT TO THIS SECTION.

**SECTION 4. 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, 1994, the sum of four hundred forty-seven thousand forty dollars (\$447,040) and 4.5 FTE, or so much thereof as may be necessary, for activities relating to the Arkansas river litigation.

(2) In addition to any other appropriation, there is hereby appropriated, to the department of law, for the fiscal year beginning July 1, 1994, the sum of four million dollars (\$4,000,000), or so much thereof as may be necessary, for activities relating to litigation specified in section 37-60-121 (2.5) (a), Colorado Revised Statutes. Such appropriation shall be from cash funds received by the Colorado water conservation board from the litigation account in the Colorado water conservation board construction fund.

**SECTION 5. 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 25, 1994