Colorado Revised Statutes 2018

TITLE 37

WATER AND IRRIGATION

Cross references: For water rights generally, see §§ 5 to 8 of art. XVI, Colo. Const.

CONSERVANCY LAW OF COLORADO - FLOOD CONTROL

ARTICLE 1

Conservancy Law - Flood Control

37-1-101. Short title. Articles 1 to 8 of this title shall be known and may be cited as the "Conservancy Law of Colorado".

Source: L. 22: p. 11, § 1. **C.L.** § 9515. **CSA:** C. 138, § 126. **CRS 53:** § 30-1-1. **C.R.S. 1963:** § 29-1-1.

37-1-102. Definitions. As used in articles 1 to 8 of this title, unless the context otherwise requires:

(1) "Conservancy district" means the districts created under articles 1 to 8 of this title; and the bonds which may be issued under articles 1 to 8 of this title may be called "conservancy bonds", and such designation may be engraved or printed on their face.

(2) "Court" means the district court of that judicial district of the state of Colorado wherein the petition for the organization of a conservancy district shall be filed.

(3) (a) "Land" or "property" means real estate, as "real estate" is defined by the laws of the state of Colorado, and shall embrace all railroads, tramroads, electric railroads, street and interurban railroads, highways, roads, streets and street improvements, telephone, telegraph, and transmission lines, gas, sewer, and water systems, water rights, pipelines, and rights-of-way of public service corporations, and all other real property whether held for public or private use.

(b) When "land" or "property" is used, with reference to benefits, appraisals, assessments, or taxes, public corporations, as political entities, according to benefits received, shall be considered as included in such reference, in the same manner as "land" or "property".

(4) "Person" means a person, firm, partnership, association, or corporation, other than a county, town, city, or other political subdivision. Similarly, "public corporation" means counties, towns, cities, school districts, drainage districts, irrigation districts, water districts, park districts, and all governmental agencies clothed with the power of levying or providing for the levy of general or special taxes or special assessments.

(5) "Publication" means printing once a week for three consecutive weeks in at least one newspaper of general circulation in each county wherein such publication is to be made. It shall

not be necessary that publication shall be made on the same day of the week in each of the three weeks, but not less than fourteen days (excluding the day of the first publication) shall intervene between the first publication and the last publication, and publication shall be complete on the date of the last publication.

Source: L. 22: p. 11, § 1. **C.L.** § 9515. **CSA:** C. 138, § 126. **CRS 53:** § 30-1-1. **C.R.S. 1963:** § 29-1-1.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24.

37-1-103. Liberal construction. Articles 1 to 8 of this title, being necessary to secure and preserve the public health, safety, convenience, and welfare, and being necessary for the prevention of great loss of life and for the security of public and private property from floods and other uncontrolled waters, shall be liberally construed to effect the purposes of said articles.

Source: L. 22: p. 72, § 71. **C.L.** § 9585. **CSA:** C. 138, § 196. **CRS 53:** § 30-1-6. **C.R.S. 1963:** § 29-1-6.

37-1-104. Removal of officials for cause. Any director or other officer of any district organized under articles 1 to 8 of this title may be removed for cause after a hearing upon a motion filed by any interested person in the original proceeding in which the district was organized.

Source: L. 22: p. 70, § 67. **C.L.** § 9581. **CSA:** C. 138, § 192. **CRS 53:** § 30-1-2. **C.R.S. 1963:** § 29-1-2.

37-1-105. Remedy by mandamus. The performance of all duties prescribed in articles 1 to 8 of this title concerning the organization and administration or operation of a conservancy district may be enforced against any officer thereof or against any person or corporation refusing to comply with any order of the board of directors, by mandamus, at the instance of the board or of any person or corporation interested in any way in such district or proposed district. Such proceedings shall be instituted in the district court having jurisdiction of the original case.

Source: L. 22: p. 70, § 68. **C.L.** § 9582. **CSA:** C. 138, § 193. **CRS 53:** § 30-1-3. **C.R.S. 1963:** § 29-1-3.

37-1-106. Early hearings. All cases in which there may arise a question of the validity of the organization of a conservancy district, or a question of the validity of any proceeding under articles 1 to 8 of this title, shall be advanced as a matter of immediate public interest and concern and heard in all courts at the earliest practicable moment. The courts shall be open at all times for the purposes of said articles.

Source: L. 22: p. 72, § 70. **C.L.** § 9584. **CSA:** C. 138, § 195. **CRS 53:** § 30-1-5. **C.R.S. 1963:** § 29-1-5.

37-1-107. Correction of faulty notices. (1) In every case where a notice is provided for in articles 1 to 8 of this title, if the court finds for any reason that due notice was not given, the court shall not thereby lose jurisdiction, and the proceeding in question shall not thereby be void or be abated, but the court shall in that case order due notice to be given, and shall continue the hearing until such time as notice shall be properly given, and thereupon shall proceed as though notice had been properly given in the first instance.

(2) In case any particular appraisal, assessment, or levy is held void for want of legal notice, or in case the board of directors determines that any notice with reference to any land may be faulty, then the board of directors may file a motion in the original cause asking that the court order notice to be given to the owner of such land, and the court shall set a time for hearing as provided in articles 1 to 8 of this title. If the original notice as a whole is held to be sufficient but faulty only with reference to publication as to particular lands, only the owners of and persons interested in such particular lands need be notified by such subsequent notice, and if the publication of any notice in any county is held to be defective or not made in time, publication of the defective notice need be had only in the county in which the defect occurred.

Source: L. 22: p. 71, § 69. **C.L.** § 9583. **CSA:** C. 138, § 194. **CRS 53:** § 30-1-4. **C.R.S. 1963:** § 29-1-4.

37-1-108. Short forms and abbreviations. (1) In any order of court the words "The court now here finds that it hath jurisdiction of the parties to and of the subject matter of this proceeding", shall be equivalent to a finding of the existence of each jurisdictional fact necessary to confer plenary jurisdiction upon the court and necessary from the proper signing and filing of the initial petitions to the date of the order, to meet every legal requirement imposed by articles 1 to 8 of this title.

(2) No other evidence of the legal hypothecation of the proceeds of any special assessment levied under said articles, to pay the bonds or warrants issued pursuant to articles 1 to 8 of this title, shall be required than the passage of a resolution by the board of directors and the issuance of bonds or warrants in accordance therewith.

(3) In the preparation of any assessment or appraisal record the usual abbreviations employed by engineers, surveyors, and abstractors may be used.

(4) Where it would be necessary to use a long description to properly describe any parcel of land, the appraisers, after locating the land generally, may refer to the book and page of the public record of any instrument in which the land is described, which reference shall be sufficient for all the purposes of articles 1 to 8 of this title to identify the land described in the public record so referred to.

(5) It shall not be necessary in any notice required to be published by articles 1 to 8 of this title to specify the names of the owners of the lands or of the persons interested therein; but any such notice may be addressed "To all persons interested" with like effect as though such notice named every owner of any lands within the territory specified in the notice and every person interested therein and every lienor, actual or inchoate.

(6) Every district declared upon hearing to be a conservancy district shall thereupon become a political subdivision and a public corporation of the state of Colorado invested with all the powers and privileges conferred upon such districts by articles 1 to 8 of this title.

Source: L. 22: p. 72, § 74. **C.L.** § 9588. **CSA:** C. 138, § 198. **CRS 53:** § 30-1-8. **C.R.S. 1963:** § 29-1-8.

37-1-109. Repeal - saving clause. All laws or parts of laws conflicting in any way with any of the provisions of articles 1 to 8 of this title, in regard to improvements of the character contemplated by said articles, or regulating or limiting the power of taxation or assessment, or otherwise interfering with the execution of articles 1 to 8 of this title according to their terms, are declared inoperative and ineffective as to said articles, as completely as if they did not exist. But all such laws and parts of laws shall not be otherwise affected by said articles.

Source: L. 22: p. 72, § 73. **C.L.** § 9587. **CSA:** C. 138, § 197. **CRS 53:** § 30-1-7. **C.R.S. 1963:** § 29-1-7.

ARTICLE 2

Organization of Conservancy Districts

37-2-101. Jurisdiction of district court - purposes of districts. (1) The district court sitting in and for any county in this state has jurisdiction, when the conditions stated in section 37-2-102 are found to exist, to establish conservancy districts, which may be entirely within or partly within and partly without the judicial district in which said court is located, for any of the following purposes:

(a) Preventing floods;

(b) Regulating stream channels by changing, widening, and deepening the same;

(c) Regulating the flow of streams;

(d) Diverting, controlling, or in whole or in part eliminating watercourses;

(e) Protecting public and private property from inundation; and incident to such purposes and to enable its accomplishment, any district so established has the power to straighten, widen, deepen, change, divert, or change the course or terminus of any natural or artificial watercourse; to build reservoirs, canals, levees, walls, embankments, bridges, or dams; to reclaim or fill low lands and lands subject to overflow; to remove and to regulate and prescribe the location of improvements upon land; to maintain, operate, and repair any of the construction herein named; and to do all other things necessary for the fulfillment of the purposes of articles 1 to 8 of this title; and such powers shall also be construed as purposes for which benefits may be appraised as provided in articles 1 to 8 of this title;

(f) The conservation, development, utilization, and disposal of water for agricultural, municipal, and industrial uses thereof, when desirable as a part of a project or undertaking the principal purpose of which is one or more of the purposes set out in this section;

(g) Participating in the development of parks and recreational facilities within the boundaries of the conservancy district.

Source: L. 22: p. 12, § 2. **C.L.** § 9516. **CSA:** C. 138, § 127. **CRS 53:** § 30-2-1. **L. 57:** p. 296, § 1. **C.R.S. 1963:** § 29-2-1. **L. 94:** (1)(g) added, p. 577, § 1, effective April 7.

37-2-102. Petition. (1) The establishment of conservancy districts for the purposes and in the manner provided for in articles 1 to 8 of this title is declared to be conducive to public health, safety, convenience, and welfare. Before any conservancy district is established under articles 1 to 8 of this title, a petition shall be filed in the office of the clerk of the court vested with jurisdiction, in a county in which all or part of the lands embraced in said proposed conservancy district are situated, signed either by two hundred owners of land or by a majority of the owners of land situate within the limits of the territory proposed to be organized into a district. Such petition may be signed by the governing body of any public corporation lying wholly or partly within the proposed district, in such manner as it may prescribe, and when so signed by such governing body such a petition on the part of the said governing body shall fill all the requirements of representation upon such petition of the owners of land of such public corporation as they appear upon the tax rolls; and thereafter it shall not be necessary for individuals within said public corporation to sign such a petition. Such a petition may also be signed by railroad corporations and other corporations owning lands within the proposed district. Any city interested in some degree in the improvement, upon proper action by its governing body, may alone file the petition required by this section.

(2) The petition shall set forth: The proposed name of said district; that property within the proposed district will be benefited by the accomplishment of one or more of the purposes enumerated in section 37-2-101; and a general description of the purpose of the contemplated improvement and of the territory to be included in the proposed district. Said description need not be given by metes and bounds or by legal subdivisions, but it shall be sufficient to enable a property owner to ascertain whether his property is within the territory proposed to be organized as a district. Said territory need not be contiguous if it is so situated that the organization as a single district of the territory described is calculated to promote one or more of the purposes enumerated in section 37-2-101. Said petition shall pray for the organization of the district by the name proposed.

(3) No petition with the requisite signatures shall be declared null and void on account of alleged defects, but the court may at any time permit the petition to be amended to conform to the facts by correcting any errors in the description of the territory or in any other particular. Several similar petitions or duplicate copies of the same petition for the organization of the same district may be filed and shall together be regarded as one petition. All such petitions filed prior to the hearing on the first petition filed shall be considered by the court the same as though filed with the first petition placed on file. In determining whether a majority of landowners have signed the petition, the court shall be governed by the names as they appear upon the tax roll, which shall be prima facie evidence of such ownership.

Source: L. 22: p. 13, § 3. **C.L.** § 9517. **CSA:** C. 138, § 128. **CRS 53:** § 30-2-2. **C.R.S. 1963:** § 29-2-2.

37-2-103. Bond of petitioners. At the time of filing the petition or at any time subsequent thereto and prior to the time of the hearing on said petition, a bond shall be filed, with security approved by the court, sufficient to pay all the expenses connected with the proceedings in case the organization of the district is not effected. If at any time during the proceeding the court is satisfied that the bond first executed is insufficient in amount, it may

require the execution of an additional bond within a time to be fixed not less than ten days distant, and upon failure of the petitioners to execute the same, the petition shall be dismissed.

Source: L. 22: p. 15, § 4. **C.L.** § 9518. **CSA:** C. 138, § 129. **CRS 53:** § 30-2-3. **C.R.S. 1963:** § 29-2-3.

37-2-104. Notice of hearing on petition. (1) Immediately after the filing of such petition, the court wherein the petition is filed shall by order fix a place and time, not less than sixty-three days nor more than ninety-one days after the petition is filed, for hearing thereon, and the clerk of the court shall cause notice by publication (Schedule Form I) to be made of the pendency of the petition and of the time and place of the hearing thereon. The clerk of the court shall also forthwith cause a copy of said notice to be sent by United States first-class mail or by electronic service using the e-filing system of the judicial department to the board of county commissioners of each of the counties having territory within the proposed district.

(2) The district court in and for the county in which the petition for the organization of a conservancy district has been filed shall thereafter, for all purposes of articles 1 to 8 of this title, except as otherwise provided in said articles, maintain and have original and exclusive jurisdiction coextensive with the boundaries of said conservancy district and of lands and other property proposed to be included in said district or affected by said district, without regard to the usual limits of its jurisdiction.

(3) No judge of such court wherein such petition is filed shall be disqualified to perform any duty imposed by articles 1 to 8 of this title by reason of ownership of property within any conservancy district or proposed conservancy district or by reason of ownership of any property that may be benefited, taxed, or assessed therein.

Source: L. 22: p. 15, § 5. **C.L.** § 9519. **CSA:** C. 138, § 130. **CRS 53:** § 30-2-4. **C.R.S. 1963:** § 29-2-4. **L. 2017:** (1) amended, (HB 17-1142), ch. 66, p. 208, § 2, effective September 1.

Cross references: For Schedule Form I, see § 37-8-101.

37-2-105. Protesting petitions - hearing on petitions - organization of districts. (1) At any time after the filing of a petition for the organization of a conservancy district and not less than thirty days prior to the time fixed by the order of the court for the hearing upon said petition and not thereafter, a petition may be filed in the office of the clerk of the court wherein the proceeding for the creation of said district is pending, signed by a majority of the owners of the land in said proposed district, protesting the creation of said district. Upon the filing of such protesting petition, it is the duty of the clerk of the court forthwith to make as many certified copies thereof, including the signatures thereto, as there are counties into any part of which said proposed district extends and forthwith to place in the hands of the county treasurer of each of such counties one of said certified copies.

(2) Thereupon it shall be the duty of each of such county treasurers to determine from the last tax rolls of his county in his hands, and to certify to the said district court under his official seal, prior to the day fixed for the hearing, the total number of owners of the land situate in said proposed district within his county and the total number of owners of the land situate in such proposed district within his county who have signed said protesting petition, and such

certificate shall constitute prima facie evidence of the facts so stated therein and shall be so received and considered by said court. Upon the day set for the hearing upon the original petition, if it appears to the court from such certificate, and from such other evidence as may be adduced by any party in interest, that the said protesting petition is not signed by a majority of the owners of land within the proposed district, the court shall thereupon dismiss said protesting petition and shall proceed with the original hearing as provided in articles 1 to 8 of this title.

(3) If the court finds from the evidence that said protesting petition is signed by a majority of the owners of the land situate in the district, the court shall forthwith dismiss the original petition praying for the creation of the district. The finding of the court upon the question of the total number of owners of the land situate in said proposed district and upon the question of the number of the owners of the land situate in said proposed district signing said protesting petition, the genuineness of the signatures, and all matters of law and fact incidental to such determinations shall be final and conclusive on all parties in interest whether appearing or not.

(4) At any time prior to the hearing by the court on the petition for the organization of any conservancy district extending into more than one county, or for the inclusion in any existing conservancy district of territory situate in a county no part of which is then in such district, the board of county commissioners of any county into which said proposed district extends, or the board of county commissioners of any county, territory of which is proposed to be included in any existing district, has the right to file, in the court wherein the petition for the organization of such proposed district or the proceeding for the inclusion of additional territory in any existing district is pending, a copy of a resolution of such board of county commissioners protesting against the organization of such district or the inclusion of such territory in an existing district, which copy of resolution shall be duly certified by the clerk of said board of county commissioners, and thereupon, unless said protest is withdrawn prior to the hearing, said court shall deny and dismiss such petition; but the board of county commissioners of any such county into which said proposed district extends, or territory of which is sought to be included in an existing district, shall be required to make and file such protest, if within the time specified a written request to do so, signed by a majority of the owners of the land lying within the part of said proposed conservancy district in said county, is filed with the clerk of said board of county commissioners.

(5) If the board of county commissioners fails or refuses, upon the filing of such request, to protest against the organization of said district, and to file a certified copy thereof with the clerk of the court, then the court, upon petition, prior to such hearing, of any person or public corporation signing the request, or attorney or agent of any person or corporation signing such request, shall determine the sufficiency of such request so filed, upon notice by publication within said county, and hearing thereon, and if it is determined by the court that such request has the requisite signatures, the court shall enter an order in the same manner and effect as though a protest had been made and filed by the board of county commissioners.

(6) Any owner of real property in said proposed district not having individually signed a petition for the organization of a conservancy district and desiring to object to the organization and incorporation of said district, on or before the date set for the cause to be heard, may file objections to the organization and incorporation of the district. Such objections shall be limited to a denial of the statements in the petition and shall be heard by the court as an advanced case without unnecessary delay.

(7) Upon the said hearing, if it appears that a petition for the organization of a conservancy district has been signed and presented, as provided in section 37-2-102, in conformity with articles 1 to 8 of this title, and that the allegations of the petition are true, and that no protesting petition has been filed, or if filed has been dismissed as provided in this section, the court, by order duly entered of record, shall adjudicate all questions of jurisdiction, declare the district organized, and give it a corporate name by which in all proceedings it shall thereafter be known, and thereupon the district shall be a political subdivision of the state of Colorado and a body corporate with all the powers of a public or municipal corporation and shall have power to sue and be sued, to incur debts, liabilities, and obligations, to exercise the right of eminent domain and of taxation and assessments as provided in said articles, to issue negotiable bonds, and to do all acts expressly authorized and all acts necessary and proper for the carrying out of the purposes for which the district was created and for executing the powers with which it is invested.

(8) In such decree the court shall designate the place where the office or principal place of business of the district shall be located, which shall be within the corporate limits of the district, if practicable, and which may be changed by order of court from time to time. The regular meetings of the board of directors shall be held at such office or place of business, but for cause may be adjourned to any other convenient place. The official records and files of the district shall be kept at the office so established.

(9) If the court finds that no petition has been signed and presented in conformity with articles 1 to 8 of this title, or that the material facts are not as set forth in the petition filed, it shall dismiss said proceedings and adjudge the costs against the signers of the petition in such proportions as it deems just and equitable. No appeal or other remedy shall lie from an order dismissing said proceedings; but nothing in this section shall be construed to prevent the filing of a subsequent petition for similar improvement or for a similar conservancy district, and the right so to renew such proceedings is expressly granted and authorized.

(10) If an order is entered establishing the district, such order shall be deemed final and binding upon the real property within the district, and no appeal or other remedy shall lie therefrom, and the entry of such order shall finally and conclusively establish the regular organization of the said district against all persons except the state of Colorado, in an action in the nature of quo warranto, commenced by the attorney general within three months after said decree declaring such district organized as provided in this section, and not otherwise. The organization of said district shall not be directly nor collaterally questioned in any suit, action, or proceeding except as expressly authorized in this article.

Source: L. 22: p. 16, § 6. **C.L.** § 9520. **CSA:** C. 138, § 131. **CRS 53:** § 30-2-5. **C.R.S. 1963:** § 29-2-5.

37-2-106. Provisions for recording decree of incorporation. Within thirty days after the district has been declared a corporation by the court, the clerk of the court shall transmit to the division of local government in the department of local affairs and to the county clerk and recorder in each of the counties having lands in said district copies of the findings and the decree of the court incorporating said district. The same shall be filed with said division, and copies shall also be recorded in the office of the county clerk and recorder of each county in which a part of the district may be, where they shall become permanent records.

Source: L. 22: p. 20, § 7. **C.L.** § 9521. **CSA:** C. 138, § 132. **CRS 53:** § 30-2-6. **C.R.S. 1963:** § 29-2-6. **L. 76:** Entire section amended, p. 605, § 29, effective July 1. **L. 83:** Entire section amended, p. 1227, § 11, effective July 1.

ARTICLE 3

Board of Directors - Powers and Duties

37-3-101. Appointment or election of directors. (1) (a) Except as specified in subsection (2) of this section:

(I) Within thirty days after entering the decree incorporating the district, the court shall appoint as a board of directors of the district three persons who are residents of the county or counties in which the conservancy district is situated, at least two of whom shall own real property in the district, one for a term of two years, one for a term of three years, and one for a term of five years. When a director no longer resides within the district or no longer owns property within the district, a vacancy is created on the district's board of directors.

(II) At the expiration of the directors' respective terms of office, the court shall make appointments for terms of five years.

(III) The court shall fill all vacancies that occur on the board.

(IV) Each director shall hold office during the term for which he or she is appointed and until his or her successor is duly appointed and has qualified and shall furnish a corporate surety bond, at the expense of the district, in an amount and form fixed and approved by the court, conditioned upon the faithful performance of his or her duties as director.

(b) All special and regular meetings of the board shall be held at locations that are within the boundaries of the district or that are within the boundaries of any county in which the district is located, in whole or in part, or in any county so long as the meeting location does not exceed twenty miles from the district boundaries. The provisions of this section governing the location of meetings may be waived only if the proposed change of location of a meeting of the board appears on the agenda of a regular or special meeting of the board and if a resolution is adopted by the board stating the reason for which a meeting of the board is to be held in a location other than under the provisions of this section and further stating the date, time, and place of the meeting.

(2) On and after August 6, 2014, with regard only to the board of directors of the Pueblo conservancy district:

(a) The directors who held office on August 6, 2014, referred to in this subsection (2) as the holdover directors, continue to hold office until the expiration of their terms. Upon expiration of their terms, pursuant to subparagraph (I) of paragraph (b) of this subsection (2), the governing body of the city of Pueblo shall fill the two vacancies for the holdover directors who resided within the city of Pueblo, and pursuant to subparagraph (II) of paragraph (b) of this subsection (2), the board of county commissioners of Pueblo county shall fill the vacancy for the holdover director who resided within the county of Pueblo.

(b) The board consists of nine directors, who are appointed and represent areas within the district as follows:

(I) The governing body of the city of Pueblo shall appoint four of the directors, with initial terms of three years, who must represent and be residents of the city of Pueblo;

(II) The board of county commissioners of Pueblo county shall appoint four of the directors with initial terms of four years. Three of the directors represent and must be residents of those portions of Pueblo county not located within the city of Pueblo. One director must represent and reside within the Pueblo West metropolitan district and be a member or designee of the board of directors of the Pueblo West metropolitan district.

(III) The board of county commissioners of Pueblo county and the governing body of the city of Pueblo shall jointly appoint one at-large director, whose initial term is five years.

(c) Directors serve at the pleasure of the respective appointing authorities. The respective appointing authorities shall fill vacancies on the board, whether by expiration of a term of office, increase in the number of directors, or otherwise.

(d) The board shall comply with the open meetings law, section 24-6-402, C.R.S., with regard to all official board actions, including those related to all proposed increases in fees assessed by the board.

Source: L. 22: p. 21, § 8. **C.L.** § 9522. **CSA:** C. 138, § 133. **CRS 53:** § 30-3-1. **C.R.S. 1963:** § 29-3-1. **L. 90:** Entire section amended, p. 1501, § 13, effective July 1. **L. 2014:** Entire section amended, (HB 14-1184), ch. 99, p. 356, § 1, effective August 6.

37-3-102. Oath or affirmation - organization. Each director shall take an oath or affirmation in accordance with section 24-12-101. The board of directors shall choose one of its number as chairperson of the board and president of the district and shall elect some suitable person secretary of the board and of the district who may or may not be a member of the board. Such board shall adopt a seal and shall keep in a visual text format that may be transmitted electronically a record of all of its proceedings, minutes of all meetings, certificates, contracts, bonds given by employees, and corporate acts, which shall be open to the inspection of all owners of property in the district as well as to all other interested parties.

Source: L. 22: p. 21, § 9. **C.L.** § 9523. **CSA:** C. 138, § 134. **CRS 53:** § 30-3-2. **C.R.S. 1963:** § 29-3-2. **L. 2009:** Entire section amended, (HB 09-1118), ch. 130, p. 563, § 10, effective August 5. **L. 2018:** Entire section amended, (HB 18-1138), ch. 88, p. 700, § 33, effective August 8.

Cross references: For the legislative declaration in HB 18-1138, see section 1 of chapter 88, Session Laws of Colorado 2018.

37-3-103. General powers. (1) In order to protect life and property within the district, and to protect or relieve land subject to overflowing or washing, or which is menaced or threatened by the normal flow or flood or surplus or overflow waters of any natural watercourse, stream, canyon, or wash, whether perennial, intermittent, or flood, and in order to effect the protection of the land and other property in the district, and in order to accomplish all other purposes of the district, the board of directors is authorized:

(a) To clean out, straighten, widen, alter, deepen, or change the course or terminus of any ditch, drain, sewer, river, watercourse, pond, lake, creek, or natural stream in or out of said district;

(b) To fill up any abandoned or altered ditch, drain, sewer, river, watercourse, pond, lake, creek, or natural stream and to concentrate, divert, or divide the flow of water in or out of said district;

(c) To construct and maintain main and lateral ditches, sewers, canals, levees, dikes, dams, sluices, revetments, reservoirs or retarding basins, floodways, pumping stations and syphons, and any other works and improvements deemed necessary to construct, preserve, operate, or maintain the works in or out of said district;

(d) To construct, reconstruct, or enlarge or cause to be constructed, reconstructed, or enlarged any bridges that may be needed in or out of said district;

(e) To construct, reconstruct, or elevate roadways and streets;

(f) To construct or reconstruct any works and improvements along, across, through, or over any public highway, canal, railroad right-of-way, track, grade, fill, or cut, in or out of said district;

(g) To remove or change the location of any fence, building, railroad, canal, or other improvements in or out of said district;

(h) To acquire by donation, purchase, or condemnation, to construct, own, lease, use, and sell, and to hold, encumber, control, and maintain any easement, water right, railroad right-of-way, canal, sluice, reservoir or retarding basin, mill dam, water power, work, franchise, park, cemetery, or other public way or place, or any real or personal property, public or private, in or out of said district, for rights-of-way or retarding basins, or for materials of construction, or for any other use not inconsistent with the purposes of articles 1 to 8 of this title;

(i) To replot or subdivide land, open new roads, parks, streets, and alleys, or change the location of existing ones;

(j) To cause the dissolution of the district pursuant to article 3.5 of this title;

(k) To participate in the development of parks and recreational facilities including, but not limited to, trails, greenways, and riverfront development within the boundaries of said district.

(2) Nothing in articles 1 to 8 of this title shall be construed to grant to any conservancy district organized under said articles the power to regulate or administer water rights or to take or damage such water rights, except upon payment of compensation.

Source: L. 22: p. 25, § 15. **C.L.** § 9529. **CSA:** C. 138, § 140. **CRS 53:** § 30-3-8. **L. 57:** p. 298, § 1. **C.R.S. 1963:** § 29-3-8. **L. 81:** (1)(j) added, p. 1746, § 1, effective May 28. **L. 94:** (1)(k) added, p. 577, § 2, effective April 7.

37-3-104. General grant of power. The board of directors of any district organized under articles 1 to 8 of this title is vested with all powers necessary for the accomplishment of the purposes for which the district is organized and capable of being delegated by the general assembly of the state of Colorado; and no enumeration of particular powers granted shall be construed to impair any general grant of power contained in this section, or to limit any such grant to power of the same class as those so enumerated.

Source: L. 22: p. 31, § 24. **C.L.** § 9538. **CSA:** C. 138, § 149. **CRS 53:** § 30-3-17. **C.R.S. 1963:** § 29-3-17.

37-3-105. Employment of agents. (1) The secretary shall be the custodian of the records of the district and of its corporate seal and shall assist the board of directors in such particulars as it may direct in the performance of its duties. The secretary shall attest, under the corporate seal of the district, all certified copies of the official records and files of the district that may be required of him by this article or by any person ordering the same and paying the reasonable cost of transcription, and any portion of the record so certified and attested shall prima facie import verity. The secretary shall serve also as treasurer of the district unless a treasurer is otherwise provided for by the board of directors. The board shall also have the authority to appoint other members of the board as custodians for district funds. The board may also employ a chief engineer, who may be an individual, partnership, or corporation; an attorney; and such other engineers, attorneys, and agents and assistants as may be needed; and it may provide for their compensation, which, with all other necessary expenditures, shall be part of the cost or maintenance of the improvement.

(2) The employment of the secretary, treasurer, chief engineer, and attorney for the district shall be evidenced by agreements in writing which, so far as possible, shall specify the amounts to be paid for their services. The chief engineer shall be superintendent of all the works and improvements, and shall make a full report to the board of directors each year, or oftener if required by the board, and may make such suggestions and recommendations to the board as he may deem proper. The secretary and treasurer and such other agents or employees of the district as the court may direct shall furnish corporate surety bonds, at the expense of the district, in amount and form fixed and approved by the court, conditioned upon the faithful performance of their respective duties.

Source: L. 22: p. 22, § 11. **C.L.** § 9525. **CSA:** C. 138, § 136. **CRS 53:** § 30-3-4. **C.R.S. 1963:** § 29-3-4. **L. 81:** (1) amended, p. 1750, § 3, effective May 28.

37-3-106. Regulations to protect works. (1) Where necessary, in order to secure the best results from the execution and operation of the plans of the district or to prevent damage to the district by the deterioration or misuse or by the pollution of the waters of any watercourse therein, the board of directors may make regulations for and may prescribe the manner of building bridges, roads, fences, or other works in, into, along, or across any channel, reservoir, or other construction; and may prescribe the manner in which ditches or other works shall be adjusted to or connected with the works of the district or any watercourse therein; and, when not in conflict with the regulations of the state board of health, may prescribe the manner in which the watercourses of the district may be used for sewer outlets or for disposal of waste.

(2) The construction of any works in a manner harmful to the district or to any watercourse therein, and in a manner contrary to that specified by the board of directors, is a misdemeanor, punishable by a fine of not more than one thousand dollars. The directors have authority to enforce by mandamus or other legal proceedings all necessary regulations made by them and authorized by articles 1 to 8 of this title and may remove any harmful construction or may close any opening improperly made. Any person, corporation, or municipality willfully failing to comply with such regulations is liable for all damage caused by such failure and for the cost of renewing any construction damaged or destroyed.

Source: L. 22: p. 28, § 19. **C.L.** § 9533. **CSA:** C. 138, § 144. **CRS 53:** § 30-3-12. **C.R.S. 1963:** § 29-3-12.

37-3-107. Quorum. A majority of the directors shall constitute a quorum, and a concurrence of the majority in any matter within their duties is sufficient for its determination.

Source: L. 22: p. 22, § 10. **C.L.** § 9524. **CSA:** C. 138, § 135. **CRS 53:** § 30-3-3. **C.R.S. 1963:** § 29-3-3.

37-3-108. Plans. (1) Upon its qualification, the board of directors shall prepare or cause to be prepared a plan for the improvements for which the district was created. Such plan shall include such maps, profiles, plans, and other data and descriptions as may be necessary to set forth properly the location and character of the work, and of the property benefited or taken or damaged, with estimates of cost and specifications for doing the work.

(2) In case the board of directors finds that any former survey made by any other district or in any other manner is useful for the purposes of the district, it may take over the data secured by such survey or such other proceedings as may be useful to it and may pay therefor an amount equal to the value of such data to said district.

(3) Upon the completion of such plan, the board of directors shall cause notice thereof to be given by publication in each county in which said district may be located, in whole or in part, and shall permit the inspection thereof at the office of the district by all persons interested. Said notice shall fix the time and place for the hearing of all objections to said plan not less than twenty days nor more than thirty days after the last publication of said notice. All objections to said plan shall be in writing and filed with the secretary of the district at his office not more than ten days after the last publication of said notice. After said hearing before the board of directors, the board shall adopt a plan as the official plan of the said district. If, however, any person objects to said official plan, so adopted, then such person may, within ten days from the adoption of said official plan, file in the office of the clerk of the court in the original case establishing the district his objections in writing, specifying the features of the plan to which objection is made, and thereupon the court shall fix a day for the hearing thereof before the court, not less than ten days nor more than twenty days after the time fixed for filing objections, at which time the court shall hear said objections and adopt, reject, or refer back said plan to said board of directors.

(4) If the court should reject said plan, then the board shall proceed as in the first instance under this section to prepare another plan. If the court should refer back said plan to the board for amendment, then the court shall continue the hearing to a day certain without publication of notice. If the court approves the said plan as the official plan of the district, then a certified copy of the order of the court approving the same shall be filed with the secretary of the district and by him incorporated into the records of the district. The official plan may be altered in detail from time to time until the assessment record is filed, and of all such alterations the appraisers shall take notice. After the assessment record has been filed in court, no alterations of the official plan shall be made except as provided in section 37-4-113.

Source: L. 22: p. 23, § 12. **C.L.** § 9526. **CSA:** C. 138, § 137. **CRS 53:** § 30-3-5. **C.R.S. 1963:** § 29-3-5.

37-3-109. Execution of plans. The board of directors has full authority to devise, prepare for, execute, maintain, and operate all works or improvements necessary or desirable to complete, maintain, operate, and protect the works provided for by the official plan and to that end may employ and secure men and equipment under the supervision of the chief engineer or other agents or may in its discretion let contracts for such works, either as a whole or in parts.

Source: L. 22: p. 24, § 13. **C.L.** § 9527. **CSA:** C. 138, § 138. **CRS 53:** § 30-3-6. **C.R.S. 1963:** § 29-3-6.

37-3-110. Contracts. When it is determined to let the work by contract, contracts in amounts in excess of ten thousand dollars shall be advertised after notice by publication calling for bids, and the board may reject any or all bids or may let said contract to the lowest or best bidder who gives a good and approved bond with ample security, conditioned on the carrying out of the contract. Such contract shall be in writing and shall be accompanied by or shall refer to plans and specifications for the work to be done prepared by the chief engineer. Said contract shall be approved by the board of directors and signed by the president of the district and by the contractor and shall be executed in duplicate; but in case of sudden emergency when it is necessary in order to protect the district, the advertising of contracts may be waived upon the unanimous consent of the board of directors, with the approval of the court; but the provisions of this section shall not apply if it is determined by the board of directors that the work be done on force account.

Source: L. 22: p. 26, § 16. **C.L.** § 9530. **CSA:** C. 138, § 141. **CRS 53:** § 30-3-9. **C.R.S. 1963:** § 29-3-9.

37-3-111. Surveys and investigation. The board of directors also has the right to establish and maintain stream gauges, rain gauges, and a flood warning service with telephone or telegraph lines or telephone or telegraph service, and may make such surveys and examinations of rainfall and flood conditions, stream flow, and other scientific and engineering subjects as are necessary and proper for the purposes of the district, and may issue reports thereon.

Source: L. 22: p. 30, § 22. **C.L.** § 9536. **CSA:** C. 138, § 147. **CRS 53:** § 30-3-15. **C.R.S. 1963:** § 29-3-15.

37-3-112. Cooperation with United States or other agencies. The board of directors also has the authority to enter into contracts or other arrangements with the United States government or any department thereof, with persons, railroads, or other corporations, with public corporations, and with the state government of this or other states and with irrigation, drainage, conservation, conservancy, or other improvement districts, in this or other states, for cooperation or assistance in constructing, maintaining, using, and operating the works of the district or for making surveys and investigations or reports thereon. It may purchase, lease, or acquire land or other property in adjoining states in order to secure outlets or for other purposes of articles 1 to 8 of this title and may let contracts and spend money for securing such outlets or other works in adjoining states.

Source: L. 22: p. 30, § 23. **C.L.** § 9537. **CSA:** C. 138, § 148. **CRS 53:** § 30-3-16. **C.R.S. 1963:** § 29-3-16.

37-3-113. Access to lands - penalty. The board of directors of any district organized under articles 1 to 8 of this title, or its employees or agents, including contractors and their employees and the members of the board of appraisers provided for in article 4 of this title, and their assistants, may enter upon lands within or without the district in order to make surveys and examinations to accomplish the necessary preliminary purposes of the district or to have access to the work, being liable, however, for actual damage done; but no unnecessary damage shall be done. Any person or corporation preventing such entry is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than fifty dollars.

Source: L. 22: p. 25, § 14. **C.L.** § 9528. **CSA:** C. 138, § 139. **CRS 53:** § 30-3-7. **C.R.S. 1963:** § 29-3-7.

37-3-114. Removal of structures. (1) For the accomplishment of the official plan, the board of directors of any district has full power to improve in alignment, section, grade, location, or any other manner any watercourse, and it may remove, widen, lengthen, lower, raise, or otherwise change any public or private road bridge or railroad bridge, or any flume, aqueduct, or telephone, telegraph, gas, oil, sewer, water, or other pipelines, or any other construction over, across, in, into, under, or through any such watercourse or may require the same to be done. The foregoing shall apply to all such changes specified by the official plan or reasonably necessary for the accomplishment of the same; but, if any such change is made necessary in any construction because of the failure of the same to permit the free flow of water in such stream in time of flood or to permit the necessary enlargement or protection of the channel, then the owner of such construction shall make such change and all adjustments of grade, roadway, track, approach, or other construction incidental thereto, without cost to the district and without any claim for damages against the district; but the district shall pay the cost of excavating the earth for the enlargement of any channel or for placing earth for the filling of any channel, where such excavation or filling is required as a part of the official plan in making the changes outlined in this section. The district shall not be required to make such fill or excavation unless the same would be necessary to the official plan if the construction or work so changed did not exist.

(2) Before the removal, change, or modification of any work or construction outlined in this section, the board of directors shall give notice to the owner thereof requiring that the same be adapted to the official plan. In case such removals, changes, or adjustments are not commenced and completed by the owner within the respective times specified therefor in such notice, which time shall be reasonable under all circumstances, such removals, changes, or adjustments may be made by the district at the expense of the owner.

Source: L. 22: p. 28, § 20. **C.L.** § 9534. **CSA:** C. 138, § 145. **CRS 53:** § 30-3-13. **C.R.S. 1963:** § 29-3-13.

37-3-115. Passing equipment through bridge or grade. In case it is necessary to pass any dredge boat or other equipment through a bridge or grade of any railroad company or other corporation, county, city, town, or other municipality, the board of directors shall give notice to

the owner of said bridge or grade that the same shall be removed temporarily to allow the passage of such equipment or that an agreement be immediately entered into in regard thereto. The owner of said bridge or grade shall keep an itemized account of the cost of the removal and if necessary of the replacing of said bridge or grade, and the necessary and actual cost shall be paid by the district. In case the owner of said bridge or grade fails to commence or complete provision for the passage of said equipment within the time specified in the notice, the board of directors may remove such bridge or grade at its own expense, interrupting traffic in the least degree consistent with good work and without unnecessary damage or delay. In case it is hindered or prevented from so doing, the owner of said bridge or grade shall be liable for all damage resulting to the district therefrom.

Source: L. 22: p. 30, § 21. **C.L.** § 9535. **CSA:** C. 138, § 146. **CRS 53:** § 30-3-14. **C.R.S. 1963:** § 29-3-14.

37-3-116. Condemnation under general law. The district shall also have the right, instead of having appraisals made by the board of appraisers, to condemn for the use of the district, according to the procedure provided by articles 1 to 7 of title 38, C.R.S., for the appropriation of land or other property taken for public use, any land or property within or without said district not acquired or condemned by the court on the report of said appraisers.

Source: L. 22: p. 27, § 18. **C.L.** § 9532. **CSA:** C. 138, § 143. **CRS 53:** § 30-3-11. **C.R.S. 1963:** § 29-3-11.

37-3-117. Dominant right of eminent domain. (1) The district, when necessary for the purposes of articles 1 to 8 of this title, has a dominant right of eminent domain over the right of eminent domain of railroad, telegraph, telephone, gas, water power, and other companies and corporations and over towns, cities, counties, and other public corporations.

(2) In the exercise of this right, due care shall be taken to do no unnecessary damage to other public utilities and, in case of failure to agree upon the mode and terms of interference, not to interfere with their operations or usefulness beyond the actual necessities of the case, due regard being given to the other public interests involved.

Source: L. 22: p. 27, § 17. **C.L.** § 9531. **CSA:** C. 138, § 142. **CRS 53:** § 30-3-10. **C.R.S. 1963:** § 29-3-10.

ARTICLE 3.5

Dissolution of Conservancy Districts

37-3.5-101. Dissolution of district. (1) At such time as the board of directors of any conservancy district by unanimous decision determines that the original purposes for the organization of the district have been accomplished and after the district has paid in full any indebtedness incurred by it, the board may devise a plan of dissolution which shall be filed, together with a petition for dissolution, with the court which authorized the organization of the district pursuant to section 37-2-105 (7).

(2) Such plan of dissolution shall set forth the proposal by the board of directors to dispose of any assets which the district may then own and to transfer any remaining responsibilities of the district to a political subdivision of the state.

(3) Immediately after the filing of such petition for dissolution, the court wherein such petition is filed shall, by order, fix a date, time, and place for a public hearing thereon, and thereupon the clerk of said court shall cause notice of said hearing to be published weekly for three successive weeks in a newspaper of general circulation in the county where said court is located. Any person who wishes to object to the proposed plan of dissolution shall file a written objection at any time after the filing of a petition for dissolution but not less than five days prior to the date fixed by the order of the court for the hearing upon said petition. At the hearing, the court may take such testimony as the court deems proper. If the court finds that the original purpose for the organization of the district has been accomplished, that the district is no longer indebted to any person, and that adequate provision has been made for the disposition of any assets of the district and the transfer of any remaining responsibilities of the district to a political subdivision of the state, the court may enter an order approving the plan of dissolution. In lieu of approving said plan, the court may order an election submitting the proposition of dissolution of the district to the electors of the district, and any such election ordered shall be conducted pursuant to the procedures of sections 37-3.5-105 to 37-3.5-107.

(4) If an order approving the plan of dissolution is entered, the board of directors shall expeditiously implement the plan of dissolution and upon the completion of its implementation shall file, with the court and with the division of local government in the department of local affairs, a notice that the dissolution of the district has been completed in compliance with the plan of dissolution approved by the court. Upon the receipt of such notice, the court shall enter a decree granting the petition for dissolution and dissolving the district. On and after the date of the entering of such decree, the district shall be deemed dissolved, any bonds posted on behalf of members of the board shall be deemed discharged, and the board of directors shall be relieved of further responsibilities and liabilities with regard to the district.

(5) As used in this section, "political subdivision" means any entity of government authorized by law to impose ad valorem taxes on taxable property located within its territorial limits.

Source: L. 81: Entire article added, p. 1746, § 2, effective May 28.

37-3.5-102. Election for dissolution - petition or resolution filed. (1) Any conservancy district organized may be dissolved in the manner specified in this section and sections 37-3.5-103 to 37-3.5-107 if such district has not been authorized to incur bonded or other indebtedness under the procedures set forth in article 5 of this title and such district has not incurred bonded or other indebtedness pursuant to the provisions of any other law; except that, if such district has entered into a contract with the United States or any other agency thereof, no dissolution shall take place unless the secretary of the interior of the United States has first consented thereto.

(2) An election submitting the proposition of dissolution of the district may be initiated by the filing of a copy of a resolution adopted by three-fourths of all the members of the board of directors of such district requesting such an election or by the filing of a petition requesting such election. Such resolution or petition shall be filed in the district court which formed said district.

(3) Any such petition so filed shall be accompanied by a good and sufficient bond for five hundred dollars with not less than two sureties approved by the court, and, if a majority of the qualified electors do not vote for dissolution in the election specified in this article, the amount of such bond shall be forfeited to the district; otherwise the same shall be discharged.

(4) If the valuation for assessment of land together with improvements thereon within said district when formed is in excess of twenty million dollars, such petition shall bear signatures of any owners of land equal in number to two-thirds or more of the number of such type of owners required by section 37-2-102 upon a petition for the formation of such a district. Such land shall be situated within the limits of the district and shall not be embraced within the incorporated limits of any city or town. Said petition shall also bear the signatures of any owners of land or land embraced within the incorporated limits of a city or town equal in number to two-thirds or more of the number of such type of owners required by said section upon a petition for the formation of such a district, said land to be situated within the limits of the district.

(5) If the valuation for assessment of land and improvements thereon within such district when formed is less than twenty million dollars, said petition shall contain the same number and type of signatures required by section 37-2-102 upon petitions for the formation of such a district. In either case the petition shall set forth opposite each signature the description of the land and the valuation for assessment thereof together with any improvements. Similar petitions or duplicate copies of the same petition may be filed together and shall be regarded as one petition. No petition with the requisite signatures shall be declared void on account of alleged defects, but the court may permit the petition to be amended from time to time to conform to the facts by correcting errors in descriptions, valuation, or any other particular.

Source: L. 81: Entire article added, p. 1747, § 2, effective May 28.

37-3.5-103. Notice of election. Upon presentation of such petition or resolution, the court shall cause a notice to be published forthwith at least once each week for four consecutive weeks in a newspaper of general circulation in each county where the district or parts thereof lie. Such notice shall recite that a petition or resolution for dissolution of the district has been filed, shall describe generally the territory of the district, and shall further specify the time and places of election, which time shall not be less than sixty days nor more than ninety days after the date of the last publication of the notice. If an objection to the petition or resolution is filed in such court by an owner of land situated within said district within twenty days from the date of the last publication of the notice, the court may, if necessary, continue the election from time to time until all objections are disposed of. Due notice of the time and places of any continued election shall be given in the manner and form prescribed above.

Source: L. 81: Entire article added, p. 1748, § 2, effective May 28.

37-3.5-104. Objections to resolution or petition. Objections to a resolution for an election shall be confined to the question of whether sufficient directors voted in favor of the same. Objections to a petition for such election shall be confined to the question of whether sufficient qualified owners of land situate within the district have signed the petition for such election. Such petition shall be accepted as prima facie evidence of all facts stated therein, and all signatures affixed to such petition shall be presumed to be those of qualified owners residing

within the boundaries of the district until the contrary is proven. No signer of a petition shall be permitted to withdraw his name from such petition after it is filed, except for fraud. All objections shall be heard as an advanced case on the docket of the court. Nothing in this section shall be construed to prevent the filing of subsequent resolutions or petitions for the same purpose, but elections on the proposition of dissolution shall not be held more frequently than once every three years.

Source: L. 81: Entire article added, p. 1748, § 2, effective May 28.

37-3.5-105. Election procedure - ballot. (1) Any election held for the purpose of submitting the proposition of dissolution of a district may be held separately or may be consolidated or held concurrently with any other election authorized by law. The election shall be conducted by the secretary of the board of directors of such district under the supervision of the court, and the court shall fix the manner of holding the same and shall also fix the compensation to be paid the officers of the election and shall designate the precincts and polling places. The court shall also appoint for each polling place and for each precinct, from the electors thereof, the officers of such election, which officers shall consist of three judges, one of whom shall act as clerk, who shall constitute a board of election for each polling place.

(2) The description of precincts may be made by reference to any order of the board of county commissioners of the county in which the district or any part thereof is situated or by reference to any previous order or resolution of the board or by detailed description of such precincts. Precincts established by the boards of the various counties may be consolidated for special elections held under this article. In the event that any such election is called to be held concurrently with any other election or is consolidated therewith, the court order need not designate precincts or polling places or the names of officers of election but shall contain a reference to the act or order calling such other election and fixing the precincts and polling places and appointing election officers therefrom.

(3) The respective election boards shall conduct the election in their respective precincts in the manner prescribed by law for the holding of general elections and shall make their returns to the secretary of the district. At any regular or special meeting of the board held not earlier than five days following the date of such election, the returns thereof shall be canvassed and the results declared. In the event that any election held under this article is consolidated with any primary or general election, the returns thereof shall be made and canvassed at the time and in the manner provided by law for the canvass of the returns of such primary or general election. It is the duty of such canvassing body to promptly certify and transmit to the board a statement of the result of the vote upon the proposition submitted under this article. Upon receipt of such certificate, it is the duty of the board to tabulate and declare the results of the election held under this article.

