

## CHAPTER 1

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**WATER AND IRRIGATION**

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**SENATE BILL 12S-002**

BY SENATOR(S) Schwartz and White, Aguilar, Boyd, Carroll, Foster, Giron, Grantham, Guzman, Heath, Hodge, Hudak, Jahn, Johnston, King K., King S., Morse, Neville, Newell, Nicholson, Renfroe, Roberts, Scheffel, Steadman, Tochtrop, Williams S., Shaffer B.;

also REPRESENTATIVE(S) Sonnenberg and Baumgardner, Hamner, Pace, Acree, Barker, Becker, Beezley, Brown, Casso, Coram, Court, DelGrosso, Duran, Ferrandino, Fields, Fischer, Gardner B., Gerou, Holbert, Hullinghorst, Jones, Kagan, Kefalas, Kerr A., Kerr J., Labuda, Lee, Levy, Liston, Looper, Massey, McCann, Miklosi, Murray, Nikkel, Pabon, Peniston, Priola, Ramirez, Ryden, Schafer S., Scott, Singer, Solano, Soper, Stephens, Summers, Swerdfeger, Szabo, Todd, Tyler, Vaad, Vigil, Waller, Williams A., Wilson, Young, McNulty.

**AN ACT**

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

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

**SECTION 1. Continuation of the 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, 2012, the sum of \$300,000, or so much thereof as may be necessary, for renovation of existing gauging stations, replacement of outdated collection platforms and upgrading of transmission components of the satellite monitoring system established and operated pursuant to section 37-80-102 (10),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 remain available for the designated purposes until they are fully expended.

**SECTION 2. 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

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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.*

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, 2012, the sum of \$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, and their fiscal agents, with the development of cloud seeding programs that provide benefits to recreation, streams, and reservoirs through snow pack enhancement.

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

**SECTION 3. 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, 2012, the sum of \$500,000, or so much thereof as may be necessary in order to restore the unencumbered balance in the fund to \$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 to participate in federally sponsored floodplain map modernization activities.

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

**SECTION 4. 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, 2012, the sum of \$500,000, 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 remain available for the designated purposes until they are fully expended.

**SECTION 5. Repurposing of the flood response program and restoration of the flood response fund balance.** The state treasurer shall transfer a total of \$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 and drought response fund created in section 37-60-123.2, Colorado Revised Statutes, in order to restore the unencumbered balance in the flood and drought response fund to \$300,000.

**SECTION 6.** In Colorado Revised Statutes, **amend** 37-60-123.2 as follows:

**37-60-123.2. Flood and drought response fund - created.** There is hereby created in the state treasury the flood AND DROUGHT response fund, referred to in this section as the "response fund". The state treasurer is hereby authorized and

directed to transfer three hundred thousand dollars from the Colorado water conservation board construction fund to the response fund. The board is authorized to provide funding for flood AND DROUGHT preparedness and for response and recovery activities following flood OR DROUGHT events and disasters. The moneys in the response fund are hereby continuously appropriated to the board for flood AND DROUGHT response purposes, including ~~but not limited to~~, the immediate availability of funds for aerial photography of flooded areas, flood AND DROUGHT documentation and identification of specific hazards, evaluations and revisions of floodplain designations AND DROUGHT-PRONE AREAS, flood AND DROUGHT forecasting and preparation, and development of disaster and recovery mitigation plans. ~~At~~ THE STATE TREASURER SHALL CREDIT ALL interest derived from the investment of moneys in the response fund ~~shall be credited~~ to the Colorado water conservation board construction fund. Any balance remaining in the response fund at the end of any fiscal year ~~shall remain~~ REMAINS in the fund.

**SECTION 7. Phreatophyte control cost-sharing 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, 2012, the sum of \$1,000,000, or so much thereof as may be necessary, for the board to continue financing phreatophyte control cost-sharing grants through any of the board's existing programs.

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

**SECTION 8. Continuation of the Colorado river water availability 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, 2012, the sum of \$2,000,000, or so much thereof as may be necessary, for the board to continue model development, formulate and evaluate water demand alternatives, and perform a risk management analysis on various Colorado river issues, as another component of the Colorado river water availability study, authorized in Section 15 of Senate Bill 07-122, enacted in 2007. The board shall continue to work in consultation with, and with the active involvement of, the basin roundtables and shall continue to consider current and potential future in-basin consumptive and nonconsumptive needs.

