

CHAPTER 253

WATER AND IRRIGATION

HOUSE BILL 04-1221

BY REPRESENTATIVE(S) Hoppe, Brophy, Harvey, Hefley, Hodge, McCluskey, Miller, Paccione, Salazar, Tochtrop, White, Wiens, Boyd, Briggs, Carroll, Hall, Jahn, Madden, McFadyen, Merrifield, Weddig, Williams S., Williams T., and Young; also SENATOR(S) Entz, Chlouber, Groff, Grossman, Phillips, Tapia, Taylor, and Teck.

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
(a)	New Cache La Poudre Irrigating Company - Barnesville, Cornish Plains and Drury Reservoir Construction*	<u>\$ 7,272,000</u>
	Total	<u>\$ 7,272,000</u>

*This loan is to refinance projects wholly or partially completed

(2) The Colorado water conservation board may make loans for the construction of the projects 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. The 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

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

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 the 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 the board is satisfied, in 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
(a)	Colorado River Water Conservation District - Elkhead Reservoir Enlargement	<u>\$ 11,110,000</u>
	Total	\$ 11,110,000

(2) The Colorado water conservation board may make loans for the construction of the projects specified in subsection (1) of this section from revenues that are or may hereafter become available to the severance tax trust fund perpetual base account. The 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 the 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 the board is satisfied, in 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. Decreases to prior water project loan authorizations from the Colorado water conservation board construction fund.

Borrower-Project	Prior Authority	Prior Amount	Decrease	Amount Remaining
Town of Paonia -	HB 95-1155	\$ 600,000	\$ 600,000	\$ 0

New Reservoir

City of Sterling - HB 98-1189 Pawnee Creek Flood Control Project	\$ 550,000	\$ 550,000	\$ 0
City of Sterling - SB 99-173 Pawnee Creek Flood Control Project	\$ 610,000	\$ 610,000	\$ 0
City of Ouray - SB 99-173 Skyrocket Creek Deflection Structure Rehabilitation	\$ 25,000	\$ 25,000	\$ 0
City of Ouray - HB 00-1419 Skyrocket Creek Deflection Structure Rehabilitation	\$ 30,000	\$ 30,000	\$ 0
City of Fountain - HB 02-1152 Keeton Reservoir Rehabilitation	\$ 420,000	\$ 420,000	\$ 0
Totals	\$ 2,235,000	\$ 2,235,000	\$ 0

SECTION 4. Colorado water conservation board data collection - 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, 2004, the sum of two hundred ten thousand dollars (\$210,000), or so much thereof as may be necessary, for satellite monitoring and data collection efforts related to in-stream flow monitoring, compact protection, decision support systems, and flood forecasting and warning projects.

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

SECTION 5. 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, 2004, the sum of three hundred fifty-three thousand dollars (\$353,000), or so much thereof as may be necessary, for the maintenance 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 6. Colorado decision support system irrigated acreage refresh

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 Colorado water conservation board, for the fiscal year beginning July 1, 2004, the sum of one hundred fifty thousand dollars (\$150,000) to refresh the irrigated acreage component of the Colorado decision support system database in the Rio Grande river basin and begin the Colorado decision support system implementation of acreage and crop delineation in the Arkansas river basin. The moneys may also be used to determine the feasibility of using Colorado decision support system satellite imagery to delineate tamarisk stands in the South Platte, Rio Grande, Colorado, and Arkansas river drainage basins.

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

SECTION 7. Continuation of the Colorado water conservation board document imaging 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 Colorado water conservation board, for the fiscal year beginning July 1, 2004, the sum of one hundred forty-five thousand dollars (\$145,000), or so much thereof as may be necessary, for the board to continue development of the Colorado water conservation board document imaging system.

(2) The amounts appropriated in this section are in addition to amounts appropriated previously for the Colorado water conservation board document imaging system. The moneys appropriated in subsection (1) of this section shall remain available for the designated purposes until the project is completed.

SECTION 8. Colorado flood plain map modernization - 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, 2004, the sum of two hundred fifteen thousand dollars (\$215,000), or so much thereof as may be necessary, for the board to continue to assist with the preparation of revised and improved flood plain studies and maps for communities throughout Colorado and participate in federally sponsored flood plain map modernization activities.

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

SECTION 9. 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 Colorado water conservation board, for the fiscal year beginning July 1, 2004, the sum of twenty thousand dollars (\$20,000), or so much thereof as may be necessary, for the board to assist water conservation and conservancy districts with the development of cloud seeding programs that provide benefits to recreation, streams, and reservoirs through snowpack enhancement.