(4) The results of such election shall be certified promptly by the secretary of the board of directors to the court. It is the duty of the secretary of the board of directors of the district to prepare ballots to be used at the election on which shall be inscribed the words "For Dissolution" and "Against Dissolution". The costs of the election and ballots shall be paid by the district under the supervision of the court, and the district shall be authorized, under the supervision of the court, to borrow funds for this purpose. Irrespective of any other provision of this article, the

district shall not be required or authorized to hold any election on the proposition of such borrowing.

Source: L. 81: Entire article added, p. 1749, § 2, effective May 28.

37-3.5-106. Majority vote determines question. The electors of the district shall be qualified to vote on the question of dissolving the district. If a majority of votes are for dissolution of the district, the district shall be dissolved as provided in section 37-3.5-107. Any objections to the election, or proceedings to invalidate the election, must be filed in the court within thirty days from the date of the election. Errors, omissions, and irregularities not affecting substantial rights shall be disregarded.

Source: L. 81: Entire article added, p. 1750, § 2, effective May 28.

37-3.5-107. Winding up and dissolution - order entered. (1) In the event that the vote is for dissolution, any qualified signer of the petition for the election or the board of directors of such district may, within such time as may be fixed by the court, present a written plan for the winding up of the affairs of the district. Such plan may specify that the affairs of the district be wound up by the board of directors of the district or by a receiver appointed by the court for that purpose. On a day fixed by the court, the court shall consider such plan and shall enter an order establishing therefrom a plan for the winding up of such affairs. The court shall retain continuing jurisdiction to modify such plan from time to time and shall supervise such winding up.

(2) If no such plan is presented on or before the day set by the court, then the court shall appoint a receiver to wind up the affairs of the district under the court's supervision. Upon the appointment of any receiver, all authority of the board of directors of the district shall terminate; except that its authority to levy taxes for the payment of the obligations of the district and the costs of winding up shall continue until the district is dissolved. Such board shall levy taxes within the limits imposed by article 5 of this title sufficient to pay expeditiously such obligations and costs, and, if a receiver has been appointed, all tax collections shall be delivered to such receiver.

(3) When it appears to the satisfaction of the court that all obligations of the district have been discharged and the costs of winding up the district paid, such court shall enter an order dissolving the district, and a certified copy of such order shall be recorded by the clerk of the court in all counties in which the district may be situate. All funds remaining in the hands of such receiver or board of directors after such dissolution shall be divided among the counties comprising any part of such district in proportion to the total valuation of taxable property in such county within the boundaries of such district, as determined by the tax roll of such counties in the treasurer's hands, for the calendar year preceding the year in which such dissolution occurs, and said receiver or members of the board of directors shall thereupon be discharged by the court.

Source: L. 81: Entire article added, p. 1750, § 2, effective May 28.

ARTICLE 4

37-4-101. Appointment of appraisal commissioners. At the time of making its order organizing the district or at any time thereafter, the court shall appoint three commissioners, referred to in this article as appraisers or the board of appraisers, whose duties shall be to appraise the lands or other property within and without the district to be acquired for rights-of-way, reservoirs, and other works of the district and to appraise all benefits and damages accruing to all land within or without the district by reason of the execution of the official plan. Said appraisers shall be freeholders residing within the state of Colorado, who may or may not own lands within said district. Each of the appraisers, before taking up his duties, shall take and subscribe to an oath that he will faithfully and impartially discharge his duties as such appraiser and that he will make a true report of such work done by him. The appraisers at their first meeting shall elect one of their own number chairman, and the secretary of the board of directors or his deputy shall be ex officio secretary of said board of appraisers during their continuance in office. A majority of the appraisers shall constitute a quorum, and a concurrence of the majority in any matter within their duties is sufficient for its determination. The court, by order, may remove any appraiser at any time, and shall fill all vacancies in the board of appraisers, or may appoint a new board, as occasion may require, which new board, if appointed, shall perform all the duties and exercise all the powers of the board of appraisers of the district.

Source: L. 22: p. 31, § 25. **C.L.** § 9539. **CSA:** C. 138, § 150. **CRS 53:** § 30-4-1. **C.R.S. 1963:** § 29-4-1.

37-4-102. Appraisals. (1) During the preparation of the official plan, the board of appraisers shall examine and become acquainted with the nature of the plans for the improvement and of the lands and other property affected thereby, in order that they may be better prepared to make appraisals.

(2) When the official plan is filed with the secretary of the district, he shall at once notify the appraisers, and they shall thereupon proceed to appraise the benefits of every kind to all land and property within or without the district which will result from the organization of said district and the execution of the official plan. They shall also appraise the damages sustained and the value of the land and other property necessary to be taken by the district for which settlement has not been made by the board of directors. In the progress of their work, the appraisers shall have the assistance of the attorney, engineers, secretary, and other agents and employees of the district.

(3) The board of appraisers shall also appraise the benefits and damages, if any, accruing to cities, towns, counties, and other public corporations as political entities, and to the state of Colorado, and the same shall be considered the same as benefits or damages, as the case may be, to land or other property.

(4) Before appraisals of compensation and damages are made, the board of directors of the district may report to the appraisers the parcels of land it wishes to purchase and for which it wishes appraisals to be made, both for easement and for purchase in fee simple, and the directors may specify the particular purpose for which and the extent to which an easement in any property is desired, describing definitely such purpose and extent.

(5) The appraisers shall appraise all damages which may, because of the execution of the official plan, accrue to real or other property, either within or without the district, which damages shall also cover easements acquired by the district for all of the purposes of the district, unless otherwise specifically stated.

(6) Wherever instructed to do so by the board of directors, the appraisers shall appraise lands which it may be necessary or desirable for the district to own and shall appraise both the total value of the land and also the damages due to an easement for the purposes of the district. Upon such appraisals being confirmed by the court, the board of directors of the district shall have the option of paying the entire appraised value of the property and acquiring full title to it in fee simple or of paying only the cost of such easement, for the purposes of the district.

(7) Upon written demand by the owner, such option shall be exercised by the directors within ninety days after the date of the final judicial determination of such appraisal. The appraisers in appraising benefits and damages shall consider only the effect of the execution of the official plan. Appraisals of value for property taken shall be made without reference to any increase in value thereof due to the execution of the official plan. The appraisers in making appraisals shall give due consideration and credit to any other works or other systems of protection already constructed or under construction which form a useful part of the work of the district according to the official plan. Where the appraisers or a jury, in case one is called, returns no appraisal of damages to any property, it is deemed a finding by it that no damages will be sustained.

Source: L. 22: p. 32, § 26. **C.L.** § 9540. **CSA:** C. 138, § 151. **CRS 53:** § 30-4-2. **C.R.S. 1963:** § 29-4-2.

37-4-103. Land affected outside the district. If the appraisers find that land not embraced within the boundaries of the district will be affected by the proposed improvement or should be included in the district, they shall appraise the benefits and damages to such land, and shall file notice in the court of the appraisal which they have made upon the lands beyond the boundaries of the district, and to the land which, in their opinion, should be included in the district. The appraisers shall also report to the court any lands which, in their opinion, should be eliminated from the district; but no territory lying in any county into which any existing district does not already extend shall be included in such district, except in accordance with the provision of section 37-2-105 with reference to the inclusion of land in such counties.

Source: L. 22: p. 34, § 27. **C.L.** § 9541. **CSA:** C. 138, § 152. **CRS 53:** § 30-4-3. **C.R.S. 1963:** § 29-4-3.

37-4-104. Notice of hearing on land excluded from or taken into district. If the report of the board of appraisers includes recommendations that other lands be included in the district or that certain lands be excluded from the district, it is the duty of the clerk of the court before which the proceeding is pending, upon order of the court, to give notice to the owners of such property by publication (Schedule Form V) to be made as provided in articles 1 to 8 of this title for a hearing on the petition for the creation of the district. The time and place of the hearing shall be the same as provided for the hearing on appraisals, and upon such hearing the court shall make and enter such orders with respect to lands to be included in or excluded from the district

as the facts and the provisions of articles 1 to 8 of this title require. As to the owners of property to be excluded from the district, it will be sufficient to notify them of that fact.

Source: L. 22: p. 34, § 28. **C.L.** § 9542. **CSA:** C. 138, § 153. **CRS 53:** § 30-4-4. **C.R.S. 1963:** § 29-4-4.

Cross references: For Schedule Form V, see § 37-8-101.

37-4-105. Report of appraisal commissioners. (1) The board of appraisers shall prepare a tabulated report of its findings which shall be bound in book form and which shall be known as the conservancy appraisal record. Such record (Schedule Form VI) shall contain the names of the owners of property appraised as they appear on the tax rolls or from the records of the office of the county clerk and recorder, a description of the property appraised, the amount of benefits appraised, the amount of damages appraised, and the appraised value of land or other property which may be taken for the purposes of the district. The appraisers shall also report any other benefits or damages or any other matter which, in their opinion, should be brought to the attention of the court. No error in the names of the owners of property or in the descriptions thereof shall invalidate said appraisal or the levy of assessments or taxes based thereon, if sufficient description is given to identify such property.

(2) When the report is completed, it shall be signed by at least a majority of the appraisers and deposited with the clerk of the court who shall file it in the original case. At the same time certified copies of that part of the report giving the appraisal of benefits and appraisals of land to be taken and of damages in any county other than that in which the original case is pending shall be made and filed with the county clerk and recorder of such county.

Source: L. 22: p. 35, § 29. **C.L.** § 9543. **CSA:** C. 138, § 154. **CRS 53:** § 30-4-5. **C.R.S. 1963:** § 29-4-5.

Cross references: For Schedule Form VI, see § 37-8-101.

37-4-106. Notice of hearing on appraisals. (1) Upon the filing of the report of the appraisers, the clerk of the court in which the original cause is pending shall, upon order of the court, give notice thereof by publication (Schedule Form VII) in each county in the conservancy district. It shall not be necessary for said clerk to name the parties interested, nor to describe separate lots or tracts of land in giving said notice, but it shall be sufficient to give such descriptions as will enable the owner to determine whether or not his land is covered by such description.

(2) Where lands in different counties are mentioned in said report, it shall not be necessary to publish in each county a description of all the lands in the district but only of that part of the said lands situate in the county in which publication is made.

Source: L. 22: p. 35, § 30. **C.L.** § 9544. **CSA:** C. 138, § 155. **CRS 53:** § 30-4-6. **C.R.S. 1963:** § 29-4-6.

Cross references: For Schedule Form VII, see § 37-8-101.

37-4-107. Hearing on appraisals. Any property owner may accept the appraisals in his favor of benefits and of damages and of lands to be taken, as made by the appraisers, or may acquiesce in their failure to appraise damages in his favor, and shall be construed to have done so unless, within ten days after the last publication provided for in section 37-4-106, he has filed exceptions to said report or to any appraisal of either benefits or of damages, or of the value of land to be taken. All exceptions shall be heard by the court beginning not less than twenty nor more than thirty days after the last publication provided for in section 37-4-106 and determined in advance of other business so as to carry out, liberally, the purposes and needs of the district. The court may, if it deems necessary, return the report to the board of appraisers for their further consideration and amendment and may enter its order to that effect. If, however, the appraisal roll as a whole is referred back to the appraisers, the court shall not resume the hearing thereon without new notice, as for an original hearing thereon. But the court may, without new notice, order the appraisers to revise and amend the roll when the order of the court specifies the changes to be made.

Source: L. 22: p. 36, § 31. **C.L.** § 9545. **CSA:** C. 138, § 156. **CRS 53:** § 30-4-7. **C.R.S. 1963:** § 29-4-7.

Cross references: For requirements of publication, see § 37-1-102 (5).

37-4-108. Decree on appraisals. If it appears to the satisfaction of the court, after having heard and determined all said exceptions, that the estimated cost of constructing the improvements contemplated in the official plan is less than the benefits appraised, then the court shall approve and confirm said appraisers' report as so modified and amended, and such findings and appraisals shall be final and incontestable, except as provided in this article. In considering the appraisals made by the board of appraisers, the court shall take cognizance of the official plan and of the degree to which it is effective for the purposes of the district. In case the court finds that the estimated benefits appraised are less than the estimated total cost of the execution of the official plan, exclusive of interest on deferred payments, or that the official plan is not suited to the requirements of the district, it may at its discretion return said official plan to the directors of the district with an order directing them to prepare new or amended plans, or it may dissolve the district after having provided for the payment of all expenses theretofore incurred.

Source: L. 22: p. 36, § 32. **C.L.** § 9546. **CSA:** C. 138, § 157. **CRS 53:** § 30-4-8. **C.R.S. 1963:** § 29-4-8.

37-4-109. Appeals from awards. (1) Any person or public or private corporation desiring to appeal from an award of the appraisers as to compensation, damages, or benefits shall, within ten days from the judgment of the court confirming the report of the appraisers, file with the clerk of the court a written notice making demand for a jury trial. If the appeal is solely from an award as to benefits, the appellant shall, at the same time, file a bond with good and sufficient security to be approved by the clerk, in a sum not exceeding two hundred dollars, to the effect that if the verdict is not more favorable to appellant than the award of the appraisers, the appellant will pay the costs of the appeal. The appellant shall state definitely from what part of the order the appeal is taken. The appeal may be from the award of compensation, damages,

or benefits, or one or more of them, but from no other part of the judgment of the court confirming the report of the appraisers.

(2) In case more than one appeal is filed from the award as to compensation, damages, or benefits, the court may, upon a showing that the same may be consolidated without injury to the interest of anyone, consolidate and try the same together.

(3) Upon demand for a jury trial to fix the amount of compensation for property proposed to be taken or damaged, the court shall order the board of directors at once to begin condemnation proceedings therefor in the district court of the county in which are situate the lands sought to be condemned, in the district court in and for such county, which suit shall be conducted in accordance with articles 1 to 7 of title 38, C.R.S., concerning the right of eminent domain, where a jury is demanded.

(4) Upon demand for a jury trial to fix the assessment of benefits or the assessment of damages other than those incident to condemnation proceedings, the court shall order the board of directors to present a petition embodying the facts and the claims made in short form, which shall be filed in the court in which the original case is pending, whereupon a jury shall be empaneled according to law to try and determine the issue presented, as in condemnation proceedings.

Source: L. 22: p. 37, § 33. **C.L.** § 9547. **CSA:** C. 138, § 158. **CRS 53:** § 30-4-9. **C.R.S. 1963:** § 29-4-9.

37-4-110. Entry after deposit of award. No property shall be taken under articles 1 to 8 of this title until just compensation has been paid according to law. But where a trial by jury is demanded under section 37-4-109, the board of directors may pay into court the amount allowed by the appraisers, with the costs, and thereupon the court shall make an order admitting the said district into possession of the property and thereupon the board of directors may enter into undisturbed possession of the property and rights involved. The right of entry provided by this section is a cumulative remedy and additional to the district's right of possession during the pendency of condemnation proceedings under the provisions of articles 1 to 7 of title 38, C.R.S.

Source: L. 22: p. 38, § 34. **C.L.** § 9548. **CSA:** C. 138, § 159. **CRS 53:** § 30-4-10. **C.R.S. 1963:** § 29-4-10.

37-4-111. Filing decree. (1) Upon the entry of the order of the court approving the report of the appraisers, as provided for in articles 1 to 8 of this title, the clerk of said court in which the same is entered shall transmit to the secretary of the district a certified copy of the said decree and of the appraisals as confirmed by the court, except those parts from which appeals have been perfected in accordance with section 37-4-109, but not determined.

(2) When any proceeding to review a judgment of the district court, confirming the verdict of a jury, has been finally determined, the clerk of the court deciding the same shall certify the amount of each item of the judgment to the clerk of the court having the original case, who shall file the same therein and shall thereupon transmit certified copies of the same to the secretary of the district who shall thereupon complete the conservancy appraisal record.

Source: L. 22: p. 39, § 35. **C.L.** § 9549. **CSA:** C. 138, § 160. **CRS 53:** § 30-4-11. **C.R.S. 1963:** § 29-4-11.

37-4-112. Appeals shall not delay proceedings. (1) No appeal from an award by the appraisers under articles 1 to 8 of this title shall be permitted to interrupt or delay any action or the prosecution of any work under articles 1 to 8 of this title, except where the appellant is entitled to a jury trial under the constitution of the state, and the district does not exercise the right of deposit provided by section 37-4-110, in which case only so much of the work shall be interrupted or delayed as would constitute a taking or damaging of the property of such appellant.

(2) No proceeding to review a judgment of the district court entered under the provisions of articles 1 to 8 of this title shall be commenced after thirty days from the entry of the judgment sought to be reviewed.

(3) The board of directors of any district organized under articles 1 to 8 of this title has the same right as property owners to invoke the jurisdiction of an appellate court of the state of Colorado to review any reviewable order of the district court made in any proceeding under said articles.

(4) The failure to appeal from or seek a review of any order of the court in any proceeding under articles 1 to 8 of this title within the time specified in this section shall constitute a waiver of any irregularity in the proceedings, and the remedies provided for in said articles shall exclude all other remedies except as provided in this section.

Source: L. 22: p. 39, § 36. **C.L.** § 9550. **CSA:** C. 138, § 161. **CRS 53:** § 30-4-12. **C.R.S. 1963:** § 29-4-12.

37-4-113. Change of official plan. (1) The board of directors may at any time when necessary to fulfill the objects for which the district was created alter or add to the official plan, and when such alterations or additions are formally approved by the board and by the court and are filed with the secretary, they shall become part of the official plan for all purposes of articles 1 to 8 of this title. Where such alterations or additions in the judgment of the court neither materially modify the general character of the work, nor materially increase resulting damages for which the board is not able to make amicable settlement, nor increase the total cost more than ten percent above that estimated in the official plan, no action other than a resolution of the board of directors shall be necessary for the approval of such alterations or additions. In case the proposed alterations or additions materially modify the general character of the work, or materially modify the resulting damages, or materially reduce the benefits for which the board is not able to make amicable settlement, or materially increase the benefits in such a manner as to require a new appraisal, or increase the total cost more than ten percent above that estimated in the official plan, the court shall direct the board of appraisers, which may be the original board, or a new board appointed by the court on petition of the board of directors, to appraise the property to be taken, benefited, or damaged by the proposed alterations or additions.

(2) Upon the completion of the report by the board of appraisers, notice shall be given and a hearing had on its report in the same manner as in the case of the original report of the board of appraisers, and the same right of appeal to a jury shall exist; but where only a few landowners are affected, the clerk of the court may, on order of the court, if found to be more

economical and convenient, give personal notice of the pendency of the report of said appraisers instead of notice by publication; and if the only question at issue is additional damages or reduction of benefits to property due to modifications in or additions to the official plan, the board of directors may, if practicable, make settlements with the owners of the property damaged instead of having appraisals made by the board of appraisers. In case such settlements are made, notice and hearing need not be had. After district bonds are sold, as provided in articles 1 to 8 of this title, in order that their security may not be impaired, no reduction shall be made in the amount of uncontested benefits appraised or costs assessed against any property in the district; but in lieu of any reduction in assessment, if by reason of a modification in or addition to the official plan an excessive assessment is made under the provisions of section 37-5-104, the excess shall be paid to the property owner in cash. This provision shall apply to all changes in appraisals under articles 1 to 8 of this title.

Source: L. 22: p. 40, § 37. **C.L.** § 9551. **CSA:** C. 138, § 162. **CRS 53:** § 30-4-13. **C.R.S. 1963:** § 29-4-13.

37-4-114. Lands exempt and later liable to assessment. If any lands in any district organized under articles 1 to 8 of this title are not liable to assessment at the time of the execution of the work, but afterwards, during the period when such work is being paid for, become liable to assessment, such lands shall thereupon be appraised and assessed as other lands in said district receiving equal benefits.

Source: L. 22: p. 41, § 38. **C.L.** § 9552. **CSA:** C. 138, § 163. **CRS 53:** § 30-4-14. **C.R.S. 1963:** § 29-4-14.

37-4-115. Subsequent appraisals. In case any property within or without any district is benefited, which for any reason was not appraised in the original proceedings, or was not appraised to the extent of benefits received, or in case any person or public corporation makes use of or profits by the works of any district organized under articles 1 to 8 of this title to a degree not compensated for in the original appraisal, or in case the directors of the district find it necessary subsequent to the time when the first appraisals are made to take or damage any additional property, the directors of said district, at any time such condition becomes evident, shall direct the board of appraisers to appraise the benefits or the enhanced benefits received by such property, or such damages or value of property taken, and the proceedings in articles 1 to 8 of this title for appraising lands not at first included within the boundaries of the district shall in all matters be conformed to, including notice to the parties; or the board may, at its discretion, make settlement with such person or public corporation for such use, benefit, damage, or property taken.

Source: L. 22: p. 41, § 39. **C.L.** § 9553. **CSA:** C. 138, § 164. **CRS 53:** § 30-4-15. **C.R.S. 1963:** § 29-4-15.

37-4-116. Validation of irregular proceedings. (1) No fault in any notice or other proceeding shall affect the validity of any proceeding under articles 1 to 8 of this title except to

the extent to which it can be shown that such fault resulted in a material denial of justice to the property owner complaining of such fault.

(2) In case it is found upon a hearing that, by reason of some irregularity or defect in the proceedings, the appraisal has not been properly made, the court may, nevertheless, on having proof that expense has been incurred which is a proper charge against the property of the complainant, render a finding as to the amount of benefits to said property and appraise the proper benefits accordingly, subject to a claim for a jury as already provided, when the party is entitled thereto, and thereupon said land shall be assessed as other land equally benefited.

(3) In the event that at any time, either before or after the issuance of bonds pursuant to the provisions of articles 1 to 8 of this title, the appraisal of benefits, either as a whole or in part, is declared by any court of competent jurisdiction to be invalid by reason of any defect or irregularity in the proceedings therefor, whether jurisdictional or otherwise, the said district court where the original case is pending is authorized, on the application of the board of directors of the said district, or on the application of any holder of any bonds which may have been issued pursuant hereto, promptly and without delay to remedy all defects or irregularities, as the case may require, by causing to be made in the manner provided in articles 1 to 8 of this title, a new appraisal of the amount of benefits against the whole or any part of the lands in the said district, as the case may require.

Source: L. 22: p. 42, § 40. **C.L.** § 9554. **CSA:** C. 138, § 165. **CRS 53:** § 30-4-16. **C.R.S. 1963:** § 29-4-16.

ARTICLE 5

Financial Administration

37-5-101. Funds. (1) The moneys of every conservancy district organized under articles 1 to 8 of this title shall consist of the following separate funds:

(a) "Preliminary funds" means the proceeds of the level rate assessment authorized by section 37-5-102.

(b) "Construction fund" means the proceeds of levies made against the special benefits appraised, equalized, and confirmed under the provisions of articles 1 to 8 of this title.

(c) "Maintenance fund" means the proceeds of a special assessment to be levied annually for the purpose of upkeep, administration, and current expenses as provided in said articles. Moneys received by the district from any other source shall be placed in any fund which the board of directors orders.

(2) No vouchers shall be drawn against the preliminary fund or against the maintenance fund until an assessment levying resolution has been properly passed by the board of directors and duly entered upon its records. No bonds shall be issued against the construction fund until an assessment levying resolution has been properly passed by the board of directors and duly entered upon its records and until the property owners have been given an opportunity for a period of not less than sixty days to pay in cash the assessment so levied against their respective properties.

Source: L. 22: p. 43, § 41. **C.L.** § 9555. **CSA:** C. 138, § 166. **CRS 53:** § 30-5-1. **C.R.S. 1963:** § 29-5-1.

37-5-102. Preliminary fund. (1) As soon as any district has been organized under articles 1 to 8 of this title and a board of directors has been appointed and qualified, such board has the authority to fix the amount of an assessment upon the property within the district not to exceed one mill for every dollar of valuation for assessment thereof as a level rate to be used for the purpose of paying the expenses of organization, for surveys and plans, for other incidental expenses which may have been incurred prior to the time when money is received from the sale of bonds or otherwise, and for the general administration of the district. In accordance with the schedule prescribed by section 39-5-128, C.R.S., the amount of assessment for each dollar of valuation for assessment shall be certified to the boards of county commissioners of the various counties in which the district, or any portion thereof, is located and by them included in their next annual levy for state and county purposes. Said amount shall be collected for the use of such district in the same manner as are taxes for county purposes, and the revenue laws of the state for the levy and collection of taxes on real estate for county purposes, except as modified in this article, shall be applicable for the levy and collection of the amount certified by the directors of such district as aforesaid, including the enforcement of penalties and forfeiture for delinquent taxes.

(2) All collections made by the county treasurer pursuant to such levy shall be paid to the treasurer of the conservancy district on or before the tenth day of the next succeeding calendar month. If such items of expense have already been paid in whole or in part from other sources, they may be repaid from the receipts of such levy, and such levy may be made although the work proposed may have been found impracticable or for other reasons may have been abandoned. The information collected by the necessary surveys, the appraisal of benefits and damages, and other information and data are declared to constitute benefits for which said assessment may be levied. In case a district is dissolved or abandoned for any cause whatsoever before the work is constructed, the data, plans, and estimates which have been secured shall be filed with the clerk of the court in which the district was organized and shall be matters of public record available to any person interested.

(3) If all the expenses of organization, for surveys and plans, and for other incidental expenses which may have been incurred prior to the time when money is received from the sale of bonds or otherwise have been paid in full, any or all of the moneys remaining in the preliminary fund may be transferred by the board of directors to any of the other funds of the district.

Source: L. 22: p. 44, § 42. **C.L.** § 9556. **CSA:** C. 138, § 167. **CRS 53:** § 30-5-2. **C.R.S. 1963:** § 29-5-2. **L. 81:** (1) amended and (3) added, p. 1751, § 4, effective May 28. **L. 87:** (1) amended, p. 1408, § 7, effective April 22.

Cross references: For the levy and collection of taxes on real estate, see articles 1 to 14 of title 39.

37-5-103. Power to borrow money for the preliminary fund. In order to facilitate the preliminary work, the board of directors may borrow money at a net effective interest rate as

determined by said board and, as evidence of the debt so contracted, may issue and sell or may issue to contractors or others negotiable evidences of debt, in this article called "warrants", and may pledge, after it has been levied, the preliminary assessment of not exceeding one mill for the repayment thereof. If any warrant so issued by the board of directors is presented for payment and is not paid for want of funds in the treasury, that fact, with the date of presentation, shall be endorsed on the back of such warrant, which shall thereafter draw interest at the rate specified in the endorsement, not exceeding the net effective interest rate when issued, until such time as there is money on hand sufficient to pay the amount of said warrant with interest.

Source: L. 22: p. 45, § 43. **C.L.** § 9557. **CSA:** C. 138, § 168. **CRS 53:** § 30-5-3. **C.R.S. 1963:** § 29-5-3. **L. 75:** Entire section amended, p. 1363, § 1, effective June 29.

37-5-104. Construction fund. (1) After the list of property, with the appraised benefits as approved by the court or that part thereof from which no appeal is pending, has been filed with the secretary of the district, then from time to time, as the affairs of the district may demand, the board of directors shall levy on all property upon which benefits have been appraised an assessment of such portion of said benefits as may be found necessary by said board to pay the cost of the appraisal, except as paid out of the preliminary fund, the preparation and execution of the official plan including superintendence of construction and administration during the period of construction plus ten percent of said total to be added for contingencies but not to exceed, in the total of principal, the appraised benefits so adjudicated. The assessment to be known as the "construction fund assessment" shall be apportioned to and levied on each tract of land or other property in said district in proportion to the benefits appraised, and not in excess thereof, and, in case bonds are issued as provided in articles 1 to 8 of this title, then the amounts of interest which will accrue on such bonds, as estimated by said board of directors, shall be included in and added to the said assessment, but the interest to accrue on account of the issuing of said bonds shall not be construed as a part of the cost of construction in determining whether or not the expenses and costs of making said improvement are equal to or in excess of the benefits appraised. As soon as said assessment is levied, the secretary of the district, at the expense of the district, shall prepare in duplicate an assessment record of the district. It shall be in the form of a well-bound book endorsed and named, "Construction Fund Assessment Record of ..... Conservancy District", which endorsement shall also be printed at the top of each page thereof.

(2) The construction fund assessment record shall include a table or schedule (Schedule Form VIII, 1) showing in properly ruled columns:

(a) The names of the owners of the property to which benefits are appraised, which may be as they appear in the decree of the court confirming the appraisals, and, in case of appraisals against a town, city, county, or other public corporation, the name of the individual owners need not be given, but only the name of such corporation;

(b) The descriptions of the items of property appraised and assessed, arranged by counties;

(c) The total amount of benefits appraised against each item of property;

(d) The total assessment levied against each item of property to which benefits have been appraised, and in this column of the record provision shall be made for the entry of successive levies of assessments;

(e) A blank column in which the treasurer shall enter the assessments paid within the sixty-day period in which property owners may pay their assessments;

(f) In successive columns, the construction fund installments, or if bonds are issued, these columns may be designated bond fund installments, both principal and interest, one column for each installment, with provision for the entry of installments of successive levies, if any, and suitable blank columns in which the county treasurer shall record the several installment amounts, principal and interest, as collected by him, and the names of the persons paying the same. Where successive levies of assessments are made for the construction fund, the construction fund assessment record shall contain suitable notations to show the number of levies and the amount of each, to the end that it may disclose the aggregate of all levies for the construction fund.

(3) Upon the completion of the construction fund assessment record, it shall be signed by the president of the district, and the seal of the district shall be thereunto affixed and attested by the signature of the secretary, and the same shall thereafter become a permanent record in the office of said district.

(4) If it is found at any time that the total amount of assessments levied is insufficient to pay the cost of the works set out in the official plan or of additional work done, the board of directors may levy such additional assessments and may make such amendments or supplements to the construction fund assessment record from time to time as may be necessary to provide funds to complete the work, but the total of all such assessments, exclusive of interest, shall not exceed the total of benefits appraised.

(5) After the cost of the works set out in the official plan or of additional work done has been paid in full, any or all moneys remaining in the construction fund may be transferred by the board of directors to the maintenance fund.

Source: L. 22: p. 45, § 44. **C.L.** § 9558. **CSA:** C. 138, § 169. **CRS 53:** § 30-5-4. **C.R.S. 1963:** § 29-5-4. **L. 81:** (5) added, p. 1751, § 5, effective May 28.

Cross references: For Schedule Form VIII, see § 37-8-101.

37-5-104.5. Determination of special benefits - factors considered. (1) The term "benefit", for the purposes of assessing a particular property within a conservancy district particularly with respect to regulating streamflow to control floods, includes, but is not limited to, the following:

(a) Any increase in the market value of the property;

(b) The provision for accepting the burden from specific dominant property for discharging surface water onto servient property in a manner or quantity greater than would naturally flow because the dominant owner made some of his property impermeable;

(c) Any adaptability of property to a superior or more profitable use;

(d) Any alleviation of health and sanitation hazards accruing to particular property or accruing to public property in the improvement district, if the provision of health and sanitation is paid for wholly or partially out of funds derived from taxation of property owners of the improvement district;

(e) Any reduction in the maintenance costs of particular property or of public property in the improvement district, if the maintenance of the public property is paid for wholly or partially out of funds derived from taxation of property owners of the improvement district;

(f) Any increase in convenience or reduction in inconvenience accruing to particular property owners, including the facilitation of access to and travel over streets, roads, and highways;

(g) Recreational improvements accruing to particular property owners as a direct result of drainage improvement.

Source: L. 75: Entire section added, p. 998, § 4, effective July 1.

37-5-105. Payment of assessments. (1) When the construction fund assessment record is placed on file in the office of the district, notice by publication shall be given to property owners that they may pay their assessments. Any owners of real property assessed for the execution of the official plan under the provisions of articles 1 to 8 of this title shall have the privilege of paying such assessment to the treasurer of the district within sixty days from the time such publication is completed, and the amount to be paid shall be the full amount of the assessment less any amount added thereto to meet interest. When such assessment has been paid, the secretary of the district shall enter upon the said assessment record opposite each tract for which payment is made the words "paid in full", and such assessment shall be deemed satisfied. The payment of such assessment shall not relieve the landowner from the payment of a maintenance assessment nor from the payment of any further assessments, not exceeding the total of benefits appraised which may be necessary as provided in articles 1 to 8 of this title.

(2) Failure to pay the whole construction fund assessment within said period of sixty days shall be conclusively considered an election on the part of all persons interested, whether under disability or otherwise, to pay such assessment in installments as provided in this section. All persons so electing to pay in installments shall be conclusively considered as consenting to said official plan and all work thereunder, the issuance of bonds provided for in articles 1 to 8 of this title, and the payment of interest thereon, and such election shall be conclusively considered as a waiver of all right to question the power or jurisdiction of the conservancy district to construct the works set forth in said official plan, the regularity or sufficiency of the proceedings, or the validity or the correctness of such assessment; except that any public corporation may, within said sixty days, elect to pay, in whole or in part, the amount assessed against such corporation in not more than ten annual installments, beginning at the time of the next annual levy of taxes by such corporation, but nothing in this section shall be construed to relieve such corporation from liability for successive levies of assessments, not exceeding the amount of benefits appraised.

(3) In case of such election to pay in installments, the construction fund assessment shall be payable in not less than five nor more than thirty annual installments of principal, the first of which installments shall be payable in not less than one and not more than five years, and the last in not more than thirty years after the filing of the construction fund assessment record in the office of the district, with interest in all cases on the unpaid principal, computed semiannually, at a rate not exceeding six percent per annum, all as may be determined by the board of directors of the conservancy district by resolution.

(4) Subject to the foregoing requirements, all installments, both of principal and interest, shall be payable at such times as may be determined by the board of directors of the conservancy district by resolution as provided in articles 1 to 8 of this title.

(5) Upon failure to pay any installment, whether of principal or interest, when due, the whole amount of the unpaid principal of such installment and accrued interest thereon shall draw interest at the rate of one percent per month or fraction of a month until the day of sale, as provided in this article; but, at any time prior to the day of sale, the owner may pay the amount of all unpaid and overdue installments, with interest at one percent per month or fraction of a month, and all penalties accrued.

(6) After the expiration of the period of sixty days within which the property owners may pay their respective assessments, as limited in this article, the treasurer of the district shall certify to the board of directors the aggregate of the amount so paid, and thereupon the board of directors may pass and include in its records a bonding resolution in which shall be stated the amount of the construction fund assessment and the amount thereof paid as aforesaid, and in the same resolution they shall apportion the uncollected assessment into installments or levies for the collection of interest upon the unpaid installments, and they may order the issuance of conservancy district bonds in an amount not exceeding ninety percent of the levy in anticipation of the collection of said installments. The residue of the tax so levied, not less than ten percent, shall constitute a contingent account to protect the bonds from casual default, and, if not needed for this purpose, may be transferred from time to time to the maintenance fund of the district.

Source: L. 22: p. 48, § 45. **C.L.** § 9559. **CSA:** C. 138, § 170. **CRS 53:** § 30-5-5. **C.R.S. 1963:** § 29-5-5.

37-5-106. Conservancy bonds. (1) The board of directors may, if in its judgment it seems best, issue conservancy bonds (Schedule Form IV) in an amount not to exceed ninety percent of the total amount of the construction fund assessment, exclusive of interest, levied under the provisions of articles 1 to 8 of this title, in denominations of not less than one hundred dollars, bearing interest from date at a net effective interest rate determined by said board, to mature at annual intervals within thirty years commencing not later than five years after date, as may be determined by the board of directors, both principal and interest payable at a place or places determined by the board of directors and designated in the bonds. Said bonds shall be signed by the president of the district, and the seal of the district shall be thereunto affixed and attested by the signature of the secretary. The semiannual payments of interest shall be evidenced by coupons bearing a lithographed or engraved facsimile of the signature of the treasurer of the district. In case any officer whose signature or certificate appears upon bonds or coupons issued pursuant to articles 1 to 8 of this title ceases to be an officer before the delivery of such bonds to the purchaser, such signature or certificate shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until the delivery of the bonds.

(2) All of said bonds, when executed, shall be delivered to the treasurer of said district, who shall sell the same in such quantities and at such times as the board of directors may order to meet the payments for the works and improvements of the district. Said bonds may be sold below par, but they shall be sold at such a price that the total payment of principal and interest is not greater than would have been required if the bonds had borne the net effective interest rate

when issued and had been sold for par and accrued interest. The bonds shall show on their faces the purpose for which they are issued and shall be payable out of money derived from the construction fund. A sufficient amount of the assessments shall be appropriated by the board of directors for the purpose of paying the principal and interest of bonds, and the same shall, when collected, be set apart in a separate fund for that purpose and no other. All bonds and coupons not paid at maturity shall bear interest at the net effective interest rate when issued, from maturity until paid, or until sufficient funds have been deposited at the place of payment. Any expenses incurred in the issue and sale of said bonds and in paying bonds and interest thereon may be paid out of any funds in the hands of the district treasurer.

(3) The board of directors, in making assessment levies provided in this article, shall take into account maturing bonds and interest on all bonds and shall make ample provision for the payment thereof. In case the proceeds of the original assessments made under the provisions of articles 1 to 8 of this title are not sufficient to pay punctually the principal of and the interest upon all bonds issued under this article, then the board of directors shall make such additional levy or levies against the appraised benefits as may be necessary for such purposes, and under no circumstances shall any assessment levies be made that will in any manner or to any extent impair the security of any bond issued under this article or the fund available for the payment of the principal thereof and interest thereon. But no bond issue under this article, or the assessment made to pay the same, shall have a priority of lien over any other bond issued or assessment made under this article. Said district treasurer shall, at the time of taking office, execute and deliver to the president of the district a bond with good and sufficient sureties to be approved by the said board of directors, conditioned that he shall account for and pay over as required by law and as ordered by said board of directors all moneys received by him on the sale of such bonds, or from any other source, and that he will sell and deliver such bonds to the purchaser or purchasers thereof, according to the terms prescribed in this article and not otherwise, and that he will, when ordered by said board to do so, return to said board, duly canceled, all bonds not sold, which said bonds shall remain in the custody of the president of the district, who shall produce the same for inspection or for use as evidence whenever and wherever legally required to do so.

(4) The said treasurer shall promptly report all sales of bonds to the board of directors, and the board of directors shall issue warrants upon the treasurer at the proper time for the payment of the maturing bonds so sold and the interest payments coming due on all bonds sold, and said treasurer shall place sufficient funds at the place of payment to pay the same. In case warrants are not issued by the board of directors as provided in this section, then the treasurer shall of his own accord place funds at the place of payment, and the canceled bonds and coupons shall be accepted in lieu of such warrants. The successors in office of any such district treasurer shall not be entitled to said bonds or the proceeds thereof until he has complied with all the foregoing provisions applicable to his predecessor in office; but, if it is deemed more expedient to the board of directors, as to moneys derived from the sale of bonds issued or from any other source, said board may by resolution select some suitable bank or banks or other depository, which depository shall give good and sufficient bond, as temporary or assistant treasurer, to hold and disburse said moneys on the orders of the board of directors as the work progresses, until such fund is exhausted or transferred to the district treasurer by order of the said board of directors. For such deposit the district shall receive not less than two percent interest per annum. The funds derived from the sale of said bonds shall be used for the purpose of paying the cost of

the works and improvements and such costs, expenses, fees, and salaries as may be authorized by law and shall be used for no other purpose.

(5) If at the time when the bonds are ready to be issued, the board of directors is of the opinion that such bonds cannot advantageously be issued and sold in whole or in part, the board may sell parts only of the entire issue or may pledge all or part of said issue as collateral to a loan, but no partial sale or pledge shall be made without the order of the board made and entered of record, and no pledge shall be made at a greater margin than at the rate of one hundred dollars of bond principal for ninety dollars of loan.

(6) The district may borrow money from the United States government and provide for the repayment thereof in the manner provided for the payment of bonds, and the board of directors may make any necessary regulations to provide for such payment.

(7) A party who has not sought a remedy against any proceeding under articles 1 to 8 of this title until after bonds have been sold shall not for any cause have an injunction against the collection of taxes or assessments for the payment of said bonds.

(8) Articles 1 to 8 of this title shall, without reference to any other law of the general assembly of the state of Colorado, be full authority for the issuance and sale of the bonds authorized in articles 1 to 8 of this title, which bonds shall have all the qualities of negotiable investment securities as provided by article 8 of title 4, C.R.S. and when executed and sealed in conformity with the provisions of articles 1 to 8 of this title and when sold or pledged in the manner prescribed in this article, and the consideration therefor received by the district shall not be invalid for any irregularity or defect in the proceedings for the issue, sale, or pledge thereof and shall be incontestable in the hands of a holder in due course. No proceedings in respect to the issuance of any such bonds shall be necessary except such as are required by articles 1 to 8 of this title.

(9) Whenever the owner of any coupon issued pursuant to the provisions of articles 1 to 8 of this title presents such bond to the treasurer of the district, or to such bank or other depository as the board of directors of the district may for such purpose designate as registrar, with a request for the conversion of such bond into a registered bond, the said treasurer, bank, or other depository shall cut off and cancel the coupons of any such coupon bond so presented and shall stamp, print, or write upon such coupon bond so presented, either upon the back or the face thereof, as may be convenient, a statement to the effect that the said bond is registered in the name of the owner and that thereafter the interest and principal of said bond are payable to the registered owner. Thereafter and from time to time, such bond may be transferred by such registered owner in person or by attorney duly authorized on presentation of such bond for registration as before, a similar statement being stamped, printed, or written thereon. Such statement stamped, printed, or written upon any such bond may be substantially in the following form:

"This bond is registered in the name of (here insert name of owner) pursuant to the provisions of the conservancy law of Colorado, and the interest and principal thereof are hereafter payable to such owner.

Treasurer (or Registrar)
Conservancy District.
Date ....."

(10) If any bond is registered as provided in subsection (9) of this section, the principal and interest of such bond shall be payable to the registered owner. The treasurer of the district shall enter in a register of said bonds to be kept by him or in a separate book the fact of the registration of such bond and the name of the registered owner thereof, so that the register or book shall at all times show what bonds are registered and the name of the registered owner thereof.

(11) All bonds issued by any conservancy district pursuant to articles 1 to 8 of this title shall be exempt from all state, county, municipal, school, and other taxes imposed by any taxing authority of the state of Colorado.

Source: L. 22: p. 50, § 46. **C.L.** § 9560. **CSA:** C. 138, § 171. **CRS 53:** § 30-5-6. **C.R.S. 1963:** § 29-5-6. **L. 75:** (1) and (2) amended, p. 1363, § 2, effective June 29; (8) amended, p. 222, § 77, effective July 16.

Cross references: For Schedule Form IV, see § 37-8-101.

37-5-107. Maintenance fund. (1) To maintain, operate, and preserve the improvements made pursuant to articles 1 to 8 of this title, and to strengthen, repair, and restore the same when needed, and for the purpose of defraying the current expenses of the district, the board of directors may, upon the substantial completion of said improvements, or any unit thereof, and on or before the first Monday in November in each year thereafter, levy an assessment on each tract or parcel of land and upon public corporations, subject to assessments under articles 1 to 8 of this title, to be known as the "maintenance fund assessment". Said maintenance fund assessment shall be apportioned upon the basis of the total appraisal of benefits accruing for original and subsequent construction and shall not exceed one percent thereof in any one year, unless the court shall by its order authorize an assessment of a larger percentage.

(2) Said assessment shall be levied by resolution of the board of directors, shall be enrolled in the "maintenance fund assessment record" provided for in this article (Schedule Form VIII, 2), shall be certified to the treasurers of the several counties in which lands so assessed are situated, and shall be collected by the treasurers of said counties and delivered to the treasurer of the district in like manner and with like effect provided for the enrollment, certification, collection, and return of other assessments set forth in said articles; except that no such maintenance assessment shall be payable in annual installments, but the whole assessment shall be due and payable as and when taxes for county purposes levied in the same year are due and payable.

(3) The amount of the maintenance assessment paid by any parcel of land shall not be credited against the benefits appraised against such parcel of land; but the maintenance assessment shall be in addition to any assessment that has been or can be levied against the benefits so appraised.

Source: L. 22: p. 55, § 47. **C.L.** § 9561. **CSA:** C. 138, § 172. **CRS 53:** § 30-5-7. **C.R.S. 1963:** § 29-5-7.

Cross references: For Schedule Form VIII, see § 37-8-101.

37-5-108. Power to borrow money for the maintenance fund. In anticipation of the collection of maintenance assessments, the board of directors may borrow money at a net effective interest rate determined by said board and, as evidence of the debt so contracted, may issue and sell or may issue to contractors or others negotiable evidence of debt, in this article called "warrants", and may pledge, after it has been levied, the said maintenance assessments for the repayment thereof. If any warrant so issued by the board of directors is presented for payment and is not paid for want of funds in the treasury, that fact, with the date of presentation, shall be endorsed on the back of such warrant, which shall thereafter draw interest at the rate specified in the endorsement, not exceeding the net effective interest rate when issued, until such time as there is money on hand sufficient to pay the amount of said warrant with interest.

Source: L. 22: p. 56, § 48. **C.L.** § 9562. **CSA:** C. 138, § 173. **CRS 53:** § 30-5-8. **C.R.S. 1963:** § 29-5-8. **L. 75:** Entire section amended, p. 1364, § 3, effective June 29.

37-5-109. Readjustment of maintenance fund assessments. (1) Whenever the owners or representatives of twenty-five percent or more of the acreage or value of the lands in the district file a petition in the court in which the original petition was filed, stating that there has been a material change in the values of the property in the district since the last previous appraisal of benefits, and praying for a readjustment of the appraisal of benefits for the purpose of making a more equitable basis for the levy of the maintenance fund assessment, the court shall by order fix a time and place for a hearing thereon, and thereupon the clerk of the court shall give notice by publication of the filing of and hearing upon said petition, in such manner as the court shall provide in the order for such hearing.

(2) Upon the hearing of said petition, if said court finds that there has been a material change in the value of property in said district since the last previous appraisal of benefits, the court shall order that there be a readjustment of the appraisal of benefits for the sole purpose of providing a basis upon which to levy the maintenance assessments of said district. Thereupon the court shall direct the appraisers of the conservancy district to make such readjustment of appraisals in the manner provided in articles 1 to 8 of this title, and said appraisers shall make their report, and the same proceedings shall be had thereon, as nearly as may be, as are provided in this article for the appraisal of benefits accruing for original construction; except that in making the readjustment of the appraisal of benefits said appraisal shall not be limited to the aggregate amount of the original or any previous appraisal of benefits, and after the making of such readjustment, the limitation of the annual maintenance assessment to one percent of the total appraised benefits shall, unless otherwise ordered by the court, apply to the amount of benefits as readjusted; and except that there shall be no such readjustment of benefits oftener than once in ten years.

Source: L. 22: p. 57, § 49. **C.L.** § 9563. **CSA:** C. 138, § 174. **CRS 53:** § 30-5-9. **C.R.S. 1963:** § 29-5-9.

37-5-110. Levies. (1) After the expiration of the sixty-day period in which persons interested may pay the whole construction fund assessment, and each year thereafter if necessary to effectuate the provisions of this article, the board of directors shall determine, order, and levy the total assessments to be collected annually under articles 1 to 8 of this title for the payment of

conservancy district bonds, principal and interest, and the treasurer of the district shall thereupon enter the same in the construction fund assessment record of the district, tabulating and extending said record as provided in this article, which record shall thereupon be approved by the board of directors, and the portion thereof relating to each county shall be certified by the clerk of the district, under the seal thereof, and by him delivered to the county treasurer of each county wherein property assessed is located. It is the duty of the treasurer of each county to receive the same as a tax book and to collect the same according to law, and such construction fund assessment record shall be the treasurer's warrant and authority to demand and receive the assessments due in his county as found in the same.

(2) Such assessments shall become due and shall be collected during each year at the same time and in the same manner that state and county taxes are due and collectible; and, if further assessments are necessary to effectuate the provisions of this article, such assessments shall be levied, evidenced, and certified as provided in this section in apt time and not later than November 1 in such year, to the treasurer of each county in which the real property subject to such assessment in each district is situate.

(3) The board of directors shall each year determine, order, and levy the assessments authorized by articles 1 to 8 of this title which become due and collectible during each year on account of the maintenance fund as provided in this article.