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

**SECTION 9. South Platte groundwater level data collection and analysis - 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, 2012, the sum of \$500,000, or so much thereof as may be necessary, for the board to collect and analyze groundwater data along the South

Platte river, to update the South Platte decision support system model and make model enhancements, to install instrumentation and monitoring devices, and to construct test projects to evaluate cause and possible remediation to high groundwater levels in the South Platte river basin.

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

**SECTION 10. 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, 2012, the sum of \$1,000,000, 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 remain available for the designated purposes until they are fully expended.

**SECTION 11. Rio Grande cooperative 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, 2012, the sum of \$5,000,000, or so much thereof as may be necessary, for the board to participate in the planning, design, and rehabilitation of the Rio Grande reservoir.

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

**SECTION 12. 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 Colorado water conservation board, for the fiscal year beginning July 1, 2012, the sum of \$5,000,000, or so much thereof as may be necessary, for the board to participate in the implementation of the Chatfield reservoir reallocation project, pursuant to section 37-60-120.1, Colorado Revised Statutes.

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

**SECTION 13. Purchase of Colorado's allotment of Animas-La Plata project water - 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, 2012, the sum of \$12,000,000, or so much thereof as may be necessary, for the purchase of all or a portion of Colorado's allotment of Animas-La Plata project water, pursuant to section 39-29-109 (2) (a) (VIII) (B), Colorado Revised Statutes.

(2) The moneys appropriated in subsection (1) of this section remain available for the designated purposes until they are fully expended or until July 30, 2015, whichever comes first.

**SECTION 14. Provision of legal support and funding for litigation involving the abandonment list - 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, 2012, the sum of \$300,000, or so much thereof as may be necessary, for the board to provide legal support and funding for litigation of protests of individual water rights that the state engineer has placed on the abandonment list.

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

**SECTION 15. Management of the national hydrography dataset 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 personal services line item of the Colorado division of water resources, for the fiscal year beginning July 1, 2012, the sum of \$75,857, or so much thereof as may be necessary, for the division of water resources to continue management of the national hydrography dataset in Colorado and to provide geographic information system analysis support related to consumptive use analysis, water rights, dam break inundation, and interstate compacts.

(2) The moneys appropriated in subsection (1) of this section remain available for the designated purposes until June 30, 2013. All funds not expended by June 30, 2013, remain part of the Colorado water conservation board construction fund.

**SECTION 16.** In Colorado Revised Statutes, 37-60-121, **add** (4) (d) as follows:

**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 - repeal.**  
(4) (d) (I) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY, THE BOARD MAY EXPEND UP TO SEVENTY-FIVE THOUSAND EIGHT HUNDRED FIFTY-SEVEN DOLLARS FOR THE PERSONAL SERVICE EXPENSES OF THE DIVISION OF WATER RESOURCES IN MANAGING THE NATIONAL HYDROGRAPHY DATASET AND PROVIDING GEOGRAPHIC INFORMATION SYSTEM ANALYSIS SUPPORT FOR ACTIVITIES OF THE DIVISION OF WATER RESOURCES.

(II) THIS PARAGRAPH (d) IS REPEALED, EFFECTIVE JUNE 30, 2013.

**SECTION 17.** In Colorado Revised Statutes, 37-75-105, **amend** (4) as follows:

**37-75-105. Interbasin compact committee - report.** (4) Commencing in 2006, the committee shall submit an annual report to the house of representatives committee on agriculture, livestock, and natural resources and the senate committee on agriculture, natural resources, and energy, or their successor committees, by October 31 concerning the status of compact negotiations and, in consultation with the Colorado water conservation board created in section 37-60-102, how moneys from the water supply reserve ~~account~~ FUND created in section 39-29-109 (2) (c), C.R.S., were allocated during the previous twelve months for water activities approved by basin roundtables.

**SECTION 18.** In Colorado Revised Statutes, 37-80-102, **amend** (1) introductory portion; and **add** (1) (l) as follows:

**37-80-102. General duties of state engineer - supervision and utilization of employees - satellite monitoring system.** (1) The state engineer ~~shall be~~ IS the executive officer in charge of supervising the work of all division engineers and may direct ~~them as to~~ their supervision of ~~all~~ THEIR employees. ~~of the state responsible to them. He~~ THE STATE ENGINEER has executive responsibility and authority with respect to:

(l) RECEIVING AND EXPENDING GRANTS AND DISTRIBUTIONS OF MONEY, PROPERTY, AND EQUIPMENT FROM THE COLORADO WATER CONSERVATION BOARD FOR USE IN MAKING INVESTIGATIONS, CONTRACTING PROJECTS, OR OTHERWISE CARRYING OUT THE PURPOSES OF THIS ARTICLE. THE GRANTS AND DISTRIBUTIONS FROM THE COLORADO WATER CONSERVATION BOARD ARE CONTINUOUSLY APPROPRIATED TO THE STATE ENGINEER FOR THE PURPOSES SET FORTH IN THIS SECTION.