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

SECTION 10. Flood hazard mitigation 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 Colorado water conservation board, for the fiscal year beginning July 1, 2004, the sum of seventy-five thousand dollars (\$75,000), or so much thereof as may be necessary, for the board to participate in planning and engineering services for stream restoration projects as well as to provide matching funds for partnering with federal and local agencies in the development of flood mitigation projects.

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

SECTION 11. Statewide tamarisk field survey - 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, 2004, the sum of fifty-two thousand five hundred dollars (\$52,500), or so much thereof as may be necessary, for the board to participate in an inventory of acres infested by tamarisk and other non-native invasive phreatophytes in the Arkansas and Colorado River basins in cooperation with the tamarisk coalition and the United States department of the interior.

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

SECTION 12. 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 Colorado water conservation board, for the fiscal year beginning July 1, 2004, the sum of two million five hundred thousand dollars (\$2,500,000), 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 13. Restoration of flood response fund balance. The state treasurer shall transfer a total of one hundred fifty thousand dollars (\$150,000), 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 in order to restore the balance in the flood response fund to one hundred fifty thousand dollars (\$150,000).

SECTION 14. Repeal. 37-60-122.6, Colorado Revised Statutes, is repealed as follows:

37-60-122.6. Emergency infrastructure repair cash fund - authorization.

~~(1) There is hereby created in the state treasury the emergency infrastructure repair cash fund, referred to in this section as the "emergency fund". The state treasurer is hereby authorized and directed to transfer two million dollars from the Colorado water conservation board construction fund to the emergency fund. The Colorado water conservation board is authorized to make loans from the emergency fund for projects that it determines are necessary to avoid unreasonable risk of injury or damage to human health or well-being or to property or crops when the board also determines that the emergency condition is not the result of negligence in the operation or maintenance of the infrastructure. Such emergency projects may provide a partial, temporary, or permanent and complete solution to the emergency condition. However, the viability or success of such emergency projects may not be dependent upon further appropriations or loans. Any partial or temporary solution to an emergency condition must be one that is sensible and functional on its own merits without regard to the prospect of further state funding. The board shall submit to the general assembly a written determination of the basis for each loan from the emergency fund not later than January 15 of the year following the year in which such loan was made. The moneys in the emergency fund are hereby continuously appropriated to the board for emergency infrastructure purposes consistent with the definition of "emergency" in section 20 (2) (c) of article X of the state constitution, including, but not limited to, the immediate availability of moneys for emergency repairs to raw water storage systems, raw water transmission systems, or both such storage and transmission systems. All interest derived from loans and the investment of moneys in the emergency fund shall be credited to the Colorado water conservation board construction fund. Any balance in excess of two million dollars remaining in the emergency fund at the end of any fiscal year shall be credited to the Colorado water conservation board construction fund.~~

~~(2) Notwithstanding the provisions of section 24-6-402, C.R.S., in emergency situations in which a majority of the board certifies that exigencies of time require that the board meets without delay for the purpose of considering the need for a loan pursuant to subsection (1) of this section, the requirements of public notice may be dispensed with but the public shall receive notice as soon as is practicable under such exigent circumstances; except that nothing in this subsection (2) shall be construed to relieve the board of the duty to make public notice.~~

SECTION 15. Emergency infrastructure repair cash fund transfer. Any remaining unreserved moneys previously appropriated to the emergency infrastructure repair cash fund shall be credited to the Colorado water conservation board construction fund.

SECTION 16. 37-60-130, Colorado Revised Statutes, is amended to read:

37-60-130. Well augmentation loans. ~~(1) There is hereby created in the state treasury the Arkansas river augmentation loan fund. The state treasurer is hereby authorized and directed to transfer a total of three million five hundred thousand dollars from the unreserved cash funds in the water conservation board construction fund to the Arkansas river augmentation loan fund.~~

~~(2) The board is hereby authorized to expend up to three million five hundred thousand dollars from the Arkansas river augmentation loan fund for the purpose of making loans~~ MAKE LOANS FROM UNRESERVED CASH IN THE COLORADO WATER

CONSERVATION BOARD CONSTRUCTION FUND to organizations or entities for the purchase of augmentation water or the rights to such water to replace out-of-priority depletions to surface water rights and to prevent material depletions of usable stateline flows THAT MIGHT RESULT in violation of ~~the Arkansas river compact. Moneys in the Arkansas river augmentation loan fund are hereby continuously appropriated to the board. All interest derived from the investment of moneys in the Arkansas river augmentation loan fund shall be credited to the Colorado water conservation board construction fund~~ COMPACTS OR INTERSTATE DECREES.