(4) The maintenance fund assessment record (Schedule Form VIII, 2) shall include a table or schedule showing in properly ruled columns:

(a) The names of the owners of the property to which benefits are appraised, which may be as they appear in the decree of the court confirming the appraisals, and, in case of appraisals against a town, city, county, or other public corporation, the name of the individual owners need not be given, but only the name of such corporation;

(b) The description of the items of property appraised and assessed, arranged by counties;

(c) The total maintenance assessment levied against each item of property;

(d) Blank columns in which the treasurer shall enter payments as made and the name of the persons paying the same.

(5) The maintenance fund assessment record shall be prepared in duplicate in a well-bound book, which shall be endorsed and named "Maintenance Fund Assessment Record of ..... Conservancy District", which endorsement shall also be printed at the top of each page in said book. One copy of that part of such duplicate affecting lands in any county shall be forwarded to the county treasurer of such county for his use. It is the duty of the treasurer of each county to receive the same as a tax book and to collect the same according to law, and such maintenance fund assessment record shall be the treasurer's warrant and authority to demand and receive the assessments due in his county as found in the same.

(6) The county treasurer shall receive payment of all assessments, with interest and penalties, appearing upon said construction fund assessment record and said maintenance fund assessment record, or portion thereof, filed with him and, in case of default in the payment of any installment of principal of the construction fund assessment, or interest thereon, when due, shall advertise and sell any property concerning which such default is suffered for the unpaid installment of the assessments thereon; and likewise, in case of default in the payment of any maintenance fund assessment, the county treasurer shall advertise and sell any property concerning which such default is suffered. Said advertisements and sales shall be made at the

same time and in the same manner, under all the same conditions and penalties, and with the same effect, provided by general law for sales of real estate in default of payment of general taxes. Lands sold for delinquent taxes or assessments under this article may be bid in, by, or for the conservancy district in like manner and like effect, including the issuance of a deed, as is provided by law with respect to lands bid in, by, or for cities and towns.

(7) All collections made by the county treasurer upon such assessment records in any calendar month shall be accounted for and paid over to the treasurer of the district on or before the tenth day of the next succeeding calendar month, with separate statements of all such collections for each item of property assessed.

Source: L. 22: p. 58, § 50. **C.L.** § 9564. **CSA:** C. 138, § 175. **CRS 53:** § 30-5-10. **C.R.S. 1963:** § 29-5-10.

Cross references: For procedure to increase tax levy beyond statutory limits, see § 29-1-302; for Schedule Form VIII, see § 37-8-101.

37-5-111. Manner of collection - tax sale - certificate of purchase - tax deed. (1) Lands sold for delinquent assessments under articles 1 to 8 of this title shall be struck off to the conservancy district or bid in for the conservancy district, in like manner and effect, including issuance of a deed therefor, as provided by law with respect to lands struck off to, or bid in for, counties, cities, or towns as the case may be; but when a certificate of purchase has been issued to the conservancy district with respect to any lands, no certificate of purchase for subsequent assessments shall be issued with respect to the same lands, except to the conservancy district, until all assessments represented by certificates of purchase held by the conservancy district have been redeemed or paid.

(2) No holder of such certificate of purchase, other than the conservancy district, shall be entitled to a tax deed thereon, except upon payment of all assessments subsequent to such certificate of purchase, which are due and unpaid or unredeemed, at the time of issuance of the tax deed; and the tax deed so issued to such holder shall be subject to future unpaid assessments. Any such holder of a certificate of purchase may at any time after three years from issuance thereof present the same to the county treasurer, together with all subsequent certificates held by him, as evidence of subsequent payment of assessments, and request the county treasurer to issue one tax deed thereon; and one tax deed shall be issued accordingly in the same manner as other tax deeds.

(3) The conservancy district may at any time after three years from issuance of any such certificate of purchase held by the district present the same to the county treasurer, together with all subsequent certificates of purchase held by it as evidence of unpaid subsequent assessments, and request the county treasurer to issue one tax deed thereon; and one deed shall be issued accordingly in the same manner as other tax deeds; but such tax deed shall not prejudice the parity of any existing lien for general taxes. Upon the delivery of the tax deed, the conservancy district shall have and enjoy all the rights of an owner in fee simple to the lands described therein; but no sale of such land shall be made by the district except subject to the lien of assessments due and unpaid subsequent to the issuance of the tax deed to the district, as well as future unpaid assessments, nor shall the district convey such property by deed with covenants of warranty, nor shall any sale of such property be made for less than the principal amount of the

original assessment thereon, remaining due and unpaid, unless such sale is approved by an order of the district court in which the organization proceeding of the district is pending.

(4) The conservancy district by resolution of its board of directors may sell, assign, and deliver any such certificates held by the district for such sum as the board of directors may determine and authorize; but no such sale or assignment shall be made which does not include all certificates held by the district with respect to the same land. Upon presentation and surrender of such certificates by the assignee thereof to the county treasurer, such officer shall accept the same in payment of the assessment represented thereby, unless such purchaser requests a tax deed thereon as provided in this section. No such assignment shall be made by the district for less than the principal sum represented by the certificate assigned, except upon order approving the assignment, made by the district court wherein the organization proceedings of the district is pending.

Source: L. 45: p. 541, § 1. **CSA:** C. 138, § 175(1). **CRS 53:** § 30-5-11. **C.R.S. 1963:** § 29-5-11.

37-5-112. Collection by civil action. In addition to all other remedies for collection of assessments provided by this article, and cumulative therewith, the conservancy district may at any time after three years from the issuance of any certificate of purchase held by the district bring a civil action to foreclose the lien for assessments represented by all certificates of purchase held by the district with respect to the same land and for other relief with respect to such land as provided by the Colorado rules of civil procedure then in effect for the foreclosure of liens on real property; but no statute of limitation shall be applicable to the rights of the conservancy district arising from any assessment; and no decree, or sale of lands thereunder, shall be made except subject to the lien of future unpaid installments of assessments. The county treasurer shall be made a party to any action of the conservancy district authorized by this section.

Source: L. 45: p. 542, § 2. **CSA:** C. 138, § 175(2). **CRS 53:** § 30-5-12. **C.R.S. 1963:** § 29-5-12.

37-5-113. Bond of county treasurer. Before receiving the assessment record, the treasurer of each county in which lands or other property of the district is located shall execute to the conservancy district a bond with at least two good and sufficient sureties, or a corporate surety company, the cost of which shall be paid by the district in a sum not less than the probable amount to be collected by him, and which he may have in his custody for the district at any one time, during any one year, the amount of which said bond shall be fixed by order of the district court based thereon, conditioned that said treasurer shall, as provided in this article, pay over and account for all assessments so collected by him. Said bond after approval by the board of directors shall be deposited with the secretary of the district who shall be custodian thereof, and who shall produce the same for inspection and use as evidence whenever and wherever lawfully required to do so.

Source: L. 22: p. 60, § 51. **C.L.** § 9565. **L. 31:** p. 215, § 1. **CSA:** C. 138, § 176. **CRS 53:** § 30-5-13. **C.R.S. 1963:** § 29-5-13.

37-5-114. Lien of conservancy assessments. All conservancy assessments provided for in articles 1 to 8 of this title, together with all interest thereon and all penalties for default in payment of the same and all costs in collecting the same, shall, from the date of filing the certificate of the preliminary fund assessment with the board of county commissioners, and the construction fund assessment record and maintenance fund assessment record, mentioned in this article, in the office of the treasurer of the county wherein the lands and properties are situated, until paid, constitute a perpetual lien on said lands and property on a parity with the tax lien for general state, county, city, town, or school taxes, and no sale of such land or property to enforce any general state, county, city, town, or school tax or other lien shall extinguish the perpetual lien of such assessments.

Source: L. 22: p. 61, § 52. **C.L.** § 9566. **CSA:** C. 138, § 177. **L. 45:** p. 543, § 3. **C.R.S. 53:** § 30-5-14. **C.R.S. 1963:** § 29-5-14.

37-5-115. Assessment records prima facie evidence. The record of assessments contained in the respective assessment records of the district shall be prima facie evidence in all courts of all matters therein contained.

Source: L. 22: p. 61, § 53. **C.L.** § 9567. **CSA:** C. 138, § 178. **CRS 53:** § 30-5-15. **C.R.S. 1963:** § 29-5-15.

37-5-116. Remedy for defective assessments. If any assessment made under the provisions of articles 1 to 8 of this title proves invalid, the board of directors shall, by subsequent or amended acts or proceedings, promptly and without delay remedy all defects or irregularities, as the case may require, by making and providing for the collection of new assessments or otherwise.

Source: L. 22: p. 61, § 54. **C.L.** § 9568. **CSA:** C. 138, § 179. **CRS 53:** § 30-5-16. **C.R.S. 1963:** § 29-5-16.

37-5-117. Duties of officers of public corporations as to assessments. (1) Whenever, under the provisions of articles 1 to 8 of this title, an assessment is levied against a public corporation, as defined in said articles, and is finally determined, it is the duty of the governing or taxing body of such public corporation immediately to take all the legal and necessary steps to provide for the payment of the same. It is the duty of the said governing or taxing body of such public corporation in its next annual levy succeeding said determination to levy and assess a tax by a uniform rate upon all the taxable property within the boundaries of said public corporation and certify the same to the treasurer of the county in which such corporation is located, whose duty it is to receive and collect the same for the benefit of the conservancy district, in like manner and with like remedies and penalties as provided in this article for collection of other assessments.

(2) Nothing in this section shall prevent the assessment of the real estate of other corporations or persons situated within the corporate limits of such public corporation which may be subject to assessment for special benefits to be received.

(3) In the event of any dissolution or disincorporation of any conservancy district organized pursuant to the provisions of articles 1 to 8 of this title, such dissolution or disincorporation shall not affect the lien of any assessment for benefits imposed pursuant to the provisions of articles 1 to 8 of this title, or the liability of any lands in such district to the levy of any future assessments for the purpose of paying the principal of and interest upon any bonds issued under this article, and in that event, or in the event of any failure on the part of the officers of any district to qualify and act, or in the event of any resignations or vacancies in office which prevent action by the said district or by its proper officers, it is the duty of the county treasurer and of all other officers charged in any manner with the duty of assessing, levying, and collecting taxes for public purposes in any county, municipality, or political subdivision in which such land shall be situated to perform all acts which may be necessary and requisite to the collection of any such assessment which may have been imposed and to the levying, imposing, and collecting of any assessment which it may be necessary to make for the purpose of paying the principal and interest of said bonds.

(4) Any holder of any bonds issued pursuant to the provisions of articles 1 to 8 of this title, or any person or officer being a party in interest, may either at law or in equity by suit, action, or mandamus, enforce and compel performance of the duties required by articles 1 to 8 of this title of any of the officers or persons mentioned in articles 1 to 8 of this title.

Source: L. 22: p. 61, § 55. **C.L.** § 9569. **CSA:** C. 138, § 180. **CRS 53:** § 30-5-17. **C.R.S. 1963:** § 29-5-17.

37-5-118. Penalty for failure of treasurer to pay over tax. If any county treasurer or other person entrusted with the collection of any assessment made under the provisions of articles 1 to 8 of this title refuses, fails, or neglects to make prompt payment of the assessments, or any part thereof, collected under said articles to the treasurer of the district upon his presentation of a proper demand, then he shall pay a penalty of ten percent on the amount of his delinquency. Such penalty shall become due and payable at once, and both he and his sureties shall be liable therefor on his bond as provided for in said articles.

Source: L. 22: p. 63, § 56. **C.L.** § 9570. **CSA:** C. 138, § 181. **CRS 53:** § 30-5-18. **C.R.S. 1963:** § 29-5-18.

37-5-119. Surplus funds and annual reports. (1) Any surplus funds in the treasury of the district may be used for retiring bonds, reducing the rate of assessment, or for accomplishing any other of the legitimate objects of the district.

(2) At least once a year, or oftener if the court orders, the board of directors shall make a report to the court of its proceedings and an accounting of receipts and disbursements to that date, which shall be filed with the clerk of the court. Thereupon, the court shall order the auditing of said accounts by competent public accountants, who shall file their report thereon with the clerk of the court.

Source: L. 22: p. 63, § 57. **C.L.** § 9571. **CSA:** C. 138, § 182. **CRS 53:** § 30-5-19. **C.R.S. 1963:** § 29-5-19.

37-5-120. Compensation of officials. (1) Each member of the board of directors shall receive for attendance at each meeting a sum fixed by order of the court and shall receive such sum per day and his necessary expenses for the time actually employed in the performance of his duties.

(2) When the interests of the district so require, the board of directors by resolution may designate one of its members as executive director in charge of construction, maintenance, and the general business affairs of the district and fix a reasonable monthly compensation therefor in proportion to the per diem rate and in lieu thereof as to the director so designated. Such executive director shall be at all times subject to the direction of the board of directors.

(3) Each appraiser, including temporary special appraisers, shall receive a sum per day to be approved by the court for the time actually employed in the performance of his duties.

(4) Each county treasurer shall retain for his services one percent of the amount collected by him on assessments, except assessments paid by public corporations, but all other services required of courts, county treasurers, or other public officers under articles 1 to 8 of this title shall be performed as part of their official duties, and without additional compensation.

Source: L. 22: p. 63, § 58. **C.L.** § 9572. **CSA:** C. 138, § 183. **L. 45:** p. 543, § 4. **CRS 53:** § 30-5-20. **L. 61:** p. 297, § 1. **C.R.S. 1963:** § 29-5-20.

ARTICLE 6

Intercorporate Relations and Jurisdiction

37-6-101. Lands in more than one district. (1) The same land may be included in more than one district and be subject to the provisions of articles 1 to 8 of this title for each district in which it may be included; but no district shall be organized under articles 1 to 8 of this title in whole or in part within the territory of a district already organized under said articles until the court having jurisdiction of the original conservancy district determines, upon application, whether the purposes of said articles will best be accomplished by the organization of an additional district or whether such conditions demand that the territory proposed to be organized into an additional district shall be organized as part of the existing district. Such application shall fulfill all the requirements of a petition for a district as set forth in section 37-2-102.

(2) Upon application, if the court determines that the organization of such territory as a part of the original district should not be ordered, then proceedings may be had before any court of competent jurisdiction for the formation of an additional district in accordance with the provisions of articles 1 to 8 of this title. Any person whose signature has been subscribed to said application may within ten days after such decision withdraw his signature therefrom, and if at the expiration of said period there remain sufficient subscribers to said petition to satisfy the requirements of section 37-2-102, and in case such court determines that the territory described in such application, if organized for the purpose of a conservancy district, should be included within the original district, like proceedings shall thereupon be had with respect to the territory and the owners thereof as in the case of a petition for the formation of a district. Upon the hearing, if it appears that the purpose of articles 1 to 8 of this title would be subserved by the organization of such territory as part of the original district, the court shall by its findings, duly entered of record, enter a decree accordingly.

Source: L. 22: p. 64, § 59. **C.L.** § 9573. **CSA:** C. 138, § 184. **CRS 53:** § 30-6-1. **C.R.S. 1963:** § 29-6-1.

37-6-102. Union of districts. (1) In case two or more districts have been organized under articles 1 to 8 of this title in a territory which, in the opinion of the directors of each of the districts, should constitute but one district, the board of directors of the districts may petition the court for an order uniting said districts into a single district; but if such districts are contiguous, such petition may be signed and presented by the directors of any one of such contiguous districts. Said petition shall be filed in the office of the clerk of the district court in and for that county which has the greatest valuation of real property within the districts sought to be included, as shown by the tax rolls of the respective counties. Said petition shall set forth facts showing that the purposes of articles 1 to 8 of this title would be subserved by the union of said districts and that such union would promote the economical execution of the purposes for which the districts were organized.

(2) Upon the filing of said petition the court shall by order fix a time and place of hearing, and thereupon the clerk shall give notice by publication or by personal service to the boards of directors of the districts which it is desired to unite with the district of the petitioners. Such notice shall contain the time and place where the hearing on the petition will be had and the purpose of the same, and under the provisions of section 37-2-105, in case the said two or more districts sought to be united severally include a part of the territory within two or more counties. Such hearing shall be had in accordance with the provisions of articles 1 to 8 of this title as to the hearing upon petition for the formation of a conservancy district.

(3) After the hearing, if the court finds that the averments of the petition are true and that the said districts, or any of them, should be united, it shall so order, and thereafter such districts shall be united into one district and proceed as such. The court shall designate the corporate name of such united district, and such further proceedings shall be taken as provided for in articles 1 to 8 of this title. The court shall in such order appoint the directors of such united district who shall thereafter have such powers and be subject to such regulations as are provided for directors in districts created in the first instance. All legal proceedings already instituted by or against any of such constituent districts may be revived and continued against such united district by an order of court substituting the name of such united district for such constituent districts, and such proceedings shall then continue accordingly.

(4) Instead of organizing a new district from such constituent districts, the court may, in its discretion, direct that one or more of such districts described in the petition be included in another of said districts, which other shall continue under its original corporate name and organization, or it may direct that the district or districts so absorbed shall be represented on the board of directors of the original district, designating what members of the board of directors of the original district shall be retired from the new board and what members representing the included district or districts shall take their places; or it may direct that the included district or districts shall become subdistricts of the main district.

Source: L. 22: p. 65, § 60. **C.L.** § 9574. **CSA:** C. 138, § 185. **CRS 53:** § 30-6-2. **C.R.S. 1963:** § 29-6-2.

37-6-103. Subdistricts. (1) Whenever it is desired to construct improvements wholly within or partly within and partly without any district organized under articles 1 to 8 of this title, which improvements will affect only a part of said district, for the purpose of accomplishing such work, subdistricts may be organized upon petition of the owners of real property, within or partly within and partly without the district, which petition shall fulfill the same requirements concerning the subdistricts as the petition outlined in section 37-2-102 is required to fulfill concerning the organization of the main district and shall be filed with the clerk of the district court and shall be accompanied by a bond as provided for in section 37-2-103. All proceedings relating to the organization of such subdistricts shall conform in all things to the provisions of said articles relating to the organization of districts. Whenever the court by its order duly entered of record declares and decrees the subdistricts to be organized, the clerk of said court shall thereupon give notice of such order to the directors of the district, who shall thereupon act also as directors of the subdistrict. Thereafter, the proceedings in reference to the subdistrict shall in all matters conform to the provisions of said articles; except that, in the appraisal of benefits and damages for the purposes of such subdistricts, in the issuance of bonds, in the levying of assessments, and in all other matters affecting only the subdistrict, the provisions of said articles shall apply to the subdistrict as though it were an independent district, and it shall not, in these things, be amalgamated with the main district.

(2) The board of directors, board of appraisers, chief engineer, attorney, secretary, and other officers, agents, and employees of the district shall, insofar as it may be necessary, serve in the same capacities for such subdistrict, and contracts and agreements between the main district and subdistrict may be made in the same manner as contracts and agreements between two districts. The distribution of administration expense between the main district and subdistrict shall be in proportion to the interests involved and the amount of service rendered, such division to be made by the board of directors with the right of appeal to the court establishing the district. This section shall not be held to prevent the organization of independent districts for local improvements under other laws within the limits of a district organized under articles 1 to 8 of this title.

Source: L. 22: p. 67, § 61. **C.L.** § 9575. **CSA:** C. 138, § 186. **CRS 53:** § 30-6-3. **C.R.S. 1963:** § 29-6-3.

37-6-104. Remedy for injury by a district. (1) In case any person or public corporation, within or without any district organized under articles 1 to 8 of this title, may be injuriously affected with respect to property rights in any manner whatsoever by any act performed by any official or agent of such district, or by the execution, maintenance, or operation of the official plan, and except as otherwise provided in article 10 of title 24, C.R.S., and in case no other method of relief is offered under articles 1 to 8 of this title, the remedy shall be as follows: The person or public corporation seeking relief shall petition the court before which said district was organized for an appraisal of damages sufficient to compensate for such injuries. The court shall thereupon direct the board of appraisers of the district to appraise said damages and injuries and to make a report to the court on or before the time named in the order of the court. Upon the filing of such report, the court shall cause notice to be given to the petitioner and to the directors of the district of a hearing on said report. At the time of such hearing, the court shall consider said report of said appraisers and may ratify said report or

amend it as the court may deem equitable or may return it to the said board of appraisers and require them to prepare a new report. Upon the filing of an order of the court approving said report of said appraisers, with such modifications as it may have made, said order shall constitute a final adjudication of the matter, unless it is appealed in the manner provided in this article, within twenty days.

(2) Appeal from said order to a jury may be had as provided in this article, in case of condemnation proceedings, by the petitioners, by the directors of the district, or by any person or corporation adversely affected by the report of the appraisers. No damages shall be allowed under this section which would not otherwise be allowed by law; but nothing in this section shall be construed to deprive any person or public corporation of the remedy of injunction in the case of prospective irreparable injury.

Source: L. 22: p. 68, § 62. **C.L.** § 9576. **CSA:** C. 138, § 187. **CRS 53:** § 30-6-4. **C.R.S. 1963:** § 29-6-4. **L. 71:** p. 1212, § 4.

ARTICLE 7

Police Powers and Regulations

37-7-101. District protection. The board of directors has the right to police and protect the works of the district, to prevent persons, vehicles, or livestock from passing over the works of the district, and to prevent the doing of any act which would result in damage thereto.

Source: L. 22: p. 69, § 63. **C.L.** § 9577. **CSA:** C. 138, § 188. **CRS 53:** § 30-7-1. **C.R.S. 1963:** § 29-7-1.

37-7-102. Injury to survey marks - penalty. The willful destruction, injury, or removal of any bench marks, witness marks, stakes, or other reference marks, placed by the surveyors or engineers of the district or by contractors in constructing the works of the district, is a misdemeanor, punishable by a fine of not more than one hundred dollars. The original field notes of surveys shall be the permanent property of the district.

Source: L. 22: p. 69, § 64. **C.L.** § 9578. **CSA:** C. 138, § 189. **CRS 53:** § 30-7-2. **C.R.S. 1963:** § 29-7-2.

37-7-103. Liability for damages - penalty - jurisdiction. (1) All persons and corporations, public or private, shall be liable for damages done to works of the district by themselves, their agents, or their employees or by their livestock. Any person guilty of willful damage is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars and costs and shall be liable for all damages and costs. The board of directors has authority to repair such damage at the expense of the person or corporation causing the same.

(2) In all cases declared misdemeanors by articles 1 to 8 of this title, the county court of the county in which the offense is committed has jurisdiction thereof and, upon complaint being made as required by law, may issue a warrant directed to any proper officer of his county for the

arrest of any person so charged with such misdemeanor, and, upon the arrest of such person, the county judge before whom such person is brought for trial shall hear and determine the cause and, if he finds the accused guilty, shall assess the fine as prescribed in articles 1 to 8 of this title.

Source: L. 22: p. 69, § 65. **C.L.** § 9579. **CSA:** C. 138, § 190. **CRS 53:** § 30-7-3. **C.R.S. 1963:** § 29-7-3. **L. 64:** p. 220, § 43.

37-7-104. Penalty for fraud. The making of profit, directly or indirectly, by any officer of any district organized under articles 1 to 8 of this title or by any other public officer within the state out of any contracts entered into by the district or the use of any money belonging to the district by loaning it or otherwise using it or by depositing the same in any manner contrary to law or by removal of any money by any such officer or with his or her consent and placing it elsewhere than is prescribed either by law or by the official acts of the board of directors for the purpose of profit is prohibited. Any person who violates this section commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S., and the officer offending shall be liable personally and upon his or her official bond for all losses to such district and for all profits realized by such unlawful use of moneys.

Source: L. 22: p. 70, § 66. **C.L.** § 9580. **CSA:** C. 138, § 191. **CRS 53:** § 30-7-4. **C.R.S. 1963:** § 29-7-4. **L. 77:** Entire section amended, p. 884, § 64, effective July 1, 1979. **L. 89:** Entire section amended, p. 850, § 133, effective July 1. **L. 2002:** Entire section amended, p. 1553, § 333, effective October 1.

Editor's note: The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See People v. McKenna, 199 Colo. 452, 611 P.2d 574 (1980).

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

ARTICLE 8

Schedule of Forms

37-8-101. Forms. The following forms illustrate the character of the procedure contemplated by articles 1 to 8 of this title and, if substantially complied with, with changes to meet particular requirements, shall be held to meet requirements of articles 1 to 8 of this title:

FORM I.

Notice of Hearing on Petition.

To All Persons Interested:

Public Notice Is Hereby Given:

1. That on the ..... day of ....., 20...., pursuant to the provisions of the conservancy law of Colorado, there was filed in the office of the clerk of the district court sitting in and for ..... county, Colorado, the petition of ..... and others for the establishment of a conservancy district to be known as ..... conservancy district.

(Here insert the purpose.)

2. That the lands sought to be included in said district comprise lands in ..... and ..... counties, Colorado, described as follows:

(Here insert description.)

3. That a public hearing on said petition will be had in said court on ..... the ..... day of ..... at the hour of ..... o'clock ....M., by the district court sitting in and for ..... county, at the court house in the city of ..... county, Colorado.

All persons and public corporations owning or interested in real estate within the territory hereinbefore described will be given the opportunity to be heard at the time and place above specified.

Dated ..... Colorado ..... 20.... .

.....

Clerk of the district court sitting in and for ..... county, Colorado.

FORM II.

Finding on Hearing.

STATE OF COLORADO)
) ss.
County of.....)

IN THE DISTRICT COURT SITTING IN AND FOR ..... COUNTY.

In the Matter of

..... Conservancy District.

Findings and Decree on Hearing.

On this ..... day of ....., 20.... this cause coming on for hearing upon the petition of .... and others, for the organization of a conservancy district under the conservancy act of the state of Colorado, the court, after a full hearing, now here finds:

1. That said petition has been signed and presented in full conformity with the conservancy law of Colorado.
2. That the allegations of said petition are true.
3. That no protesting petition has been filed (or if filed has been dismissed).
4. That this court has jurisdiction of the parties to, and the subject matter of, this proceeding.
5. That the purposes for which said district is established are:

(Insert the purposes, e.g., a system of flood prevention.)

6. That a public necessity exists for the construction of the proposed work.

7. That the territory to be included in the proposed district and the boundaries of said district are as follows:

(Here insert boundaries of district.)

8. That the said territory last above described should be constituted and created a conservancy district under the conservancy law of Colorado under the corporate name of ..... conservancy district.

Wherefore, it is by the court ordered, adjudged and decreed:

That the territory as above described be and the same hereby is constituted and created a conservancy district under the conservancy law of Colorado under the corporate name of ..... conservancy district, with its office or principal place of business at ..... in ..... county, Colorado. (If directors are appointed at the same time.) And the following persons are hereby appointed directors of said conservancy district ..... for the term of one year, ... for the term of three years, ... for the term of five years, who are hereby directed to qualify and proceed according to law.

9. For consideration of other matters herein, this cause is retained on the docket of this court.

By the court,

.....

Judge.

FORM III.

Notice to Property Owners to Pay Assessments.

..... Conservancy District.

To All Persons Interested:

Public Notice Is Hereby Given:

1. That on the ..... day of ....., 20.... the board of directors of ..... conservancy district duly levied for the account of the construction fund of said district, an assessment upon all the property in said district in the aggregate sum of ....., and has caused the same to be extended upon the construction fund assessment record of said district, and that said record is now in the hands of the treasurer of the said district for collection.

2. That the entire assessment against any parcel of land may be paid to the said treasurer of the district at any time on or prior to ....., 20.... without costs and without interest.

3. That as soon after the ..... day of ....., 20.... as conveniently may be, the board of directors of said district will divide the uncollected portion of said assessment into convenient installments and will issue bonds bearing interest not exceeding six percent per annum in anticipation of the collection of the several installments of said assessment, pursuant to the conservancy law of Colorado.

.....

President.

(Seal)

Attest:

.....

Secretary.

FORM IV.

Bonds and Coupons.

(Form of Bond.)

No.....$ .....

UNITED STATES OF AMERICA.

State of Colorado.

..... Conservancy District.

Conservancy Bond.

Know All Men by These Presents, That ..... conservancy district, a legally organized conservancy district of the state of Colorado, acknowledges itself to owe and for value received hereby promises to pay bearer ..... dollars, on the first day of ....., 20.... with interest thereon from the date hereof until paid at the rate of ..... percent per annum, payable ....., 20.... and semiannually thereafter on the first day of ..... and of ..... in each year on presentation and surrender of the annexed interest coupons as they severally become due. Both the principal of and the interest on this bond are hereby made payable in lawful money of the United States of America, at ..... and ..... .

This bond is one of a series of bonds issued by ..... conservancy district for the purpose of paying the cost of constructing a system for flood prevention (or for other works) for said district, and in anticipation of the collection of the several installments of an assessment duly levied upon lands within said district and benefited by said improvement in strict compliance with the conservancy law of Colorado, and pursuant to an order of the board of directors of said district, duly made and entered of record.

And it is hereby certified and recited that all acts, conditions and things required to be done in locating and establishing said district and in equalizing appraisals of benefits and in levying assessments against lands benefited thereby, and in authorizing, executing and issuing this bond, have been legally had, done and performed in due form of law; that the total amount of bonds issued by said district does not exceed ninety percent of the assessments so levied and unpaid at the time said bonds are issued, and does not exceed any legal limitation imposed by law.

And for the performance of all the covenants and stipulations of this bond and of the duties imposed by law upon said district for the collection of the principal of and the interest upon said assessment and the application thereof to the payment of this bond and the interest thereon, and for the levying of such other and further assessments as are authorized by law and as may be required for the prompt payment of this bond and the interest thereon, the full faith, credit and resources of said ..... conservancy district are hereby irrevocably pledged.

In Testimony Whereof, The Board of directors of ..... conservancy district has caused this bond to be signed by its president and sealed with the corporate seal of said district,

attested by its secretary, and has caused the coupons hereto annexed to be executed by the facsimile signature of its treasurer, as of the ..... day of ....., 20.... .

.....
President.
(Seal)
Attest:
.....
Secretary.

(Form of Coupon.)

$ .....No. .....

On the first day of ....., 20.... ,

..... conservancy district promises to pay to the bearer ..... dollars, in lawful money of the United States of America, at ..... or at ..... at the holder's option, being semiannual interest due on that date on its conservancy bond dated ....., 20.... .

(Facsimile Signature.)

.....
Treasurer.
No.....

FORM V.

Form of Notice of Enlargement of District.

STATE OF COLORADO)
) ss.
County of.....)

In the District Court in and for

..... County, Colorado.

In the Matter of
.....
Conservancy District.

Notice of Enlargement of District.

To All Persons (and Public Corporations, if any) Interested:

Public Notice is Hereby Given:

1. That heretofore on the ..... day of ....., 20.... the district court sitting in and for ..... county, Colorado, duly entered a final decree constituting and creating ..... conservancy district and appointing a board of directors therefor.
2. That thereafter this court duly appointed

to be the board of appraisers for said district. That said board of appraisers on the ..... day of ....., 20.... filed their report recommending that the following lands, not originally included in the district, be added thereto.

(Here describe generally the lands which the report

of the board of appraisers recommends should be

added to the district.)

3. That on ..... the ..... day of ....., 20.... (or as soon hereafter as the convenience of the court will permit) at the court house in ..... of ..... Colorado, the district court sitting in and for ..... county, Colorado, will hear all persons and public corporations who are owners of or interested in the property described in this notice upon the question whether said lands should be added to and included in said ..... conservancy district.

.....
Clerk of the district court
sitting in and for
..... county, Colorado.

FORM VI. STATE OF COLORADO, ...CONSERVANCY DISTRICT. CONSERVANCY APPRAISAL RECORD, ...COUNTY.
Reserve space for table
Action Taken by Appraisers, Court, and Jury.
Description
Record
On the First Line Carry Action by Appraisers; <C15> Matters
Index Owner's
Second line, Court; Third Line, Jury. <C15> Reported

Number Name <C11> Appraised Amount Amountto Court
<C6> Section Value for Fixed FixedAmountunder
<C3> Part T R. (Lot Acres or BookPage Purchasefor Value offor
Fixed Section
<C3> (Part) (Sub.) (Blk.) No.) Area of feeEasementDamagesfor Benefits37-4-105

<C10> A $ $ $$
<C10> C $ $ $ $
<C10> J $ $ $ $

<C10> A $ $ $$
<C10> C $ $ $ $
<C10> J $ $ $ $

~~</TBL.37-8-101x1>~~

FORM VII.

Notice of Hearing on Appraisals.

STATE OF COLORADO)
) ss.
County of.....)

In the District Court Sitting in and for

..... County, Colorado.

In the Matter of
.....
Conservancy District.

Notice of Hearing on Appraisals.

To All Persons and Public Corporations Interested:

Public Notice Is Hereby Given:

1. That heretofore on the ..... day of ....., 20.... the district court sitting in and for ..... county, Colorado, duly entered a decree, constituting and creating ..... conservancy district and appointing a board of directors therefor.

2. That thereafter this court duly appointed

the board of appraisers for said district. That said board of appraisers on ..... day of ....., 20.... filed their appraisal of benefits and damages. The land affected by such appraisal is described as follows:

(Here insert general description of land appraised.)

(It will be sufficient to state: "All land lying in the ..... ward of the city of .....," or "All land abutting on ..... street in the city of .....," or "All land lying west of ..... river and east of ..... railroad in section ..... township ..... range .....," or any general description pointing out the lands involved.)

The said appraisal of benefits and damages and of land to be taken is now on file in the office of the clerk of this court.

3. All public corporations and all persons, owners of or interested in the property described in said report, whether as benefited property or as property taken or damaged (whether said taken or damaged property lies within or without said district), desiring to contest the appraisals as made and returned by the board of appraisers, must file their objections in said court on or before the .... day of ...., 20.., and a hearing on said appraisal will be held in this court on the ..... day of ....., 20.... at the hour of ..... o'clock ....M., in the county of ....., Colorado, at which time an opportunity will be afforded all objectors to be heard upon their several objections.

.....
Clerk of the district court sitting in and for ..... county, Colorado.
Dated at ....., Colorado ..... day of ....., 20...

FORM VIII.

Certificate of Levy of Assessments.

1. For Construction Fund Assessment Record.

STATE OF COLORADO)
) ss.
County of.....)

To the Treasurer of ..... County, Colorado:

This is to certify that by virtue and under the authority of the conservancy law of Colorado, the board of directors of ..... conservancy district has levied the sum of ..... dollars for the account of the construction fund of said district, which said assessment bears interest as provided by law and is payable as set forth in the construction fund assessment record to which this certificate is appended.

The assessments above specified shall be collectible and payable in the sums therein specified at the time that the state and county taxes are due and collectible, and you are directed and ordered to demand and collect such assessments at the time that the state and county taxes are due on the same land, and the construction fund assessment record to which this certificate is appended shall be your authority to make such collection.

Witness the signature of the president of said district, attested by the seal thereof, attested by the signature of its secretary, this ..... day of ....., 20.... .

.....
President.
(Seal)
Attest: ..... Secretary.

The construction fund assessment record shall be in substantially the following form:

CONSTRUCTION FUND ASSESSMENT RECORD OF .....CONSERVANCY DISTRICT. .....COUNTY.

Assessment Levied
Bond Fund Installation to be Collected by the
<C3> Descrip-
<C4> Trial
Against Each Item of
Assessments Paid
County Treasurer
<C3> tion of
<C4> Amount of
Property to Which
Within Sixty Days
Name
<C3> Item of
<C4> Benefits
Benefits Have Been
No.
of
<C3> Property
<C4> Appraised
Appraised
Owner
<C3> Appraised
<C4> Against
Installments Due 20.....
Installments Due 20.....
<C3> and Each Item Name
ofAmountName ofAmountName of
<C3> Assessed of 1st 2nd 3rd Assess.PersonAssess.<C>Date
PersonAssess.DatePerson
<C4> PropertyAssess.Assess.Assess.No. Amt.DateMakingNo. Prin.Int.
PaidMakingNo.Prin.Int. PaidMaki ng
<C11> Payment Payment Payment

<C5> $ $ $

<C8> 1 $ 1 $ $ 1$ $
<C8> 2 $ 2 $ $ 2$ $
<C8> 3 $ 3 $ $ 3$ $

2. For Maintenance Fund Assessment Record.

STATE OF COLORADO)
) ss.
County of.....)

To the Treasurer of ..... County, Colorado:

This is to certify that by virtue and under the authority of the conservancy law of Colorado, the board of directors of ..... conservancy district has levied the sum of ..... dollars, for the account of the maintenance fund for the year 20.... .

The amounts of said levies upon the several parcels of land upon which the same are imposed are set forth in the maintenance fund assessment record to which this certificate is appended.

The said assessments set forth in the maintenance fund record, to which this certificate is appended, shall be collectible and payable the present year in the sums therein specified at the time that the state and county taxes are due and collectible, and you are directed and ordered to demand and collect such assessments at the time that the state and county taxes are due on the same land, and the maintenance fund assessment record to which this certificate is appended shall be your authority to make such collection.

Witness the signature of the president of the district, attested by the seal thereof, attested by the signature of its secretary, this ..... day of ....., 20.... .

.....
President.
(Seal)
Attest:
.....
Secretary.

The maintenance fund assessment record shall be in substantially the following form:

MAINTENANCE FUND ASSESSMENT RECORD
OF
..... CONSERVANCY DISTRICT
..... COUNTY
For the Year .....
(Due in the Year ....., at the Same Times General
Taxes Are Due.)

No.	Name of Owner	Description of Property	Total Maintenance Assessments Levied	1st and 2nd Half	Amount	Payments Date	Payments Name of Person

Making Payment	Against each Item of Property	Paid
	1st Half $	
	2nd Half $	
	1st Half $	
	2nd Half $	

Source: L. 22: p. 74, § 75. **C.L.** § 9589. **CSA:** C. 138, § 199. **CRS 53:** § 30-8-1. **C.R.S. 1963:** § 29-8-1.

DRAINAGE AND DRAINAGE DISTRICTS

ARTICLE 20

Organization of Districts

Cross references: For mine drainage districts, see article 51 of title 34; for irrigation drainage districts, see § 37-43-122; for internal improvement districts, see article 44 of this title.

37-20-101. Legislative declaration. It is declared by the general assembly that the reclamation by drainage of lands not at present cultivatable or useful or fully so will be conducive to the public health, convenience, utility, or welfare. The owners of agricultural lands susceptible of drainage by the same general system of works may propose the organization of a drainage district by presenting to the board of county commissioners of the county where the larger portion of said lands lie a petition giving the name of the proposed district and praying that the board of county commissioners cause the question of the organization of said district to be submitted to a vote of the owners of the lands lying within the boundaries thereof or that a drainage system may be established without election, as provided in section 37-20-110.

Source: L. 11: p. 311, § 1. **C.L.** § 2107. **CSA:** C. 57, § 1. **CRS 53:** § 47-1-1. **C.R.S. 1963:** § 47-1-1.

37-20-102. Petition - maps - committee. (1) The petition may be in more than one part for convenience in obtaining signatures if each part is the same in substance. When the several parts of said petition, with the signatures thereto attached, are together presented to the board of county commissioners, they shall be considered as one petition. Said petition shall be signed by a majority of the owners of said lands, whether residents or nonresidents of said county, as well as by the owners in the aggregate of a majority of the total number of acres of land sought to be included in said district and shall contain a general description of the boundaries of said proposed district and a statement that the lands within said proposed district are not at present

cultivatable or useful or fully so and that they can be made more productive or useful by drainage.

(2) The petition shall be accompanied by a map drawn to scale of not less than two inches to the mile, giving the names of the owners of each tract of land appearing of record and proposed to be embraced in said district. The petitioners shall select and name in said petition a committee of three or more of said petitioners to present such petition to the board of county commissioners and to give notice thereof as provided in section 37-20-106.

(3) The equalized county assessment roll next preceding the presentation of a petition for the organization of a drainage district is sufficient evidence of title for the purpose of articles 20 to 30 of this title, but other evidence may be received including receipts or other evidence of the rights of entrymen of lands under any law of the United States or of this state, and such entrymen shall be competent signers of such petition, and the lands on which said entries have been made by entrymen for the purpose of said petition shall be considered as owned by them. Articles 20 to 30 of this title shall apply to said lands to the extent of the rights of such entrymen and shall bind said lands as other lands in the district when the title of the state or the United States is divested.

Source: L. 11: p. 312, § 2. **L. 13:** p. 252, § 1. **L. 15:** p. 296, § 1. **C.L.** § 2108. **CSA:** C. 57, § 2. **CRS 53:** § 47-1-2. **C.R.S. 1963:** § 47-1-2.

37-20-103. Petition accompanied by bond. The petition shall be accompanied by a good and sufficient bond with sureties to be approved by the said board of county commissioners in a penal sum double the amount of the probable cost of organizing said district, conditioned for the payment of all costs incurred in said proceedings in case said organization shall not be effected.

Source: L. 11: p. 312, § 3. **C.L.** § 2109. **CSA:** C. 57, § 3. **CRS 53:** § 47-1-3. **C.R.S. 1963:** § 47-1-3.

37-20-104. Cash in lieu of bond. In lieu of a bond the board of county commissioners, in its discretion, may require the petitioners to pay in advance to the county treasurer from time to time such sums of money as in the opinion of the board of county commissioners will be required for the costs and expenses of organizing said district.

Source: L. 11: p. 312, § 4. **C.L.** § 2110. **CSA:** C. 57, § 4. **CRS 53:** § 47-1-4. **C.R.S. 1963:** § 47-1-4.

37-20-105. Expenses reimbursed - when. In case the district is organized, the expenses incurred by the county shall be paid to the county by said district, and all advances made by the petitioners to the county treasurer shall be refunded by the county to the petitioners, who shall have advanced the same.

Source: L. 11: p. 313, § 5. **C.L.** § 2111. **CSA:** C. 57, § 5. **CRS 53:** § 47-1-5. **C.R.S. 1963:** § 47-1-5.

37-20-106. Petition - notice - publication. Prior to the presentation of the petition to the board of county commissioners, the petition shall be published in some newspaper of general circulation in the county where said petition will be presented, for at least two weeks, together with a notice signed by the committee selected by the petitioners and named in said petition, giving the time and place of the presentation of the same to the board of county commissioners.

Source: L. 11: p. 313, § 6. **C.L.** § 2112. **CSA:** C. 57, § 6. **CRS 53:** § 47-1-6. **C.R.S. 1963:** § 47-1-6.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24.

37-20-107. Hearing of petition. At the time and place designated in the notice, if it appears that the notice of presentation of the petition has been given as required by section 37-20-106 and that said petition has been signed by the number of petitioners required by section 37-20-102, the board of county commissioners shall hear said petition and applications for the exclusion of lands from said district and applications for the inclusion of lands therein and may adjourn such hearing from time to time not exceeding four weeks in all.

Source: L. 11: p. 313, § 7. **C.L.** § 2113. **CSA:** C. 57, § 7. **CRS 53:** § 47-1-7. **C.R.S. 1963:** § 47-1-7.

37-20-108. Change boundaries - limitations. The board of county commissioners may make such changes in the boundaries of the proposed district as may be necessary by including therein upon the application of the owners thereof of other lands susceptible of drainage by the proposed system, or which will be benefited by the system of drainage, and by excluding therefrom lands mentioned in the petition which in the opinion of the board of county commissioners will not be susceptible of drainage thereby or will not be benefited by the system of drainage, but the board of county commissioners shall not exclude from said district any lands described in the petition which, in the opinion of the board, are susceptible of drainage by the system or will be benefited thereby.

Source: L. 11: p. 313, § 8. **C.L.** § 2114. **CSA:** C. 57, § 8. **CRS 53:** § 47-1-8. **C.R.S. 1963:** § 47-1-8.

37-20-109. Order establishing district. When the boundaries of any proposed drainage district have been determined, the board of county commissioners shall make an order allowing the prayer of the petition, defining and establishing the boundaries and designating the name of the proposed district.

Source: L. 11: p. 314, § 9. **C.L.** § 2115. **CSA:** C. 57, § 9. **CRS 53:** § 47-1-9. **C.R.S. 1963:** § 47-1-9.

37-20-110. Establishment without election. When the prayer of the petition is that a drainage system be established without holding an election and it appears that a large portion of the land which will be benefited by the proposed drainage system is unoccupied land or so many

of the owners of land to be benefited thereby are not residents upon the land that an election would be impracticable or would entail an undue expense, the board of county commissioners is authorized, at any regular or special session, to cause a system of drainage to be constructed and to exercise all the powers conferred upon boards of directors of drainage districts, and to continue to exercise the powers and perform the duties of boards of directors until a petition is presented signed by the owners of the larger portion of the lands, or their duly authorized agents, praying that an election may be called to elect directors for the district. Then the board of county commissioners shall call an election for that purpose and as soon as the result of said election is determined, the board of county commissioners shall cease to have or exercise the duties of directors of a drainage district.

Source: L. 11: p. 314, § 10. **C.L.** § 2116. **CSA:** C. 57, § 10. **CRS 53:** § 47-1-10. **C.R.S. 1963:** § 47-1-10.

37-20-111. Election - notice - contents. (1) When the petition prays that an election shall be held, the board of county commissioners shall order an election to be held within the proposed drainage district for the purpose of determining whether or not said district shall be organized and shall cause to be published a notice of said election which shall contain:

(a) The name of the proposed district;

(b) The boundaries thereof;

(c) The polling places;

(d) The names of the judges of election;

(e) The names of three or more persons eligible for directors of said district;

(f) The date of said election.

(2) Said notice shall require the electors to cast ballots which shall contain the words: "Drainage District - Yes" or "Drainage District - No". Said notice shall be signed by the chairman of the board of county commissioners and attested by the county clerk and recorder under the seal of the county.

Source: L. 11: p. 314, § 11. **C.L.** § 2117. **CSA:** C. 57, § 11. **CRS 53:** § 47-1-11. **C.R.S. 1963:** § 47-1-11.

37-20-112. Three directors - representation. There shall be elected three directors who shall be owners of land within said district; but the board of county commissioners may divide and if requested in said petition shall divide said district into three divisions, as nearly equal as conveniently may be, which shall be numbered one, two, and three, respectively, and in that event, the voters of each division shall elect one director, who shall be the owner of land within said division, and the three thus elected shall be the directors of said district.

Source: L. 11: p. 315, § 12. **C.L.** § 2118. **CSA:** C. 57, § 12. **CRS 53:** § 47-1-12. **C.R.S. 1963:** § 47-1-12.

37-20-113. Polling place - precincts. The board of county commissioners shall designate a polling place within said district and, if necessary, shall establish a convenient

number of election precincts within said district, define the boundaries thereof, and designate the polling place in each precinct.

Source: L. 11: p. 315, § 13. **C.L.** § 2119. **CSA:** C. 57, § 13. **CRS 53:** § 47-1-13. **C.R.S. 1963:** § 47-1-13.

37-20-114. Judges of election. The board of county commissioners shall appoint for each precinct, from the qualified electors who are owners of lands therein, three judges of election who shall exercise the powers and duties usually performed by judges of election in this state.

Source: L. 11: p. 315, § 14. **C.L.** § 2120. **CSA:** C. 57, § 14. **CRS 53:** § 47-1-14. **C.R.S. 1963:** § 47-1-14.

Cross references: For powers and duties of judges of election, see article 6 of title 1.

37-20-115. Publication of election notice. The notice shall be published at least two weeks preceding the election in a newspaper of general circulation within the county; and a like notice shall be published in each county within which any portion of the district may lie.

Source: L. 11: p. 315, § 15. **C.L.** § 2121. **CSA:** C. 57, § 15. **CRS 53:** § 47-1-15. **C.R.S. 1963:** § 47-1-15.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24.

37-20-116. Qualification of voters. Every owner of land within said district, who is a citizen of the United States or has declared his intention to become a citizen of the United States and is a resident of the state of Colorado, shall be entitled to vote at such election in the precinct where he resides, or if a nonresident of the precinct, then in the precinct within which the greater portion of his land lies.

Source: L. 11: p. 315, § 16. **C.L.** § 2122. **CSA:** C. 57, § 16. **CRS 53:** § 47-1-16. **C.R.S. 1963:** § 47-1-16.

37-20-117. Canvass of votes - result. The board of county commissioners shall meet on the second Monday following the election and proceed to canvass the votes cast thereat. If it appears that a majority of the votes cast are "Drainage District - Yes", the board of county commissioners shall make an order declaring that said drainage district is duly organized under the name theretofore designated and that the persons who receive the highest number of votes respectively are duly elected directors of said district.

Source: L. 11: p. 316, § 17. **C.L.** § 2123. **CSA:** C. 57, § 17. **CRS 53:** § 47-1-17. **C.R.S. 1963:** § 47-1-17.