**SECTION 19.** In Colorado Revised Statutes, 39-29-109, **amend** (2) introductory portion, (2) (a) (VIII) (A), and (2) (c); and **add** (2) (a) (X) and (2) (a) (XI) as follows:

**39-29-109. Severance tax trust fund - created - administration - distribution of moneys - repeal.** (2) State severance tax receipts shall be credited to the severance tax trust fund as provided in section 39-29-108. Except as otherwise set forth in section 39-29-109.5, all income derived from the deposit and investment of the moneys in the fund shall be credited to the fund. At the end of any fiscal year, all unexpended and unencumbered moneys in the fund ~~shall~~ remain therein and shall not be credited or transferred to the general fund or any other fund. All moneys in the fund ~~shall be~~ ARE subject to appropriation by the general assembly for the following purposes:

(a) **The perpetual base account.** (VIII) (A) Notwithstanding any provision of this paragraph (a) to the contrary, the state treasurer shall transfer to the Colorado water conservation board construction fund, for use by the Colorado water conservation board, also referred to in this subparagraph (VIII) as the "board", thirty-six million dollars for the purchase of all or a portion of Colorado's allotment

of Animas-La Plata project water. The state treasurer shall make the transfer mandated by this sub-subparagraph (A) in three consecutive ~~annual~~ installments of twelve million dollars on ~~June 30 of each year, commencing~~ June 30, 2011, JUNE 30, 2012, AND JULY 1, 2012.

(X) (A) NOTWITHSTANDING ANY PROVISION OF THIS PARAGRAPH (a) TO THE CONTRARY, THE STATE TREASURER SHALL TRANSFER TO THE COLORADO WATER CONSERVATION BOARD CONSTRUCTION FUND, FOR USE BY THE COLORADO WATER CONSERVATION BOARD, ALSO REFERRED TO IN THIS SUBPARAGRAPH (X) AS THE "BOARD", THIRTY MILLION DOLLARS FOR THE PLANNING, DESIGN, AND CONSTRUCTION OF THE RIO GRANDE COOPERATIVE PROJECT. OF THIS AMOUNT, THE BOARD SHALL ALLOCATE UP TO TEN MILLION DOLLARS FOR IMPROVEMENTS ASSOCIATED WITH THE BEAVER PARK RESERVOIR, OWNED AND OPERATED BY THE DIVISION OF PARKS AND WILDLIFE, AND UP TO TWENTY MILLION DOLLARS FOR IMPROVEMENTS TO THE RIO GRANDE RESERVOIR, OWNED AND OPERATED BY THE SAN LUIS VALLEY IRRIGATION DISTRICT. THE STATE TREASURER SHALL TRANSFER THE MONEYS IN TWO CONSECUTIVE ANNUAL INSTALLMENTS OF FIFTEEN MILLION DOLLARS ON JULY 1, 2012, AND JULY 1, 2013.

(B) PURSUANT TO SECTION 37-60-122 (1) (b), C.R.S., THE BOARD MAY LOAN MONEYS IN AN AMOUNT UP TO TEN MILLION DOLLARS TO THE DIVISION OF PARKS AND WILDLIFE AND UP TO FIFTEEN MILLION DOLLARS TO THE SAN LUIS VALLEY IRRIGATION DISTRICT.

(C) PURSUANT TO SECTION 37-60-121 (1) (b) (IV), C.R.S., THE BOARD MAY DETERMINE THE AMOUNT OF LOAN, OR LOAN-TO-GRANT RATIO, FOR THE SECOND FIFTEEN-MILLION-DOLLAR INSTALLMENT, AS SET FORTH IN SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (X), COMMENCING ON JULY 1, 2013.