(3) The board shall approve or deny applications for loans ~~after consulting with the Arkansas river coordinating committee concerning such applications;~~ based upon criteria including, but not limited to, whether the:

- (a) Source of augmentation water is from a reliable, permanent supply;
- (b) Applicant has adequate security or collateral to assure repayment;
- (c) Applicant has the ability to repay the loan at an interest rate and over a period of time as set by the board;
- (d) Applicant is able to collect payments for the augmented water from its members;
- (e) Loan will serve the needs of a broad group of users rather than a specific user;
- (f) Loan will assist in maintaining the agricultural viability of the ~~Arkansas river valley~~ AREA SERVED;
- (g) Applicant obtains commitments from its members that any such member who fails to make payments in accordance with the loan agreement shall cease pumping water; and
- (h) Applicant obtains commitments from its members to comply with any rules or changes to rules as promulgated or amended by the state engineer that govern the measurement of ~~groundwater~~ GROUND WATER withdrawals and the use of such ~~groundwater in the Arkansas river basin. Rule changes may include but not be limited to the elimination of the three-seven rule and augmentation plans for post-compact wells~~ GROUND WATER.

(4) (a) The state engineer shall promptly and completely curtail the use of a well by the owner of such well if such owner has accepted the benefit of ~~the Arkansas river~~ A WELL augmentation loan fund; and fails to make a payment required pursuant to the terms of subsection (3) of this section.

(b) This section shall apply regardless of whether the well owner accepts the benefit of the ~~Arkansas river~~ WELL augmentation loan fund directly or through membership in a participating association or organization.

(c) Curtailment pursuant to this subsection (4) shall remain in effect for as long as any payment remains past due.

SECTION 17. Arkansas river augmentation loan fund transfer. Any remaining unreserved moneys previously appropriated to the Arkansas river augmentation loan fund shall be credited to the Colorado water conservation board construction fund.

SECTION 18. Section 12 of chapter 360, Session Laws of Colorado 2000, is amended to read:

Section 12. **El Paso county water master plan - appropriation.** (1) The Colorado water conservation board is hereby authorized to participate in a cooperative water supply planning investigation and master plan of the rural El Paso county area. The purposes of the investigation will be to effectively identify the current and future development of water resources, systems, and facilities benefitting the residents of El Paso county. The scope of work for the master plan shall be developed by the El Paso county water authority in consultation with El Paso county and the Colorado water conservation board. THE COLORADO WATER CONSERVATION BOARD IS FURTHER AUTHORIZED TO PARTICIPATE WITH THE EL PASO COUNTY WATER AUTHORITY IN A COOPERATIVE STUDY AND INVESTIGATION OF TRANSIT LOSSES ON FOUNTAIN AND MONUMENT CREEKS TO BE CONDUCTED BY THE UNITED STATES GEOLOGICAL SURVEY AND DEVELOPMENT OF A TRANSIT LOSS MODEL TO BE USED IN ADMINISTERING WATER DELIVERIES THAT MAXIMIZE BENEFICIAL USE OF THE WATER RESOURCES OF EL PASO COUNTY.

(2) 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 allocation to the El Paso county water authority, for the fiscal year beginning July 1, 2004, the sum of two hundred thousand dollars (\$200,000), or so much thereof as may be necessary, ~~to prepare an El Paso county water master plan,~~ FOR THE PURPOSES SET FORTH IN SUBSECTION (1) OF THIS SECTION.

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

SECTION 19. Section 4 of chapter 344, Session Laws of Colorado 1979, is amended to read:

Section 4. **Project authorizations.** (1) Pursuant to section 37-60-122, Colorado Revised Statutes 1973, there are hereby authorized to be constructed from such funds as may become available to the Colorado water conservation board construction fund, in the priority listed as nearly as practicable and with the sums of money listed, plus or minus such amounts, if any, as may be justified by unforeseen circumstances or by reason of ordinary fluctuations in land values and construction costs as indicated by cost indices applicable to the type of projects involved, the following projects:

Project	Amount
Chatfield Project	
Channel Improvement	\$ 2,500,000
Closed Basin	\$ 500,000
Beaver Park	\$ 1,500,000

Larkspur	\$ 200,000
Rio Grande Reservoir	<u>\$ 90,000</u>
Total	\$ 4,790,000

(2) The Chatfield project channel improvement and the Rio Grande Reservoir project authorized by this section shall be constructed as first priorities from the first moneys made available to the Colorado water conservation board construction fund pursuant to section 39-26-123.1, Colorado Revised Statutes 1973. The funds made available for the Chatfield project channel improvements may be expended, INCLUDING UP TO ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000) FOR CHATFIELD-RELATED PLANNING STUDIES, only through ~~a contract~~ CONTRACTS with the United States by which the United States agrees to provide not less than one-half of the total cost of said channel improvement AND RELATED PLANNING STUDIES.