37-20-118. Order filed with county clerk and recorder. The board of county commissioners shall cause a certified copy of the order, together with a copy of the plat of the district, to be filed with the county clerk and recorder of each county in which any portion of the district lies, and thereafter no land within the district shall be included within the boundaries of any other drainage district without the consent of the owner of the lands sought to be embraced within such other district.

Source: L. 11: p. 316, § 18. **C.L.** § 2124. **CSA:** C. 57, § 18. **CRS 53:** § 47-1-18. **C.R.S. 1963:** § 47-1-18.

37-20-119. Officers to qualify. On and after the date of such filing, the organization of said district shall be complete, and the officers thereof shall forthwith enter upon the duties of their respective offices, upon qualifying according to law, and shall hold their respective offices until their successors are elected and qualified.

Source: L. 11: p. 316, § 19. **C.L.** § 2125. **CSA:** C. 57, § 19. **CRS 53:** § 47-1-19. **C.R.S. 1963:** § 47-1-19.

37-20-120. Validity of organization. No action shall be brought or maintained or defense made affecting the validity of the organization of said district, unless the same has been commenced or made within one year after the entry of said order.

Source: L. 11: p. 316, § 20. **C.L.** § 2126. **CSA:** C. 57, § 20. **CRS 53:** § 47-1-20. **C.R.S. 1963:** § 47-1-20.

37-20-121. Actions - judicial notice - validity. In all actions, suits, and judicial proceedings in any court of this state, the court shall take judicial notice of the organization and existence of any drainage district of this state, from and after the filing for record in the office of the county clerk and recorder of the certified copy of the order of the board of county commissioners mentioned in section 37-20-117. A certified copy of said order shall be prima facie evidence in all actions, suits, and proceedings in any court of this state of the regularity and legal sufficiency of all acts, matters, and proceedings therein recited and set forth. Any such drainage district, in regard to which any such order may be entered and such certified copy thereof so filed for record, which has exercised the rights and powers of such a district and which has in office a board of directors exercising the duties of its office and the legality or regularity of the formation or organization of which shall not have been questioned by proceedings in quo warranto instituted in the district court of the county in which such district or the greater portion thereof is situated, within one year from the date of such filing, shall be conclusively deemed to be a legally and regularly organized, established, and existing drainage district within the meaning of articles 20 to 30 of this title. The due and lawful formation and organization of said district shall not thereafter be questioned in any action, suit, or proceeding whether brought under the provisions of articles 20 to 30 of this title or otherwise.

Source: L. 11: p. 328, § 74. **C.L.** § 2127. **CSA:** C. 57, § 21. **CRS 53:** § 47-1-21. **C.R.S. 1963:** § 47-1-21.

ARTICLE 21

Directors - Duties - Elections

37-21-101. Directors to exercise powers. The board of directors is vested with all powers necessary to accomplish the purposes for which the district was organized, including the power to optimize drainage and recharge of water within the district. No enumeration of particular powers granted shall be construed to impair any general grant of power specified in this article, nor shall the grant of particular powers be construed to limit any such general grant to a power of the same class as the particular powers so enumerated.

Source: L. 11: p. 316, § 22. **C.L.** § 2129. **CSA:** C. 57, § 23. **CRS 53:** § 47-2-2. **C.R.S. 1963:** § 47-2-2. **L. 88:** Entire section amended, p. 1225, § 1, effective March 17.

37-21-102. Meetings of directors. The board of directors shall hold a regular meeting in the office of the drainage district on the first Tuesday in January, April, July, and October and such special meetings as may be required for the proper transaction of business. Special meetings shall be called by the president of the board or any director. All special meetings of the board shall be held at locations which are within the boundaries of the district or which are within the boundaries of any county in which the district is located, in whole or in part, or in any county so long as the meeting location does not exceed twenty miles from the district boundaries. The provisions of this section governing the location of meetings may be waived only if the proposed change of location of a meeting of the board appears on the agenda of a regular or special meeting of the board and if a resolution is adopted by the board stating the reason for which a meeting of the board is to be held in a location other than under the provisions of this section and further stating the date, time, and place of such meeting.

Source: L. 11: p. 317, § 24. **C.L.** § 2131. **CSA:** C. 57, § 25. **CRS 53:** § 47-2-4. **C.R.S. 1963:** § 47-2-4. **L. 90:** Entire section amended, p. 1502, § 14, effective July 1.

37-21-103. Meetings public - quorum. Meetings of the board of directors shall be public, and two directors shall constitute a quorum for the transaction of business. On all questions requiring a vote there shall be a concurrence of at least two directors. The record of the board shall be open to the inspection of the public during business hours.

Source: L. 11: p. 317, § 25. **C.L.** § 2132. **CSA:** C. 57, § 26. **CRS 53:** § 47-2-5. **C.R.S. 1963:** § 47-2-5.

37-21-104. President - secretary - seal. The board of directors shall elect a president from the members of the board and shall appoint a secretary and adopt a drainage district seal.

Source: L. 11: p. 316, § 21. **C.L.** § 2128. **CSA:** C. 57, § 22. **CRS 53:** § 47-2-1. **C.R.S. 1963:** § 47-2-1.

37-21-105. Directors - election. The regular election of directors of drainage districts shall be held on the first Tuesday after the first Monday in January of each alternate year, at which three directors shall be elected. The three persons receiving the highest number of votes shall be the directors for the next succeeding two years and until their respective successors are elected and qualified.

Source: L. 11: p. 318, § 30. **C.L.** § 2137. **CSA:** C. 57, § 31. **CRS 53:** § 47-2-10. **C.R.S. 1963:** § 47-2-10.

37-21-106. Directors to qualify. Each director shall take an oath or affirmation in accordance with section 24-12-101 and file the director's official bond in the office of the county clerk and recorder of the county where the organization of the district was effected.

Source: L. 11: p. 318, § 31. **C.L.** § 2138. **CSA:** C. 57, § 32. **CRS 53:** § 47-2-11. **C.R.S. 1963:** § 47-2-11. **L. 2018:** Entire section amended, (HB 18-1138), ch. 88, p. 700, § 34, effective August 8.

Cross references: For the legislative declaration in HB 18-1138, see section 1 of chapter 88, Session Laws of Colorado 2018.

37-21-107. Failure of director to qualify. In the event that a person elected as director of a drainage district fails or refuses to qualify within the time prescribed in this article, a vacancy shall exist and the board of county commissioners of the county where the office of the drainage district is located shall appoint a director who shall hold the office until the next regular district election, and, upon filing his oath and bond, the term of office of the director whose successor was to be elected shall end.

Source: L. 11: p. 328, § 73. **C.L.** § 2139. **CSA:** C. 57, § 33. **CRS 53:** § 47-2-12. **C.R.S. 1963:** § 47-2-12.

37-21-108. Director's bond. Each director shall execute a bond in the penal sum of two thousand dollars with sureties approved by the county judge of the county where said organization was effected and file the same in the office of the county clerk and recorder of said county. Said bond shall be in the form prescribed by law for county officers, making the drainage district obligee therein.

Source: L. 11: p. 318, § 32. **C.L.** § 2140. **CSA:** C. 57, § 34. **CRS 53:** § 47-2-13. **C.R.S. 1963:** § 47-2-13.

Cross references: For bonds of county officers, see § 30-10-110.

37-21-109. Directors - secretary - salary. Each director shall receive as compensation for his services a sum not in excess of six hundred dollars per annum, as fixed by the board. No director shall receive any compensation as an officer, engineer, attorney, employee, or other agent of the district. Nothing contained in this article shall be construed as preventing the board

from authorizing the reimbursement of any director for expenses incurred and appertaining to the activities of the district. The salary of the secretary shall be fixed by resolution of the board.

Source: L. 11: p. 318, § 29. **L. 21:** p. 279, § 1. **C.L.** § 2136. **CSA:** C. 57, § 30. **CRS 53:** § 47-2-9. **L. 63:** p. 344, § 1. **C.R.S. 1963:** § 47-2-9. **L. 73:** p. 565, § 1.

37-21-110. Powers of board. The board of directors is authorized to take conveyances or assurances in the name of the drainage district for all property acquired by it and to institute and maintain any actions, proceedings, and suits necessary or proper in order fully to carry out the provisions of articles 20 to 30 of this title or to enforce, maintain, protect, or preserve any rights, privileges, and immunities created or acquired in pursuance thereof.

Source: L. 11: p. 317, § 28. **C.L.** § 2135. **CSA:** C. 57, § 29. **CRS 53:** § 47-2-8. **C.R.S. 1963:** § 47-2-8.

37-21-111. Right to enter upon land in district. The directors, agents, and employees of the drainage district have the right to enter upon any land in the district to make surveys and to locate drainage ditches and laterals.

Source: L. 11: p. 317, § 26. **C.L.** § 2133. **CSA:** C. 57, § 27. **CRS 53:** § 47-2-6. **C.R.S. 1963:** § 47-2-6.

37-21-112. Office of district. The office of the drainage district shall be located in the county where the organization is effected, at some fixed place to be determined by the board of directors of the drainage district.

Source: L. 11: p. 318, § 33. **C.L.** § 2141. **CSA:** C. 57, § 35. **CRS 53:** § 47-2-14. **C.R.S. 1963:** § 47-2-14.

37-21-113. Property to vest in district. The title to property acquired under the provisions of articles 20 to 30 of this title shall vest in such drainage district in its corporate name. Said property shall be held by such district in trust for, and is hereby dedicated and set apart for, the uses and purposes set forth in articles 20 to 30 of this title and shall be exempt from taxation. The board of directors is authorized to hold, use and acquire, manage, occupy, and possess said property.

Source: L. 11: p. 317, § 27. **C.L.** § 2134. **CSA:** C. 57, § 28. **CRS 53:** § 47-2-7. **C.R.S. 1963:** § 47-2-7.

37-21-113.5. Sale of district property. The board of directors of such drainage district has the power to sell and transfer by proper conveyance any real estate or personal property belonging to the district when, in the opinion of the board, such property is no longer needed by such district; except that no parcel of real estate with a fair market value of more than twenty-five thousand dollars shall be sold or transferred unless the question of the proposed sale or transfer is submitted to the qualified voters of the district at an election held thereon and is

approved by a majority of the qualified voters of the district voting at such election. Such election shall be held in the same manner as an election for dissolution of the district pursuant to the provisions of article 29 of this title insofar as such provisions are practicable.

Source: L. 83: Entire section added, p. 1385, § 1, effective March 22.

37-21-114. Construction of system - contracts. (1) The board of directors may cause surveys to be made for ditches for drainage works and rights-of-way for said district; may cause drainage or irrigation ditches, work, rights-of-way, and other property necessary for said district to be laid out, constructed, purchased, and acquired by condemnation or otherwise; and may appropriate, divert, and use waters for beneficial purposes, including any water gathered in or discharged by the works of any such district, under the same rules as to ownership, title, appropriation, priority, and adjudication of priorities as are applicable to individuals. The district shall file applications for water rights, changes of water rights, and plans for augmentation as provided in section 37-92-302.

(2) The board of directors has no power to make any contract or authorize any expenditure involving more than fifty thousand dollars unless such contract or expenditure is authorized, approved, and ratified in writing by owners of land in said drainage district equal in number to a majority of the votes cast at the last district election; and no contract or expenditure involving more than one hundred thousand dollars shall be made or be binding unless the question of making said contract or expenditure has been submitted and said expenditure authorized at an election in said district. The board of directors shall not violate the spending limitations specified in section 29-1-301, C.R.S.

(3) The board of directors has the power and authority, without advertising for bids as required by section 37-24-101, to enter into contracts either with the state of Colorado or with the United States, or both, jointly, for any and all surveys, plans, and specifications for a proposed drainage ditch, system, or works and also for the construction in whole or in part of such drainage ditch, system, or works. Such contracts shall provide for the payment by such drainage district to the state of Colorado or the United States, or both, as the case may be, of the actual cost of making such surveys, plans, and specifications and the actual cost of construction of such drainage ditch, system, or works, by such amounts as shall be agreed upon in such contracts. Any such contracts shall not become effective and binding upon any such drainage district until the question of making such contracts is submitted to and authorized at an election of the qualified electors of said district.

Source: L. 11: p. 316, § 23. **L. 15:** p. 294, § 1. **C.L.** § 2130. **L. 23:** p. 279, § 1. **CSA:** C. 57, § 24. **CRS 53:** § 47-2-3. **L. 55:** p. 292, § 1. **C.R.S. 1963:** § 47-2-3. **L. 73:** p. 1403, § 35. **L. 88:** (2) amended, p. 1225, § 2, effective March 17.

37-21-115. Notice of election. Fifteen days prior to any election held subsequent to the organization of a drainage district, the secretary shall cause notices specifying the polling place of each precinct to be posted in three public places in each precinct, giving the hour and place of holding the election, and at the same time shall post a general election notice of said election in the office of said drainage district.

Source: L. 11: p. 318, § 34. **C.L.** § 2142. **CSA:** C. 57, § 36. **CRS 53:** § 47-2-15. **C.R.S. 1963:** § 47-2-15.

37-21-116. Hours of voting. The polls shall be opened at eight a.m. and be kept open until six p.m. of the day of election.

Source: L. 11: p. 319, § 38. **C.L.** § 2146. **CSA:** C. 57, § 40. **CRS 53:** § 47-2-19. **C.R.S. 1963:** § 47-2-19.

37-21-117. Judges of election. Prior to the time for posting said notices, the board of directors shall appoint three judges of election in each precinct, each of whom shall be a landowner within said precinct, and one of whom shall act as clerk of the election.

Source: L. 11: p. 319, § 35. **C.L.** § 2143. **CSA:** C. 57, § 37. **CRS 53:** § 47-2-16. **C.R.S. 1963:** § 47-2-16.

37-21-118. Judges - vacancies filled by voters. If the board of directors fails to appoint judges or the appointees fail to attend at the hour designated for opening the polls on the morning of election, the voters of the precinct present at that hour may appoint one or more judges to supply the places of those absent.

Source: L. 11: p. 319, § 36. **C.L.** § 2144. **CSA:** C. 57, § 38. **CRS 53:** § 47-2-17. **C.R.S. 1963:** § 47-2-17.

37-21-119. Oaths - judges and clerks. Any judge or clerk of election may administer and certify oaths required to be administered during the progress of an election. Before opening the polls, each judge and clerk shall take and subscribe an oath faithfully to perform the duties imposed upon him by law. Any qualified elector of the precinct may administer and certify said oath.

Source: L. 11: p. 319, § 37. **C.L.** § 2145. **CSA:** C. 57, § 39. **CRS 53:** § 47-2-18. **C.R.S. 1963:** § 47-2-18.

37-21-120. Count of ballots - returns. After the closing of the polls, the judges of election shall forthwith proceed to count the ballots and make returns of the results of the election. It is the duty of the clerk forthwith to deliver the returns duly certified to the board of directors of the drainage district, together with the ballots cast.

Source: L. 11: p. 319, § 39. **C.L.** § 2147. **CSA:** C. 57, § 41. **CRS 53:** § 47-2-20. **C.R.S. 1963:** § 47-2-20.

37-21-121. Canvass of returns. The board of directors shall meet at the office of the drainage district on the first Monday after an election and canvass the returns. If at the time of the meeting the returns have been received from all the precincts, the board of directors shall proceed to canvass the returns. If returns have not been received from all precincts, the canvass

shall be postponed from day to day until the returns have all been received or until six postponements have been made. The canvass shall be made in public by opening the returns and counting the votes of the district for each person voted for and for or against each question submitted at such election and declaring the results thereof. The board shall declare elected the person receiving the highest number of votes for each office and shall declare the result of the vote on any question submitted to the voters.

Source: L. 11: p. 319, § 40. **C.L.** § 2148. **CSA:** C. 57, § 42. **CRS 53:** § 47-2-21. **C.R.S. 1963:** § 47-2-21.

37-21-122. Tie vote determined by lot. In the event that at any regular or special election two or more persons receive the same number of votes and one is elected thereby, the election shall be determined by lot under direction of the county judge of the county in which the office of the drainage district is kept.

Source: L. 11: p. 320, § 41. **C.L.** § 2149. **CSA:** C. 57, § 43. **CRS 53:** § 47-2-22. **C.R.S. 1963:** § 47-2-22.

37-21-123. Statement of result. (1) As soon as the result of any election is declared, the secretary of the board of directors shall enter in the record of the board of directors and file with the county clerk and recorder of the county in which the office of said district is located a statement of the result.

(2) Said statement shall contain:

(a) A copy of the published notice of said election;

(b) The names of the judges of election;

(c) The number of votes cast in the district and in each precinct of the district;

(d) The office to which each person was elected;

(e) The number of votes cast in each precinct for each person;

(f) The number of votes cast in the district for each person;

(g) The names of the persons elected;

(h) The result of any question submitted to the voters at said election.

Source: L. 11: p. 320, § 42. **C.L.** § 2150. **CSA:** C. 57, § 44. **CRS 53:** § 47-2-23. **C.R.S. 1963:** § 47-2-23.

37-21-124. Certificate of election. The secretary shall forthwith deliver to each person elected a certificate of election, signed by the secretary and authenticated with the seal of the drainage district.

Source: L. 11: p. 320, § 43. **C.L.** § 2151. **CSA:** C. 57, § 45. **CRS 53:** § 47-2-24. **C.R.S. 1963:** § 47-2-24.

37-21-125. Vacancies. In case of a vacancy in the board of directors by death, removal, or inability from any cause to properly discharge the duties of a director, the board of county commissioners of the county where the office of said district is located shall appoint a director

who shall hold his office until the next regular election in said district and until his successor is elected and qualified.

Source: L. 11: p. 320, § 44. **C.L.** § 2152. **CSA:** C. 57, § 46. **CRS 53:** § 47-2-25. **C.R.S. 1963:** § 47-2-25.

ARTICLE 22

Treasurer - Duties

37-22-101. Treasurer of drainage district. The county treasurer of the county in which the office of the drainage district is kept shall be ex officio treasurer of the drainage district and shall be liable on his official bond for the safety and disbursement of the funds of said drainage district which may come into his hands. The county treasurer shall receive as his sole compensation for the collection of taxes levied for the benefit of such drainage district such an amount as the board of directors of said district may allow, as provided in section 30-1-102, C.R.S., which compensation shall be considered as a part of the regular fees of the office of the county treasurer to be accounted for by him to the county.

Source: L. 11: p. 320, § 45. **C.L.** § 2153. **L. 23:** p. 277, § 1. **CSA:** C. 57, § 47. **CRS 53:** § 47-3-1. **C.R.S. 1963:** § 47-3-1. **L. 71:** p. 325, § 1.

37-22-102. Duties of treasurer. The treasurer shall collect, receive, and receipt for all moneys belonging to said drainage district. It is the duty of the county treasurer of each county in which any drainage district is located in whole or in part to collect and receipt for all assessments levied in the same manner and at the same time and upon the same receipt as is required in the collection of taxes upon real estate for county purposes.

Source: L. 11: p. 321, § 46. **C.L.** § 2154. **CSA:** C. 57, § 48. **CRS 53:** § 47-3-2. **C.R.S. 1963:** § 47-3-2.

Cross references: For collection of taxes, see article 10 of title 39.

37-22-103. Remittances to district treasurer. The county treasurer of each county comprising a portion only of a drainage district, on the first Monday of each month, shall remit to the treasurer of the drainage district all moneys belonging to said drainage district. The board of directors is authorized to pay all legal claims against said district by warrants drawn on the district treasurer, as provided in section 37-22-104.

Source: L. 11: p. 321, § 47. **C.L.** § 2155. **CSA:** C. 57, § 49. **CRS 53:** § 47-3-3. **C.R.S. 1963:** § 47-3-3.

37-22-104. Payment only on warrants. The treasurer of the drainage district shall pay out of the funds of said district only upon warrants ordered by the board of directors of the

drainage district, signed by its president and attested by its secretary, under the seal of the drainage district.

Source: L. 11: p. 321, § 48. **C.L.** § 2156. **CSA:** C. 57, § 50. **CRS 53:** § 47-3-4. **C.R.S. 1963:** § 47-3-4.

37-22-105. Warrants - no funds - interest. When any warrants of a drainage district are presented to the treasurer and there are no funds in his hands to pay the same, he shall stamp the same in the same manner as ordinary county warrants are stamped, and they shall draw interest at the rate of six percent per annum from the date of their presentation until paid.

Source: L. 11: p. 321, § 49. **C.L.** § 2157. **CSA:** C. 57, § 51. **CRS 53:** § 47-3-5. **C.R.S. 1963:** § 47-3-5.

37-22-106. Claims verified - order of payment. All claims against a drainage district shall be verified as required in the case of claims against counties, and the directors and secretary of the drainage district are authorized to administer oaths to the parties verifying said claims. The district treasurer shall keep a register in which he shall enter each warrant presented for payment, giving the date and amount of the warrant, to whom payable, the date of the presentation for payment, the date of payment, and the amount paid, and all warrants shall be paid in the order of their presentation for payment to the district treasurer and when paid shall be canceled across the face. All warrants shall be drawn payable to the claimant or bearer.

Source: L. 11: p. 321, § 50. **C.L.** § 2158. **CSA:** C. 57, § 52. **CRS 53:** § 47-3-6. **C.R.S. 1963:** § 47-3-6.

37-22-107. Registry of warrants - vouchers. The secretary shall keep a registry of all warrants drawn by order of the board of directors showing the date, amount, name of payee, and for what purposes drawn, and no warrant shall be issued except upon an itemized voucher duly verified stating the services rendered or material furnished the district and by whom ordered or contracted.

Source: L. 11: p. 322, § 51. **C.L.** § 2159. **CSA:** C. 57, § 53. **CRS 53:** § 47-3-7. **C.R.S. 1963:** § 47-3-7.

37-22-108. Treasurer's reports. At each regular meeting of the directors of a drainage district and more often when required, the treasurer shall report in writing the amount of money on hand, the amount received since his last report, and the amounts paid out, with a list of warrants presented since the last report. Said report shall be sworn to and filed with the secretary of the board of directors.

Source: L. 11: p. 322, § 52. **C.L.** § 2160. **CSA:** C. 57, § 54. **CRS 53:** § 47-3-8. **C.R.S. 1963:** § 47-3-8.

ARTICLE 23

Assessment for Benefits

37-23-101. Assessments according to benefits. (1) As soon as the plans for a drainage system have been determined and before the actual work of drainage is begun or bonds voted, the board of directors shall proceed to make special assessments for benefits by classifying the lands in the district in tracts of forty acres, more or less, according to the legal or recognized subdivisions on a graduated scale to be numbered according to the benefits to be received by the contemplated drainage. The tracts of land which will receive most and about equal benefits shall be marked one hundred, and such as are adjudged to receive less benefits shall be marked with a lesser number denoting its percent of benefit. This classification when established shall remain as a basis for the levy of taxes as may be needed for the lawful and proper purposes of the drainage district.

(2) In any district where a classification has once been made and the board of directors believes from experience and results that such former classification is not fairly adjusted on the several tracts of land according to benefits which may be adjusted by new or additional assessments, then the board of directors shall disregard such former classification and make a new classification in accordance with justice and right. When the classification is completed it shall be properly tabulated or shown by a map, or both, and filed in the office of the secretary of the district for inspection.

Source: L. 11: p. 322, § 53. **L. 13:** p. 253, § 2. **C.L.** § 2161. **CSA:** C. 57, § 55. **CRS 53:** § 47-4-1. **C.R.S. 1963:** § 47-4-1.

37-23-101.5. Determination of special benefits - factors considered. (1) The term "benefit", for the purposes of assessing a particular property within a drainage system improvement district, includes, but is not limited to, the following:

(a) Any increase in the market value of the property;

(b) The provision for accepting the burden from specific dominant property for discharging surface water onto servient property in a manner or quantity greater than would naturally flow because the dominant owner made some of his property impermeable;

(c) Any adaptability of property to a superior or more profitable use;

(d) Any alleviation of health and sanitation hazards accruing to particular property or accruing to public property in the improvement district, if the provision of health and sanitation is paid for wholly or partially out of funds derived from taxation of property owners of the improvement district;

(e) Any reduction in the maintenance costs of particular property or of public property in the improvement district, if the maintenance of the public property is paid for wholly or partially out of funds derived from taxation of property owners of the improvement district;

(f) Any increase in convenience or reduction in inconvenience accruing to particular property owners, including the facilitation of access to and travel over streets, roads, and highways;

(g) Recreational improvements accruing to particular property owners as a direct result of drainage improvement.

Source: L. 75: Entire section added, p. 998, § 5, effective July 1.

37-23-102. Objections to classification - hearing. The board of directors shall cause to be personally served upon all parties residing in the district and owning land to be affected by the proposed drainage system, or other property liable to be taxed, a written or printed notice of the time when, and place where, it will meet to hear any objections that may be made to classifications of lands on the graduated scale. The notice shall be served in case of residence in the district not less than three days before the time set for hearing, by delivering a copy thereof to the party to be served. In the event that such copy cannot be personally delivered to the party to be served, then such notice shall be served in the manner provided for the service of summons in the Colorado rules of civil procedure. The board of directors shall cause to be sent by mail, at least ten days before the time set for said hearing, such notice to all owners who do not reside in the district whose land is affected, in case their post-office address is known to the board of directors or can be ascertained by the use of reasonable diligence. In case the land of any nonresident or of anyone whose residence is unknown is affected, then publication shall be made in some newspaper published in said county for three successive weeks prior to the time of such hearing, the publication to be made after a resolution of the board of directors has been duly passed determining the names of those landowners within the district who are nonresidents of the state or whose residence is unknown, and such meeting to hear objections may be adjourned from day to day by public announcement of the board of directors made at the meeting, until all objections are heard. All persons duly notified of the first day of meeting shall take cognizance of all adjournments without further notice. The affidavit of any creditable person that he has posted or served the notice required and the certificate of the publishers of such newspaper as to such publication shall be sufficient evidence of such facts.

Source: L. 11: p. 322, § 54. **L. 13:** p. 254, § 2. **C.L.** § 2162. **CSA:** C. 57, § 56. **CRS 53:** § 47-4-2. **C.R.S. 1963:** § 47-4-2.

Cross references: For service of process, see C.R.C.P. 4; for publication of legal notices, see part 1 of article 70 of title 24.

37-23-103. Corrections - appeal - bond. At the time of meeting for review, the board of directors shall hear whatsoever objections may be urged by any person interested, and, if satisfied that any injustice has been done in the classification of the several tracts of land or any of them, it shall correct the same in accordance with what is right, but if not so satisfied, it shall leave the classification as first made and enter an order to that effect. Any person appearing and urging objections who is not satisfied with the decision of the board of directors may appeal from its decision to the district court of the county in which the lands affected are situated, within ten days after the decision of the board of directors is rendered, by filing with the county clerk and recorder a bond with security conditioned to pay such taxes as are finally levied upon the land in question, and the costs occasioned by the appeal, in case the board of directors is sustained by the court.

Source: L. 11: p. 322, § 55. **L. 13:** p. 255, § 2. **C.L.** § 2163. **CSA:** C. 57, § 57. **CRS 53:** § 47-4-3. **C.R.S. 1963:** § 47-4-3. **L. 64:** p. 248, § 119.

37-23-104. Hearing on appeal - special jury. (1) Appeals taken to the district court may be heard at the discretion of the court; except that ten days shall intervene from the time of taking the appeal and the date set for hearing. The costs of such appeal, at the discretion of the court, may be divided between the drainage district and the owner of the land who may appeal from the classification of the board of directors. It is the duty of the district court to cause to be summoned six landowners living outside of the drainage district, who are not interested in any lands or work in said district, or of kin to any of the parties interested, to meet at the courthouse at a time set by the court for hearing any appeal that may be taken from the decision of the board of directors. The six landowners shall be men who have some knowledge of the costs and benefits of farm drainage and shall be sworn as a special jury to try the case on appeal. Should any of said landowners fail to appear at the time named, or should any of those summoned be rejected under the exercise of the usual right of challenge, the court may cause to be summoned any other qualified landowner to fill such vacancy, or the case may be tried by three qualified jurors if both parties to the suit so agree.

(2) Whenever the special jury summoned to hear appeals has been sworn, it is the duty of the court to lay before them the classifications as determined by the drainage district board of directors, and they shall examine the same and hear allegations and testimony in opposition to and in support of the same and, if requested by either party to the appeal, may visit the district and view the lands. If they find the tracts of land in question are marked too high or too low in the classification, they shall correct the errors; but, if no injustice has been done, they shall confirm the classification as made by the board of directors. Their final determination shall be made in writing and filed with the records of the court.

(3) The classification when established shall also be recorded with other papers on the drainage record. Appellate review of the final decision of the district court, entered pursuant to the decision of the special jury, may be had in an appellate court as in other civil actions and pursuant to the Colorado appellate rules.

Source: L. 13: p. 255, § 2. **C.L.** § 2164. **CSA:** C. 57, § 58. **CRS 53:** § 47-4-4. **C.R.S. 1963:** § 47-4-4. **L. 64:** p. 249, § 120.

37-23-105. Effect of appeal. The taking of any appeal by any persons shall not operate to delay the collection of any tax from which no appeal has been taken or delay the progress of the work or the issuing of any bonds.

Source: L. 13: p. 257, § 2. **C.L.** § 2165. **CSA:** C. 57, § 59. **CRS 53:** § 47-4-5. **C.R.S. 1963:** § 47-4-5.

37-23-106. Modified classification filed. The board of directors shall modify said classification so that it conforms to the changes made therein in the hearings before said board, and the secretary of the district shall certify and file said classification of property of the district so modified, properly tabulated or shown by a map, or both, with the county clerk and recorder of each county in which the district is located, and, if through any appeal said classification is modified, the board shall then modify the classification, and the secretary of the district shall certify and file the same so modified with the county clerk and recorder of each county in which the district is located.

Source: L. 13: p. 257, § 2. **C.L.** § 2166. **CSA:** C. 57, § 60. **CRS 53:** § 47-4-6. **C.R.S. 1963:** § 47-4-6.

37-23-107. Special assessments - apportionment. (1) The board of directors, on or before July 1 in each year, shall determine the amount of money required to meet the current expenses of the coming year, including cost of construction, maintenance, operating and ordinary expenses, deficiency in the payment of expenses already incurred, bond interest unpaid, the amount of bonded indebtedness, and the principal or interest which will fall due during said coming year, and by resolutions shall order such amount of money to be raised by special assessment upon the lands of the district, as may be necessary to raise the sum of money so determined. Such amount shall be apportioned among the several tracts in the name of the owner when known according to acreage of each and its figure of this classification on the graduated scale, so that each tract may bear its equal burden in proportion to benefits.

(2) The board shall make out a special assessment roll, designated in this article as "tax list", setting down in separate columns the owners' names when known, and when unknown stating "unknown", a description of the land, the number denoting the classification, and the tax: That for current expenses and that for bonded indebtedness and interest thereon shall be in separate columns. When completed the list shall be filed with the secretary of the district.

(3) The tax list may be substantially as follows:

SPECIAL ASSESSMENT TAX LIST OF--(here insert name of district).

					TAX LEVIED		
						Bonded	
OWNER'S	Description		No.		Current	Indebtedness	
NAME	of Land		Classification		Expenses	and Interest	Remarks
	Sec.	Tp.	R.	Acres	on Scale	Dol. Cts.	Dol. Cts.

Source: L. 13: p. 257, § 2. **C.L.** § 2167. **CSA:** C. 57, § 61. **CRS 53:** § 47-4-7. **C.R.S. 1963:** § 47-4-7.

37-23-108. Assessment list. The assessment list shall be completed on or before July 15, and, on the first Tuesday of August in each year and from day to day thereafter, Sundays excepted, the board of directors shall sit to hear complaints and to correct errors in said assessment until all complaints filed with the secretary or presented to the board have had an opportunity to be heard and determined. The classification of any lands on the graduated scale shall not be changed or determined at said hearings.

Source: L. 13: p. 258 § 2. **C.L.** § 2168. **CSA:** C. 57, § 62. **CRS 53:** § 47-4-8. **C.R.S. 1963:** § 47-4-8.

37-23-109. Alternative method of assessment. (1) As an alternative method for the assessment of the lands in the district and in lieu of the method of assessment provided by sections 37-23-101 to 37-23-108, the board of directors may adopt the following method for the assessment of the benefits derived from the system of drainage adopted:

(a) As soon as the plans for a drainage system have been determined and before the actual work of drainage is begun or bonds voted, the board of directors shall assess the amount of benefits which, by means of the contemplated drainage, will accrue to each tract of land comprising forty acres, more or less, according to the legal or recognized subdivisions. The assessed benefits shall represent the increased value which, in the judgment of the directors, will accrue to the lands in the district because of the contemplated drainage. The board of directors shall prepare a report of its findings which shall be arranged in tabular form, the columns of which shall be headed as follows: Column 1, "Owner of property assessed"; column 2, "Description of property assessed"; column 3, "Number of acres assessed"; column 4, "Amount of benefits assessed". The board of directors shall also estimate the cost of the works set out in the plans for the drainage system, which estimate shall include the probable expenses of district organization and administration. Said report shall be signed by the president of the district with the seal of the district thereto affixed, and attested by the secretary, and one copy thereof shall be filed by the secretary in the office of the county clerk and recorder of the county where the organization is effected and one copy thereof in the office of the district.

(b) Upon the filing of the report, the secretary of the district shall give notice thereof by causing publication to be made in some newspaper published in each county in which lands affected are located. Such notice shall be in substantially the following form:

"Notice of filing of directors' report of
assessments of benefits for .....
drainage district.

Notice is hereby given to all persons interested in the following described land in .... county (or counties), in the state of Colorado (here describe the respective tracts of land) included within .... drainage district, that the board of directors of said district have assessed the benefits to be received by each tract of land in the district by the contemplated system of drainage adopted for said district, and have filed their report of such assessments in the office of the county clerk and recorder of ..... county, Colorado, and in the office of the district on the ..... day of ....., A.D., 20...., and you, and each of you, are hereby notified that you may examine said report and file exceptions with the secretary of the district to all or any part thereof, on or before the ..... day of ....., A.D., 20..... .

.....
Secretary."

Source: L. 19: p. 394, § 1. **C.L.** § 2169. **CSA:** C. 57, § 63. **CRS 53:** § 47-4-9. **C.R.S. 1963:** § 47-4-9.

37-23-110. Owner may except - hearing. (1) Any owner of land in said drainage district may file exceptions to said report or to any assessment for benefits within ten days after the last day of publication of the notice provided for in this article. All exceptions shall be heard by the board of directors and determined in a summary manner so as to carry out liberally the

purposes of articles 20 to 30 of this title and the needs of the district; and if it appears to the satisfaction of the board, after hearing and determining all exceptions which may in writing be filed, that the estimated cost of constructing the improvement contemplated in the plans for the drainage system is less than the benefits assessed against the land in the district, then the board of directors shall approve and confirm the report as originally filed or as modified and amended after such hearing.

(2) The secretary of the district shall transmit the directors' report as finally confirmed to the county clerk and recorder of each county in which lands in the district may be located or affected by said report, where the same shall become a permanent record. Appeals may be taken from the decision of the board of directors in the same manner and with the same effect as provided in sections 37-23-103 to 37-23-105, and the board of directors shall modify said assessment of benefits so that the same shall conform to the changes made therein by reason of such appeal and shall certify and file the same with the county clerk and recorder of each county in which the district is located.

(3) Where the works set out in the plan for a drainage system of any drainage district are found insufficient to reclaim in whole or in part any or all of the land within the district, the board of directors may formulate new or amended plans, containing new ditches or other works or providing for the enlargement of existing ditches or other works, and additional assessments may be made in conformity with the provisions of this section, the same to be made in proportion to the increased benefits accruing to the lands within the district because of such additional works.

(4) After the list of lands with the assessed benefits has been filed in the office of the county clerk and recorder, the board of directors, without any unnecessary delay, shall levy a tax on such portion of said benefits on all lands in the district to which benefits have been assessed, as may be found necessary by the board of directors to pay the costs of the completion of the proposed plan for the drainage system and in carrying out the objects of the district, plus ten percent for emergencies.

Source: L. 19: p. 394, § 1. **C.L.** § 2169. **CSA:** C. 57, § 63. **CRS 53:** § 47-4-10. **C.R.S. 1963:** § 47-4-10.

37-23-111. Tax levies - how made. (1) The tax shall be apportioned to and levied on each tract of land in said district in proportion to the benefits assessed and not in excess thereof, and, in case bonds are issued, the amount of the interest, as estimated by said board of directors, which will accrue on such bonds shall be included and added to the tax, but the interest to accrue on such bonds shall not be construed as a part of the cost of construction in determining whether or not the expenses and costs of making said improvements are or are not equal to or in excess of the benefits assessed.

(2) In case bonds are issued, said tax shall be divided into such number of annual installments as will meet the requirements of and provide for the punctual payment of the interest upon and the principal of the bonds as the same accrue. In case the proceeds of the original tax levy are not sufficient to pay the principal of and the interest upon all of the bonds which may at any time be issued, then the board of directors shall make such additional levies upon the benefits assessed, but not in excess thereof, as are necessary to pay such principal and interest. If it is found at any time that the amount of total taxes levied is insufficient to pay the

cost of the works set out in the plan for a drainage system or to pay the cost of the additional work, the board of directors may make an additional levy to provide funds to complete the work; but the total of all such levies shall not exceed the total amount of benefits assessed.

(3) The secretary of the district, as soon as said total tax is levied, at the expense of the district, shall prepare a list of all taxes levied in the form of a well-bound book, which book shall be endorsed and named: "..... Drainage District Assessment Book", which endorsement shall also be printed or written at the top of each page in said book, and it shall be signed and certified by the president and secretary of the district, under the seal thereof, and the same shall thereafter become a permanent record in the office of said secretary, and a certified copy thereof shall be transmitted to the proper county assessor.

Source: L. 19: p. 394, § 1. **C.L.** § 2169. **CSA:** C. 57, § 63. **CRS 53:** § 47-4-11. **C.R.S. 1963:** § 47-4-11.

Cross references: For procedure to increase tax levy beyond statutory limits, see § 29-1-302.

37-23-112. Levy for alternative plan. In case the board of directors adopts the alternative method of assessment of benefits provided by sections 37-23-109 to 37-23-111, and after a tax has been levied upon the benefits so assessed for the purpose of paying the costs of completion of the proposed plan for the drainage system and carrying out the objects of the district, thereafter taxes may be levied for the purposes of meeting the maintenance, operating, and ordinary expenses of the district for the coming year and any deficiency in the payment of such expenses already incurred, and such taxes shall be levied in the manner provided by sections 37-23-107 and 37-23-108, with the exception that the amounts of money to be raised shall be apportioned among the several tracts assessed in proportion to the benefits assessed thereon under section 37-23-111 and with the further exception that the amount to be raised for the purposes of meeting the interest upon and the principal of the bonds of the district as the same accrue, together with any deficiencies in the payment of the same, shall be determined in the manner provided by sections 37-23-109 to 37-23-111, and shall so appear in the assessment roll provided by section 37-23-107.

Source: L. 23: p. 280, § 2. **CSA:** C. 57, § 64. **CRS 53:** § 47-4-12. **C.R.S. 1963:** § 47-4-12.

37-23-113. Assessments - how made. (1) On or before September 1 in each year, the secretary shall transmit to the county assessor of each county a certified copy of so much of said assessment book as relates to land within the county of said county assessors, together with the certified copy of the order of the board of directors.

(2) Thereupon it is the duty of the county assessor, without expense to the drainage district, to assess and enter upon his records as assessor, in its appropriate column, the assessments so certified, which assessments shall be delivered to the county treasurer as part of the assessment roll in the same manner as general, state, and county taxes are certified by the county assessor to the county treasurer for collection.

Source: L. 11: p. 323, § 56. **L. 21:** p. 279, § 2. **C.L.** § 2170. **CSA:** C. 57, § 65. **CRS 53:** § 47-4-13. **C.R.S. 1963:** § 47-4-13.

37-23-114. State tax laws to apply. (1) The laws of this state for the collection of general taxes including the laws for the sale of property for taxes and the redemption of the same, except as modified in this section, shall apply and have full force and effect for the purposes of articles 20 to 30 of this title, and the provisions of said articles for collecting the same shall be deemed for the purpose of carrying into effect the police powers granted to drainage districts for the construction and maintenance of drainage systems and shall not be construed as imposing a special tax under the taxing power. In case of a sale of any lot or parcel of land or any interest therein for delinquent drainage district taxes or delinquent drainage district and other taxes, and there are no bids therefor on any of the days of such tax sale, the same shall be struck off to the drainage district in which such land is located for the amount of the taxes, interest, and costs thereon, and a certificate of sale shall be made out to the district therefor and delivered to its secretary, who shall file the same in the office of its board of directors and record the same in a book of public record to be kept by said board for such purpose, but no charge shall be made by the county treasurer for making such certificate, and in such case he shall make an entry on his records "struck off to ..... drainage district" as well as an entry showing the amount of the taxes and interest thereon for which said lands were offered for sale, together with the cost attending such sale. No taxes assessed against any land so struck off to said district under the provisions of this section shall be payable until the same has been derived by the district from the sale or redemption of such lands.

(2) Such drainage district or its assignee shall be entitled to a tax deed for said lands, in the same manner and subject to the same equities as if a private purchaser at said tax sale, upon the payment to the county treasurer at the time of demanding said deed of such sum as the board of county commissioners of such county at any regular or special meeting may decide for the payment of any delinquent general taxes, and if said deed is demanded by any assignee of the drainage district, then such assignee shall also pay to the county treasurer such additional amount as may be specified by the board of directors of the drainage district, as payment for any delinquent drainage district taxes.

(3) In case the owner of said lot or parcel of land, or interest therein, desires to redeem the same at any time before said tax deed is issued, the same may be done in the same manner as provided by law, in case said lot or parcel of land, or interest therein, has been purchased by a bidder at said tax sale or has been struck off to the county, and in such case the county treasurer shall forthwith issue a certificate of redemption therefor and notify the secretary of said fact, who shall thereupon make a suitable transfer entry upon his record aforesaid, and return the certificate of sale to the county treasurer for cancellation.

(4) In case any person desires to obtain such certificate of purchase so issued to said drainage district, the same may be done in the same manner as provided by law in case said lot or parcel of land, or interest therein, had been purchased by a bidder at said tax sale or had been struck off to the county, upon payment to the county treasurer of the required amount in cash, or in cash together with warrants not in excess of the drainage district and redemption fund tax, or in cash and in warrants and bonds and coupons respectively, not in excess of said respective funds.

(5) After any certificate of sale or tax deed has been issued to any drainage district, such drainage district or any assignee thereof may at any time commence an action in the district court in the county wherein the major portion of said drainage district lies, for the purpose of determining the validity of said tax sale. Such action shall be conducted in the same manner as an action to quiet title to real estate under the laws of the state; and after the final determination of such action, the validity of the taxes for which the property was sold and the legality of the proceedings taken in the sale of the property involved shall be incontestable between all persons and parties whatsoever.

Source: L. 11: p. 323, § 58. **L. 21:** p. 275, § 1. **C.L.** § 2172. **CSA:** C. 57, § 66. **CRS 53:** § 47-4-14. **C.R.S. 1963:** § 47-4-14.

Cross references: For collection of taxes and tax sales, see articles 10 and 11 of title 39.

37-23-115. Sale of property taxed. The board of directors of any drainage district may sell, dispose of, and convey, on behalf of such district, any real property to which such drainage district may take title by tax deed under the provisions of section 37-23-114, as said board may by resolution direct, either at public or private sale, at such price and upon such terms as said board may determine, and without any authorization from the electors of such district.

Source: L. 29: p. 535 § 1. **CSA:** C. 57, § 67. **CRS 53:** § 47-4-15. **C.R.S. 1963:** § 47-4-15.

37-23-116. President to execute deed. The president of the board of directors of such drainage district, when authorized by resolution of the board of directors, is empowered to execute, acknowledge, and deliver any deeds of conveyance necessary to convey such real property to the purchaser thereof. The deed of conveyance shall be attested by the secretary of such drainage district under its seal, and when so executed such deed of conveyance shall be held to convey the entire title of such drainage district to the purchaser thereof.

Source: L. 29: p. 535, § 2. **CSA:** C. 57, § 68. **CRS 53:** § 47-4-16. **C.R.S. 1963:** § 47-4-16.

37-23-117. Proceeds of sale. The proceeds of such sales shall be paid into such fund of the drainage district as its board of directors by resolution may direct.

Source: L. 29: p. 536, § 3. **CSA:** C. 57, § 69. **CRS 53:** § 47-4-17. **C.R.S. 1963:** § 47-4-17.

37-23-118. Directors to perfect title. The board of directors of any such drainage district is authorized to take such steps in the name of and on behalf of the district as it deems necessary in order to perfect the title of such drainage district to any lands to which it has taken title by tax deed and for that purpose may procure and take deeds of conveyance or other assurances of title from the holders of record or other titles to such lands and may institute

actions for the purpose of quieting title to such real estate as against the claims of any other persons, associations, or corporations.

Source: L. 29: p. 536, § 4. **CSA:** C. 57, § 70. **CRS 53:** § 47-4-18. **C.R.S. 1963:** § 47-4-18.

ARTICLE 24

Construction of System

37-24-101. Construction - bids - advertising. After adopting a plan for a drainage system and providing for the payment of the same, or a designated part thereof by assessment or bonds, the board of directors shall give notice, by publication not less than twenty days prior to the date of opening proposals in a newspaper published in the county where the office of the drainage district is kept and in such other newspaper as may be deemed advisable, calling for bids for the construction of said work or any portion thereof; if less than the whole, then the portion of said system to be constructed shall be described in the notice. The notice shall set forth where the plans and specifications may be seen and that sealed proposals will be received at the office of the drainage district and a contract let to the lowest responsible bidder, giving the time and place for opening the proposals, which, at said time and place, shall be opened in public. The board of directors may enter into a contract with the lowest responsible bidder for the construction of the whole or any portion of the work mentioned in the notice, or may reject any and all bids and readvertise for proposals, or may proceed to construct the work under the supervision of the board of directors, and in that event all material shall be purchased from the lowest responsible bidders after proposals have been invited and notice thereof published.

Source: L. 11: p. 323, § 59. **C.L.** § 2173. **CSA:** C. 57, § 74. **CRS 53:** § 47-5-1. **C.R.S. 1963:** § 47-5-1.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24.

37-24-102. Contractor - bond - engineer. The person to whom a contract may be awarded shall execute a bond in the penal sum of not less than ten percent of the contract price, with surety to be approved by the board of directors, payable to the drainage district, conditioned for the faithful performance of the contract. All work shall be done under the direction and to the satisfaction of the engineer employed by the drainage district subject to approval by the board of directors.

Source: L. 11: p. 324, § 60. **C.L.** § 2174. **CSA:** C. 57, § 75. **CRS 53:** § 47-5-2. **C.R.S. 1963:** § 47-5-2.

37-24-103. Right of eminent domain. The board of directors has the power to construct the works across any watercourse, street, avenue, highway, railway, canal, or ditch which the route of such drainage system or any branch thereof intersects or crosses. If any railroad company, or the owners and controllers of said property, thing, or franchise so to be crossed, or

the owner of land necessary for said drainage district, and the board of directors cannot agree upon the amount to be paid therefor, or the points or the manner of said crossings, the same shall be ascertained and determined in all respects as is provided by law in respect to the taking of land for public uses, by the exercise of the right of eminent domain, which right is hereby conferred on drainage districts.

Source: L. 11: p. 327, § 70. **C.L.** § 2175. **CSA:** C. 57, § 76. **CRS 53:** § 47-5-3. **C.R.S. 1963:** § 47-5-3.

Cross references: For eminent domain proceedings, see articles 1 to 7 of title 38.

37-24-104. Additional powers - eminent domain. All drainage districts incorporated under the laws of this state have, in addition to all rights and powers granted by statute prior to March 22, 1921, the right and power under the laws of this state to cross lands outside the boundaries of said drainage district with any part of the system of drainage works including the drainage ditch or canal thereof.

Source: L. 21: p. 284, § 1. **C.L.** § 2177. **CSA:** C. 57, § 78. **CRS 53:** § 47-5-5. **C.R.S. 1963:** § 47-5-5.

37-24-105. Compensation for property taken. Said drainage district shall make due and just compensation for such right-of-way and the damages occasioned by the construction and operation of its works, and, where the compensation for the property sought to be taken or damaged cannot be agreed upon by the parties interested, or in case the owner of the property is incapable of consenting, or his name or residence is unknown, or he is a nonresident of the state, the compensation to be paid for such right-of-way and damages occasioned by the construction and operation of such drainage works shall be determined by proceedings in eminent domain in the manner provided by law for the exercise of the right of eminent domain.