(D) ALL INTEREST EARNED FROM THE INVESTMENT OF MONEYS IN THE FUND SHALL BE CREDITED TO, AND MADE A PART OF, THE COLORADO WATER CONSERVATION BOARD CONSTRUCTION FUND. ALL FUNDS NOT EXPENDED REMAIN AND ARE PART OF THE COLORADO WATER CONSERVATION BOARD CONSTRUCTION FUND.

(XI) (A) NOTWITHSTANDING ANY PROVISION OF THIS PARAGRAPH (a) TO THE CONTRARY, THE STATE TREASURER SHALL TRANSFER TO THE COLORADO WATER CONSERVATION BOARD CONSTRUCTION FUND, FOR USE BY THE COLORADO WATER CONSERVATION BOARD, ALSO REFERRED TO IN THIS SUBPARAGRAPH (XI) AS THE "BOARD", THIRTEEN MILLION DOLLARS FOR THE IMPLEMENTATION OF THE CHATFIELD RESERVOIR REALLOCATION PROJECT, PURSUANT TO SECTION 37-60-120.1, C.R.S. THE STATE TREASURER SHALL TRANSFER THE MONEYS IN TWO CONSECUTIVE INSTALLMENTS OF FIVE MILLION DOLLARS ON JANUARY 1, 2013, AND EIGHT MILLION DOLLARS ON JULY 1, 2014.

(B) THIS SUBPARAGRAPH (XI) IS REPEALED, EFFECTIVE JULY 1, 2015.

(c) **The water supply reserve fund.** (I) There is hereby created IN THE OFFICE OF THE STATE TREASURER the water supply reserve ~~account~~ FUND, also referred to in this paragraph (c) as the "~~account~~" "FUND", which shall be administered by the ~~state treasurer. Moneys shall be transferred by~~ COLORADO WATER CONSERVATION

BOARD. The STATE treasurer SHALL TRANSFER MONEYS to the ~~account~~ FUND from the operational account of the severance tax trust fund as specified in section 39-29-109.3 (2) (a). The moneys in the ~~account~~ FUND are hereby continuously appropriated, for purposes authorized by this paragraph (c), to the Colorado water conservation board, also referred to in this paragraph (c) as the "board". All interest derived from the investment of moneys in the ~~account~~ FUND shall be credited to the STATEWIDE account OF THE FUND, WHICH ACCOUNT IS HEREBY CREATED. Repayments of both the principal and interest on loans from the ~~account~~ FUND shall be credited to the ~~account~~ FUND. Any balance remaining in the ~~account~~ FUND at the end of any fiscal year ~~shall~~ remain in the ~~account~~ FUND. The board shall allocate moneys by grant or loan from the ~~account~~ FUND only for water activities approved by a roundtable pursuant to article 75 of title 37, C.R.S. The approving roundtable ~~shall be~~ IS the roundtable for the basin in which a proposed water diversion or nonstructural activity would occur. If the applicant is a covered entity, as defined in section 37-60-126, C.R.S., the board shall allocate moneys by grant or loan from the ~~account~~ FUND only if the applicant has adopted a water conservation plan, as defined in section 37-60-126, C.R.S. The board, in consultation with the interbasin compact committee created in section 37-75-105, C.R.S., shall ~~jointly~~ establish criteria and guidelines for allocating moneys from the ~~account~~. ~~The~~ FUND, INCLUDING criteria ~~shall~~ THAT ensure that the allocations will assist in meeting water supply needs identified under section 37-75-104 (2) (c), C.R.S., in a manner consistent with section 37-75-102, C.R.S., and shall facilitate both structural and nonstructural projects or methods. Eligible water activities include ~~but are not limited to~~, the following:

(A) Competitive grants for environmental compliance and feasibility studies;

(B) Technical assistance regarding permitting, feasibility studies, and environmental compliance;

(C) Studies or analyses of structural, nonstructural, consumptive, and nonconsumptive water needs, projects, or activities; and

(D) Structural and nonstructural water projects or activities.

(II) On or before October 31 of each year, commencing with the year 2010, the board shall consult with the interbasin compact committee to produce the annual report required by section 37-75-105 (4), C.R.S., regarding how moneys in the ~~account~~ FUND were allocated in the previous twelve-month period.

**SECTION 20.** In Colorado Revised Statutes, 39-29-109.3, **amend** (2) (a) (I) introductory portion as follows:

**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:

(a) (I) To the water supply reserve ~~account~~ FUND created in section 39-29-109 (2) (c), the following amounts:

**SECTION 21. 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 19, 2012