(3) Neither the Closed Basin project nor the Larkspur project authorized by this section nor the projects authorized by section 2 of chapter 101, Session Laws of Colorado 1978, shall preempt any project priority previously established by the general assembly, but any previously established priority may be waived or relinquished in writing by a project sponsor.

SECTION 20. Water project loan authorizations from the Colorado river recovery program loan fund. (1) Pursuant to sections 37-60-122.9 and 37-60-122 (1) (b), Colorado Revised Statutes, the Colorado water conservation board is hereby authorized to loan moneys from the Colorado river recovery program loan fund to enable the construction of the following water resources projects:

Priority	Borrower - Project	Loan Amount
(a)	Western Area Power Administration - Capital projects of the Upper Colorado and San Juan River Basins Recovery Implementation Program	<u>\$ 5,938,800</u>
	Total	\$ 5,938,800

(2) The Colorado water conservation board may make loans for the construction of the projects specified in subsection (1) of this section from such moneys as are or may hereafter be transferred to the Colorado river recovery program loan fund from the Colorado water conservation board construction fund. The 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 the 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 the board is satisfied, in 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 21. 37-60-119 (1) (b) and (2), Colorado Revised Statutes, are amended to read:

37-60-119. Construction of water and power facilities - contracts with and charges against users. (1) (b) In carrying out ~~such program~~ THIS SUBSECTION (1), the board ~~is directed to~~ SHALL place special emphasis upon the adoption and incorporation of measures ~~which~~ THAT will encourage the conservation and more efficient use of water, including the installation of water meters or such other measuring and control devices as the board deems appropriate in each particular case.

(2) The board may, subject to the provisions in section 37-60-122, enter into contracts for the use of, or to loan moneys to enable the construction, rehabilitation, enlargement, or improvement of, said flood control, water, power, and any related recreational facilities, excluding domestic water treatment and distribution systems, with any agency or political subdivision of this state or the federal government, ~~with~~ individuals, ~~with~~ corporations, or ~~with~~ organizations composed of citizens of this state. Any such contracts may provide for such charges to the using entity as, in the opinion of the board, are necessary and reasonable to recover the board's capital investment, together with operational, maintenance, and interest charges over the term of years agreed upon by contract. Interest charges shall be recommended by the board at between zero and seven percent on the basis of the project sponsor's ability to pay and the significance of the project to the development and protection of the water supplies of the state. Interest charges shall be credited to and made a part of the Colorado water conservation board construction fund. Any other charges, as determined appropriate by the board, shall be continuously appropriated to the Colorado water conservation board for supplemental operational expenditures.

SECTION 22. 37-60-122 (1) (c), Colorado Revised Statutes, is amended to read:

37-60-122. General assembly approval. (1) Moneys in the Colorado water conservation board construction fund shall be expended in the following manner and under the following circumstances:

(c) In order to determine the economic and engineering feasibility of any project proposed to be constructed from funds provided in whole or in part from the Colorado water conservation board construction fund, the board shall cause a feasibility report to be prepared on such proposed project if, in the discretion of the board, it appears to qualify for consideration under section 37-60-119. The board may also cause a feasibility report to be prepared on any other water project proposed in this state whether funded by the Colorado water conservation board construction fund or by any other source or entity or federal or state agency, and the board shall cooperate with any such entity or federal or state agency in the planning of such project. The board shall also cause any feasibility study to be made at the direction of the general assembly. For all such feasibility investigations, the board is authorized to ~~commit~~ ~~OR LOAN, GRANT, OR OTHERWISE~~ expend on a continuing basis ~~ten percent of~~ the moneys appropriated ~~credited, or otherwise applied~~ to the construction fund authorized by section 37-60-121, ~~prior to the execution and approval of any contract contemplated by paragraph (a) of this subsection (1); except that the cost of any~~

~~feasibility investigation shall be considered a part of the total project cost if such project is subsequently constructed~~ IN ACCORDANCE WITH POLICIES ADOPTED BY THE BOARD.

SECTION 23. 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 21, 2004