Source: L. 21: p. 284, § 2. **C.L.** § 2178. **CSA:** C. 57, § 79. **CRS 53:** § 47-5-6. **C.R.S. 1963:** § 47-5-6.

37-24-106. Right-of-way across state lands. The right-of-way is given, dedicated, and set apart to locate, construct, and maintain drainage systems and works in, over, through, across, or upon any of the lands which are the property of the state.

Source: L. 11: p. 327, § 71. **C.L.** § 2176. **CSA:** C. 57, § 77. **CRS 53:** § 47-5-4. **C.R.S. 1963:** § 47-5-4.

37-24-107. No officer interested in contract. No director or officer of a district shall be interested directly or indirectly in any contract awarded or to be awarded by the board or in the profits thereof, nor shall he or she receive any gratuity or bribe. For any violation of this provision, such officer or director commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S., and such conviction shall work a forfeiture of his or her office.

Source: L. 11: p. 327, § 72. **C.L.** § 2179. **CSA:** C. 57, § 80. **CRS 53:** § 47-5-7. **C.R.S. 1963:** § 47-5-7. **L. 77:** Entire section amended, p. 884, § 65, effective July 1, 1979. **L. 89:** Entire section amended, p. 850, § 134, effective July 1. **L. 2002:** Entire section amended, p. 1553, § 334, effective October 1.

Editor's note: The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See People v. McKenna, 199 Colo. 452, 611 P.2d 574 (1980).

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

ARTICLE 25

Bonds

37-25-101. Bond issue - purposes - election. For the purpose of constructing a drainage system and necessary works for any drainage district and acquiring the necessary property and rights therefor, of paying the first year's interest upon the bonds authorized in this article, and of otherwise carrying out the provisions of articles 20 to 30 of this title, the board of directors of any drainage district may estimate and determine the amount of money necessary to be raised for such purposes and is empowered to call a special election to determine whether or not bonds of said district shall be issued in the amount so determined.

Source: L. 11: p. 324, § 61. **C.L.** § 2180. **CSA:** C. 57, § 81. **CRS 53:** § 47-6-1. **C.R.S. 1963:** § 47-6-1.

37-25-102. Notice of election - form of ballot. A notice of such election shall be given by posting notices in three public places in each election precinct in said district for at least twenty days and by publication of such notice in some newspaper published in the county where the office of the drainage district is required to be kept once a week for at least three successive weeks. The notice shall specify the time of holding the election and the amount of bonds proposed to be issued, and said election shall be held and the results thereof determined and declared in all respects as nearly as possible in conformity with the provisions of sections 37-21-105 to 37-21-108, 37-21-112, and 37-21-115 to 37-21-124 governing the election of directors. No informalities in conducting such election shall invalidate the same if the election has been otherwise fairly conducted. At such election the ballots shall contain the words "Bonds - Yes" or "Bonds - No".

Source: L. 11: p. 324, § 62. **C.L.** § 2181. **CSA:** C. 57, § 82. **CRS 53:** § 47-6-2. **C.R.S. 1963:** § 47-6-2.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24.

37-25-103. Bonds - issuance - interest. (1) If a majority of the votes cast is "Bonds - Yes", the board of directors shall immediately cause bonds in such amount to be issued payable in series as follows: At the expiration of eleven years, not less than five percent of the whole amount of said bonds; at the expiration of twelve years, not less than six percent of the whole amount of said bonds; at the expiration of thirteen years, not less than seven percent of the whole amount of said bonds; at the expiration of fourteen years, not less than eight percent of the whole amount of said bonds; at the expiration of fifteen years, not less than nine percent of the whole amount of said bonds; at the expiration of sixteen years, not less than ten percent of the whole amount of said bonds; at the expiration of seventeen years, not less than eleven percent of the whole amount of said bonds; at the expiration of eighteen years, not less than thirteen percent of the whole amount of said bonds; at the expiration of nineteen years, not less than fifteen percent of the whole amount of said bonds; and, at the expiration of twenty years, a percentage sufficient to pay off the remainder of said bonds.

(2) The several enumerated percentages shall be of the entire amount of the bond issue.

(3) Each bond must be payable at the given time for its entire amount and not for a percentage.

(4) The said bonds shall bear interest at the rate of not to exceed eight percent per annum payable semiannually on June 1 and December 1 of each year. The principal and interest shall be payable at the office of the county treasurer of the county in which the organization of the district was effected and at such other place as the board of directors may designate in such bond.

Source: L. 11: p. 325, § 63. **L. 21:** p. 280, § 3. **C.L.** § 2182. **CSA:** C. 57, § 83. **CRS 53:** § 47-6-3. **C.R.S. 1963:** § 47-6-3.

37-25-104. Denomination - coupons - record. The bonds shall be of the denomination of one hundred dollars or five hundred dollars, negotiable in form, executed in the name of the district, and signed by the president and secretary, and the seal of the district shall be affixed thereto. The bonds shall be numbered consecutively and bear the date of their issue. Coupons for the interest shall be attached to each bond bearing the lithographed signatures of the president and secretary. The bonds shall express on their face that they are issued by the authority of articles 20 to 30 of this title. The secretary shall keep a record of the bonds sold, their number, date of sale, the price received, and the name of the purchaser.

Source: L. 11: p. 326, § 64. **C.L.** § 2183. **CSA:** C. 57, § 84. **CRS 53:** § 47-6-4. **C.R.S. 1963:** § 47-6-4.

37-25-105. Bonds maturing in less than twenty years. Any drainage district, by a majority vote of the legal electors of said district, may provide for the issuance of bonds that will mature in any number of years less than twenty and arrange for the payment thereof in series as provided in section 37-25-103.

Source: L. 11: p. 326, § 65. **C.L.** § 2184. **CSA:** C. 57, § 85. **CRS 53:** § 47-6-5. **C.R.S. 1963:** § 47-6-5.

37-25-106. Additional bonds - election - priority. When the money provided by any previous issue of bonds has become exhausted by authorized expenditures and it becomes necessary to raise additional money for such purposes, additional bonds may be issued by submitting the question at a special election to the qualified voters of said district and otherwise complying with the provisions of this article in respect to an original issue of bonds. The lien for taxes, for the payment of the interest and principal of any previous bond issue, shall be a prior lien to that of any subsequent bond issue.

Source: L. 11: p. 326, § 66. **C.L.** § 2185. **CSA:** C. 57, § 86. **CRS 53:** § 47-6-6. **C.R.S. 1963:** § 47-6-6.

37-25-107. Sale of bonds - procedure. The board of directors may sell bonds from time to time in such quantities as may be necessary and most advantageous to raise the money to carry out the objects and purposes of articles 20 to 30 of this title. Before making any sale, the board, by resolution, shall declare its intention to sell a specified amount of the bonds and the day and hour and place of such sale and shall cause such resolution to be entered in the minutes and notice of the sale to be given by publication thereof for at least twenty days in a daily newspaper published in the city of Denver and in any other newspaper at its discretion.

Source: L. 11: p. 326, § 67. **C.L.** § 2186. **CSA:** C. 57, § 87. **CRS 53:** § 47-6-7. **C.R.S. 1963:** § 47-6-7.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24.

37-25-108. Sale of bonds - rejection of bids. The notice shall state that sealed proposals will be received by the board of directors at the office of the drainage district for the purchase of the bonds until the day and hour named in the resolution. At the time appointed, the board shall open the proposals and award the purchase of the bonds to the highest responsible bidder, or it may reject all bids.

Source: L. 11: p. 326, § 68. **L. 21:** p. 281, § 4. **C.L.** § 2187. **CSA:** C. 57, § 88. **CRS 53:** § 47-6-8. **C.R.S. 1963:** § 47-6-8.

37-25-109. Liability for bonds and interest. The bonds and the interest thereon shall be paid from annual assessments upon the real property within the drainage district, and said property shall be and remain liable to be assessed for such payments. Such bonds and coupons shall be receivable in payment of the assessments levied in payment of the interest and the redemption of the bonds.

Source: L. 11: p. 327, § 69. **C.L.** § 2188. **L. 31:** p. 326, § 1. **CSA:** C. 57, § 89. **CRS 53:** § 47-6-9. **C.R.S. 1963:** § 47-6-9.

37-25-110. Confirmation of bonds. Whether or not said bonds or any of them have been sold or disposed of, the board of directors of a drainage district may commence special proceedings in the district court of the county where the office of the drainage district is kept, in

and by which the proceedings of said board of said district providing for and authorizing the issue and sale of the bonds of said district may be judicially examined, approved, and confirmed. The proceeding thereon shall be in conformity with the law regulating like proceedings for the examination, approval, and confirmation of the organization and bonds of irrigation districts.

Source: L. 11: p. 329, § 76. **C.L.** § 2193. **CSA:** C. 57, § 94. **CRS 53:** § 47-6-10. **C.R.S. 1963:** § 47-6-10.

Cross references: For confirmation proceedings of irrigation districts, see §§ 37-41-151 to 37-41-155.

ARTICLE 26

Refunding Bonds

37-26-101. Refunding bonds may be issued. The board of directors of any drainage district in this state has the power, under the conditions in this article, to issue negotiable coupon bonds to be denominated "refunding bonds" for the purpose of paying, redeeming, or compromising outstanding bonds of the district and any unpaid matured interest on such outstanding bonds, whether such outstanding bonds are due or not, or payable at the option of the district or by consent of the bondholders, and whether such bonds are outstanding or are issued on or after April 24, 1933. Such refunding bonds shall not exceed in amount the principal sum of the bonds outstanding and the unpaid matured interest thereon at the time of the issue of the refunding bonds. The rate of interest on such refunding bonds shall not exceed the rate on the bonds so refunded, and in no event shall interest exceed six percent per annum. Such refunding bonds may be issued and used to redeem or compromise all or any part of one or more issues of bonds outstanding at the time of refunding, together with unpaid matured interest thereon.

Source: L. 33: p. 450, § 1. **CSA:** C. 57, § 95. **CRS 53:** § 47-7-1. **C.R.S. 1963:** § 47-7-1.

37-26-102. Refunding bonds issued - when. Such refunding bonds shall be issued in lieu of the bonds and interest refunded; shall evidence the same indebtedness; shall be supported by the same liens, assessments, appraised benefits, and levies; and, except as to time of payments, amounts, and rates of interest, shall be payable therefrom in the same manner as the bonds refunded, but said refunding bonds shall not constitute a blanket indebtedness or lien on lands within such drainage district unless provided for on the face of the bonds.

Source: L. 33: p. 451, § 2. **CSA:** C. 57, § 96. **CRS 53:** § 47-7-2. **C.R.S. 1963:** § 47-7-2.

37-26-103. Elections. Whenever it is desired to issue refunding bonds, the board of directors of the district shall call a special election of the qualified voters of said district at which there shall be submitted the question of issuing refunding bonds, or the question may be submitted at a general election in the district. Said election shall be held and the result thereof determined and declared in all respects as nearly as possible in conformity with the provisions of sections 37-21-105 to 37-21-108, 37-21-112, and 37-21-115 to 37-21-124 governing the election

of drainage district directors; but no informalities in conducting such election shall invalidate the same if the election has been otherwise fairly conducted. Notice of said election shall be published in three consecutive weekly issues of a newspaper of general circulation in the district, and a copy of said notice shall be posted for fifteen days in three public places in the district. Said notice shall specify the time and places of holding said election; the bonds and interest to be refunded; and the amount and maturity of and the rate of interest on the proposed refunding bonds. Every owner of land within said district who is a citizen of the United States or has declared his intention to become a citizen of the United States, and is a resident of the state of Colorado, shall be entitled to vote at such election in the precinct where he resides, or if a nonresident of the district, then in the precinct within which the greater portion of his land lies. At such election the ballots shall contain the words "Refunding Bonds - Yes" and "Refunding Bonds - No", and the voter shall place a cross mark (X) opposite the words expressing his choice. If a majority of the votes cast are "Refunding Bonds - Yes", bonds may be issued in accordance with the proposition submitted.

Source: L. 33: p. 451, § 3. **CSA:** C. 57, § 97. **CRS 53:** § 47-7-3. **C.R.S. 1963:** § 47-7-3.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24.

37-26-104. Maturity and form. Whenever refunding bonds are authorized, the board of directors shall provide therefor by resolution designating the date, denomination, rate of interest, maturity, one or more places of payment within or without the state of Colorado, and the form of such bonds. Such bonds shall be executed by the president and attested by the secretary, countersigned by the district treasurer, and sealed with the seal of the district. The interest accruing on such bonds shall be evidenced by semiannual interest coupons bearing the original or facsimile signature of the president. The district treasurer shall make a record of all refunding bonds issued in a book to be kept in his office for that purpose.

Source: L. 33: p. 452, § 4. **CSA:** C. 57, § 98. **CRS 53:** § 47-7-4. **C.R.S. 1963:** § 47-7-4.

37-26-105. Mature serially. The refunding bonds shall mature serially, the first payment to be in not more than five years and the last payment in not more than thirty-five years from the date of the bonds; but each bond issued shall be redeemable at the option of the district five years prior to its maturity and on any interest-paying date thereafter. Interest on any bond called for payment shall cease thirty days after publication of a notice of call in a newspaper published or of general circulation in the district. Consistently with the denomination of the bonds issued, maturities shall be in substantially equal annual amounts of principal, or in such amounts as will require substantially equal annual assessments for principal and interest throughout the period, commencing not later than five years after the date of the bonds.

Source: L. 33: p. 453, § 5. **CSA:** C. 57, § 99. **CRS 53:** § 47-7-5. **C.R.S. 1963:** § 47-7-5.

37-26-106. Refunding bonds exchanged - when. The refunding bonds may be exchanged for the outstanding bonds and interest so refunded, or they may be sold, in which latter event, the proceeds shall be used solely for the purpose of paying the principal of and the interest on the bonds refunded, and for improvement of the district. In no event shall the principal amount of refunding bonds issued exceed the amount of outstanding bonds and matured interest coupons surrendered and canceled simultaneously with the issuance of refunding bonds. Any exchange or sale of refunding bonds shall be made in such manner as to cause no loss of interest to the district.

Source: L. 33: p. 453, § 6. **CSA:** C. 57, § 100. **CRS 53:** § 47-7-6. **C.R.S. 1963:** § 47-7-6.

37-26-107. Consent of unknown bondholders. If the board of directors of any drainage district issuing or intending to issue refunding bonds desires to obtain the constructive consent of unknown and nonconsenting holders of bonds or claims for interest thereon desired to be retired or refunded under this article, such board of directors, before selling or otherwise disposing of any such refunding bonds, shall declare by resolution its intention of selling or otherwise disposing of the same and shall cause such resolution to be entered on its minutes and shall cause notice of sale or other disposition to be given by publication thereof at least once a week for four consecutive weeks in three newspapers published in the state of Colorado, one of which shall be a newspaper published in the city of Denver and one of which shall be a newspaper published in the county in which the office of the board of directors is situated.

Source: L. 33: p. 454, § 7. **CSA:** C. 57, § 101. **CRS 53:** § 47-7-7. **C.R.S. 1963:** § 47-7-7.

37-26-108. Bondholders to offer to exchange bonds. (1) Before authorizing the issuance of such refunding bonds, the board of directors, if it desires to obtain such constructive consent, shall require that the known holders, or their representatives, of not less than eighty percent of the total in amount of all of such bonds or unpaid interest which is to be retired or refunded shall submit to said board for its acceptance an offer to deliver and surrender up all such bonds or interest coupons in exchange for bonds or cash, not exceeding the maximum amount of the total of such bonds and unpaid interest, or to accept in full payment of all such outstanding bonds, interest, and interest coupons so held by any person, association, firm, or corporation a sum of money or refunding bonds representing the proportion which such total proposed refunding bond issue or cash bears to such total outstanding bonds and interest proposed to be refunded, satisfied, and discharged, based on the par value of such proposed refunding bonds or cash. Such creditors and owners of such bonds and interest of such district shall agree to absorb the loss between the amount of such total outstanding bonds and interest and the amount of refunding bonds, at par, or cash, and to receive such refunding bonds, or cash, in full payment, satisfaction and discharge of such outstanding bonds and interest. Such known creditors or their representatives shall agree to make such proper pro rata distribution of such refunding bonds or cash or the proceeds from the sale thereof or cash as shall be required to retire and discharge said total outstanding bonds and interest proposed to be refunded. Such offer shall be in writing and shall be irrevocable when once submitted to said board until after said

board has the opportunity to authorize the issuance, sale, or delivery of refunding bonds to replace and discharge such outstanding bonds and interest on acceptance of such offer.

(2) Any litigation which is sought to or which will restrain or prevent said board from issuing and delivering such refunding bonds shall not subject said offer to revocation until after the same is concluded and such board has a reasonable time thereafter in which to issue, sell, or deliver such refunding bonds, and said offer shall be deemed accepted by said board upon such delivery. For the purpose of obtaining the constructive consent of the unknown holders of said bonds and interest, whether bonds or interest coupons, or interest on bonds, and of such holders of such bonds and interest due thereon, who have not given their consent in writing, said board of directors of said drainage district shall file in the district court of the county in which is located the office of said drainage district a petition in rem, duly verified by the oath of the president or secretary of said district, in which shall be set forth the plan theretofore adopted by such district for retiring or refunding such bonds and interest due thereon of the district proposed to be retired or refunded. Said petition shall further recite what percentage in amount, and which percentage shall not be less than eighty percent of the holders of said bonds, and interest thereon to be retired or refunded, have filed their written consent to said proposed plan, and shall further set forth what steps have been taken to obtain the consent of all nonconsenting holders of such bonds, or interest thereon to be retired or refunded. Upon the presentation of said petition to the judge of said district court, either in open court or in chambers, said judge shall authorize said district to publish and said district shall cause to be published, at least once in each of three newspapers published within the state of Colorado, to be by the court designated, one of which papers shall be published in the county in which the office of the board of directors is situated, and one which shall be a newspaper published in the city of Denver, a notice describing the substance of the terms of settlement under which the bonds or interest coupons of the district are to be surrendered, refunded, satisfied, compromised, exchanged, or discharged under the provisions of this article.

(3) Said notice shall contain a general description of the bonds and interest coupons to be refunded and retired, and the amount thereof, and also a general description of the refunding bonds to be issued and shall require all holders of such bonds or interest coupons so to be retired and refunded to file in said matter of said petition in said district court their written dissent from, or objection to, said proposed plan of settlement in said notice described; and, if such dissent in writing shall not be filed in said court within ninety days from the date of the first publication of said notice, the owners and holders of such bonds or interest coupons failing to file such dissent or objection shall be deemed to have consented to said refunding, compromise, or settlement of said indebtedness under the terms and conditions set forth in said notice. After the expiration of ninety days from the date of the first publication of said notice, the holders of said bonds or interest coupons so failing to file their objections and protests with said court will be deemed to have consented to said refunding, compromise, or settlement of said indebtedness under the terms set forth in said notice; and such failure within said time to file such objections and protests with said court shall be the equivalent of the offer in writing signed by known consenting holders of such bonds or interest coupons.

Source: L. 33: p. 454, § 7. **CSA:** C. 57, § 102. **CRS 53:** § 47-7-8. **C.R.S. 1963:** § 47-7-8.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24.

37-26-109. District to file verified return - decree. (1) After the expiration of ninety days from the date of the first publication of said notice, said district shall file in the proceeding in said district court its verified return of its acts under the order of the court theretofore made, attaching thereto affidavits of the printers or publishers of said newspapers of the publication of said notice in three newspapers.

(2) Thereupon said court shall forthwith hear said cause and shall enter a decree of court adjudging that all owners and holders of said bonds, or interest coupons to be retired or refunded by said plan and proceeding of the district, who have not within ninety days after the date of the first publication of said notice filed in said court their written dissent and objections to the proceedings have consented that their said bonds or interest coupons be retired or refunded under the proposed plan. In the decree the court shall direct the officers of said district to deposit with the Colorado water conservation board, as trustee for the persons entitled thereto, the pro rata part of the cash or refunding bonds which, under said settlement, belongs to the holders of said bonds, claims for interest, or interest coupons whose consent was so obtained by said court proceedings.

(3) Said decree shall further provide that, upon the payment of said money or bonds or interest coupons to the Colorado water conservation board as trustee, said bonds or interest coupons so held by said holders shall be deemed paid and no longer an obligation of said district and that, upon the surrender to the Colorado water conservation board of said bonds, together with the unpaid interest coupons belonging to same, the Colorado water conservation board shall pay on demand to said holders their pro rata part of the moneys or bonds so deposited with it as trustee and shall mark said bonds canceled and deliver same to the drainage district.

Source: L. 33: p. 457, § 7. **CSA:** C. 57, § 103. **CRS 53:** § 47-7-9. **C.R.S. 1963:** § 47-7-9. **L. 91:** (2) and (3) amended, p. 892, § 22, effective June 5.

37-26-110. Bondholders deemed to have notice. All holders of said bonds or interest coupons to be retired or refunded shall be deemed to have notice of all steps and proceedings had.

Source: L. 33: p. 458, § 7. **CSA:** C. 57, § 104. **CRS 53:** § 47-7-10. **C.R.S. 1963:** § 47-7-10.

37-26-111. Assessment to pay bonds and interest. The refunding bonds and interest thereon shall be paid from annual assessments levied upon the real property within the district, and such real property shall be and remain liable to be assessed for such payments. Except when refunding bonds are issued for unpaid matured interest, no existing lien or liability created by an original issue of bonds shall be increased by issuing bonds to refund such original bonds. The board of directors of any district issuing refunding bonds shall take the same steps and adopt the same proceedings with respect to ordering and certifying such annual assessments, and county officers shall collect and enforce the same in the same manner as provided by law for the levy, certification, and collection of assessments for the payment of bonds refunded and interest

thereon; except that amounts for principal and interest shall be ordered, certified, and collected separately.

Source: L. 33: p. 458, § 8. **CSA:** C. 57, § 105. **CRS 53:** § 47-7-11. **C.R.S. 1963:** § 47-7-11.

37-26-112. Collection and record of assessment. The county treasurer shall collect said assessments at the time of and simultaneously with the collection of general taxes, but the property owner may pay the general and school taxes separately from the drainage district assessments. The county treasurer shall keep a separate record of principal and interest payments. Assessments for interest shall not be construed to be part of the cost of construction or a charge against any benefits theretofore appraised.

Source: L. 33: p. 459, § 9. **CSA:** C. 57, § 106. **CRS 53:** § 47-7-12. **C.R.S. 1963:** § 47-7-12.

Cross references: For collection of taxes, see article 10 of title 39.

37-26-113. Assessments on a parity with general taxes. The lien of assessments to pay refunding bonds and the interest thereon shall be on a parity with the lien of general taxes, and no sale of property for the nonpayment of general taxes shall extinguish the lien of such assessments. Except as provided by this article, the lien of any assessment levied against appraised benefits or otherwise for the payment of an original issue of bonds and interest thereon shall continue and persist for the benefit of the owners of refunding bonds, which owners shall be subrogated to all the rights and remedies of the owners of bonds refunded; except that if there is a reduction in the amount of outstanding bonds there shall be a corresponding reduction in the amount of the lien.

Source: L. 33: p. 459, § 10. **CSA:** C. 57, § 107. **CRS 53:** § 47-7-13. **C.R.S. 1963:** § 47-7-13.

37-26-114. Money applied proportionately - when. In the event there shall not be sufficient funds to the credit of a district for the payment in full of an installment of principal or interest when due, the district treasurer shall apply the money in the respective funds in proportionate payments on all bonds or coupons then due, endorsing on the bonds or coupons a notation showing the payments made. After respective maturities, the district treasurer shall make disbursements whenever he has sufficient funds to pay five percent of the total principal or twenty-five percent of the total interest due at maturity.

Source: L. 33: p. 460, § 11. **CSA:** C. 57, § 108. **CRS 53:** § 47-7-14. **C.R.S. 1963:** § 47-7-14.

37-26-115. Matured bonds used for paying assessments. Refunding bonds of any maturity may be used at face value in paying assessments levied to pay the principal of refunding bonds, if bonds so used have all future due coupons thereto attached and no credit

shall be allowed for such coupons. Interest coupons maturing in any year may be used at face value in paying interest assessments which become due and payable in that year.

Source: L. 33: p. 460, § 12. **CSA:** C. 57, § 109. **CRS 53:** § 47-7-15. **C.R.S. 1963:** § 47-7-15.

37-26-116. Construction of article. Nothing in this article shall be construed to prevent any financial assistance which any drainage district may secure by an agreement with the owners of its outstanding bonds or by any lawful means other than those specified in this article.

Source: L. 33: p. 460, § 13. **CSA:** C. 57, § 110. **CRS 53:** § 47-7-16. **C.R.S. 1963:** § 47-7-16.

37-26-117. Manner of releasing lands from lien. (1) Any tract of land or part thereof in any drainage district issuing refunding bonds may be released from the lien of assessments to pay such bonds in the following manner:

(a) (I) If the bonds to be refunded were issued upon the basis of an assessment for benefits pursuant to the provisions of sections 37-23-101 to 37-23-106, the proportionate share of the outstanding debt chargeable to the particular tract to be released shall be determined by the board of directors of the district on application by the landowner.

(II) In making its determination the board shall take into consideration the basis of assessment on the land in question, the total authorized outstanding debt refunded, the amount of land involved in relation to the total amount of land in the district subject to assessment, the unpaid assessments against the particular land, and all other matters necessary for a proper computation and shall add thereto ten percent of such amount. The board shall make and enter in its records a certificate of such determination, and a certified copy thereof shall be delivered to the district treasurer, who shall accept refunding bonds of any maturity at face value or cash, or both, in full payment of the final amount so determined. At the time of any such payment, the district treasurer shall issue a receipt which shall be filed in the office of the county assessor and may be recorded in the office of the county clerk and recorder of the county in which the land is situate. After any such payment, the particular land shall be forever released and discharged from the lien on the bonds evidencing the particular debt and all assessments levied or to be levied to pay the principal thereof and the interest thereafter due.

(b) If at or prior to the time of the issuance of the bonds to be refunded benefits were appraised pursuant to the provisions of sections 37-23-109 to 37-23-111, any particular tract of land or part thereof may be released upon payment of refunding bonds of any maturity at face value or cash, or both, in an amount equal to any unpaid interest then due plus the benefits appraised against the land, deducting principal amounts theretofore paid. The procedure for releasing land and the effect thereof shall be the same as prescribed in paragraph (a) of this subsection (1).

(c) (I) Any tract of land or part thereof may be released pursuant to a written agreement between the district and its bondholders, under which a landowner may pay an amount less than his proportionate share, if the same is determined under paragraph (a) of this subsection (1), or less than the benefits appraised against his land, deducting principal amounts theretofore paid, the same is determined under paragraph (b) of this subsection (1). Any such agreement may

provide for a general revision, reduction, or cancellation of classifications, assessments, or appraised benefits, but there shall be no increase thereof without the written consent of the landowner affected thereby.

(II) Except as provided by any such written agreement, the procedure for releasing land and the effect thereof shall be the same as prescribed in paragraph (b) of this subsection (1). A certified copy of any such agreement shall be filed with the district treasurer and with the assessor of each county in which the district is located.

Source: L. 33: p. 460, § 14. **CSA:** C. 57, § 111. **CRS 53:** § 47-7-17. **C.R.S. 1963:** § 47-7-17.

37-26-118. Expenses not released. No release of land under section 37-26-117 shall relieve such land from paying its proportionate share of maintenance and operating expenses of the district.

Source: L. 33: p. 462, § 15. **CSA:** C. 57, § 112. **CRS 53:** § 47-7-18. **C.R.S. 1963:** § 47-7-18.

37-26-119. District may change classification. Any district intending to issue bonds pursuant to this article may revise, reduce, or cancel classifications of land, assessments, or assessments of or for benefits in substantially the same manner as provided by the laws existing at the time of the original classification or assessments; but no parcel of land shall ever be liable for the payment of an amount greater than the amount for which the land was liable under its original classification or assessment, and the total assessments levied shall not be less than the principal amount of refunding bonds to be issued. Thereafter the qualified voters of the district may vote refunding bonds based upon such reclassification or reassessment of or for benefits. Refunding bonds so authorized may be exchanged on a compromise basis for outstanding bonds and unpaid matured interest thereon, with such owners thereof as may be willing to make such exchange. The rate of interest on such refunding bonds shall not exceed the rate on the bonds refunded, and in no event shall such rate exceed six percent per annum. Refunding bonds issued in accordance with this section shall be secured only by their proportionate share of such new classifications or assessments, and that fact shall be set forth on the face of each refunding bond issued.

Source: L. 33: p. 463, § 16. **CSA:** C. 57, § 113. **CRS 53:** § 47-7-19. **C.R.S. 1963:** § 47-7-19.

ARTICLE 27

Inclusion of Lands in District

37-27-101. Inclusion of contiguous land. Upon petition of the owner of a tract of land and the payment of a sum equal to the past due assessments upon the same after a classification thereof upon a graduated scale by the board of directors as provided in section 37-23-101, so that the tract is upon an equal footing with other lands of the district, the board of directors may

authorize the inclusion of any tract of land contiguous to the existing boundaries of said district and capable of being drained by said drainage system, and thereupon said lands shall become liable for all future assessments which may become due or are levied for drainage purposes within said drainage district, and the cost of any such proceeding for the inclusion of land shall be borne by the applicant.

Source: L. 11: p. 328, § 75. **L. 13:** p. 258, § 3. **C.L.** § 2190. **CSA:** C. 57, § 91. **CRS 53:** § 47-8-1. **C.R.S. 1963:** § 47-8-1.

37-27-102. Cities and towns included. The lands within the boundaries of any city or town organized and existing under the general laws of this state or under article XX of the state constitution requiring drainage in whole or in part and susceptible of drainage by the drainage ditch, system, or works of any drainage district or proposed drainage district organized or proposed to be organized pursuant to the laws of the state of Colorado relating to the formation of drainage districts may be included within and made a part of any such drainage district upon the presentation to the board of directors of such district, or to the proper board of county commissioners, in case such district has not been organized, of a petition for such inclusion signed by a majority of the owners of such lands, whether residents or nonresidents of such city or town, as well as by the owners in the aggregate of the majority of the total number of acres of such land to be included, exclusive of the land occupied by public streets and alleys, public parks, and any other lands owned by any municipality. Such city or town shall bear the expense of the drainage of all area included with the streets, alleys, public parks, or other lands owned by it. It is the duty of the city council or board of trustees of such city or town to annually certify the amount necessary to pay the drainage assessments as authorized by said drainage district to the taxing tribunal, with instructions to such taxing tribunal to make a levy against the taxable property within such city or town for such purpose as provided by law in other cases of special assessment. Any inclusion of the lands within any city or town shall be subject to all of the provisions and conditions of articles 20 to 30 of this title.

Source: L. 15: p. 292, § 1. **C.L.** § 2192. **CSA:** C. 57, § 93. **CRS 53:** § 47-8-2. **C.R.S. 1963:** § 47-8-2.

ARTICLE 28

Voluntary Districts

37-28-101. Formation of voluntary districts. Whenever the owners of lands which may require a combined system of drainage shall unanimously and mutually agree upon a system of drainage and the character of work necessary to be done to drain their lands and the amount of money each shall contribute towards said proposed works, they may reduce their agreement to writing specifying the boundary lines of said voluntary district and the lands therein, in one hundred sixty acre tracts or smaller tracts if necessary, giving the names of the owners of each tract of land specifying the work which they propose shall be done, the name of the drainage district, and also the names of three persons among their number who shall act as

directors until the annual election, and they may agree upon any other lawful matter or thing which they may deem pertinent to the work proposed.

Source: L. 11: p. 329, § 77. **C.L.** § 2194. **CSA:** C. 57, § 114. **CRS 53:** § 47-9-1. **C.R.S. 1963:** § 47-9-1.

37-28-102. Method of organization. (1) Said owners shall submit such agreement to the board of county commissioners of the county wherein the major part of the lands proposed to be included in such district may be situated and shall submit therewith a plat of the land giving a general description of the same, and the said board of county commissioners as soon thereafter as may be practicable shall carefully consider all questions involved and shall make a personal inspection of the land proposed to be included in said voluntary district or may employ some competent engineer or surveyor to examine and report to said board on the same, and the expense of such surveyor or engineer, including any expense that the board of county commissioners may incur in the examination of such project, shall be paid by the parties to such voluntary agreement, and the board of county commissioners may require a deposit to be made with the county treasurer of the county to protect the county against such expense.

(2) If such board of county commissioners is satisfied that the plan proposed is practicable and will be conducive to the public health, convenience, utility, or welfare and that the agreement submitted is fair and equitable in all respects considering the benefits which the respective lands will receive from such voluntary drainage system, then the board of county commissioners shall enter an order upon their records approving such agreement and shall file the same with the accompanying plat in the office of the county clerk and recorder of said county. If such district extends into more than one county, a certified copy of the agreement and plat, together with a certified copy of the said order of the board of county commissioners, shall be filed by the parties to such agreement with the county clerk and recorder of such other counties, and thereupon the said drainage district shall be fully organized and established and have all the powers of drainage districts. The directors so named in said agreement shall then possess all the powers and proceed in like manner as before designated in the case of directors of districts organized by petition, and the agreement provided for in this article shall constitute a charter of authority of such voluntary district, and all lands subscribed to and voluntarily included in said district shall be considered as a unit or but one tract of land in the determination of any question or right or duty as between said voluntary district and any lands outside thereof, whether lying above, below, or adjacent to said district.

Source: L. 11: p. 329, § 78. **C.L.** § 2195. **CSA:** C. 57, § 115. **CRS 53:** § 47-9-2. **C.R.S. 1963:** § 47-9-2.

ARTICLE 29

Dissolution of Districts

37-29-101. Dissolution - procedure. Whenever a majority of the owners of land within a drainage district representing also a majority of the whole number of acres of land within the district petitions the board of directors to call a special election for the purpose of submitting to

the qualified electors of said drainage district a proposition to dissolve such district, it is the duty of such board of directors, upon proof that all claims and bills of the district of every kind or nature whatsoever have been fully paid, to call an election for the purpose of submitting the question of the dissolution of such district to the qualified voters thereof and to cause a notice setting forth the object of such election to be posted in the office of the district and in six public places within such district and to be published in some newspaper of general circulation and published in each county in which any portion of said district may lie for a period of thirty days prior to said election. Said notice shall set forth the time and place for holding said election in each precinct within said district. It is the duty of the board of directors to prepare ballots to be used at such elections on which shall be written or printed the words "For dissolution" and "Against dissolution" and to appoint judges and clerks of elections as in other elections of the district. No district shall be dissolved which has claims, bills, bonds, or indebtedness outstanding or unpaid, and the attempted dissolution of such a district shall be null, void, and of no force and effect.

Source: L. 11: p. 330, § 79. **C.L.** § 2196. **CSA:** C. 57, § 116. **CRS 53:** § 47-10-1. **C.R.S. 1963:** § 47-10-1.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24.

37-29-102. Canvass of votes - order of dissolution. (1) The board of directors, upon the day specified in the notice of election as the day for the canvassing of the vote of such election, shall proceed to canvass the votes cast at said election, and if it appears from such canvass that a majority of the ballots cast at said election were "For dissolution", then the board of directors shall forthwith make and enter in their records an order declaring said district to be duly dissolved and disorganized, which order shall contain a complete copy of said petition for dissolution, including the signatures thereto attached and a duly authenticated copy of the published notice of such election, together with copies of the publisher's affidavit of publication. The order shall state that an election was called and set for the ..... day of ....., A. D., ..., that on said day the election was held and that so many votes, stating the number, were cast for dissolution and so many votes were cast against dissolution.

(2) Said board of directors shall cause a copy of said order, duly certified by the president and attested by the secretary of the board of directors under the seal of the district, to be filed for record in the office of the county clerk and recorder of each county within which any portion of such district extends, and it is the duty of said county clerk and recorders to forthwith file and record said certified copies, whereupon said district shall be dissolved and shall cease to exist.

(3) If it appears upon the canvass of said vote so cast at the election that a majority of the votes were against dissolution, then the board of directors shall declare the proposition lost and shall thereupon enter an order to that effect in the records of the district but shall not file such order with the county clerk and recorders of the counties into which such district extends.

Source: L. 11: p. 331, § 80. **C.L.** § 2197. **CSA:** C. 57, § 117. **CRS 53:** § 47-10-2. **C.R.S. 1963:** § 47-10-2.

ARTICLE 30

Drainage of State Lands

37-30-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Drainage assessment" means any tax, assessment, or charge levied on account of the construction, maintenance, and operation of the drainage project.

(2) "Drainage district" means an organization formed under the drainage district law of this state.

(3) "Drainage project" includes legally organized drainage districts and enterprises of persons, corporations, or associations having for their object the drainage of land.

(4) "Treasurer" means the proper officer of the drainage project authorized to receive payments of drainage assessments.

Source: L. 15: p. 384, § 1. **C.L.** § 2200. **CSA:** C. 57, § 119. **CRS 53:** § 47-11-1. **C.R.S. 1963:** § 47-11-1.

37-30-102. Drainage for state lands. For the purpose of securing drainage for state lands, the state board of land commissioners is authorized to enter into contracts with any person, corporation, association, or drainage district providing for such drainage and to petition all such lands into drainage districts at the time of or after the formation of such districts. The state board of land commissioners has full power to secure to such person, corporation, association, or drainage district so furnishing drainage of state lands the payment of the cost of drainage upon state lands. In no case shall the state board of land commissioners have any power to use any of the school funds, either principal or interest, or cash fund for any such purpose.

Source: L. 15: p. 384, § 2. **C.L.** § 2201. **CSA:** C. 57, § 120. **CRS 53:** § 47-11-2. **C.R.S. 1963:** § 47-11-2.

37-30-103. Board or purchaser as freeholder. If any such land is included in any drainage project, the state board of land commissioners shall be considered in all respects a freeholder so long as the lands remain unsold, but as soon as any of such land is sold, whether occurring before or after the time such land is included in such drainage project, the purchaser shall from the time of his purchase be considered as such freeholder and entitled to all the rights of the freeholder whether or not he has completed his payments to the state board of land commissioners. In no case shall any interest or title of the state to lands be made liable or subjected to any claim for any drainage assessment by reason of the including of any such state land in any drainage project.

Source: L. 15: p. 385, § 3. **C.L.** § 2202. **CSA:** C. 57, § 121. **CRS 53:** § 47-11-3. **C.R.S. 1963:** § 47-11-3.

37-30-104. Lessee advance assessments. When the state lands included in a drainage project are leased, the state board of land commissioners in its discretion may require the lessee to pay to the state board of land commissioners an amount annually, to cover in whole or in part

the drainage assessments. The additional amount so paid shall be used to pay in whole or in part the drainage assessments.

Source: L. 15: p. 386, § 7. **C.L.** § 2206. **CSA:** C. 57, § 125. **CRS 53:** § 47-11-4. **C.R.S. 1963:** § 47-11-4.

37-30-105. Assessments become part of permanent fund. Whenever the state board of land commissioners shall pay drainage district assessments on land not under certificate of purchase, then, upon sale of such land, all money received therefor shall become a part of the permanent fund.

Source: L. 33: p. 449, § 5. **CSA:** C. 57, § 73. **CRS 53:** § 47-11-5. **C.R.S. 1963:** § 47-11-5.

Cross references: For disposition of proceeds from sale of state land, see § 36-1-134.

ARTICLE 31

Grand Valley Drainage District

37-31-101. Public necessity of drainage district in Grand Valley. It is declared that the seepage conditions existing in the territory described in section 37-31-102 are peculiar to that particular territory and affect in a peculiar manner the people residing and owning property within said district. It is further declared that torrential storms affect the territory in said district in an adverse manner. It is further declared that the construction of a suitable drainage works for the protection of urban and rural property within said district will promote the health, comfort, safety, convenience, and welfare of all the people residing or owning property within said district and that the construction of said drainage works is therefore a governmental function conferring a general benefit upon all of the people residing or owning property within said district.

Source: L. 23: p. 283, § 1. **CSA:** C. 57, § 127. **L. 37:** p. 519, § 1. **CRS 53:** § 47-12-1. **C.R.S. 1963:** § 47-12-1. **L. 83:** Entire section amended, p. 1386, § 1, effective June 1.

37-31-102. Grand Valley drainage district created - boundaries - inclusion of land. (1) There is hereby created the Grand Valley drainage district. Said district is declared to be a body corporate under the laws of Colorado and by said name may sue and defend any actions, suits, and proceedings. Said district, situate in the county of Mesa, Colorado, shall be comprised of the district now known as Grand Junction drainage district and is included within, and may expand beyond, the following boundaries: Beginning at a point bearing south twenty-nine degrees, thirty minutes west, five hundred fifty-five feet from the east quarter corner of section three, in township eleven south of range ninety-eight west of the sixth principal meridian, in Mesa county, Colorado, said point being identical with the headgate of that certain canal heretofore known and designated as canal No. 2 of the High Line Mutual Irrigation Company, as shown by the plat thereof of record in the office of the clerk and recorder of said Mesa county,

Colorado, in ditch plat book three, at pages 14 and 15, said canal being now generally known and designated as the "stub ditch" of the Mesa county irrigation district, and running thence westerly along the northerly bank or line of said canal No. 2, now known as the stub ditch, to the point where the northerly line or bank of said canal intersects the west line of the northwest quarter of section five, in township one south of range one east of the Ute principal meridian; thence south along said west line to the northerly bank or line of that certain canal heretofore known and designated as canal No. 1 of the High Line Mutual Irrigation Company, said canal being now commonly known and designated as the Price ditch, of the Palisade irrigation district; thence southwesterly along the northerly line or bank of said Price ditch to the intersection thereof with the "Indian Waste", in the southeast quarter of section six, in township one south of range one east of the Ute principal meridian; thence along the west side or line of said "Indian Waste" in a general southerly direction to the intersection of said west line or bank with the northerly line or bank of the Grand Valley canal in the northeast quarter of section seven in township one south of range one east of the Ute principal meridian; thence along the northerly line or bank of said Grand Valley canal of the Grand Valley Irrigation Company, including under the name "Grand Valley Canal" that part thereof sometimes known and designated as "The Grand Valley High Line" ditch or canal of the Grand Valley Irrigation Company, to the end of said Grand Valley canal, also sometimes known as "The High Line Canal" of the Grand Valley Irrigation Company, said point being the beginning of that certain ditch or canal of the Grand Valley Irrigation Company commonly known and designated as the Kiefer extension ditch or canal, in section thirty-six in township two north of range three west of the Ute principal meridian; thence along the right line or bank of said Kiefer extension ditch or canal to the end thereof, the same being at a point on the northerly bank of the Grand river, now the Colorado river, in section ten, in township one north of range three west of the Ute principal meridian; thence up and along the northerly line or bank of said Grand river, now the Colorado river, to the point of beginning; including all the territory embraced and included within the corporate limits of the town of Palisade. The boundaries of the district shall exist entirely within the boundaries of Mesa county.

(2) Upon petition of the owner of a tract of land located within Mesa county and capable of receiving benefit from the district, the board of directors may authorize the inclusion of said tract within the district. The petition shall describe the boundaries of said tract of land and shall be signed by the petitioner.

(3) Within thirty days following the filing of such petition, the board of directors shall fix a time and place for a public hearing and conduct said hearing on the petition, at which time all objections thereto shall be presented in writing. Failure of any person to object in writing shall be held as an assent on his part to the inclusion of such tract of land in the drainage district. If the petition is granted, the board shall make an order to that effect, and the property involved shall be included in the district. After inclusion of the tract within the district, the owner of said tract shall become liable for all future assessments within said drainage district.

Source: L. 23: p. 283, § 2. **CSA:** C. 57, § 128. **L. 37:** p. 520, § 2. **CRS 53:** § 47-12-2. **C.R.S. 1963:** § 47-12-2. **L. 83:** Entire section amended, p. 1386, § 2, June 1. **L. 2007:** (1) amended, p. 156, § 1, effective January 1, 2008.

37-31-103. Successor to Grand Junction drainage district. The Grand Valley drainage district shall be the successor to the Grand Junction drainage district and all rights, causes of action, records, uncollected revenues, taxes, and assessments, and all other property of the said Grand Junction drainage district shall accrue to and become the property of the Grand Valley drainage district, and all valid indebtedness and obligations of the Grand Junction drainage district, as well as the contract obligations with the United States, shall be assumed, paid, and carried out by the Grand Valley drainage district.

Source: L. 23: p. 286, § 4. **CSA:** C. 57, § 130. **CRS 53:** § 47-12-4. **C.R.S. 1963:** § 47-12-4. **L. 2007:** Entire section amended, p. 157, § 2, effective January 1, 2008.

37-31-104. Government of district. The district shall be managed and controlled by a board of three members known as the board of directors. The district shall be divided into three divisions with the same boundaries as the three divisions of the Grand Valley drainage district. The voters of each division shall elect one director from electors residing in said division. In the case of the inclusion of any tract of land within the district pursuant to section 37-31-102 (2), at least thirty days prior to the next succeeding regular election, the board of directors shall issue an order redividing such district into three divisions, as nearly equal in size as may be practicable.

Source: L. 23: p. 287, § 5. **CSA:** C. 57, § 131. **CRS 53:** § 47-12-5. **C.R.S. 1963:** § 47-12-5. **L. 83:** Entire section amended, p. 1388, § 3, effective June 1. **L. 2007:** Entire section amended, p. 157, § 3, effective January 1, 2008.

37-31-105. General powers of district. (1) The board is vested with all powers necessary for the accomplishment of the purposes for which this district is organized and capable of being delegated by the general assembly of the state of Colorado, and no enumeration of particular powers granted shall be construed to impair any general grant of power contained in this article or to limit any such grant to a power of the same class as those so enumerated.

(2) The board may also participate in the formulation and implementation of nonpoint source water pollution control programs related to agricultural practices in order to implement programs required by or authorized under federal law and section 25-8-205 (5), C.R.S., enter into contracts and agreements, accept funds from any federal, state, or private source, receive grants or loans, participate in education and demonstration programs, construct, operate, maintain, or replace facilities, and perform such other activities and adopt such rules and policies as the board deems necessary or desirable in connection with nonpoint source water pollution control programs related to agricultural practices.

Source: L. 23: p. 293, § 29. **CSA:** C. 57, § 155. **CRS 53:** § 47-12-29. **C.R.S. 1963:** § 47-12-29. **L. 98:** Entire section amended, p. 121, § 1, effective March 24.

37-31-106. Nomination of directors. Nominations for membership on said board shall be made by petitions signed by not less than twenty-five qualified electors. Said petitions shall be signed and the residence address of the signers affixed thereon, and the petitions shall be sworn to in the same manner as provided by law for petitions for nominations for state and county officers. Said petitions shall be filed at least twenty days before the election with the

secretary of the board, and a list of the nominees so selected shall be published by the board with its election notice.

Source: L. 23: p. 290, § 15. **CSA:** C. 57, § 141. **CRS 53:** § 47-12-15. **L. 61:** p. 367, § 2. **C.R.S. 1963:** § 47-12-15.

37-31-107. General election laws apply - rules. The board is empowered to make such rules and regulations for the holding of said elections as will carry out the purposes of this article and shall furnish all the necessary supplies and equipment for holding said elections, and the laws of the state of Colorado providing for general elections, not provided for in this article and not provided for by said board in said rules, shall govern.

Source: L. 23: p. 290, § 16. **CSA:** C. 57, § 142. **CRS 53:** § 47-12-16. **C.R.S. 1963:** § 47-12-16.

Cross references: For rule-making procedures, see article 4 of title 24; for general election laws, see title 1.

37-31-108. Call and notice of election. At least twenty days before any election, the board, by resolution, shall call such election, shall designate the polling places in each precinct, and shall name the judges of election. The board shall also give notice of the time of such election by publication of a notice of election in some newspaper of general circulation published in said district by two insertions of said notice one week apart, the last insertion to be at least three days before the election.

Source: L. 23: p. 289, § 13. **CSA:** C. 57, § 139. **CRS 53:** § 47-12-13. **C.R.S. 1963:** § 47-12-13.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24.

37-31-109. Regular election - directors elected. (1) The regular election in said district for the purpose of electing a board of directors shall be held on the first Tuesday after the first Monday of May of each year, beginning with 2008, at which time one director shall be elected for a term of three years. Any director whose term expires before May 2008 shall remain in office until the election of directors in May 2008. Persons residing within each division and qualified to vote at general county elections shall be entitled to vote for the director representing that division.

(2) Special elections may be held on the first Tuesday after the first Monday in February, May, October, or December, except for ballot issue elections, which may be held only in a state general election, the regular district election, on the first Tuesday in November of odd-numbered years, or by mail ballot.

Source: L. 25: p. 239, § 1. **CSA:** C. 57, § 133. **CRS 53:** § 47-12-7. **C.R.S. 1963:** § 47-12-7. **L. 2007:** Entire section amended, p. 157, § 4, effective January 1, 2008.

37-31-110. Election precincts. The board of directors shall establish a convenient number of election precincts within said district, define the boundaries thereof, and designate the polling places thereof.

Source: L. 23: p. 288, § 8. **CSA:** C. 57, § 134. **CRS 53:** § 47-12-8. **C.R.S. 1963:** § 47-12-8.

37-31-111. Judges of election. The board of directors shall appoint three judges of election in each precinct, each of whom shall be a qualified elector residing within said precinct.

Source: L. 23: p. 288, § 9. **CSA:** C. 57, § 135. **CRS 53:** § 47-12-9. **C.R.S. 1963:** § 47-12-9.

37-31-112. Appointment of substitute judges. If the board of directors fails to appoint judges or the appointees fail to attend at the hour designated for opening the polls on the morning of election, the voters of the precinct present at that hour may appoint one or more judges to take the places of those absent.

Source: L. 23: p. 288, § 10. **CSA:** C. 57, § 136. **CRS 53:** § 47-12-10. **C.R.S. 1963:** § 47-12-10.

37-31-113. Oath of judge of election. Any judge of election may administer and certify oaths required to be administered during the progress of an election. Before opening the polls each judge shall take and subscribe an oath faithfully to perform the duties imposed upon him by law. Any qualified elector of the precinct may administer and certify said oath.

Source: L. 23: p. 288, § 11. **CSA:** C. 57, § 137. **CRS 53:** § 47-12-11. **C.R.S. 1963:** § 47-12-11.

37-31-114. No registration of voters. No registration shall be required for any election, but no person shall be entitled to vote without the qualifications prescribed in section 37-31-109. Any judge of election or any voter at the polls has the right of challenging anyone seeking to vote at said election on the ground of said person's disqualification; and, before such challenged person is entitled to vote, he shall take an oath, to be administered by one of the judges of election, to the effect that he is a qualified elector to vote at said election. Anyone making a false oath at said election is guilty of perjury in the second degree. The polls for said election shall be open in each of the precincts from 7 a.m. to 7 p.m., and, after said polls are closed, the judges of said election shall canvass the votes and make returns thereof, one copy to be retained by said judges and the other certified to the board of directors.

Source: L. 23: p. 288, § 12. **CSA:** C. 57, § 138. **CRS 53:** § 47-12-12. **L. 61:** p. 367,§ 1. **C.R.S. 1963:** § 47-12-12. **L. 72:** p. 559, § 16. **L. 79:** Entire section amended, p. 1351, § 1, effective July 1.

Cross references: For perjury in the second degree, see § 18-8-503.

37-31-115. Canvass of vote - certificate of election. Within seven days after said election, the board shall meet at the office of the drainage district for the purpose of canvassing the vote cast at said election, and shall issue a certificate of election to the candidate receiving the highest number of votes for said office, and shall file a statement of the result of said election in the clerk and recorder's office of Mesa county, Colorado. The director certified to be elected shall take an oath or affirmation in accordance with section 24-12-101.

Source: L. 25: p. 240, § 1. **CSA:** C. 57, § 140. **CRS 53:** § 47-12-14. **C.R.S. 1963:** § 47-12-14. **L. 2018:** Entire section amended, (HB 18-1138), ch. 88, p. 700, § 35, effective August 8.

Cross references: For the legislative declaration in HB 18-1138, see section 1 of chapter 88, Session Laws of Colorado 2018.

37-31-116. In case of tie determination by lot. In the event that, at any regular or special election, two or more persons receive the same number of votes and one is elected thereby, the election shall be determined by lot under direction of the county judge of the said county of Mesa.

Source: L. 23: p. 291, § 18. **CSA:** C. 57, § 144. **CRS 53:** § 47-12-18. **C.R.S. 1963:** § 47-12-18.

37-31-117. Contest of election. The election of any person declared duly elected as a director at any election may be contested by any qualified elector residing within the division from which such director was chosen, upon the grounds provided for such contest for the election of county officers by the general law of the state, and any district judge has jurisdiction to hear and determine said contest, said contest to be conducted in the same manner, under the same rules and procedure, and with like effect as is provided by law for the contest of county officers.

Source: L. 23: p. 290, § 17. **CSA:** C. 57, § 143. **CRS 53:** § 47-12-17. **C.R.S. 1963:** § 47-12-17.

Cross references: For contest of election of county officers, see § 1-11-212.

37-31-118. Powers of board. The board of directors is authorized to take conveyances or assurances in the name of the drainage district for all property acquired by it, and to institute and maintain any actions, proceedings, and suits at law or in equity, necessary or proper to fully carry out the provisions of this article or to enforce, maintain, protect, or preserve any rights, privileges, and immunities created by this article or acquired in pursuance thereof.

Source: L. 23: p. 293, § 28. **CSA:** C. 57, § 154. **CRS 53:** § 47-12-28. **C.R.S. 1963:** § 47-12-28.

37-31-119. Purposes of district - powers of board of directors. The purposes for which the district is organized are to construct, operate, and maintain systems of drains and drainage works sufficient to reclaim and protect all lands and property within said district from seepage, waste waters, and storm waters. The board of directors may cause surveys to be made for ditches and drainage works and rights-of-way for said district and may cause drainage ditches, works, rights-of-way, and other property necessary for said district to be laid out, constructed, purchased, and acquired by condemnation or otherwise.

Source: L. 23: p. 297, § 42. **CSA:** C. 57, § 168. **CRS 53:** § 47-12-42. **L. 61:** p. 368, § 3. **C.R.S. 1963:** § 47-12-42. **L. 83:** Entire section amended, p. 1388, § 4, effective June 1.

37-31-120. Meetings of directors. The board of directors shall hold its regular meetings in the office of the drainage district on the first Tuesday in January, April, July, and October and such special meetings as may be required for the proper transaction of business. Special meetings shall be called by the president of the board or by any director. All special meetings of the board shall be held at locations which are within the boundaries of the district or which are within the boundaries of any county in which the district is located, in whole or in part, or in any county so long as the meeting location does not exceed twenty miles from the district boundaries. The provisions of this section governing the location of meetings may be waived only if the proposed change of location of a meeting of the board appears on the agenda of a regular or special meeting of the board and if a resolution is adopted by the board stating the reason for which a meeting of the board is to be held in a location other than under the provisions of this section and further stating the date, time, and place of such meeting.

Source: L. 23: p. 292, § 24. **CSA:** C. 57, § 150. **CRS 53:** § 47-12-24. **C.R.S. 1963:** § 47-12-24. **L. 90:** Entire section amended, p. 1502, § 15, effective July 1.

37-31-121. Meetings public - quorum - records. Meetings of the board of directors shall be public, and two directors shall constitute a quorum for the transaction of business. On all questions requiring a vote there shall be a concurrence of at least two directors. The record of the board shall be open to the inspection of the public during business hours.

Source: L. 23: p. 292, § 25. **CSA:** C. 57, § 151. **CRS 53:** § 47-12-25. **C.R.S. 1963:** § 47-12-25.

Cross references: For provisions relating to open meetings, see part 4 of article 6 of title 24.

37-31-122. Directors may sell bonds. The board of directors may sell bonds from time to time in such quantities as may be necessary and most advantageous to raise money to carry out the objects and purposes of this article. Before making any sale, the board, by resolution, shall declare its intention to sell a specified amount of bonds, and the day, hour, and place of such sale, and shall cause such resolution to be entered in the minutes and notice of the sale to be given by the publication thereof in two consecutive insertions in a daily newspaper published in said district, and in any other newspaper, at the discretion of the board.

Source: L. 23: p. 301, § 50. **CSA:** C. 57, § 176. **CRS 53:** § 47-12-50. **C.R.S. 1963:** § 47-12-50.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24.

37-31-123. No director interested in contract. No director or officer of the district shall be interested directly or indirectly, in any manner, in any contract awarded or to be awarded by the board or in the profits thereof, nor shall he or she receive any gratuity or bribe; and for any violation of this provision such officer commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S., and such conviction shall work a forfeiture of his or her office.

Source: L. 23: p. 303, § 54. **CSA:** C. 57, § 180. **CRS 53:** § 47-12-54. **C.R.S. 1963:** § 47-12-54. **L. 77:** Entire section amended, p. 884, § 66, effective July 1, 1979. **L. 89:** Entire section amended, p. 850, § 135, effective July 1. **L. 2002:** Entire section amended, p. 1553, § 335, effective October 1.

Editor's note: The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See People v. McKenna, 199 Colo. 452, 611 P.2d 574 (1980).

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

37-31-124. Directors may contract - with whom. The board of directors has the power, without advertising for bids, to enter into a contract upon such terms as the board may regard as equitable, with any individual, partnership, corporation, or governmental entity or an irrigation or drainage district organized under the laws of this state or with more than one or with all of said parties, for the making of any surveys, plans, and specifications for a proposed drainage ditch, system, or works, or for the construction in whole or in part of such drainage ditch, system, or works, or for the joint use of any drainage ditch or drainage facilities; but no such contract involving an expenditure by said district of an amount in excess of twenty-five percent of the district's budget shall become effective and binding unless the question of making such contract has been submitted to and authorized at a general or special election of the qualified electors of the district.

Source: L. 23: p. 304, § 56. **CSA:** C. 57, § 182. **CRS 53:** § 47-12-56. **C.R.S. 1963:** § 47-12-56. **L. 79:** Entire section amended, p. 1351, § 2, effective July 1. **L. 83:** Entire section amended, p. 1388, § 5, effective June 1.

37-31-125. Vacancy on board of directors. In case of a vacancy in the board of directors by failure of any person named or elected to the office to qualify, or by death, removal, or inability from any cause to properly discharge the duties of a director, the board of county

commissioners of Mesa county, Colorado, shall appoint a director who shall hold his office until the next regular election in said district and until his successor is elected and qualified.

Source: L. 23: p. 291, § 19. **CSA:** C. 57, § 145. **CRS 53:** § 47-12-19. **C.R.S. 1963:** § 47-12-19.

37-31-126. Bonds of directors. Each director shall execute a bond in the penal sum of two thousand dollars, with sureties approved by the county judge of Mesa county, Colorado, and file the same in the office of the county clerk and recorder of said county. Said bonds shall be in the form prescribed by law for county officers making the drainage district obligee therein.

Source: L. 23: p. 287, § 6. **CSA:** C. 57, § 132. **CRS 53:** § 47-12-6. **C.R.S. 1963:** § 47-12-6.

37-31-127. Right of entry to survey. The directors, agents, and employees of the drainage district have the right to enter upon any land in the district to make surveys and to locate drainage ditches and laterals.

Source: L. 23: p. 292, § 26. **CSA:** C. 57, § 152. **CRS 53:** § 47-12-26. **C.R.S. 1963:** § 47-12-26.

37-31-128. Treasurer of district. The board of directors shall choose one of its members to serve as treasurer of the board and may choose one of its members to serve as secretary of the board. The secretary and treasurer may be one person, and if such is the case, he shall be a member of the board. The treasurer shall execute a bond in a sum to be determined by the board of directors, with a corporate surety authorized and licensed to do business in this state as surety, and shall file the same in the office of the county clerk and recorder of Mesa county.

Source: L. 23: p. 291, § 20. **CSA:** C. 57, § 146. **CRS 53:** § 47-12-20. **C.R.S. 1963:** § 47-12-20. **L. 79:** Entire section R&RE, p. 1352, § 3, effective July 1.

37-31-129. Salary and expenses of officers. Each director shall receive as per diem compensation for his or her services a sum not in excess of one hundred dollars per day, but not to exceed one thousand six hundred dollars per annum, as fixed by the board, together with actual and necessary expenses incurred in the performance of his or her duties. No director shall receive any compensation as an officer, engineer, attorney, employee, or other agent of the district. Nothing contained in this article shall be construed as preventing the board from authorizing the reimbursement of any director for expenses incurred and appertaining to the activities of the district. The salary of the secretary shall be fixed by resolution of the board of directors.

Source: L. 23: p. 291, § 21. **CSA:** C. 57, § 147. **L. 51:** p. 356, § 1. **CRS 53:** § 47-12-21. **C.R.S. 1963:** § 47-12-21. **L. 73:** p. 565, § 2. **L. 79:** Entire section amended, p. 1352, § 4, effective July 1. **L. 98:** Entire section amended, p. 121, § 2, effective March 24. **L. 2007:** Entire section amended, p. 158, § 5, effective January 1, 2008.

37-31-130. Location of office. The office of the drainage district shall be located in the county of Mesa, at a place to be determined by the board of directors of the drainage district. The board of directors shall elect a president from the members of the board, appoint a secretary who may or may not be a director, and adopt a seal.

Source: L. 23: p. 292, § 22. **CSA:** C. 57, § 148. **CRS 53:** § 47-12-22. **C.R.S. 1963:** § 47-12-22.

37-31-131. Funds paid on warrant. The treasurer of the drainage district shall pay out of the funds of the district only upon warrants ordered by the board of directors of the drainage district, signed by its president and attested by its secretary, under the seal of the drainage district.

Source: L. 23: p. 293, § 30. **CSA:** C. 57, § 156. **CRS 53:** § 47-12-30. **C.R.S. 1963:** § 47-12-30.

37-31-132. Warrants not paid draw interest. When any warrants of the drainage district are presented to the treasurer and there are no funds in his hands to pay the same, he shall stamp the same in the same manner as ordinary county warrants are stamped, and said warrants shall draw interest at the rate of six percent per annum from the date of their presentation until paid.

Source: L. 23: p. 294, § 31. **CSA:** C. 57, § 157. **CRS 53:** § 47-12-31. **C.R.S. 1963:** § 47-12-31.

37-31-133. Claims against district verified. (Repealed)

Source: L. 23: p. 294, § 32. **CSA:** C. 57, § 158. **CRS 53:** § 47-12-32. **C.R.S. 1963:** § 47-12-32. **L. 75:** Entire section amended, p. 223, § 78, effective July 16. **L. 79:** Entire section repealed, p. 1352, § 5, effective July 1.

37-31-134. Register of warrants - when issued. (Repealed)

Source: L. 23: p. 294, § 33. **CSA:** C. 57, § 159. **CRS 53:** § 47-12-33. **C.R.S. 1963:** § 47-12-33. **L. 79:** Entire section repealed, p. 1352, § 5, effective July 1.

37-31-135. Treasurer to report. At each regular meeting of the board of directors of the drainage district and at such other times as may be required by the board, the treasurer shall report in writing the amount of money on hand, the amount received since his last report, and the amount paid out, with a list of warrants presented since the last report. Said report shall be sworn to and filed with the secretary of the board of directors.

Source: L. 23: p. 295, § 34. **CSA:** C. 57, § 160. **CRS 53:** § 47-12-34. **C.R.S. 1963:** § 47-12-34.

37-31-136. Treasurer's fees. The county treasurer of Mesa county, Colorado, shall charge and receive for duties required of him to be performed and for handling the taxes of said district the same fees and commissions as are paid to him under the laws of Colorado upon school taxes in counties of the first class.

Source: L. 23: p. 296, § 41. **CSA:** C. 57, § 167. **CRS 53:** § 47-12-41. **C.R.S. 1963:** § 47-12-41.

Cross references: For fees of county treasurer, see § 30-1-102.

37-31-137. Property taxable and service fees chargeable by district. (1) In order to carry out the purposes of the district and the provisions of this article, the board of directors has the following powers:

(a) Within the limits of the Grand Valley drainage district, to levy taxes of the same kinds and classes upon the taxable property, real, personal, or mixed, which is subject to taxation for state and county purposes in accordance with the laws of this state;

(b) To designate specially benefited areas within the district as improvement districts and to levy, collect, and cause to be collected assessments fixed against real property in any such improvement district within the district;

(c) To fix and, from time to time, increase or decrease and collect and cause to be collected rates, fees, and other service charges pertaining to the facilities of the district and to pledge revenues derived from such service charges for the payment of district securities. The board of directors may enforce the collection of such revenues by civil action or by any other means provided by law. Service charges may include, without limitation, minimum charges and charges for availability of the facilities or services relating to the facilities of the district. Such service charges may be charged to and collected in advance or otherwise by the district at any time or from time to time from any person owning real property within the district or from any occupancy of such property which directly or indirectly is, or has been, or will be connected with the district drainage system. Such service charges, as nearly as the district deems practicable and equitable, shall be reasonable and uniform for the same type, class, and amount of use. Reasonable penalties may be fixed for any delinquencies, including, without limitation, interest on delinquent service charges from any date due at a rate of not more than one percent per month, or fraction thereof, reasonable attorney fees, and other costs of collection. The district may prescribe and, when necessary, revise a schedule of such service charges.

Source: L. 23: p. 295, § 35. **CSA:** C. 57, § 161. **CRS 53:** § 47-12-35. **C.R.S. 1963:** § 47-12-35. **L. 83:** Entire section R&RE, p. 1389, § 6, effective June 1. **L. 2007:** (1)(a) amended, p. 158, § 6, effective January 1, 2008.

37-31-138. General tax laws apply. The laws of this state for the collection of the general taxes, including the laws for the sale of property for taxes and the redemption of the same, shall apply and have full force and effect for the purposes of this article.

Source: L. 23: p. 296, § 38. **CSA:** C. 57, § 164. **CRS 53:** § 47-12-38. **C.R.S. 1963:** § 47-12-38.

Cross references: For collection of taxes, tax sales, and redemption, see articles 10, 11, and 12 of title 39.

37-31-139. Certification of property values. It is the duty of the county assessor of Mesa county, Colorado, in making his return each year, to designate the property situated within the limits of the said district and to certify to the board of directors of the said drainage district the total valuation for assessment of all taxable property within the district.

Source: L. 23: p. 295, § 36. **CSA:** C. 57, § 162. **CRS 53:** § 47-12-36. **C.R.S. 1963:** § 47-12-36.

37-31-140. District tax on tax list and included in warrant. It is the duty of the county assessor of Mesa county, Colorado, as soon as the assessment roll is ready in each year for the extension of the taxes, to extend the same upon the tax list of the current year in a separate column properly headed in the same manner as other taxes are extended, carrying said district tax into the general total of all taxes for the year, and he shall include the said district taxes in his general warrant to the county treasurer for collection.

Source: L. 23: p. 295, § 37. **CSA:** C. 57, § 163. **CRS 53:** § 47-12-37. **C.R.S. 1963:** § 47-12-37.

37-31-141. Certification and levy of tax. The board of directors of the Grand Valley drainage district shall, in accordance with the schedule prescribed by section 39-5-128, C.R.S., certify to the board of county commissioners a statement showing the aggregate amount which, in the judgment of said drainage board, is necessary to raise from the taxable property of said district to create a fund for any of the purposes of said district. It is the duty of the board of county commissioners to levy, at the same time that other taxes are levied, such rate as will produce the aggregate amount so certified.

Source: L. 23: p. 296, § 39. **CSA:** C. 57, § 165. **CRS 53:** § 47-12-39. **C.R.S. 1963:** § 47-12-39. **L. 87:** Entire section amended, p. 1408, § 8, effective April 22. **L. 2007:** Entire section amended, p. 158, § 7, effective January 1, 2008.

37-31-142. Title to property - tax exemption. The title to property acquired under the provisions of this article shall vest in such drainage district in its corporate name. Said property shall be held by such district in trust for and is dedicated and set apart for the uses and purposes set forth in this article and shall be exempt from taxation, and the board of directors is authorized to hold, use and acquire, manage, occupy, and possess said property.

Source: L. 23: p. 293, § 27. **CSA:** C. 57, § 153. **CRS 53:** § 47-12-27. **C.R.S. 1963:** § 47-12-27.

37-31-143. General tax exemptions apply. Property exempt under the constitution and laws of Colorado from the payment of taxes shall be exempt from the payment of taxes in the Grand Valley drainage district.

Source: L. 23: p. 296, § 40. **CSA:** C. 57, § 166. **CRS 53:** § 47-12-40. **C.R.S. 1963:** § 47-12-40. **L. 2007:** Entire section amended, p. 158, § 8, effective January 1, 2008.

Cross references: For property tax exemptions, see article 3 of title 39.

37-31-144. Election on bonds. For the purpose of constructing a drainage system and necessary works for the drainage district and acquiring the necessary property and rights-of-way therefor, of paying the first year's interest on the bonds authorized in this article, and of otherwise carrying out the provisions of this article, the board of directors of the drainage district may estimate and determine the amount of money necessary to be raised for such purposes and is empowered to call a special election, at which election shall be submitted to the qualified taxpaying electors of the drainage district the question of whether or not the bonds of said district shall be issued in the amount so determined.

Source: L. 23: p. 298, § 45. **CSA:** C. 57, § 171. **CRS 53:** § 47-12-45. **C.R.S. 1963:** § 47-12-45.

37-31-145. Procedure of holding of election. A notice of such election shall be given as provided in this article. The notice shall specify the time of holding the election and the amount of bonds proposed to be issued. The election shall be held and the results determined and declared as nearly as possible in conformity with the provisions of this article governing the election of directors. No informalities in conducting such election shall invalidate the same if the election has been otherwise fairly conducted. At such election the ballots shall contain the words "Bonds - Yes" or "Bonds - No".

Source: L. 23: p. 299, § 46. **CSA:** C. 57, § 172. **CRS 53:** § 47-12-46. **C.R.S. 1963:** § 47-12-46.

37-31-146. Majority vote bonds issued. (Repealed)

Source: L. 23: p. 299, § 47. **CSA:** C. 57, § 173. **CRS 53:** § 47-12-47. **C.R.S. 1963:** § 47-12-47. **L. 98:** Entire section repealed, p. 122, § 3, effective March 24.

37-31-147. Majority vote bonds issued - form of bonds and coupons. If the majority of the votes cast is "Bonds - Yes", the board of directors shall issue negotiable coupon bonds of the district. Bonds shall bear interest at a rate or rates such that the net effective interest rate of the issue of bonds does not exceed the maximum net effective interest rate authorized, payable semiannually, and shall be due and payable serially, either annually or semiannually, commencing not later than three years and extending not more than twenty years from date. The form and terms of said bonds, including provisions for their payment and redemption, shall be determined by the board. If the board so determines, such bonds may be redeemable prior to maturity upon payment of a premium, not exceeding three percent of the principal thereof. Said bonds shall be executed in the name of and on behalf of the district and signed by the president with the seal of the district affixed thereto and attested by the secretary. Said bonds shall be in such denominations as the board shall determine, and the bonds and coupons thereto attached

shall be payable to bearer. Interest coupons shall bear the original or facsimile signature of the president.

Source: L. 23: p. 300, § 48. **CSA:** C. 57, § 74. **CRS 53:** § 47-12-48. **C.R.S. 1963:** § 47-12-48. **L. 98:** Entire section amended, p. 122, § 4, effective March 24.

37-31-148. Authorization of different series of payments. The drainage district may by a majority vote of the legal electors of said district provide for the issuance of bonds that will mature in any number of years not to exceed forty and arrange for the payment thereof in series.

Source: L. 23: p. 301, § 49. **CSA:** C. 57, § 175. **CRS 53:** § 47-12-49. **C.R.S. 1963:** § 47-12-49.

37-31-149. Contents of notice - sale. The notice shall state that sealed proposals will be received by the board of directors at the office of the drainage district for the purchase of the bonds until the day and hour named in the resolution. At the time appointed, the board shall open the proposals and award the purchase of the bonds to the highest responsible bidder or may reject all bids; thereafter, if all bids are rejected, the board may readvertise or sell said bonds at private sale.

Source: L. 23: p. 301, § 51. **CSA:** C. 57, § 177. **CRS 53:** § 47-12-51. **C.R.S. 1963:** § 47-12-51.

37-31-150. Levy of tax for payment. For the half-yearly interest accruing on such bonds actually issued and delivered, the board of directors of said district shall levy annually a sufficient tax to fully discharge such interest, and, for the ultimate redemption of such bonds, they shall levy annually such tax upon all the taxable property of such district as will create a yearly fund sufficient to pay the bonds maturing in such year. All taxes for interest on and for the redemption of such bonds shall be paid in cash only and shall be kept by the district treasurer as a special fund to be used in payment of interest on, and for the payment of, such bonds annually, and such tax shall be levied and collected as other taxes. If the board of directors of the district fails to levy and certify such taxes to the board of county commissioners of Mesa county, it nevertheless is the duty of such board of county commissioners to levy such taxes.

Source: L. 23: p. 301, § 52. **CSA:** C. 57, § 178. **CRS 53:** § 47-12-52. **C.R.S. 1963:** § 47-12-52.

37-31-151. Judicial confirmation of bonds. The board of directors of the drainage district may commence special proceedings in the district court of Mesa county, Colorado, in and by which the proceedings of said board in said district, providing for and authorizing the issue and sale of the bonds of said district, whether said bonds have or have not been sold or disposed of, may be judicially examined, approved, and confirmed, and the proceedings shall be in conformity with the law regulating like proceedings for the examination, approval, and confirmation of the organization and bonds of irrigation districts.

Source: L. 23: p. 305, § 59. **CSA:** C. 57, § 185. **CRS 53:** § 47-12-59. **C.R.S. 1963:** § 47-12-59.

Cross references: For confirmation proceedings of irrigation districts, see §§ 37-41-151 to 37-41-155.

37-31-152. Right of eminent domain. The board of directors has the power to construct the said works across any watercourse, street, avenue, highway, railway, canal, or ditch which the route of such drainage system or any branch thereof intersects or crosses. If any railroad company or the owners and controllers of said property, thing, and franchise to be crossed or the owner of land necessary for said drainage district and the board of directors cannot agree upon the amount to be paid therefor, the same shall be ascertained and determined in all respects as is provided by law in respect to the taking of land for public uses by the exercise of the right of eminent domain, the right to the exercise of which is conferred on said drainage district. Such right of eminent domain shall be exercised in the manner prescribed by article 1 of title 38, C.R.S., provided a juror in such proceeding shall not be disqualified by reason of being a resident or taxpayer within said district.

Source: L. 23: p. 302, § 53. **CSA:** C. 57, § 179. **CRS 53:** § 47-12-53. **C.R.S. 1963:** § 47-12-53.

37-31-153. Publication of notice for bids. After adopting a plan for a drainage system, the board of directors may give notice by publication in a newspaper published within said district, in two consecutive publications of said newspaper, and in such other newspapers as may be deemed advisable, calling for bids for the construction of said work or any portion thereof; if less than the whole, then the portion of said system to be constructed shall be described in the notice. The notice shall set forth where the plans and specifications may be seen and that sealed proposals will be received at the office of the drainage district and a contract let to the lowest responsible bidder, giving the time and place for opening the proposals, which, at said time and place, shall be opened in public. The board of directors may enter into a contract, subject to the provisions of section 37-31-119, with the lowest responsible bidder for the construction of the whole or any portion of the work mentioned in the notice, or may reject all bids and readvertise for proposals, or may proceed to construct the work under the supervision of the board of directors.

Source: L. 23: p. 297, § 43. **CSA:** C. 57, § 169. **CRS 53:** § 47-12-43. **C.R.S. 1963:** § 47-12-43.

37-31-154. Contractor's bond - engineer to supervise. The person to whom the contract may be awarded shall execute a bond in the penal sum of not less than twenty percent of the contract price, with surety to be approved by the board of directors, payable to the drainage district and conditioned upon the faithful performance of the contract. All work shall be done under the direction and to the satisfaction of the engineer employed by the drainage district and subject to approval by the board of directors.

Source: L. 23: p. 298, § 44. **CSA:** C. 57, § 170. **CRS 53:** § 47-12-44. **C.R.S. 1963:** § 47-12-44.

37-31-155. Use of existing drainage works. If, after adopting plans for the drainage of the district, it is found that any ditch or drainage work has been constructed in whole or in part conforming with the general plan of drainage for the district, the board may contract for the use and control of such drainage ditch or work, which use and control may be exclusive in said district, or it may be in conjunction with those owning or controlling such ditch or drainage work.

Source: L. 23: p. 304, § 58. **CSA:** C. 57, § 184. **CRS 53:** § 47-12-58. **C.R.S. 1963:** § 47-12-58.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24.

37-31-156. Sale of district property. The board of directors of said drainage district has the right to sell and transfer by proper conveyance any real estate or personal property belonging to said district when in the opinion of said board such property is no longer needed by the said district.

Source: L. 23: p. 304, § 57. **CSA:** C. 57, § 183. **CRS 53:** § 47-12-57. **C.R.S. 1963:** § 47-12-57.

37-31-157. Proof of existence of district. In all actions, suits, and judicial proceedings in any court in this state, the court shall take judicial notice of the organization and existence of the district from and after the filing for record in the office of the county clerk and recorder of Mesa county, Colorado, of a certified copy of the order of the board of directors of said district made at the time of the organization of the board. A certified copy of such order shall be prima facie evidence in all actions, suits, and proceedings in any court in this state of the regular and legal formation or organization of said district, and, if the formation or organization of said district has not been questioned by proceedings in quo warranto instituted in the district court of Mesa county, Colorado, within sixty days after the date of filing of such order, it shall be conclusive evidence of its due and lawful formation and organization. The said order shall state that no sufficient remonstrance was filed as in this article provided and that the Grand Valley drainage district was organized.

Source: L. 23: p. 303, § 55. **CSA:** C. 57, § 181. **CRS 53:** § 47-12-55. **C.R.S. 1963:** § 47-12-55. **L. 2007:** Entire section amended, p. 159, § 9, effective January 1, 2008.

ARTICLE 32

Bankruptcy of Districts

37-32-101. Legislative declaration. The general assembly declares that this article is necessary by reason of general economic conditions now prevailing in the agricultural sections

of this state. Said conditions make it impossible for the owners of land in many such districts to pay the general and special taxes and assessments levied against their property. As a result thereof the delinquencies seriously affect the ability of counties and other governmental agencies in which such districts are located to obtain the revenue necessary to conduct governmental functions. The relief afforded to such districts by this article is urgently necessary in order to permit the performance of local governmental functions of the state in those sections thereof in which such districts are located.

Source: L. 39: p. 446, § 7. **CSA:** C. 57, § 201. **CRS 53:** § 47-13-6. **C.R.S. 1963:** § 47-13-6.

37-32-102. Irrigation or drainage districts authorized to file petition and carry out plan of composition. Any irrigation or drainage district organized under the laws of the state of Colorado is authorized to take advantage of the provisions of an act of the congress of the United States entitled "An Act to establish a uniform system of bankruptcy throughout the United States.", approved July 1, 1898, and all acts amendatory thereof or supplementary thereto. Any such district is hereby specifically authorized to file the petition mentioned in chapter 9 of the federal bankruptcy code of 1978 (Title 11 of the United States Code). Any such district is authorized to take any necessary requisite or proper action to carry out the plan of composition filed with said petition, or any modification of such plan thereafter accepted in writing by such district, if such original or modified plan is also approved by the United States district court having jurisdiction of the matter.

Source: L. 39: p. 445, § 1. **CSA:** C. 57, § 195. **CRS 53:** § 47-13-1. **C.R.S. 1963:** § 47-13-1. **L. 80:** Entire section amended, p. 785, § 13, effective June 5.

37-32-103. Directors to adopt resolution. Before the filing of such petition, the board of directors of such district shall adopt a resolution authorizing the filing thereof.

Source: L. 39: p. 445, § 2. **CSA:** C. 57, § 196. **CRS 53:** § 47-13-2. **C.R.S. 1963:** § 47-13-2.

37-32-104. Issuance of new bonds. (1) If the plan of composition approved by the United States district court provides for the issuance of new bonds of such district and deposit thereof with such court, or such agency as it may appoint for the purpose, for the delivery of such new bonds to the creditors of the district in exchange for outstanding evidences of indebtedness of the district, such new bonds may be issued:

(a) In the case of an irrigation district, under the provisions of sections 37-43-144 to 37-43-155, or under any other law; and

(b) In the case of a drainage district, either:

(I) In the manner and with the rights of enforcement and privileges of payment provided for by article 25 of this title, insofar as applicable;

(II) Under the provisions of article 26 of this title, insofar as applicable; or

(III) Under any other law adopted after March 20, 1939.

Source: L. 39: p. 445, § 3. **CSA:** C. 57, § 197. **CRS 53:** § 47-13-3. **C.R.S. 1963:** § 47-13-3.

37-32-105. Districts may cancel taxes or assessments. In carrying out any such plan of composition of its indebtedness, any such district has power to cancel or reduce any taxes or assessments theretofore levied or made by said district for the purpose of raising money to pay the principal of or interest upon bonds or warrants sought to be refunded by such plan, upon any real property in such district, and to cancel or reduce any interest, penalties, or costs that may have accrued by reason of any delinquency in the payment of such taxes or assessments.

Source: L. 39: p. 446, § 4. **CSA:** C. 57, § 198. **CRS 53:** § 47-13-4. **C.R.S. 1963:** § 47-13-4.

37-32-106. Powers not limited by article. The enumeration of powers in this article shall not exclude powers not mentioned in this article which may be necessary for, or incidental to, the accomplishment of the purposes of this article and the carrying out of such plan of composition.

Source: L. 39: p. 446, § 5. **CSA:** C. 57, § 199. **CRS 53:** § 47-13-5. **C.R.S. 1963:** § 47-13-5.

ARTICLE 33

Marsh Land

37-33-101. Draining marsh lands. Whenever any person or corporation desires to construct, enlarge, or extend a drainage ditch or drain for the purpose of draining and reclaiming seeped or marshy land included within any irrigation district in this state, it shall file with the board of directors of such irrigation district in which such improvements are to be located a petition signed by one or more of the landowners who own the major portion of the land which would be affected by the proposed improvement.

Source: L. 27: p. 305, § 1. **CSA:** C. 57, § 186. **CRS 53:** § 47-14-1. **C.R.S. 1963:** § 47-14-1.

37-33-102. Lists of lands affected. Said petition shall set forth the necessity and probable benefits of such drainage ditch or drain, together with a list of the lands affected by the proposed improvement and the names and addresses of the owners of such lands, and there shall be attached to said petition a plat showing the approximate direction, size, and length of said drainage ditch or drain.

Source: L. 27: p. 305, § 2. **CSA:** C. 57, § 187. **CRS 53:** § 47-14-2. **C.R.S. 1963:** § 47-14-2.

37-33-103. Bond. The petitioner shall give good and sufficient bond, payable to the irrigation district in which such lands are included and approved by the board of directors of such district, conditioned in case said drainage ditch or drain, from any cause whatsoever, is not constructed, to pay all expenses incurred by the irrigation district on account of said proposed improvement.

Source: L. 27: p. 306, § 3. **CSA:** C. 57, § 188. **CRS 53:** § 47-14-3. **C.R.S. 1963:** § 47-14-3.

37-33-104. May employ engineer - hearing. When such petition, plat, and bond are filed, the board of directors of said irrigation district in which such improvements are to be made shall proceed at once to view the line of the proposed drainage ditch or drain and the lands affected thereby, and, if in its opinion it is necessary, shall employ an engineer to prepare accurate surveys and estimates of the proposed work and shall set the day and place for hearing all interested parties, receiving protests, information, and any matter in relation to the proposed improvement, and shall notify all resident landowners affected by such improvement by personal service fifteen days prior to the date of such meeting. If personal service of such notice cannot be had, or if any of said landowners are nonresidents, then such notice shall be sent through the mail at least fifteen days prior to said meeting.

Source: L. 27: p. 306, § 4. **CSA:** C. 57, § 189. **CRS 53:** § 47-14-4. **C.R.S. 1963:** § 47-14-4.

37-33-105. Method of hearing. All persons whose lands may be affected may appear at the time specified for said meeting before said board of directors and present such testimony and affidavits as shall relate to the proposed drainage system or ditch with such recommendations as to them shall seem pertinent and necessary.

Source: L. 27: p. 306, § 5. **CSA:** C. 57, § 190. **CRS 53:** § 47-14-5. **C.R.S. 1963:** § 47-14-5.

37-33-106. When improvement not feasible. If the board of directors finds that the proposed improvement is not feasible, it shall so determine, and the costs and expenses incurred shall be paid by the original petitioners as provided under their bond.

Source: L. 27: p. 307, § 6. **CSA:** C. 57, § 191. **CRS 53:** § 47-14-6. **C.R.S. 1963:** § 47-14-6.

37-33-107. Majority to control. If, however, the improvements petitioned for are found feasible and of use and benefit to the owners representing a major portion of the lands affected and in the best interest of such landowners and such irrigation district, the board of directors is empowered to proceed with the construction of such improvements in the same manner as provided by the statutes of the state of Colorado; but, upon the hearing of said petition, the board of directors, on good cause shown, may exclude any of the lands mentioned and described in

said petition which will not be benefited by the proposed improvement and may likewise, on petition of the owners, include such other lands as may be benefited thereby.

Source: L. 27: p. 307, § 7. **CSA:** C. 57, § 192. **CRS 53:** § 47-14-7. **C.R.S. 1963:** § 47-14-7.

37-33-108. Determination of cost - assessment. When the works have been completed and accepted by the board of directors, the board shall determine the total cost, damages, and other expenses and divide the same among the several tracts of land affected in proportion to the number of acres in each tract of land or according to the benefits received at the discretion of the board of directors of the district and shall certify to the county assessor, or assessors if such improvements are located in more than one county, a list of the lands affected and the total amount to be assessed against each tract. The assessor, or assessors if such improvements are located in more than one county, shall enter such assessment against each of the several tracts of land lying within his county in the same manner as other taxes, and the county treasurer of each county where such improvements or part thereof is made shall collect the same in the same manner, at the same time, and receipt for same in the same manner as other taxes for irrigation district purposes, and all moneys collected for and on account of such improvements shall be by said county treasurer credited to the general fund of such irrigation district.

Source: L. 27: p. 307, § 8. **CSA:** C. 57, § 193. **CRS 53:** § 47-14-8. **C.R.S. 1963:** § 47-14-8.

37-33-109. Irrigation district laws apply. In all cases not specifically provided for under this article, the laws of the state of Colorado relative to the operation, maintenance, and improvement of irrigation districts shall apply to improvements made under the authority of this article.

Source: L. 27: p. 308, § 9. **CSA:** C. 57, § 194. **CRS 53:** § 47-14-9. **C.R.S. 1963:** § 47-14-9.

Cross references: For irrigation district laws, see articles 40 to 44 of this title.

WATER CONSERVATION AND IRRIGATION DISTRICTS

General and Administrative

ARTICLE 40

Public Agencies - Organizing for Conservation

37-40-101. Legislative declaration. It is declared to be the policy of the state of Colorado to encourage transmission of information among agencies of the state of Colorado, political subdivisions of the state of Colorado, and private citizens and businesses of the state of Colorado concerning the conservation, protection, and development of the water resources of the

state of Colorado and to coordinate the efforts of these entities and individuals in the field of water resource conservation, protection, and development; and participation in and support of organizations organized or existing for such purposes is declared to be a public purpose.

Source: L. 59: p. 835, § 1. **CRS 53:** § 149-10-1. **C.R.S. 1963:** § 150-9-1.

37-40-102. Public agencies - powers of participation. Agencies within the department of natural resources of the state of Colorado, quasi-municipal corporations, and political subdivisions of the state, including, but not exclusively, counties, towns, cities, city and counties, water conservancy districts, water conservation districts, water and sanitation districts, conservation districts, drainage districts, and special improvement districts are authorized to become members of organizations existing or to be organized within the state of Colorado, to assist in or contribute to the protection, conservation, and development of water within the state of Colorado. Any such organization shall be construed to be an instrumentality of the agencies and political subdivisions that are members thereof. No such organization shall be ineligible under this section by virtue of the fact that it also admits private individuals and organizations to membership.

Source: L. 59: p. 835, § 2. **CRS 53:** § 149-10-2. **C.R.S. 1963:** § 150-9-2. **L. 2002:** Entire section amended, p. 524, § 31, effective July 1.

Conservation and Irrigation Districts

ARTICLE 41

Irrigation District Law of 1905

Cross references: For general provisions affecting districts organized under this article, see article 43 of this title.

37-41-101. Irrigation district - organization - purposes. (1) If a majority of the owners of the land within any district, whether residents or nonresidents, as well as the owners in the aggregate of a majority of the lands in such district desire to provide for the irrigation of the same and drainage work, or both, necessary to maintain the irrigability of the land within the district, they may propose the organization of an irrigation district under the provisions of this article. When so organized, each district shall have the powers conferred upon such irrigation district; except that where ditches, canals, or reservoirs have been constructed before May 3, 1905, such ditches, canals, reservoirs, and franchises, and the lands watered thereby, shall be exempt from the operation of this article, except such district shall be formed to purchase, acquire, lease, or rent such ditches, canals, and reservoirs and their franchises.

(2) An irrigation district may also be formed in order to cooperate, or a district formed prior to May 3, 1905, may cooperate, with the United States under the federal reclamation laws or any other federal laws enacted by the congress of the United States which do not conflict with the constitution and laws of the state of Colorado for the purposes of the construction of irrigation works, including drainage works necessary to maintain the irrigability of the land, or

for the acquisition, purchase, extension, operation, or maintenance of constructed works, or for the assumption as principal or guarantor of indebtedness to the United States on account of district lands. When so cooperating with the United States, but only in such cases, the lands of the district in their entirety shall become and remain liable to assessment and levy annually until payment is made of all contract obligations due by the district to the United States.

(3) Except when cooperating with the United States, the liabilities of an irrigation district shall be a charge upon the land ratably, and taxes levied to pay such liabilities shall be local or special improvement assessments. Such a district shall also have power to take over the assets and assume the liabilities of water users' associations organized for cooperation with the United States under the provisions of the act of congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof, in case a majority of the lands of each association shall be within such district, subject to the provisions that the shareholders of such association, by vote as provided by their articles of incorporation and bylaws, shall assent and agree that such assets and liabilities be so taken over. Entrymen upon public lands of the United States within the proposed district boundaries shall be deemed to be the owners of lands within the district for the purpose of becoming petitioners for the organization of such irrigation district and shall share all the privileges and obligations of private landowners within the district.

(4) All contracts between irrigation districts and the United States shall be recorded in the office of the clerk and recorder of the county in which the office of the irrigation district is located; except that, where the district is located in more than one county, said contract shall be recorded with the clerk and recorder of each county in which the district or any part thereof is located.

Source: L. 05: p. 246, § 1. **R.S. 08:** § 3440. **L. 21:** p. 495, § 1. **C.L.** § 1960. **CSA:** C. 90, § 377. **CRS 53:** § 149-1-1. **C.R.S. 1963:** § 150-1-1.

37-41-102. Petition. (1) For the purpose of the establishment of an irrigation district as provided by this article, a petition shall be filed with the board of county commissioners of the county which embraces the largest acreage of the proposed district. The petition shall state:

(a) That it is the purpose of petitioners to organize an irrigation district under the provisions of this article;

(b) A general description of the boundaries of such proposed district;

(c) The means proposed to supply water for the irrigation of the lands embraced therein;

(d) The name proposed for such district; and

(e) A prayer that the board of county commissioners define and establish the boundaries of said proposed district and submit the question of the final organization of the same to the vote of the qualified electors of said proposed district.

(2) The petition shall be signed by a majority of the owners of said lands, whether residents or nonresidents, as well as by the owners in the aggregate of a majority of the total number of acres of land sought to be enclosed in said proposed district. The petitioners shall elect from their number a committee of three to present such petition to the board of county commissioners. The petition shall also be accompanied by a good and sufficient bond, to be approved by the board of county commissioners, in double the amount of the probable cost of organizing such district, conditioned for the payment of all costs incurred in said proceedings in case said organization shall not be effected, but in case such district is so effected, then said

expenses incurred by the board of county commissioners shall be paid back to said county by said district.

(3) Such petition shall be published for at least four weeks before the time at which the same is to be presented, in some newspaper of general circulation published in the county where the petition is to be presented, together with a notice signed by the committee of said petitioners giving the time and place of the presentation of the same to the board of county commissioners.

Source: L. 05: p. 246, § 2. **R.S. 08:** § 3441. **L. 15:** p. 298, § 2. **C.L.** § 1961. **CSA:** C. 90, § 378. **CRS 53:** § 149-1-2. **C.R.S. 1963:** § 150-1-2.

37-41-103. Presentation and allowance of petition. (1) When such petition is presented and it appears that the notice of the presentation of said petition has been given as required by section 37-41-102 (3) and that said petition has been signed by the requisite number of petitioners as required by this article, the board of county commissioners shall then proceed to define the boundaries of said proposed district from said petition and from such applications for the exclusion of lands therefrom and the inclusion of lands therein as may be made in accordance with the intent of this article. They may adjourn such examination from time to time, not exceeding three weeks in all, and by final order, duly entered, shall define and establish the boundaries of such proposed district; except that said board of county commissioners shall not modify such proposed boundaries described in the petition so as to change the objects of said petition or so as to exempt from the operation of this article any land within the boundaries proposed by the petition susceptible to irrigation by the same system of waterworks applicable to other lands in such proposed district; nor shall any land which will not in the judgment of the board be benefited by such proposed system be included in such district if the owner thereof makes application at a hearing to withdraw the same; also except that contiguous lands not included in said proposed district as described in the petition, upon application of the owners, may be included in such district upon such hearing.

(2) When the boundaries of any proposed district have been examined and defined, the board of county commissioners shall forthwith make an order allowing the prayer of said petition, defining and establishing the boundaries, and designating the name of such proposed district. Thereupon said board, by further order duly entered upon its record, shall call an election of the qualified electors of said district to be held for the purpose of determining whether such district shall be organized under the conditions of this article and, by such order, shall submit the names of one or more persons from each of the three divisions of said district to be voted for as directors therein. For the purposes of said election, the board of county commissioners shall divide said district into three divisions as nearly equal in size as may be practicable and shall provide that a qualified elector of each of said three divisions shall be elected as a member of the board of directors of said district by the qualified electors of the whole district.

(3) Each of said divisions shall constitute an election precinct, and three judges shall be appointed for each of such precincts, one of whom shall act as clerk of said election. In the hearing of any such petition the board of county commissioners shall disregard any informality therein, and, in case it denies the same or dismisses it for any reason on account of the provisions of this article not having been complied with, which are the only reasons upon which it shall have a right to refuse or dismiss the same, the board shall state its reasons in writing therefor in

detail, which shall be entered upon its record. In case these reasons are not well founded, upon proper application therefor, an order in the nature of mandamus shall issue out of the district court of said county, compelling the board to act in compliance with this article, which order shall be heard within twenty days from the date of its issuance and which twenty days shall be excluded from the forty days given the board of county commissioners to act upon said petition. The officers of such district shall consist of three directors, a secretary, and a treasurer.

Source: L. 05: p. 247, § 3. **R.S. 08:** § 3442. **C.L.** § 1962. **CSA:** C. 90, § 379. **CRS 53:** § 149-1-3. **C.R.S. 1963:** § 150-1-3.

37-41-104. Notice of election - qualifications of electors. (1) The board of county commissioners shall thereupon cause a notice embodying said orders in substance, signed by the chairman of the board of county commissioners and the clerk of said board, to be issued, given, and published, giving public notice of said election, the time and places thereof, and the matters submitted to the vote of the electors. The notice and order shall be published once a week for at least four weeks prior to such election in a newspaper of general circulation in said county, and if any portion of such proposed district lies within any other county, then such order and notice shall be published in a newspaper of general circulation published within each of the counties. No election, the purpose of which is to issue bonds or purchase sites, water rights, reservoirs, or rights-of-way, shall be held nor shall any bonds be issued or purchased or contract of purchase be made for reservoirs, water rights, sites, or works before the board of directors has submitted to the state engineer a complete and detailed plan of the project and a complete and detailed information of the property to be leased or purchased, and any other information required by the state engineer, and a decision rendered by him as to the feasibility of the project. No election thereon shall be held nor purchase contract or lease made until sixty days have expired after the rendition of such decision by the state engineer.

(2) At all elections held under the provisions of this article, every owner or entryman of agricultural or horticultural land within said district over the age of eighteen years who is a citizen of the United States, or has declared his intention to become a citizen of the United States, and is a resident of the state of Colorado and has paid property taxes upon real property located within said district during the calendar year preceding any such election shall be entitled to vote at such election in the precinct where he resides or, if a nonresident of the precinct, in the precinct within which the greater portion of his land is located. A corporation organized or qualified to do business in this state which owns agricultural or horticultural land within the district, and which has paid property taxes thereon, may authorize an agent, who satisfies the residency and age requirements of this subsection (2), to vote in its behalf at all elections held under the provisions of this article or to serve as a director of the district. Any such person so qualified to vote and who resides in any county into which said district extends shall be eligible to election as a director in and for the division in such district in which he is entitled to vote. All lands platted or subdivided into residence or business lots shall not be considered agricultural or horticultural land. The ballots to be used and cast at such election for the formation of such district shall be substantially as follows: "Irrigation District - Yes", and "Irrigation District - No", or words equivalent thereto, and shall also contain the names of the persons to be voted for as members of the board of directors of said district. Each elector may vote for three directors, one from each division, and shall indicate his vote by placing a marginal cross upon the ballot, for or

against any question submitted or name voted upon, and opposite thereto, at any election held under this article.

Source: L. 05: p. 249, § 4. **L. 07:** p. 488, § 1. **R.S. 08:** § 3443. **L. 15:** p. 209, § 3. **L. 17:** p. 292, § 2. **C.L.** § 1963. **L. 31:** p. 431, § 1. **CSA:** C. 90, § 380. **CRS 53:** § 149-1-4. **C.R.S. 1963:** § 150-1-4. **L. 75:** (2) amended, p. 223, § 79, effective July 16. **L. 77:** (2) amended, p. 1631, § 1, effective May 24.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24.

37-41-105. Canvass of votes - proclamation. (1) The board of county commissioners shall meet on the second Monday next succeeding such election and proceed to canvass the votes cast thereat. If, upon such canvass, it appears that at least a majority of said legal electors in said district have voted "Irrigation District - Yes", the said board, by an order entered on its minutes, shall declare such territory duly organized as an irrigation district under the name and style theretofore designated and shall declare the persons receiving, respectively, the highest number of votes for such several offices to be duly elected to such office. Said board shall cause a copy of such order, including a plat of said district, duly certified by the clerk of the board of county commissioners, to be immediately filed for record in the office of the county clerk and recorder of each county in which any portion of such lands are situated, and no board of county commissioners of any county, including any portion of such district, after the date of organization of such district, shall allow another district to be formed including any of the lands of such district without the consent of the board of directors thereof.

(2) From and after the date of such filing, the organization of such district shall be complete, and the officers thereof shall immediately enter upon the duties of their respective offices, upon qualifying in accordance with law, and shall hold such offices, respectively, until their successors are elected and qualified. For the purpose of the election, the board of county commissioners shall establish a convenient number of election precincts and polling places in said proposed district and define the boundaries thereof, which said precincts may thereafter be changed by the board of directors of such districts, who shall also appoint the judges of election for each such precinct, one of whom shall act as clerk of election.

Source: L. 05: p. 249, § 5. **R.S. 08:** § 3444. **C.L.** § 1964. **CSA:** C. 90, § 381. **CRS 53:** § 149-1-5. **C.R.S. 1963:** § 150-1-5.

37-41-106. Directors - election - term. (1) The regular election of said district for the purpose of electing a board of directors shall be held on the first Tuesday after the first Monday in December of each year, at which time one director shall be elected for a term of three years; except that, at the first election held to choose the first board of directors after the organization of any district has been effected, the person having the highest number of votes shall continue in office for the full term of three years; the next highest for two years; and the next highest for one year. But if two or more persons have the same number of votes, then their term shall be determined by lot, under the direction of the county judge of the county wherein the organization of said district has been effected. The person receiving the highest number of votes for any office to be filled at such election is elected thereto.

(2) After receiving their certificates of election provided for in section 37-41-112 (2), said officers shall take an oath or affirmation in accordance with section 24-12-101. Each member of the board of directors shall execute an official bond in the sum of three thousand dollars, which bond shall be approved by the county judge of the county wherein such organization was effected, and shall be recorded in the office of the county clerk and recorder thereof. Such official bond may be signed by a surety company authorized to do business in the state of Colorado, in which case the district shall be liable for and shall pay premium on said bond. All official bonds shall be in the form prescribed by law for official bonds for county officials; except that the obligee named in said bonds shall be to the district and shall be filed with the county clerk and recorder at the same time as the filing of the oath or affirmation provided for in this section.

Source: L. 05: p. 250, § 6. **L. 07:** p. 489, § 2. **R.S. 08:** § 3445. **L. 21:** p. 503, § 1. **C.L.** § 1965. **CSA:** C. 90, § 382. **CRS 53:** § 149-1-6. **C.R.S. 1963:** § 150-1-6. **L. 2018:** (2) amended, (HB 18-1138), ch. 88, p. 701, § 36, effective August 8.

Cross references: For the legislative declaration in HB 18-1138, see section 1 of chapter 88, Session Laws of Colorado 2018.

37-41-107. Office of board - elections. (1) The office of the board of directors shall be located in the county where the organization was effected.

(2) Fifteen days before any election held under this article subsequent to the organization of the district, the secretary, who shall be appointed by the board of directors, shall cause notice to be posted in three public places in each election precinct, specifying the polling places of each precinct and the time and place of holding the election; and he shall also post a general notice of the same in the office of said board, which shall be established and kept at some fixed place to be determined by said board in said county. In lieu of such posting, said notice may be published once a week for at least three weeks (four weekly publications) prior to such election in a newspaper of general circulation in each county in which the district is located.

(3) Prior to the time for posting the notices, or the publication thereof, the board shall appoint from each precinct, from the electors thereof, three judges, one of whom shall act as clerk, who shall constitute a board of election for such precinct. If the board fails to appoint a board of election, or the members appointed do not attend the opening of polls on the morning of election, the electors of the precinct present at that hour may appoint the board of election or supply the place of an absent member thereof.

(4) The board of directors, in its order appointing the board of election, shall designate the hour and the place in the precinct where the election shall be held.

(5) Each judge of election shall receive as compensation the sum of up to one hundred dollars per day, to be paid by the district.

Source: L. 05: p. 251, § 7. **R.S. 08:** § 3446. **L. 21:** p. 504, § 2. **C.L.** § 1966. **CSA:** C. 90, § 383. **L. 53:** p. 408, § 1. **CRS 53:** § 149-1-7. **L. 59:** p. 827, § 1. **C.R.S. 1963:** § 150-1-7. **L. 77:** (5) amended, p. 1632, § 2, effective May 24. **L. 2006:** (5) amended, p. 71, § 1, effective July 1.

37-41-108. Directors - secretary - salaries. Each member of the board of directors may receive compensation at the rate of up to one hundred dollars per day while attending meetings and shall be reimbursed for his or her actual and necessary expenses while engaged in official business. No director or officer named in this article shall be interested, directly or indirectly, in any manner, in any contract awarded or to be awarded by the board or in the profits to be derived therefrom, nor shall he or she receive any bonds, gratuity, or bribe. For any violation of this section, such officer commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S. He or she shall also forfeit his or her office upon conviction.

Source: L. 05: p. 264, § 27. **R.S. 08:** § 3466. **L. 21:** p. 505, § 3. **C.L.** § 2005. **CSA:** C. 90, § 404. **CRS 53:** § 149-1-28. **L. 59:** p. 828, § 2. **L. 61:** p. 842, § 1. **C.R.S. 1963:** § 150-1-28. **L. 77:** Entire section amended, p. 1632, § 3, effective May 24; entire section amended, p. 885, § 67, effective July 1, 1979. **L. 89:** Entire section amended, p. 850, § 136, effective July 1. **L. 2002:** Entire section amended, p. 1553, § 336, effective October 1. **L. 2006:** Entire section amended, p. 71, § 2, effective July 1.

Editor's note: The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See People v. McKenna, 199 Colo. 452, 611 P.2d 574 (1980).

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

37-41-109. District treasurer - duties. (1) The county treasurer of the county in which is located the office of an irrigation district shall be and is hereby constituted ex officio district treasurer of said district. The county treasurer shall be liable upon his official bond and to indictment and criminal prosecution for malfeasance, misfeasance, or failure to perform any duty prescribed as that of the county treasurer or district treasurer, as is provided by law in other cases as that of the county treasurer. The treasurer shall collect, receive, and receipt for all moneys belonging to said district. It is the duty of the county treasurer of each county in which any irrigation district is located in whole or in part to collect and receipt for all taxes levied as provided in section 37-41-123 in the same manner and at the same time and on the same receipt as is required in the collection of taxes upon real estate for county purposes; except that such county treasurer shall receive in payment of the general fund tax, for the year in which said taxes are payable, warrants drawn against said general fund, the same as so much lawful money of the United States, if such warrant does not exceed the amount of the general fund tax which the person tendering the same owes; further except that such county treasurer shall receive in payment of the district bond fund taxes, for the year in which said taxes are payable, interest coupons or bonds of said irrigation district maturing within the year said taxes are payable the same as so much lawful money of the United States, if such interest coupons or bonds do not exceed the amount of district bonds funds tax which the person tendering the same owes.

(2) The county treasurer of each county comprising a portion only of the irrigation district, excepting the county treasurer of the county in which the office of said district is located, on the first Monday of every month, shall remit to the district treasurer all moneys,

warrants, coupons, or bonds theretofore collected or received by him on account of said district. Every county treasurer shall keep a bond fund account and a general fund account. The bond fund account shall consist of all moneys received on account of interest and principal of bonds issued by said district. Said accounts for interest and principal shall be kept separate. The general fund shall consist of all moneys or general fund warrants received by the collection of taxes or otherwise. The district treasurer shall pay out of said bond fund, when due, the interest and principal of the bonds of said district at the time and place specified in said bonds and shall pay out of said general fund only upon the order of the district, signed by the president and countersigned by the secretary of said district. The district treasurer, on the fifteenth day of each month, shall report to the secretary of the district the amount of money in his hands to the credit of said respective funds, the amount of warrants paid during the previous month, and the amount of registered warrants if any. All such district taxes collected and paid to the county treasurers shall be received by said treasurers in their official capacity, and they shall be responsible for the safekeeping, disbursement, and payment thereof the same as for other moneys collected by them as such treasurers.

Source: L. 05: p. 260, § 21. **L. 07:** p. 490, § 3. **R.S. 08:** § 3460. **L. 17:** p. 306, § 11. **L. 19:** p. 483, § 1. **C.L.** § 1998. **CSA:** C. 90, § 398. **CRS 53:** § 149-1-22. **C.R.S. 1963:** § 150-1-22.

Cross references: For failure of county treasurers to perform duties, see § 30-10-726.

37-41-110. Duties of election officers. (1) One of the judges shall be chairman of the election board and may:

(a) Administer all oaths required in the progress of an election;

(b) Appoint judges and clerks if during the progress of the election any judge or clerk ceases to act. Any member of the board of election, or any clerk thereof, may administer and certify oaths required to be administered during the progress of an election.

(2) Before opening the polls, each member of the board must take and subscribe an oath to faithfully perform the duties imposed upon him by law. Any elector of the precinct may administer and certify such oath. The polls must be opened at 9 a.m. on the day of election and be kept open until 7 p.m. on the same day. It is the duty of the clerk of the board of election to forthwith deliver the returns duly certified to the board of directors of the district.

Source: L. 05: p. 251, § 8. **R.S. 08:** § 3447. **C.L.** § 1967. **CSA:** C. 90, § 384. **CRS 53:** § 149-1-8. **C.R.S. 1963:** § 150-1-8. **L. 77:** (2) amended, p. 1632, § 4, effective May 24.

37-41-111. Canvass of votes. No lists, tally paper, or certificates returned from any election shall be set aside or rejected for want of form if they can be satisfactorily understood. The board of directors must meet at its usual place of meeting on the first Monday after election and canvass the returns. If at the time of meeting the returns from each precinct in the district in which the polls were open have been received, the board of directors must then and there proceed to canvass the returns; but, if all the returns have not been received, the canvass must be postponed from day to day until the returns have been received or until six postponements have been had. The canvass must be made in public and by opening the returns and counting the votes

of the district for each person voted for and by declaring the results thereof. The board shall declare elected the person receiving the highest number of votes so returned for each office and also declare the result of any question submitted.

Source: L. 05: p. 252, § 9. **R.S. 08:** § 3448. **C.L.** § 1968. **CSA:** C. 90, § 385. **CRS 53:** § 149-1-9. **C.R.S. 1963:** § 150-1-9.

37-41-112. Records - vacancy and term of office. (1) The secretary of the board of directors, as soon as the result of any election held under the provisions of this article is declared, shall enter in the records of such board and file with the county clerk and recorder of the county in which the office of said district is located a statement of such results, which statement shall show:

(a) A copy of the publication notice of said election;

(b) The names of the judges of said election;

(c) The whole number of votes cast in the district and in each precinct of the district;

(d) The names of the persons voted for;

(e) The offices voted for;

(f) The number of votes given in each precinct for each of such persons;

(g) The number of votes given in the district for each of such persons;

(h) The names of the persons declared elected;

(i) The result declared on any question submitted in accordance with the majority of the votes cast for or against such question.

(2) The board of directors shall declare elected the person having the highest number of votes given for each office and also the result of any question submitted. The secretary shall immediately make out and deliver to such person a certificate of election, signed by him and authenticated with the seal of the board. In case of a vacancy in the board of directors by death, removal, or inability from any cause to properly discharge the duties as such director, the vacancy shall be filled by appointment by the remaining members of the board, and, upon their failure or inability to act within thirty days after such vacancy occurs, then, upon petition of five electors of said district, the board of county commissioners of the county where the office of said board of directors is situate shall fill such vacancy. Any director so appointed shall hold his office until the next general election of said district and until his successor is elected and qualified.

Source: L. 05: p. 252, § 10. **R.S. 08:** § 3449. **C.L.** § 1969. **CSA:** C. 90, § 386. **CRS 53:** § 149-1-10. **C.R.S. 1963:** § 150-1-10.

37-41-113. Board of directors - duties - contracts. (1) The directors, having duly qualified, shall organize as a board, elect a president from their number, and appoint a secretary. The board has power and it is its duty to adopt a seal, manage and conduct the affairs and business of the district, make and execute all necessary contracts, employ such agents, attorneys, officers, and employees as may be required and prescribe their duties, and establish equitable rules and regulations for the distribution and use of water among the owners of said land. The board shall generally perform all such acts as shall be necessary to fully carry out the purposes of this article.

(2) Said board may also enter into any obligation or contract with the United States for the construction or operation and maintenance of the necessary works for the delivery and distribution of water therefrom, or for drainage of district lands, or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district lands, or for the temporary rental of water under the provisions of the federal reclamation act and all acts amendatory thereof or supplementary thereto or any other federal laws which do not conflict with the constitution and laws of the state of Colorado and the rules and regulations established thereunder, or the board may contract with the United States for a water supply under any act of congress providing for or permitting such contract and may convey to the United States as partial or full consideration therefor water rights or other property of the district. In case contract has been made with the United States, bonds of the district may be deposited with the United States at ninety-five percent of their par value, to the amount to be paid by the district to the United States under any such contract, the interest on said bonds, if bearing interest, to be provided for by assessment and levy, as in the case of other bonds of the district, and regularly paid to the United States to be applied as provided in such contract, and, if bonds of the district are not so deposited, it is the duty of the board of directors to include, as part of any levy or assessment now provided for by law, an amount sufficient to meet each year all payments accruing under the terms of any such contract. Districts cooperating with the United States may rent or lease water to private lands, entrymen, or municipalities in the neighborhood of the district in pursuance of contract with the United States and under terms and conditions not inconsistent with the laws of Colorado.

(3) Such board has the power, in addition to the means to supply water to said district proposed by the petition submitted for the formation of said district, to construct, acquire, purchase, or condemn any canals, ditches, reservoirs, reservoir sites, water, water rights, rights-of-way, or other property necessary for the use of the district or to acquire by condemnation, or otherwise, the right to enlarge any ditch, canal, or reservoir already constructed or partly constructed. In case of the purchase of any property by said district, when it shall be proposed by the board of directors to purchase a system of irrigation already constructed, or partially constructed, and to enlarge and complete the same adequate to the needs of the district, the board in such case may embody in one contract the matter of the purchase, the enlargement, and the completion of such irrigation system without inviting bids for such construction and completion; and, in case of the purchase of such property by said district, the bonds of the district provided for in section 37-41-117 may be used at their par value in payment without previous offer of such bonds for sale.

(4) No contract involving a consideration exceeding two hundred fifty thousand dollars and not exceeding four hundred thousand dollars shall be binding unless such contract has been authorized and ratified in writing by not less than one-third of the legal electors of said district according to the number of votes cast at the last district election; nor shall any contract in excess of four hundred thousand dollars be binding until such contract has been authorized and ratified at an election in the manner provided for the issue of bonds.

(5) Where the compensation to be paid by the district to the owner of any property which the board of directors of an irrigation district is authorized to take by proceedings in eminent domain has been finally determined to be in excess of twenty-five thousand dollars, sufficient time shall be given by the courts for the submission to and determination by the electors of the district, at a regularly called election in the district, of the question of whether the district shall

pay said compensation or shall abandon such condemnation proceedings. If the electors shall authorize the payment of such compensation, the necessary additional time shall be given the district to pay such compensation, either by levy and collection of assessments against the lands of the district, or by the issue and sale of bonds of the district, or by both such methods as may be determined at a district election. Where the compensation to be paid shall be more than ten thousand dollars and less than twenty-five thousand dollars, the district board may elect to pay such compensation or abandon such condemnation proceedings upon authorization in writing by not less than one-third of the legal electors of said district according to the number of votes cast at the last district election.

(6) The rules and regulations shall be printed in convenient form, as soon as the same are adopted, for distribution in the district. All waters distributed shall be apportioned to each landowner pro rata to the lands assessed under this article within such district. But all water which has been acquired by the district by virtue of the laws of Colorado may be distributed and apportioned according to the terms of any contract entered into between the district and the United States, until the obligation due the United States is paid or the obligation to pay is discharged in any manner. Nothing in this article shall be deemed or construed to grant or relinquish to the United States any of the sovereign rights of the state of Colorado in and to the waters within its borders, or its exclusive authority over and jurisdiction and control of said waters, and the diversion, appropriation, and use thereof nor in any manner change the methods of appropriation thereof.

(7) The board of directors has power to lease or rent the use of water, or contract for the delivery thereof, to occupants of other lands within or without the said district at such prices and on such terms as it deems best, but the rental shall not be less than one and one-half times the amount of the district tax for which said land would be liable if held as a freehold. No vested prescriptive right to the use of such water shall attach to said land by virtue of such lease or such rental; except that any landowner in said district, with the consent of the board of directors, may assign the right to the whole or any portion of the water so apportioned to him for any one year where practicable to any other bona fide landowner, to be used in said district for use on his land for said year, but such owner shall have paid all amounts due on assessments upon all such lands.

(8) The board of directors further has power to lease or rent the use of water, or to contract for the delivery thereof, to settlers upon or occupants of the public domain, whose entries shall not have been subordinated to the district through compliance with the act of congress approved August 11, 1916, on the terms as provided in this section; except that, in such case, the board of directors has the further power to make a contract on behalf of the district with such settler or occupant to the effect that such settler or occupant, upon receiving full title to his lands and upon the payment of his proportionate share of the bond assessments as provided in section 37-41-136, shall include his lands within said district and, upon such inclusion, shall be entitled to all the rights and privileges of a member of said district. Before the execution of such contract the board of directors shall cause notice of such contract to be given substantially as provided in section 37-41-134, with such changes in the form of the notice as may be necessary, and a hearing upon said contract and all objections thereto shall be had as provided in section 37-41-135. If upon said hearing the board of directors deems it not for the best interests of the district to execute said contract, it by order shall refuse to execute said contract; but, if it deems it for the best interests of the district that said contract be executed, the board may execute said

contract, and, in such case, said contract shall be valid and binding upon all parties thereto; and, when the said settler or occupant shall have complied with said contract and obtained title to his lands, upon proof of such compliance and obtaining of title, and without any further notice or hearing upon the matter, the board shall enter an order of inclusion of said lands as provided in section 37-41-137, but, if within thirty days from the execution of said contract a majority of the qualified electors of the district protest in writing to said board against the execution of said contract, the contract shall be held for naught and shall not be binding upon any party thereto.

Source: L. 05: p. 253, § 11. **R.S. 08:** § 3450. **L. 09:** p. 422, § 1. **L. 17:** p. 293, § 3. **L. 19:** p. 470, § 3450. **L. 21:** p. 497, § 1. **C.L.** § 1970. **CSA:** C. 90, § 387. **CRS 53:** § 149-1-11. **C.R.S. 1963:** § 150-1-11. **L. 71:** p. 1346, § 1. **L. 2006:** (4) amended, p. 71, § 3, effective July 1.

37-41-114. Meetings - duties - eminent domain. The board of directors shall hold a regular quarterly meeting in its office on the first Tuesday in January, April, July, and October and such special meetings as may be required for the proper transaction of business. All special meetings shall be called by the president of the board or any two directors. All meetings of the board must be public, and two members shall constitute a quorum for the transaction of business and, on all questions requiring a vote, there shall be a concurrence of at least two members of said board. All special meetings of the board shall be held at locations which are within the boundaries of the district or which are within the boundaries of any county in which the district is located, in whole or in part, or in any county so long as the meeting location does not exceed twenty miles from the district boundaries. The provisions of this section governing the location of meetings may be waived only if the proposed change of location of a meeting of the board appears on the agenda of a regular or special meeting of the board and if a resolution is adopted by the board stating the reason for which a meeting of the board is to be held in a location other than under the provisions of this section and further stating the date, time, and place of such meeting. All records of the board must be open to the inspection of any elector during business hours. The board and its agents and employees shall have the right to enter upon any land in the district, to make surveys, and to locate and construct any canal and the necessary laterals. Said board shall also have the right to acquire all lands, water rights, franchises, and other property necessary for the construction, use, maintenance, repair, and improvement of its canals, ditches, reservoirs, and waterworks and shall also have the right by purchase or condemnation to acquire rights-of-way for the construction or enlargement of any of its ditches, canals, or reservoirs and lands for reservoir sites.

Source: L. 05: p. 254, § 12. **R.S. 08:** § 3451. **C.L.** § 1971. **CSA:** C. 90, § 388. **CRS 53:** § 149-1-12. **C.R.S. 1963:** § 150-1-12. **L. 90:** Entire section amended, p. 1502, § 16, effective July 1.

Cross references: For condemnation proceedings, see articles 1 to 7 of title 38.

37-41-115. Property - title. The title to all property acquired under this article shall immediately and by operation of law vest in such irrigation district in its corporate name, and shall be held by such district in trust for and is hereby dedicated and set apart for the uses and purposes set forth in this article, and shall be exempt from all taxation as provided in section 3 of

article X of the state constitution. The board is hereby authorized to hold, use and acquire, manage, occupy, and possess said property as provided in this article; except that when any district contemplated in this article finds it necessary to procure and acquire a supply of water from outside the boundaries of this state, then it shall be lawful for said district to contract and pay for the same in the same manner as other property acquired by the district is purchased and paid for. Any property acquired by the district may be conveyed to the United States insofar as the same may be needed for the construction, operation, or maintenance of works by the United States for the benefit of the district under any contract that may be entered into by the United States pursuant to this article.

Source: L. 05: p. 255, § 13. **R.S. 08:** § 3452. **L. 17:** p. 297, § 5. **C.L.** § 1972. **CSA:** C. 90, § 389. **CRS 53:** § 149-1-13. **C.R.S. 1963:** § 150-1-13.

37-41-116. Conveyances - suits. (1) The said board is hereby authorized to take conveyances or assurances for all property acquired by it under the provisions of this article in the name of such irrigation district for the purposes expressed in this article, and to institute and maintain any actions and proceedings, and suits at law or in equity, necessary or proper in order to fully carry out the provisions of this article, or to enforce, maintain, protect, or preserve any rights, privileges, and immunities created by this article or acquired in pursuance thereof. In all courts, actions, suits, or proceedings, the board may sue, appear, and defend in person or by attorneys and in the name of such irrigation district. Judicial notice shall be taken in all actions, suits, and judicial proceedings in any court of this state of the organization and existence of any irrigation district of this state from and after the filing for record in the office of the county clerk and recorder of the certified copy of the order of the board of county commissioners mentioned in section 37-41-103. A certified copy of said order shall be prima facie evidence in all actions, suits, and proceedings in any court of this state of the regularity and legal sufficiency of all acts, matters, and proceedings therein recited and set forth.

(2) Any such irrigation district, in regard to which any such order has been entered and such certified copy thereof so filed for record, and which has exercised or shall exercise the rights and powers of such a district, and which shall have in office a board of directors exercising the duties of their office, and the legality or regularity of the formation or organization of which shall not have been questioned by proceedings in quo warranto instituted in the district court of the county in which such district or the greater portion thereof is situated within one year from the date of such filing, shall be conclusively deemed to be a legally and regularly organized, established, and existing irrigation district within the meaning of this article; and its due and lawful formation and organization shall not thereafter be questioned in any action, suit, or proceeding whether brought under the provisions of this article or otherwise.

Source: L. 05: p. 255, § 14. **R.S. 08:** § 3453. **C.L.** § 1973. **CSA:** C. 90, § 390. **CRS 53:** § 149-1-14. **C.R.S. 1963:** § 150-1-14.

37-41-117. Bonds - contract - purposes - election. (1) For the purpose of constructing or purchasing or acquiring necessary reservoir sites, reservoirs, water rights, canals, ditches, and works and of acquiring the necessary property and rights therefor; for the assumption of indebtedness to the United States or for entering into a contract with the United States or any

agency thereof or water right owners for district lands; for the purpose of paying the first year's interest upon the bonds authorized in this article; and for otherwise carrying out the provisions of this article, the board of directors of any such district, as soon after such district has been organized as may be practicable, shall estimate and determine the amount of money necessary to be raised for such purposes and shall forthwith call a special election, at which election shall be submitted to the electors of such district possessing the qualifications prescribed by this article the question of whether or not the bonds of said district shall be issued in the amount so determined and, if applicable, whether the contract shall be approved.

(2) A notice of such election must be given by posting notices in three public places in each election precinct in said district for at least twenty days and also by publication of such notice in some newspaper published in the county where the office of the board of directors of such district is required to be kept, once a week for at least three successive weeks. Such notice shall specify the time of holding the election, the amount of bonds proposed to be issued, and, if applicable, the dollar amount of the contract to be entered into, and said election must be held and the result thereof determined and declared in all respects as nearly as possible in conformity with the provisions of this article governing the election of officers. No informalities in conducting such election shall invalidate the same if the election shall have been otherwise fairly conducted.

(3) At such election the ballots shall contain the words, if applicable, "Bonds - Yes" or "Bonds - No" or, if applicable, "Contract - Yes" or "Contract - No", or words equivalent thereto. If a majority of the legal electors who are freeholders and taxpayers or entrymen qualified as provided in this article within said district voting at said election have voted "Bonds - Yes" or "Contract - Yes", the board of directors shall immediately cause bonds in such amount to be issued and payable in series with such rate of interest as may be required to market said bonds as irrigation district bonds or cause the contract to be executed by the president and the secretary of the district.

(4) The principal and interest shall be payable at the office of the county treasurer of the county in which the organization of the district was effected and at such other place as the board of directors may designate in such bond. Said bonds shall be in denominations as may be determined by the board of directors and shall be negotiable in form, executed in the name of the district, and signed by the president and secretary, and the seal of the district shall be affixed thereto. Bonds deposited with the United States may call for the payment of such interest not exceeding the going rate for irrigation district bonds, may be of such denominations and may call for the repayment of the principal at such times as may be agreed upon between the district and the secretary of the interior, and, where the contract provides, may likewise call for the repayment of the principal at such times as may be agreed upon. Said bonds shall be numbered consecutively as issued and bear date at the time of their issue. Coupons for the interest shall be attached to each bond bearing the lithographed signatures of the president and secretary. Said bonds shall express on their faces that they are issued by the authority of this article, stating its title and date of approval.

(5) The secretary shall keep a record of the bonds sold, their number, date of sale, the price received, and the name of the purchaser; but any such district, by a majority vote of the legal electors of said district voting at said election, may provide for the issuance of bonds that will mature in any number of years less than thirty and arrange for the payment thereof in series. When the money provided by any previous issue of bonds has become exhausted by

expenditures authorized therefrom and it becomes necessary to raise additional money for such purposes, additional bonds may be issued by submitting the question at a special election to the qualified voters of said district and otherwise complying with the provisions of this section in respect to an original issue of such bonds. The lien for taxes, for the payment of the interest and principal of any bond issue, or for any indebtedness under any contract with the United States or any agency thereof or another financial institution shall be a prior lien to that of any subsequent bond issue or under subsequent contract.

(6) If a contract is proposed to be made with the United States and bonds are not to be deposited with the United States in connection therewith, the question to be submitted to the voters at such special election is whether a contract shall be entered into with the United States or any agency thereof or any financial institution. The notice of election shall state the maximum amount of money payable to the United States for construction or other purposes, exclusive of penalties and interest, and the water rights and other property, if any, to be conveyed to the United States, any agency thereof, or another financial institution as provided in section 37-41-113. The ballots for such election shall contain the words "Contract with the United States or agency thereof or financial institution - Yes", and "Contract with the United States or agency thereof or financial institution - No", or words equivalent thereto.

Source: L. 05: p. 256, § 15. **R.S. 08:** § 3454. **L. 17:** p. 298, § 6. **C.L.** § 1983. **CSA:** C. 90, § 391. **CRS 53:** § 149-1-15. **C.R.S. 1963:** § 150-1-15. **L. 77:** Entire section amended, p. 1633, § 1, effective June 2.

37-41-118. Sale of bonds - proceeds. The board may sell bonds from time to time in such quantities as may be necessary and most advantageous to raise the money for the construction or purchase of canals, reservoir sites, reservoirs, and water rights and works and otherwise to fully carry out the object and purposes of this article. Before making any sale, the board, at a meeting, by resolution, shall declare its intention to sell a specified amount of the bonds and the day and hour and place of such sale and shall cause such resolution to be entered in the minutes and notice of the sale to be given by publication thereof at least twenty days in a daily newspaper published in the city of Denver and in any other newspaper at its discretion. The notice shall state that sealed proposals will be received by the board at its office, for the purchase of the bonds, until the day and hour named in the resolution. At the time appointed, the board shall open the proposals and award the purchase of the bonds to the highest responsible bidder and may reject all bids. The board in no event shall sell any of said bonds for less than ninety-five percent of the face value thereof. In case no bid is made and accepted, the board of directors is hereby authorized to use said bonds for the purchase of canals, reservoir sites, reservoirs, and water rights and works, or for the construction of any canal, reservoir, and works; but such bonds shall not be so disposed of at less than ninety-five percent of the face value thereof.

Source: L. 05: p. 258, § 16. **R.S. 08:** § 3455. **C.L.** § 1984. **CSA:** C. 90, § 392. **CRS 53:** § 149-1-16. **C.R.S. 1963:** § 150-1-16.

37-41-119. Bonds - payment - lien. The bonds, and the interest thereon, and all payments due or to become due to the United States under any contract between the district and the United States accompanying which bonds of the district have not been deposited with the

United States shall be paid by revenue derived from an annual assessment upon the real property of the district, and the real property of the district shall be and remain liable to be assessed for such payments. Public lands of the United States within any district shall be subject to taxation for all purposes of this article to the extent provided by the act of congress approved August 11, 1916, upon full compliance therewith by the district.

Source: L. 05: p. 259, § 17. **R.S. 08:** § 3456. **L. 17:** p. 302, § 7. **C.L.** § 1985. **CSA:** C. 90, § 393. **CRS 53:** § 149-1-17. **C.R.S. 1963:** § 150-1-17.

37-41-120. Fiscal year - directors to fix levy. The fiscal year of each irrigation district in this state shall commence on January 1 in each year. It is the duty of the board of directors on or before October 15 in each year to determine the amount of money required to meet the maintenance, operating, and current expenses for the ensuing fiscal year and to certify by resolution to the board of county commissioners of the county in which the office of the district is located said amount, together with any additional amount which may be necessary to meet any deficiency in the payment of said expenses theretofore incurred. The board of directors may fix the amount payable for any tract containing one acre or less and, if so, similarly shall certify this amount to the board of county commissioners. The board of directors shall also fix the amount payable by each tract within any district with which the United States has made a contract and shall certify the same to the board of county commissioners, and the amount so fixed shall be in accordance with the federal reclamation laws and the public notices, orders, and regulations issued thereunder and shall be in compliance with any contracts made by the United States with any owners of said lands and in compliance further with the contracts between the district and the United States. The obligation of every irrigation district contracting with the United States shall be deemed a district debt. Said resolution shall be termed the annual appropriation resolution for the next fiscal year, and no expenditure to be paid out of such fund shall exceed in any one year the amounts fixed for such expenses in the annual appropriation resolution, except as provided in section 37-41-129.

Source: L. 05: p. 259, § 18. **R.S. 08:** § 3457. **L. 13:** p. 384, § 1. **L. 15:** p. 302, § 1. **L. 17:** p. 302, § 8. **C.L.** § 1994. **CSA:** C. 90, § 394. **CRS 53:** § 149-1-18. **L. 63:** p. 1000, § 1. **C.R.S. 1963:** § 150-1-18.

37-41-121. Assessor - assessment. (1) It is the duty of the county assessor of any county embracing the whole or a part of any irrigation district to assess and enter upon his records as assessor in its appropriate column the assessment of all real estate, including public lands subject to assessment under the act of congress of August 11, 1916, exclusive of improvements, situate, lying, and being within any irrigation district in whole or in part of such county. Immediately after said assessment has been extended as provided by law, the assessor shall make returns of the total amount of such assessment to the board of county commissioners of the county in which the office of said district is located. All lands within the district, for the purpose of taxation under this article, shall be valued by the assessor at the same rate per acre; but in no case shall any land be taxed, or subject to taxation, for irrigation district purposes under this article, or under any other law relative to irrigation districts, which, by reason of location or the broken uneven surface, or unsuitable character or quality of the soil, is unsuitable for

irrigation and cultivation, or which, from any natural cause, is not capable of irrigation and cultivation, except at a financial loss, nor shall tracts of land of one acre or less be taxed for irrigation purposes if the board of directors of the irrigation district has fixed an amount payable for each of said tracts. If the amount of water available from the water system of the irrigation district is wholly insufficient for the successful growing and maturing of crops on the entire acreage of lands within the district and susceptible of irrigation therefrom, that fact may be alleged and, upon being established by proofs, shall entitle the owner of lands that have never been cultivated and irrigated from the water system of such irrigation district to the relief provided for in this article.

(2) In all cases where any such land is included in any irrigation district under any law relative to irrigation districts and assessed for irrigation district purposes, it may be excluded from such irrigation district and relieved from such assessments for irrigation district purposes by order of the board of directors of the irrigation district, upon written petition of the owner, verified as pleadings are required to be verified. The petition shall state the grounds upon which the relief is asked and shall also show that the land has never been cultivated and irrigated and is incapable of cultivation by irrigation from the irrigation system of the irrigation district, and that the petitioner did not participate in the organization of the districts; and, upon hearing before the board of directors on such petition, the allegations thereof must be supported by evidence. Notice of the filing of such petition and of the time and place of hearing thereon shall be given for the length of time and in the manner as provided in section 37-41-144.

(3) The action of the board of directors upon such petitions, as well as the action of the board of county commissioners in including such land in such irrigation district and the subsequent taxing of such lands for irrigation district purposes, shall be subject to review and correction by any court of competent jurisdiction, but the owner of any such land shall be deemed to have waived, relinquished, and lost his right to relief under this section as to such land or such portion of it as he has cultivated and irrigated from the irrigation system of such irrigation district; where a contract has been entered into between the United States and any irrigation district, the district boundaries shall not be changed, nor shall lands be exempted from taxation except upon written consent of the secretary of the interior filed with the official records of the district, nor in case of such a contract shall the foregoing provisions of this section requiring the assessor to value all lands within such district at the same rate per acre be applicable, but in such case the county assessor shall assess such district land in accordance with the certificate provided for in section 37-41-120 and in compliance with the terms of such contract between the United States and the district.

Source: L. 05: p. 259, § 19. **R.S. 08:** § 3458. **L. 15:** p. 304, § 1. **L. 17:** p. 303, § 9. **C.L.** § 1995. **L. 25:** p. 323, § 1. **CSA:** C. 90, § 395. **CRS 53:** § 149-1-19. **L. 63:** p. 1001, § 2. **C.R.S. 1963:** § 150-1-19.

37-41-122. Other taxes must be paid. The owner of such land, at the time of filing such petition and before the order of the board of directors of the district or the decree of court excluding such land from the district goes into effect, shall pay to the county treasurer of the county in which such land is situated all taxes, other than taxes for irrigation district purposes, levied or assessed thereon, together with any interest, penalties, and fees as are or may be by law properly chargeable thereon.

Source: L. 15: p. 306, § 2. **C.L.** § 1996. **CSA:** C. 90, § 396. **CRS 53:** § 149-1-20. **C.R.S. 1963:** § 150-1-20.

37-41-123. Special tax levy. (1) It is the duty of the board of county commissioners of the county in which is located the office of any irrigation district, immediately upon receipt of the returns of the total assessment of said district and upon the receipt of the certificates of the board of directors certifying the total amount of money required to be raised, to fix the rate of levy necessary to provide said amount of money and to fix the rate necessary to provide the amount of money required to pay the interest and principal of the bonds of said district as the same shall become due; to fix the rate necessary to provide the amount of money required for any other purposes as provided in this article and which is to be raised by the levy of assessments upon the real property of said district; and to certify said respective rates to the board of county commissioners of each county embracing any portion of said district. The rate of levy necessary to raise the required amount of money on the valuation for assessment of the property of said district shall be increased fifteen percent to cover delinquencies.

(2) For the purposes of said district it is the duty of the board of county commissioners of each county in which any irrigation district is located in whole or in part, at the time of making levy for county purposes, to make a levy at the rates above specified upon all real estate in said district within their respective counties and, in case of contract with the United States, in the amounts and on the tracts as fixed and certified by the board of directors as prescribed in section 37-41-120. If the board of directors of an irrigation district has certified the amount payable for any tract of one acre or less, it is the duty of the board of county commissioners of each county in which the irrigation district is located, in whole or in part, also to levy such amount against each of such tracts. All taxes levied under this article are special taxes.

Source: L. 05: p. 260, § 20. **R.S. 08:** § 3459. **L. 17:** p. 305, § 10. **C.L.** § 1997. **CSA:** C. 90, § 397. **CRS 53:** § 149-1-21. **L. 63:** p. 1002, § 3. **C.R.S. 1963:** § 149-1-21.

Cross references: For procedure to increase tax levy beyond statutory limits, see § 29-1-302.

37-41-124. Assessment - collection - redemption - deed. (1) The revenue laws of this state for the assessment, levying, and collection of taxes on real estate for county purposes, as modified in this section, shall be applicable for the purposes of this article, including the enforcement of penalties and forfeiture for delinquent taxes. However, in case of sale of any lot or parcel of land, or any interest therein, for delinquent irrigation district taxes or delinquent irrigation district and general taxes, when there are no bids therefor on any of the days of such tax sale, the same shall be struck off to the irrigation district in which such land is located for the amount of the taxes, interest, and costs thereon, and a certificate of sale shall be made out to said district therefor and delivered to its secretary, who shall file the same in the office of its board of directors and record the same in a book of public record to be kept by said board for such purpose, but no charge shall be made by the county treasurer for making such certificate, and in such case he shall make the entry "struck off to ..... irrigation district" on his records, as well as an entry showing the amount of the general irrigation district taxes and interest thereon,

respectively, for which said lands were offered for sale, together with the cost attending such sale.

(2) No taxes assessed against any land so struck off to said district under the provisions of this section shall be payable until the same has been derived by the district from the sale or redemption of such lands. Such irrigation district or its assignee shall be entitled to a tax deed for said lands in the same manner and subject to the same equities as if a private purchaser at said tax sale, upon the payment to the county treasurer at the time of demanding said deed of such sum as the board of county commissioners of such county at any regular or special meeting may decide.

(3) In case the owner of said lot or parcel of land, or interest therein, desires to redeem the same at any time before said tax deed shall be issued, the same may be done in the same manner as is provided by law to be done, in case said lot or parcel of land, or interest therein, had been purchased by a bidder at said tax sale or had been struck off to the county. In such case the county treasurer shall forthwith issue a certificate of redemption therefor and notify the district secretary of said fact, who shall thereupon make a suitable transfer entry upon his record and return the certificate of sale to the county treasurer for cancellation.

(4) In case any person desires to obtain such certificate of purchase so issued to said irrigation district, the same may be done in the same manner as provided by law to be done in case said lot or parcel of land, or interest therein, had been purchased by a bidder at said tax sale or had been struck off to the county, upon payment to the county treasurer of the required amount in cash, or in cash together with warrants not in excess of the district general fund tax, or in cash and interest coupons or bonds not in excess of the irrigation district and redemption fund tax, or in cash and in warrants and bonds, respectively, not in excess of said respective funds.

(5) No action for possession of or to quiet title to land sold for taxes shall lie on behalf of the owner or claimant of the fee title as against the holder of the tax deed or his grantee claiming title or color of title thereunder in any case wherein the taxes or any part thereof for which said land was sold were levied for the maintenance, operating, and current expenses of an irrigation district or to pay the interest or principal of the bonds of such district, unless such action is brought within five years after the execution and delivery of the deed by the treasurer and the recording thereof, any law to the contrary notwithstanding. As a condition precedent to the right of such owner or claimant of the fee title to maintain his said suit for possession or to quiet title as against the person in possession under color of title, or as against the claimant of title to vacant and unoccupied land under a tax deed giving color of title to lands in an irrigation district, the plaintiff, at the time of filing his complaint, shall pay to the clerk of the court in which such proceedings are instituted, for the benefit of and to be paid to the person entitled thereto in case the plaintiff prevails in such suit, the amount of all taxes, interest, expenses, and penalties, including the amount of subsequent taxes paid on account of such sale which may have been paid thereunder, with interest on the whole of such sum at eight percent per annum.

(6) In any case in which the claimant has title or color of title to land in an irrigation district under a tax deed duly recorded, and brings his suit for possession of or to quiet title to such lands, the invalidity or alleged invalidity or insufficiency of the tax deed shall not be a sufficient defense after the expiration of five years from and after the execution, delivery, and record of said tax deed, nor, if such defense is pleaded prior to the expiration of said five years, shall the invalidity or insufficiency of the tax deed be considered by the court as a defense, unless defendant shall first deposit with the clerk of the court in which said suit is brought, a

sufficient amount to pay the taxes, interest, expenses, and penalties, including the amount of subsequent taxes and interest at eight percent per annum, paid on account of such tax sale, for the benefit of and to be paid to the person entitled thereto, when ascertained by the judgment in said suit.

Source: L. 05: p. 262, § 22. **R.S. 08:** § 3461. **L. 15:** p. 315, § 1. **C.L.** § 1999. **CSA:** C. 399, **CRS 53:** § 149-1-23. **C.R.S. 1963:** § 150-1-23.

37-41-125. Construction - contracts. (1) After adopting a plan for the construction of canals, reservoirs, and works, the board of directors shall give notice, by publication thereof, for not less than twenty days, in a newspaper published in each of the counties into which any such irrigation district extends, provided a newspaper is published therein, and in such other newspapers as it may deem advisable, calling for bids for the construction of said work or any portion thereof. If less than the whole work is advertised, then the portion so advertised must be particularly described in such notice. The notice shall set forth that plans and specifications can be seen at the office of the board, and that the board will receive sealed proposals therefor, and that the contract will be let to the lowest responsible bidder, stating the time and the place for opening the proposals, which, at said time and place, shall be opened in public. As soon as convenient thereafter the board shall let said work, either in portions or as a whole, to the lowest responsible bidder, or it may reject any or all bids and readvertise for proposals, or it may proceed to construct the work under its own superintendence.

(2) Contracts for the purchase of material shall be awarded to the lowest responsible bidder. The persons to whom a contract may be awarded shall enter into a bond, with good and sufficient sureties, to be approved by the board, payable to said district for its use, for not less than ten percent of the amount of the contract price, conditioned for the faithful performance of said contract. The work shall be done under the direction and to the satisfaction of the engineer in charge and be approved by the board. The provisions of this section shall not apply in the case of any contract between the district and the United States; except that, before any contract for construction work shall be entered into between the United States and the district, plans and specifications covering the proposed work shall be prepared and filed with the secretary of the district.

Source: L. 05: p. 262, § 23. **R.S. 08:** § 3462. **L. 17:** p. 308, § 12. **C.L.** § 2001. **CSA:** C. 90, § 400. **CRS 53:** § 149-1-24. **C.R.S. 1963:** § 150-1-24.

37-41-126. Claims - audit - payment - financial report. Except with respect to claims coming within the provisions of article 10 of title 24, C.R.S., no claims shall be paid by the district treasurer until the same shall have been allowed by the board, and only upon warrants signed by the president and countersigned by the secretary, which warrants shall state the date authorized by the board and for what purposes. If the district treasurer has insufficient funds on hand to pay such warrant when presented for payment, he shall endorse thereon "not paid for want of funds, this warrant draws interest from date at six percent per annum", and endorse thereon the date when so presented, over his signature, and from the time of such presentation until paid such warrant shall draw interest at the rate of six percent per annum; but when there is the sum of one hundred dollars or more in the hands of the treasurer, it shall be applied upon said

warrant. All claims against the district shall be verified the same as required in the case of claims filed against counties in this state, and the secretary of the district is hereby authorized to administer oaths to the parties verifying said claims the same as the county clerk and recorder or notary public might do. The district treasurer shall keep a register in which he shall enter each warrant presented for payment, showing the date and amount of such warrant, to whom payable, the date of the presentation for payment, the date of payment, and the amount paid in redemption thereof, and all warrants shall be paid in the order of their presentation for payment to the district treasurer. All warrants shall be drawn payable to the claimant or bearer, the same as county warrants.

Source: L. 05: p. 262, § 24. **R.S. 08:** § 3463. **C.L.** § 2002. **CSA:** C. 90, § 401. **CRS 53:** § 149-1-25. **C.R.S. 1963:** § 150-1-25. **L. 71:** p. 1216, § 16.

37-41-127. Funds for expenses. For purposes of defraying the expenses of the organization of the district, and the care, operation, management, repair, and improvement of all canals, ditches, reservoirs, and works, including salaries of officers and employees, the board may either fix rates of tolls and charges and collect the same of all persons using said canal and water for irrigation or other purposes, and in addition thereto may provide, in whole or in part, for the payment of such expenditures by levy of assessments therefor as provided in section 37-41-123, or by both tolls and assessment. In case the money raised by the sale of bonds issued is insufficient, and in case bonds are unavailable for the completion of the plans of works adopted, it is the duty of the board of directors to provide for the completion of said plans by levy of an assessment therefor in the same manner in which levy of assessments is made for the other purposes provided for in section 37-41-120.

Source: L. 05: p. 263, § 25. **R.S. 08:** § 3464. **C.L.** § 2003. **CSA:** C. 90, § 402. **CRS 53:** § 149-1-26. **C.R.S. 1963:** § 150-1-26.

37-41-128. Crossing streams, highways, railroads, state lands. The board of directors has the power to construct the said works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch, or flume which the route of said canal may intersect or cross. If such railroad company and said board, or the owners and controllers of said property, thing, or franchise so to be crossed, cannot agree upon the amount to be paid therefor, or the points or the manner of said crossings, the same shall be ascertained and determined in all respects as is provided in respect to the taking of land for public uses. The right-of-way is hereby given, dedicated, and set apart to locate, construct, and maintain said works or reservoirs over, through, or upon any of the lands which are now or may be the property of the state.

Source: L. 05: p. 264, § 26. **R.S. 08:** § 3465. **C.L.** § 2004. **CSA:** C. 90, § 403. **CRS 53:** § 149-1-27. **C.R.S. 1963:** § 150-1-27.

37-41-129. Limit of indebtedness - emergency. The board of directors or other officers of the district shall have no power to incur any debt or liability whatever, either by issuing bonds or otherwise, in excess of the express provisions of this article, nor shall they add to the expenditure of any one fiscal year anything over and above the amount provided for in the

annual appropriation resolution relating to that year, and any debt or liability incurred in excess of these provisions shall be and remain absolutely void; except that said expenditures may be increased in emergency cases if the same are authorized in writing by a number of district electors equal to one-half the number who voted at the last annual district election.

Source: L. 05: p. 264, § 28. **R.S. 08:** § 3467. **L. 15:** p. 314, § 1. **C.L.** § 2006. **CSA:** C. 90, § 405. **CRS 53:** § 149-1-29. **C.R.S. 1963:** § 150-1-29.

37-41-130. Insufficient supply - distribution. In case the volume of water in any canal, reservoir, or other works in any district shall not be sufficient to supply the continual wants of the entire district susceptible of irrigation therefrom, then it is the duty of the board of directors to distribute all available water upon certain or alternate days to different localities, as it may in its judgment think best for the interests of all parties concerned.

Source: L. 05: p. 264, § 29. **R.S. 08:** § 3468. **C.L.** § 2007. **CSA:** C. 90, § 406. **CRS 53:** § 149-1-30. **C.R.S. 1963:** § 150-1-30.

37-41-131. Compensation for property taken. Nothing contained in this article shall be deemed to authorize any person to divert the waters of any river, creek, stream, canal, or reservoir to the detriment of any person having a prior right to the waters of such river, creek, stream, canal, or reservoirs, unless previous compensation is ascertained and paid therefor under the laws of this state, authorizing the taking of private property for public use.

Source: L. 05: p. 265, § 30. **R.S. 08:** § 3469. **C.L.** § 2008. **CSA:** C. 90, § 407. **CRS 53:** § 149-1-31. **C.R.S. 1963:** § 150-1-31.

37-41-132. Boundaries - change - effect. The boundaries of any irrigation district organized under the provisions of this article may be changed in the manner prescribed in sections 37-41-132 to 37-41-148; but such change of the boundaries of the district shall not impair or affect its organization, or its rights in or to property, or any of its rights or privileges of whatsoever kind or nature; nor shall it affect, impair, or discharge any contract, obligation, lien, or charge for or upon which it was or might become liable or chargeable had such change of its boundaries not been made; except that, in case a contract has been made between the district and the United States as provided in section 37-41-113, no change shall be made in the boundaries of the district, and the board of directors shall make no order changing the boundaries of the district until the secretary of the interior shall assent thereto in writing and such assent is filed with the board of directors.

Source: L. 05: p. 265, § 31. **R.S. 08:** § 3470. **L. 17:** p. 309, § 13. **C.L.** § 2009. **CSA:** C. 90, § 408. **CRS 53:** § 149-1-32. **C.R.S. 1963:** § 150-1-32.

37-41-133. Additional land admitted - petition. The holder of title, or color of title, of any land adjacent to or situated within the boundaries of any irrigation district or irrigable from the ditches, canals, and irrigation works of the district may file with the board of directors of said district a petition in writing, praying that such lands be included in such district. The petition

shall describe the tracts or body of land owned by the petitioners, but such description need not be more particular than is required when such lands are entered by the county assessor in the assessment book. Such petition shall be deemed to give the assent of the petitioners to the inclusion in said district of the lands described in the petition, and such petition must be acknowledged in the same manner that conveyances of land are required to be acknowledged.

Source: L. 05: p. 265, § 32. **R.S. 08:** § 3471. **L. 11:** p. 468, § 1. **C.L.** § 2010. **CSA:** C. 90, § 409. **CRS 53:** § 149-1-33. **C.R.S. 1963:** § 150-1-33.

37-41-134. Notice of filing - costs. The secretary of the board of directors shall cause notice of the filing of such petition to be given and published once each week for three successive weeks in a newspaper published in the county where the office of said board is situate, which shall state the filing of such petition, the names of the petitioners, a description of the lands mentioned in said petition, and the prayer of said petitioners and that all persons interested may appear at the office of said board at a time named in said notice, and show cause, in writing, why the petition should not be granted. The time specified in the notice at which it shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice. The petitioners shall advance to the secretary sufficient money to pay the estimated cost of all proceedings under such petition before the secretary shall be required to give such notice.

Source: L. 05: p. 266, § 33. **R.S. 08:** § 3472. **C.L.** § 2011. **CSA:** C. 90, § 410. **CRS 53:** § 149-1-34. **C.R.S. 1963:** § 150-1-34.

37-41-135. Hearing of petition - assent. The board of directors, at the time and place mentioned in said notice, or at such time to which the hearing of said petition may adjourn, shall proceed to hear the petition, and all objections thereto, presented in writing by any person, showing cause why said petition should not be granted. The failure of any person interested to show cause, in writing, shall be deemed as an assent on his part to the inclusion of such lands in said district as prayed for in said petition.

Source: L. 05: p. 266, § 34. **R.S. 08:** § 3473. **C.L.** § 2012. **CSA:** C. 90, § 411. **CRS 53:** § 149-1-35. **C.R.S. 1963:** § 150-1-35.

37-41-136. Payment of pro rata assessments. The board of directors to whom such petition is presented may require, as a condition precedent to the granting of the same, that the petitioners shall severally pay to such district such respective sums, as nearly as the same can be estimated by the board, as petitioners or their grantors would have been required to pay to such district as assessments for the payment of its pro rata share of all bonds and the interest thereon, which may have previously thereto been issued by said district, or for the payment of the pro rata share of the cost of construction under any contract between the district and the United States accompanying which bonds of the district have not been deposited with the United States as provided in this article, had such lands been included in such district at the time the same was originally formed, or when said bonds were so issued, or when said contract with the United States was executed. In case unentered public land is proposed to be annexed to the district, the

board of directors of the district, instead of requiring such payment as a condition precedent, may assess such charge against such unentered public land upon the records of the district to be collected in the manner authorized by the act of congress of August 11, 1916.

Source: L. 05: p. 266, § 35. **R.S. 08:** § 3474. **L. 17:** p. 310, § 14. **C.L.** § 2013. **CSA:** C. 90, § 412. **CRS 53:** § 149-1-36. **C.R.S. 1963:** § 150-1-36.

37-41-137. Inclusion or rejection of lands - protest. The board of directors if it deems it not for the best interests of the district to include therein the lands mentioned in the petition, by order, shall reject the petition, but if it deems it for the best interests of the district that said lands be included, the board may order that the district be so changed as to include therein the lands mentioned in the said petition. The order shall describe the entire boundaries of the district with the lands so included, if the district boundaries are changed thereby, and for that purpose the board may cause a survey to be made of such portion of such boundaries as may be deemed necessary. However, if within thirty days from the making of such order a majority of the qualified electors of the district protest in writing to said board against the inclusion of such lands in said district, said order shall be held for naught, and such lands shall not be included therein. In the case of inclusion of government land according to the provisions of section 37-41-113, said protest must be made within thirty days of the date of the execution of the contract provided for in said section.

Source: L. 05: p. 266, § 36. **R.S. 08:** § 3475. **L. 09:** p. 425, § 2. **C.L.** § 2014. **CSA:** C. 90, § 413. **CRS 53:** § 149-1-37. **C.R.S. 1963:** § 150-1-37.

37-41-138. Order - record - effect. Upon the allowance of such petition and in case no protest has been filed with the board within thirty days after the entry of said order, a certified copy of the order of the board of directors making such change, and a plat of such district showing such change, certified by the president and secretary, shall be filed for record in the office of the clerk and recorder of each county in which are situate any of the lands of the district, and the district shall remain an irrigation district, as fully to every intent and purpose as if the lands which are included in the district by the change of the boundaries had been included therein at the organization of the district; and said district as so changed and all the lands therein shall be liable for all existing obligations and indebtedness of the organized district.

Source: L. 05: p. 267, § 37. **R.S. 08:** § 3476. **C.L.** § 2015. **CSA:** C. 90, § 414. **CRS 53:** § 149-1-38. **C.R.S. 1963:** § 150-1-38.

37-41-139. Records - evidence. Upon the filing of the copies of the order and the plat as provided in section 37-41-138, the secretary shall record the petition in the minutes of the board. The minutes, or a certified copy thereof, shall be admissible in evidence with the same effect as the petition.

Source: L. 05: p. 267, § 38. **R.S. 08:** § 3477. **C.L.** § 2016. **CSA:** C. 90, § 415. **CRS 53:** § 149-1-39. **C.R.S. 1963:** § 150-1-39.

37-41-140. Legal representatives petitioners. A guardian, an executor, or an administrator of an estate, who is appointed as such under the laws of this state and who, as such guardian, executor, or administrator, is entitled to the possession of the lands belonging to the estate which he represents, upon being thereunto authorized by the proper court on behalf of his ward or the estate which he represents, may sign and acknowledge the petition and may show cause why the boundaries of the district should not be changed.

Source: L. 05: p. 267, § 39. **R.S. 08:** § 3478. **C.L.** § 2017. **CSA:** C. 90, § 416. **CRS 53:** § 149-1-40. **C.R.S. 1963:** § 150-1-40.

37-41-141. Redivision of district - election of officers. In case of the inclusion of any land within any district by proceedings under this article, at least thirty days prior to the next succeeding general election, the board of directors shall make an order redividing such district into three divisions, as nearly equal in size as may be practicable, which shall be numbered first, second, and third, and one director shall thereafter be elected by each division. For the purposes of election the board of directors shall establish a convenient number of election precincts in said districts and define the boundaries thereof, which said precincts may be changed from time to time as the board may deem necessary.

Source: L. 05: p. 268, § 40. **R.S. 08:** § 3479. **C.L.** § 2018. **CSA:** C. 90, § 417. **CRS 53:** § 149-1-41. **C.R.S. 1963:** § 150-1-41.

37-41-142. Lands may be excluded from district. (1) Any tract of land included within the boundaries of any such district at or after its organization, under the provisions of this article, may be excluded therefrom in the manner prescribed in sections 37-41-142 to 37-41-148, but such exclusion of land from the district shall not impair or affect its organization or its rights in or to property or any of its rights or privileges of whatever kind or nature; nor shall such exclusion affect, impair, or discharge any contract, obligation, lien, or charge for or upon which it would or might become liable or chargeable had such land not been excluded from the district.

(2) If the board of directors of an irrigation district organized under this article finds and by resolution of the board declares that the irrigation district taxes assessed against any tract of land, in such irrigation district, have not been paid for three consecutive years and further finds that it would be for the best interests of such district and the landowners and members thereof and the lienholders thereon, if any, that such lands so in default in the payment of irrigation district taxes be excluded from such irrigation district, it shall be conclusively presumed that any such lands are unproductive and unfruitful and should be excluded from such irrigation district, and the board of directors may by resolution order such exclusions and cause a copy of such resolution certified by the secretary of such irrigation district to be filed and recorded in the office of the county clerk and recorder of the county in which such lands are located, and thereupon without further proceedings all such lands shall be excluded from such irrigation district and dropped from the list of district lands for all purposes.

(3) Any water or water rights owned or controlled by the district theretofore appertaining or allocated to such lands so in default may be reallocated to lands then remaining in such district, or other and different productive lands may be included in such district in lieu thereof.

Source: L. 05: p. 268, § 41. **R.S. 08:** § 3480. **C.L.** § 2019. **L. 29:** p. 422, §1. **CSA:** C. 90, § 418. **CRS 53:** § 149-1-42. **C.R.S. 1963:** § 150-1-42.

37-41-143. Petition for exclusion. The owner in fee of any lands constituting a portion of any irrigation district may file, with the board of directors of the district, a petition praying that such lands may be excluded and taken from said district. The petition shall describe the lands which the petitioners desire to have excluded, but the description of such lands need not be more particular than required when lands are entered in the assessment book by the county assessor. Such petition must be acknowledged in the same manner and form as is required in case of a conveyance of land.

Source: L. 05: p. 268, § 42. **R.S. 08:** § 3481. **C.L.** § 2020. **CSA:** C. 90, § 419. **CRS 53:** § 149-1-43. **C.R.S. 1963:** § 150-1-43.

Cross references: For acknowledgments in the conveyance of land, see article 35 of title 38.

37-41-144. Notice of filing petition. The secretary of the board of directors shall cause a notice of the filing of such petition to be published for at least three weeks in some newspaper published in the county where the office of the board of directors is situated, and if any portion of said district lies within another county, then said notice shall be so published in a newspaper published within each of said counties, or if no newspaper is published therein, then by posting such notice for the same time in at least three public places in said district, and, in case of the posting of said notices, one of said notices must be so posted on the lands proposed to be excluded. The notice shall state the filing of such petition, the names of the petitioners, a description of the lands mentioned in said petition, and the prayer of said petitioners, and it shall notify all persons interested to appear at the office of said board at a time named in said notice and to show cause in writing why said petition should not be granted. The time to be specified in the notice at which they shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice. The petitioner shall advance to the secretary sufficient money to pay the estimated cost of all proceedings under such petition before the secretary shall give such notice.

Source: L. 05: p. 269, § 43. **R.S. 08:** § 3482. **C.L.** § 2021. **CSA:** C. 90, § 420. **CRS 53:** § 149-1-44. **C.R.S. 1963:** § 150-1-44.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24.

37-41-145. Hearing of petition. The board of directors, at the same time and place mentioned in the notice or at the time to which the hearing of said petition may be adjourned, shall proceed to hear the petition and all objections thereto presented in writing by any persons, showing cause why the prayer of said petitioner should not be granted. The filing of such petition with such board shall be deemed as an assent by each and all of such petitioners to the exclusion from such district of the lands mentioned in the petition, or any part thereof.

Source: L. 05: p. 269, § 44. **R.S. 08:** § 3483. **C.L.** § 2022. **CSA:** C. 90, § 421. **CRS 53:** § 149-1-45. **C.R.S. 1963:** § 150-1-45.

37-41-146. Order. The board of directors, if it deems it not for the best interest of the district that the lands mentioned in the petition, or some portion thereof, should be excluded from said district, shall order that said petition be denied; but if it deems it for the best interest of the district that the lands mentioned in the petition, or some portion thereof, be excluded from the district and if there are no outstanding bonds of the district, then the board may order the lands mentioned in the petition, or some defined portion thereof, to be excluded from the district. However, if, within thirty days from the making of such order, a majority of the qualified electors of the district protest in writing to said board against the exclusion of such lands from said district, said order shall be held for naught, and such lands shall not be excluded therefrom. In case a contract has been made between the district and the United States, no change shall be made in the boundaries of the district unless the secretary of the interior shall assent thereto in writing and such assent is filed with the board of directors. Upon such assent, any lands excluded from the district shall be discharged from all liens in favor of the United States under contract with the United States or under bonds deposited with its agents.

Source: L. 05: p. 269, § 45. **R.S. 08:** § 3484. **L. 17:** p. 310, § 15. **C.L.** § 2023. **CSA:** C. 90, § 422. **CRS 53:** § 149-1-46. **C.R.S. 1963:** § 150-1-46.

37-41-147. Record - effect. Upon the allowance of such petition and in case no protest has been filed with the board within thirty days after the entry of said order, a certified copy of the order of the board of directors making such change and a plat of such district showing such change, certified by the president and secretary, shall be filed for record in the office of the clerk and recorder of each county in which are situate any of the lands of the district, and the district shall remain an irrigation district as fully to every intent and purpose as if the lands which are excluded by the change of the boundaries had not been excluded therefrom.

Source: L. 05: p. 270, § 46. **R.S. 08:** § 3485. **C.L.** § 2024. **CSA:** C. 90, § 423. **CRS 53:** § 149-1-47. **C.R.S. 1963:** § 150-1-47.

37-41-148. Division of districts. At least thirty days before the next general election of such district the board of directors thereof may make an order dividing said district into three divisions, as nearly equal in size as practicable, which divisions shall be numbered first, second, and third, and one director shall be elected for each division by the qualified electors of the whole district. For the purpose of election in such district, the said board of directors must establish a convenient number of election precincts and define the boundaries thereof, which said precincts may be changed from time to time, as the board of directors may deem necessary.

Source: L. 05: p. 270, § 47. **R.S. 08:** § 3486. **C.L.** § 2025. **CSA:** C. 90, § 424. **CRS 53:** § 149-1-48. **C.R.S. 1963:** § 150-1-48.

37-41-149. Dissolution of district - election. If a majority of the resident freeholders, representing a majority of the number of acres of the irrigable land in any irrigation district

organized under this article, shall petition the board of directors to call a special election for the purpose of submitting to the qualified electors of said irrigation district a proposition to vote on the dissolution of said irrigation district, setting forth in said petition that all bills and claims of every nature whatsoever have been fully satisfied and paid, it is the duty of said directors, if they are satisfied that all claims and bills have been fully satisfied, to call an election, setting forth the object of the said election, and to cause notice of said election to be published in some newspaper in each of the counties in which said district is located, for a period of thirty days prior to said election, setting forth the time and place for holding said election in each of the three voting precincts in said district. It is also the duty of the directors to prepare ballots to be used at said election on which shall be written or printed the words: "For Dissolution - Yes", and "For Dissolution - No".

Source: L. 05: p. 270, § 48. **R.S. 08:** § 3487. **C.L.** § 2033. **CSA:** C. 90, § 425. **CRS 53:** § 149-1-49. **C.R.S. 1963:** § 150-1-49.

37-41-150. Canvass - record. The board of directors shall name a day for canvassing the vote, and if it appears that a majority of said ballots contain the words, "For Dissolution - Yes", then it shall be the duty of said board of directors to declare said district to be dissolved and to certify to the county clerk and recorders of the respective counties in which the district is situated (stating the number of signers to said petition) that said election was called and set for the ..... day of ..... (month of) ..... (year) and that said election was held and so many votes (stating the number) had been cast for, and so many votes (stating the number) had been cast against, said proposition, said certificate to bear the seal of the district and the signatures of the president and secretary of said board of directors. It is the duty of the said respective clerk and recorders to record all such certificates in the records of the respective counties. Should it appear that a majority of the votes cast at said election were "For Dissolution - No", then the board of directors shall declare the proposition lost and shall cause the result and the vote to be made a part of the records of said irrigation district.

Source: L. 05: p. 271, § 49. **R.S. 08:** § 3488. **C.L.** § 2034. **CSA:** C. 90, § 426. **CRS 53:** § 149-1-50. **C.R.S. 1963:** § 150-1-50.

37-41-151. Judicial examination of bonds and contracts. The board of directors of an irrigation district organized under the provisions of this article may commence special proceedings, in and by which the proceedings of said board and of said district providing for and authorizing the issue and sale of the bonds of said district, whether said bonds or any of them have or have not been sold or disposed of, may be judicially examined, approved, and confirmed. Special proceedings may be commenced by which the proceedings of the district providing for the authorization of a contract with the United States and the validity of said contract, and whether or not the said contract has been executed, may be judicially examined, approved, and confirmed.

Source: L. 05: p. 271, § 50. **R.S. 08:** § 3489. **L. 17:** p. 311, § 16. **C.L.** § 2050. **CSA:** C. 90, § 427. **CRS 53:** § 149-1-51. **C.R.S. 1963:** § 150-1-51.

37-41-152. Petition for judicial examination. The board of directors of the irrigation district shall file, in the district court of the county in which the lands of the district or some portion thereof are situated, a petition praying in effect that the proceedings may be examined, approved, and confirmed by the court. The petition shall state the facts showing the proceedings had for the issue and sale of said bonds, or for the authorization of a contract with the United States as the case may be, and shall state generally that the irrigation district was duly organized and that the first board of directors was duly elected, but the petition need not state the facts showing such organization of the district or the election of said first board of directors.

Source: L. 05: p. 272, § 51. **R.S. 08:** § 3490. **L. 17:** p. 312, § 17. **C.L.** § 2051. **CSA:** C. 90, § 428. **CRS 53:** § 149-1-52. **C.R.S. 1963:** § 150-1-52.

37-41-153. Notice of hearing. The court shall fix the time for the hearing of said petition and shall order the clerk of the court to give and publish a notice of the filing of said petition. The notice shall be given and published for three successive weeks in a newspaper published in the county where the office of the district is situated. The notice shall state the time and place fixed for the hearing of the petition and the prayer of the petitioners and that any person interested in the organization of said district or in the proceedings for the issue or sale of said bonds or in the making of a contract with the United States, on or before the day fixed for the hearing of said petition, may move to dismiss or answer said petition. The petition may be referred to and described in said notice as the petition of the board of directors of ..... irrigation district (giving its name), praying that the proceedings for the issue and sale of said bonds of said district, or that the proceedings for the authorization of a contract with the United States and the validity thereof, may be examined, approved, and confirmed by the court.

Source: L. 05: p. 272, § 52. **R.S. 08:** § 3491. **L. 17:** p. 312, § 18. **C.L.** § 2052. **CSA:** C. 90, § 429. **CRS 53:** § 149-1-53. **C.R.S. 1963:** § 150-1-53.

37-41-154. Answer - pleading. Any person interested in said district, or in the issue or sale of said bonds, or in the making of a contract with the United States may move to dismiss or answer said petition. The provisions of the Colorado rules of civil procedure respecting the motion to dismiss and answer to a complaint shall be applicable to a motion to dismiss and answer to said petition. The person so moving to dismiss and answering said petition shall be the defendant to the special proceeding, and the board of directors shall be the plaintiff. Every material statement of the petition not specifically controverted by the answer, for the purpose of said special proceeding, shall be taken as true, and each person failing to answer the petition shall be deemed to admit as true all the material statements of the petition. The rules of pleading and practice relating to appeals as provided by law and the Colorado appellate rules, which are not inconsistent with the provisions of this article, are applicable to the special proceedings provided for in this section.

Source: L. 05: p. 273, § 53. **R.S. 08:** § 3492. **C.L.** § 2053. **CSA:** C. 90, § 430. **CRS 53:** § 149-1-54. **C.R.S. 1963:** § 150-1-54.

37-41-155. Determination - costs. Upon the hearing of such special proceeding, the court shall find and determine whether the notice of the filing of the petition has been duly given and published for the time and in the manner prescribed in this article and shall have power and jurisdiction to examine and determine the legality and validity of, and approve and confirm, all of the proceedings for the organization of said district under the provisions of said article, from and including the petition for the organization of the district, and all other proceedings which may affect the legality or validity of said bonds, and the order of the sale and the sale thereof, and all of the proceedings, if any, for the authorization of a contract with the United States and the terms of said contract. The court, in inquiring into the regularity, legality, or correctness of said proceedings, shall disregard any error, irregularity, or omission which does not affect the substantial rights of the parties to said special proceedings. The court by decree may approve and confirm such proceedings in part and disapprove and declare illegal or invalid other or subsequent parts of the proceedings. The costs of the special proceedings may be allowed and apportioned between the parties, in the discretion of the court.

Source: L. 05: p. 273, § 54. **R.S. 08:** § 3493. **L. 17:** p. 313, § 20. **C.L.** § 2054. **CSA:** C. 90, § 431. **CRS 53:** § 149-1-55. **C.R.S. 1963:** § 150-1-55.

37-41-156. Sale of realty not needed. The board of directors of any irrigation district organized under and subject to the provisions of this article may sell, dispose of, and convey any real property of the irrigation district not needed for the use of such irrigation district nor essential to its operation, from time to time as said board by resolution may direct, either by public or private sale, and without any appraisement thereof, at such price and upon such terms as said board may determine, and without any authorization from the electors of such irrigation district.

Source: L. 25: p. 328, § 1. **CSA:** C. 90, § 508. **CRS 53:** § 149-1-56. **C.R.S. 1963:** § 150-1-56.

37-41-157. President to execute deeds. The president of the board of directors of any such irrigation district, when authorized by resolution of the board of directors, is empowered to execute, acknowledge, and deliver all deeds of conveyance necessary to convey such property to the purchaser thereof, such deed of conveyance to be attested by the secretary of such irrigation district under its seal, and when so executed such deed of conveyance shall be held to convey the entire title of such irrigation district to the purchaser thereof.

Source: L. 25: p. 328, § 2. **CSA:** C. 90, § 509. **CRS 53:** § 149-1-57. **C.R.S. 1963:** § 150-1-57.

37-41-158. Proceeds - where paid. The proceeds of such sale shall be paid into the general fund of such irrigation district.

Source: L. 25: p. 329, § 3. **CSA:** C. 90, § 510. **CRS 53:** § 149-1-58. **C.R.S. 1963:** § 150-1-58.

37-41-159. Findings of board conclusive. The board of directors by resolution shall find and determine that any such real property that it proposes to sell or dispose of is not needed for the use of such irrigation district and is not essential to its operation, and such finding and determination shall be conclusive upon such irrigation district, and the purchaser shall not be required to show or prove that such property is not needed for the use of such irrigation district or essential to its operation, and such purchaser shall not be required to see that any moneys paid in pursuance of said sale is paid into the general fund of such irrigation district.

Source: L. 25: p. 329, § 4. **CSA:** C. 90, § 511. **CRS 53:** § 149-1-59. **C.R.S. 1963:** § 150-1-59.

37-41-160. Single election precincts. In any election conducted by an irrigation district organized prior to March 3, 1953, the board of directors of such district may order, in its discretion, that the entire district shall constitute one election precinct. In such event the board shall establish one polling place in said precinct and shall appoint only three judges of election, who shall constitute a board of election, and all qualified voters voting at such election shall vote at the polling place so established.

Source: L. 53: p. 410, § 1. **CRS 53:** § 149-1-60. **C.R.S. 1963:** § 150-1-60.

Cross references: For elections that may be affected by this section, see articles 41 to 44 of this title.

ARTICLE 42

Irrigation District Law of 1921

Cross references: For single election precinct law, see § 37-41-160; for general provisions concerning irrigation districts organized under this article, see article 43 of this title.

37-42-101. Petition for organization - schedule - bond. Whenever the landowners of any prescribed area within the state of Colorado desire to organize an irrigation district for the purposes named in this article, they may propose such organization by presenting to the board of county commissioners of the county within which said area, or the greater part thereof, lies a petition praying such organization, signed by a majority of such landowners, whether resident or not, owning in the aggregate a majority of the acreage of such area so proposed to be organized. Such petition shall contain a definite description by metes and bounds of the area included within the exterior boundaries of said proposed district and a description by legal subdivisions of the area proposed to be organized, together with a statement of the purposes of organization and the property and rights proposed to be acquired or constructed, and shall name a resident of the county of proposed organization as agent for the proposers of organization, who shall act as their representative until such time as organization has been completed. Accompanying this petition, a schedule shall be filed showing by legal subdivisions, with acreage, the land owned by each signer and the total acreage of the proposed district, together with a map of the proposed district and the proposed system for its irrigation or reclamation, drawn to such scale and in the manner

required by such rules as are promulgated by the state engineer for such purpose. These instruments shall be accompanied by a bond approved by the board of county commissioners in such amount as it shall fix, conditioned that all costs of inspection and organization shall be paid by the bondsmen in case organization is not effected. Copies of all instruments and maps filed with the board of county commissioners under this article shall also be filed with the state engineer.

Source: L. 21: p. 517, § 1. **C.L.** § 2057. **CSA:** C. 90, § 432. **CRS 53:** § 149-2-1. **C.R.S. 1963:** § 150-2-1.

37-42-102. Date of hearing - notice. Upon the filing of such petition and the approval of the bond, the board of county commissioners shall communicate with the state engineer with reference thereto, and together they shall agree upon a date for hearing upon such petition, which shall in no case be later than ninety days from the date of filing thereof, and, in case no agreement is reached with reference to such date of hearing, it shall be had on the Tuesday next after the expiration of sixty days from the date of filing of such petition. During at least the four weeks immediately preceding such date for hearing, the board of county commissioners shall cause notice thereof to be published in some newspaper of general circulation published in each of the counties wherein any portion of the area of said proposed district lies, and, in case no such newspaper is published in any such county, the notice shall be given by posting the notice at the county courthouse in such county and in at least one conspicuous point within the area of such proposed district which lies in such county during the same time that publication is required, where a newspaper is available therefor.

Source: L. 21: p. 518, § 2. **C.L.** § 2058. **CSA:** C. 90, § 433. **CRS 53:** § 149-2-2. **C.R.S. 1963:** § 150-2-2.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24.

37-42-103. Preliminary report. Prior to the date of such hearing, the state engineer shall file with the board of county commissioners, before which the hearing will be held, his preliminary report on the proposed irrigation system, showing his estimate of costs, as well as the availability of an adequate water supply, and the general feasibility of the system. In the preparation of such report, the state engineer may require such aid, assistance, maps, and data as he deems necessary, from the proposers of organization. Such report shall be considered a public document and open to general public inspection and examination.

Source: L. 21: p. 519, § 3. **C.L.** § 2059. **CSA:** C. 90, § 434. **CRS 53:** § 149-2-3. **C.R.S. 1963:** § 150-2-3.

37-42-104. Hearing - adjournments. In case the state engineer considers the proposed irrigation system feasible, and shall so state in his report, or shall report his inability to reach a definite conclusion with reference thereto, the board of county commissioners shall proceed to a hearing and determination of those matters subject to their consideration either immediately upon the date set for hearing, or may adjourn such hearing from time to time as they shall see fit,

but not exceeding two weeks. During such time consumed by adjournment, the state engineer may file such additional or supplemental reports as he sees fit, and they shall also be considered in the determination.

Source: L. 21: p. 519, § 4. **C.L.** § 2060. **CSA:** C. 90, § 435. **CRS 53:** § 149-2-4. **C.R.S. 1963:** § 150-2-4.

37-42-105. Adverse report - investigations. (1) In case the report of the state engineer is adverse to the formation of such district because it is not considered feasible, he shall state his reasons for such conclusion in concise language and shall call attention thereto expressly in his letter transmitting such report to the board of county commissioners. The board of county commissioners shall thereupon fix and determine, upon such investigations and hearings as they see fit, the following matters and things:

(a) Whether the statutory requirements preliminary to organization have been substantially complied with, which determination shall be reviewable only by an action in the nature of certiorari issuing out of the district court having jurisdiction and upon application therefor made within fifteen days of the date of determination by the board of county commissioners;

(b) Fix the territorial extent and boundaries of such district and, in so doing, consider the petition upon which hearing is had, together with such petitions for inclusion within or exclusion from said district as are presented.

(2) No lands shall be excluded from said district which are susceptible of irrigation from the source of water supply intended for the irrigation of the district and not more easily irrigable from another source, nor shall any lands be included within said district which are not susceptible of irrigation from the source of supply intended for the district, or which are already irrigated, or which can be more easily irrigated from another source.

(3) Objection to such exclusions or inclusions, or the order fixing the territorial extent and boundaries of the district, shall be made in writing by the interested landowners, on or before such date of hearing or adjournment thereof, and an appeal from such adverse determination prosecuted to the district court of the county wherein such hearing is had, as in the case of appeals from disallowance of claims, insofar as applicable, within fifteen days from such determination. No such appeal having been prosecuted, the determination of the board of county commissioners shall be deemed conclusive on such points.

Source: L. 21: p. 519, § 5. **C.L.** § 2061. **CSA:** C. 90, § 436. **CRS 53:** § 149-2-5. **C.R.S. 1963:** § 150-2-5.

37-42-106. Notice of organization meeting and election. (1) Immediately following the determination of the board of county commissioners, it shall call an organization meeting and election of such proposed irrigation district for the purpose of determining whether such irrigation district shall be organized, and if organized, for the election of officers. Notice of such meeting shall recite the name of the proposed irrigation district, shall describe the boundaries thereof as defined by the determination of the board of county commissioners, and shall state that the purposes of such meeting are to determine whether said district shall be organized and, if organized, to elect directors thereof until the first annual election. Said notice shall state the

place of holding such meeting, which shall be at some convenient place in the county where the petition was filed, and the date and hour thereof. Said notice shall be published once each week for four weeks immediately preceding such meeting in a newspaper published within the county where the meeting will be held, or, if no such newspaper is published in such county, then notice shall be given by posting such notice at the courthouse in each county in which any portion of said district lies and also by posting such notice at three conspicuous places within said proposed district.

(2) Repealed.

Source: L. 21: p. 521, § 6. **C.L.** § 2062. **CSA:** C. 90, § 437. **CRS 53:** § 149-2-6. **C.R.S. 1963:** § 150-2-6. **L. 2002:** (2) amended, p. 8, § 1, effective March 5. **L. 2017:** (2) repealed, (HB 17-1030), ch. 16, p. 46, § 1, effective August 9.

37-42-107. Organization - meeting - voting. (1) The board of county commissioners shall attend at the time and place of the meeting specified in section 37-42-106 and shall certify to the meeting a list of the landowners of the proposed district, taking no account of those who have prosecuted appeals from the order of the board of county commissioners fixing and determining boundaries, together with the number of acres within the proposed district, owned or represented by each, the total of which acreage, for the purposes of this meeting, shall be considered the total acres of the district. The board of county commissioners shall also act as a credentials committee of the meeting and shall decide and create a written certification regarding who are eligible voters at the meeting. The chair of the board shall preside at the meeting until temporary officers are elected from among those present.

(2) The landowners shall organize such meeting by the selection from their own number of a chairman who shall preside at said meeting and a clerk who shall keep the minutes of the proceedings of such meeting and perform the duties generally performed by such officer.

(3) The meeting having been so organized, a vote shall be taken by ballot to determine organization. The ballots cast shall contain the words "Irrigation District - Yes ...." and "Irrigation District - No ....", and shall have a cross marked opposite the words expressing the desire of the voter, together with the name and, if the vote is by proxy, both the name of the landowner and the person voting, and the number of votes cast, being the number of acres of the landowner within said proposed district.

(4) The vote shall be publicly counted by tellers selected by the chairman, entered at length upon a tally sheet and checked with the list certified by the board of county commissioners, and shall be entered in detail in the minutes of the proceedings. If a majority of the total vote of the proposed district, as shown by the list certified by the board of county commissioners, is not found to have been cast in favor of organization, the meeting shall thereby stand adjourned and no further proceedings had upon the petition for organization or order of determination; but, if the majority of the total vote of the district as shown by said certified list is cast in favor of organization, the organization of the district shall be declared accomplished and record thereof entered in the minutes of the meeting, and the meeting shall proceed to the election of the directors of the district who shall hold office until the first annual election.

Source: L. 21: p. 522, § 7. **C.L.** § 2063. **CSA:** C. 90, § 438. **CRS 53:** § 149-2-7. **C.R.S. 1963:** § 150-2-7. **L. 2017:** (1) amended, (HB 17-1030), ch. 16, p. 46, § 2, effective August 9.

37-42-108. Directors - election. (1) The board of directors consists of three landowners of the district who are qualified to vote at district elections pursuant to section 37-42-112 (2), including authorized agents, and who reside within the district. Directors hold their respective offices for the period of three years and until their successors are elected and qualified. They shall be elected by ballot upon public nominations made at the meeting at which they are elected, and each ballot must contain the name of the person for whom it is cast, the name of the voter or, if by proxy, the name of both landowner and proxy, and the number of votes cast. Each landowner may cast as many votes as he or she has acres of land within the district for each of three persons voted for.

(2) At the first election to choose the first board of directors, the person having the highest number of votes shall continue in office for the full term of three years; the next highest two years; the next highest one year; but, if two or more persons have the same number of votes, their terms shall be determined by lot, under the direction of the county judge of the county wherein the organization of said district has been effected; and the person receiving the highest number of votes for any office to be filled at any such election is elected thereto. In case a vacancy occurs in the membership of the board of directors by death, resignation, or otherwise, the remaining members shall select a successor to serve out the unexpired term. If vacancies occur in the membership of all the places upon the board or if the board fails, neglects, or refuses at any regular meeting to fill a vacancy existing at such time, the board of county commissioners of the county wherein is situated the office of such district may fill such vacancies for the unexpired terms from the landowners of such district.

Source: L. 21: p. 524, § 8. **C.L.** § 2064. **CSA:** C. 90, § 439. **CRS 53:** § 149-2-8. **L. 57:** p. 876, § 1. **C.R.S. 1963:** § 150-2-8. **L. 2017:** (1) amended, (HB 17-1030), ch. 16, p. 47, § 3, effective August 9.

37-42-109. Directors to file map. It is the duty of the board of directors to file for record in the office of the county clerk and recorder of each county wherein any part of an irrigation district lies a map of such district showing the boundaries thereof, together with a complete list of all lands within such county included within the organized area, and to file supplements of such lists from time to time as lands are excluded from or included within such district.

Source: L. 21: p. 525, § 9. **C.L.** § 2065. **CSA:** C. 90, § 440. **CRS 53:** § 149-2-9. **C.R.S. 1963:** § 150-2-9.

37-42-110. Directors to organize - powers. (1) On the same day the board of directors is elected, and immediately following the meeting at which they were elected, the board shall meet for the purpose of organization of the board. It shall select one of its own members as president of the irrigation district and shall select a secretary who may or may not be a member of the board.

(2) (a) The board of directors shall be the governing body of the irrigation district for which it is elected and shall have the power to make and alter bylaws, rules, and regulations for the distribution of water and for the conduct of the district business not inconsistent with the laws of the state of Colorado and to make such contracts and employ such persons as are necessary for the conduct of the affairs of the district, in general exercising the usual and ordinary functions of management of the district, including, when specifically authorized by vote of the landowners so to do, to cooperate with the United States under the federal reclamation laws or any other federal laws enacted by the congress of the United States for the purpose of the construction of irrigation works, including drainage works necessary to maintain the irrigability of the land, or for the acquisition, purchase, extension, operation, or maintenance of constructed works, or for the assumption as principal or guarantor of indebtedness to the United States on account of district lands.

(b) It is also the duty of the board to make an annual report of the district showing the status of its affairs generally, including full lists of assets and liabilities, warrants and bonds outstanding, and such as have been paid or retired during the last fiscal year, and to present the report to the landowners at or before the annual election.

(3) As compensation for service as directors, each person so acting is entitled to receive one hundred dollars for each day necessarily spent in the discharge of district business and such expenses as are necessarily incurred in the conduct of its affairs; except that, after the first year, the landowners may fix other compensation by vote at any annual or special election.

(4) Repealed.

(5) No director or any officer named in this article shall be interested directly or indirectly, in any manner, in any contract awarded or to be awarded by the board or in the profits to be derived therefrom, nor shall he receive any bonds, gratuity, or bribe.

(6) Any officer who violates this section commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S. He or she shall also forfeit his or her office upon conviction.

(7) If it is found necessary by the board of directors to employ judges of election, each judge is entitled to receive as compensation for his or her services the sum of one hundred dollars per day to be paid by the district; except that the landowners may fix other compensation by vote at any annual or special election.

Source: L. 21: p. 525, § 10. **C.L.** § 2066. **CSA:** C. 90, § 441. **CRS 53:** § 149-2-10. **L. 59:** p. 829, § 1. **C.R.S. 1963:** § 150-2-10. **L. 65:** p. 1270, § 3. **L. 77:** (6) amended, p. 885, § 68, effective July 1, 1979. **L. 89:** (6) amended, p. 851, § 137, effective July 1. **L. 91:** (2)(b) amended, p. 893, § 23, effective June 5. **L. 2002:** (6) amended, p. 1554, § 337, effective October 1. **L. 2017:** (2)(b), (3), and (7) amended and (4) repealed, (HB 17-1030), ch. 16, p. 47, § 4, effective August 9.

Editor's note: The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See People v. McKenna, 199 Colo. 452, 611 P.2d 574 (1980).

Cross references: For the legislative declaration contained in the 2002 act amending subsection (6), see section 1 of chapter 318, Session Laws of Colorado 2002.

37-42-111. Meetings of directors - notice. The board of directors shall hold its regular meetings at least four times each year, which may be immediately following the general election and on the first Tuesday of April, July, and October of each year, or, in the alternative, at such other times as may be designated in the bylaws, rules, or regulations adopted by the board, and such special meetings as are called, on at least five days' notice, by a majority of the board. All special and regular meetings must be held where practicable within the district or, if not so practicable, within the boundaries of any county in which the district is located, in whole or in part, or in any county so long as the meeting location is within twenty miles of the district boundaries. The provisions of this section governing the location of meetings may be waived only if the proposed change of location of a meeting of the board appears on the agenda of a regular or special meeting of the board and if a resolution is adopted by the board stating the reason for which a meeting of the board is to be held in a location other than under this section and further stating the date, time, and place of the meeting. In calling special meetings, the call must state specifically the business to be transacted, and none other shall be considered, but, at regular meetings, any business that the board of directors may legally transact may be acted upon. A majority of all members of the board must concur in order to bind the district or the board in any matter. All board meetings must be public, except for executive sessions to discuss confidential matters and to receive legal advice on specific legal questions, and the records thereof, except confidential records, are open to general public inspection during business hours. Irrigation districts may define confidential records and matters subject to executive session in the bylaws, rules, or regulations using section 24-6-402 (4) as guidance.

Source: L. 21: p. 527, § 11. **C.L.** § 2067. **CSA:** C. 90, § 442. **CRS 53:** § 149-2-11. **C.R.S. 1963:** § 150-2-11. **L. 65:** p. 1269, § 1. **L. 90:** Entire section amended, p. 1503, § 17, effective July 1. **L. 2017:** Entire section amended, (HB 17-1030), ch. 16, p. 48, § 5, effective August 9.

37-42-112. District elections - definition. (1) Elections are of two kinds, general and special. A general election shall be held once each year in the month of January, at a date, time, and place designated by the board. Any business requiring or permitting a vote of the landowners may be transacted at the election, including always the election of a board of directors for the ensuing year. A special election may be called at any time by the board of directors by resolution duly passed and entered of record in the minutes of the proceedings of the board. Notice of a general election must call attention to the date and place of the election. In addition, notice of a special election must state the nature of the business to be transacted at the election, and no business shall be transacted at the special election other than that mentioned in the call. In either case, notice shall be delivered electronically or by United States mail to each landowner of the district who is qualified to vote in district elections at the landowner's last address as shown by the records of the district at least thirty days prior to the date of the election and also published once each week for four consecutive weeks immediately preceding the election in a newspaper designated by the board and of general circulation within the district.

(2) The following landowners who own agricultural land within a district are entitled to vote at all district elections and at elections for a proposed district under section 37-42-107:

(a) A landowner who is a natural person over the age of eighteen years, is a citizen of the United States, is a resident of the state of Colorado, and has paid or is obligated to pay property taxes upon real property located within the district for the calendar year preceding the election;

(b) A landowner that is not a natural person and that has paid or is obligated to pay property taxes upon real property located within the district for the calendar year preceding the election. In order to vote at an election, the landowner must authorize an agent who satisfies the residency and age requirements set forth in subsection (2)(a) of this section to vote on its behalf at the election and must provide written notice of the authorized agent to the district in a form satisfactory to the district.

(3) The unit of voting power is one acre within a district or proposed district, each landowner being entitled to cast as many votes as the landowner has acres of land within the district or proposed district, and, in casting such votes, the landowner may vote in person or by proxy. A district may establish in its bylaws, rules, or regulations qualifications for persons acting as proxies. A person desiring to act as proxy for another must file written authority therefor before being allowed to vote, which authority:

(a) Shall be retained as part of the proceedings of the meeting at which the vote is cast; and

(b) Is not valid at any other meeting.

(4) If the district is divided into precincts, a landowner is entitled to vote at an election in the precinct where he or she resides or, if the landowner is not a natural person or is a nonresident of the district, in the precinct within which the greater portion of the landowner's land is located. The board of directors of the district may order that the entire district constitutes one election precinct, in which case the board shall establish one polling place in the precinct and shall appoint only three judges of election, who constitute a board of election, and all qualified voters voting at the election must vote at the polling place so established.

(5) As used in this section, "agricultural land" has the meaning set forth in section 39-1-102 (1.6); except that "agricultural land" does not include any land that has been platted or subdivided into residence or business lots.

Source: L. 21: p. 528, § 12. **C.L.** § 2068. **CSA:** C. 90, § 443. **CRS 53:** § 149-2-12. **C.R.S. 1963:** § 150-2-12. **L. 65:** p. 1270, § 2. **L. 2017:** Entire section amended, (HB 17-1030), ch. 16, p. 48, § 6, effective August 9.

37-42-113. Powers of district. (1) (a) Irrigation districts organized under this article 42 may sue and be sued in their district names, and courts shall take judicial notice of their organization and territorial extent.

(b) The board of directors may acquire, by use, prescription, appropriation, purchase, or condemnation, property or rights of any kind, including rights-of-way, canals, or reservoirs either projected, or partly constructed, or constructed, or the part or whole of any contemplated, projected, partly completed system of irrigation or waterworks, water rights, or any other property or right necessary or useful for carrying out the objects of the irrigation district. The title to any such property so acquired vests immediately in the irrigation district in its corporate

name and is held by the district in trust for, and is hereby dedicated and set apart for, the uses and purposes provided for in this article 42.

(c) Any contract purporting to bind the district to the payment of any sum in excess of five hundred thousand dollars must first be ratified by a majority of all the votes cast at a general or special election called for that purpose before it becomes binding, and all contracts entered into by the board of directors agreeing to a payment in excess of that amount shall be construed as being expressly subject to this subsection (1)(c) and do not become binding upon the district until authorized and ratified at an election called and held for that purpose; except that, on July 1, 2022, and on July 1 of every five-year period thereafter, the board of directors shall adjust the dollar amount specified in this subsection (1)(c) in accordance with the percentage change over the previous five-year period in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Aurora-Lakewood for all items and all urban consumers, or its successor index. The board of directors shall post the adjusted amount on its website and in its annual reports.

(2) Where the compensation to be paid by the district to the owners of any property that the board of directors of an irrigation district is authorized to take by proceedings in eminent domain has been finally determined to be in excess of five hundred thousand dollars, the courts shall give sufficient time for the submission to and determination by the landowners of the district, at a regularly called general or special election, of the question of whether the district shall pay the compensation or abandon the condemnation proceedings; except that, on July 1, 2022, and on July 1 of every five-year period thereafter, the board of directors shall adjust the dollar amount specified in this subsection (2) in accordance with the percentage change over the previous five-year period in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Aurora-Lakewood for all items and all urban consumers, or its successor index. The board of directors shall post the adjusted amount on its website and in its annual reports. If the landowners, by majority vote of all the votes cast at the election, vote for the payment of the compensation, the courts shall give the district the necessary additional time to pay the compensation either by levy and collection of assessments against the lands of the district, by the issuance and sale of bonds of the district, or by both such methods, as may be determined at a district election.

(3) The board may also enter into any obligation or contract with the United States for the construction or operation and maintenance of the necessary works for the delivery and distribution of water therefrom; or for drainage of district lands; or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district lands; or for the temporary rental of water under the provision of the federal reclamation act and all acts amendatory thereof or supplementary thereto and the rules and regulations established thereunder; or the board may contract with the United States for a water supply under any act of congress providing for or permitting such contract and may convey to the United States as partial or full consideration therefor water rights or other property of the district. The district also has power to take over the assets and assume the liabilities of water users' associations organized for cooperation with the United States under the provisions of the act of congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereto, in case a majority of the lands of each association shall be within such district, subject to the provision that the shareholders of such association by vote, as provided by their articles of incorporation and bylaws, shall assent and agree that such assets and liabilities shall be so taken over.

(4) The powers conferred by this article 42 are cumulative and are in addition to all powers possessed by an irrigation district under the other laws of this state.

Source: L. 21: p. 528, § 13. **C.L.** § 2069. **CSA:** C. 90, § 444. **CRS 53:** § 149-2-13. **C.R.S. 1963:** § 150-2-13. **L. 2017:** (1) and (2) amended and (4) added, (HB 17-1030), ch. 16, p. 50, § 7, effective August 9. **L. 2018:** (1)(c) and (2) amended, (HB 18-1375), ch. 274, p. 1719, § 76, effective May 29.

37-42-114. Landowners - definition - evidence of ownership. (1) "Landowner", as used in this article 42, means an owner in fee of lands within the boundaries of any irrigation district organized or proposed to be organized, whether a resident or nonresident of the district, who or that is a citizen of, or an entity or arrangement created or organized within, the United States.

(2) Where such landowner is under disability, or infancy, insanity, or otherwise, or the lands are held under administration, guardianship, conservatorship, receivership, or other similar proceeding, the administrator, executor, guardian, conservator, receiver, or other like officer shall be considered the "landowner" for the purposes of this article and, when authorized by the court having jurisdiction to do so, may act in that capacity in the formation, organization, operation, management, or dissolution of any irrigation district as any other landowner thereof.

(3) For the purposes of this article 42, evidence of ownership is prima facie established by the certificate of the county assessor of the county wherein the lands involved are situated or by certificate of the register of the state board of land commissioners.

Source: L. 21: p. 531, § 14. **C.L.** § 2070. **CSA:** C. 90, § 445. **CRS 53:** § 149-2-14. **C.R.S. 1963:** § 150-2-14. **L. 2017:** (1) and (3) amended, (HB 17-1030), ch. 16, p. 51, § 8, effective August 9.

37-42-115. Land board as landowner. (1) The state board of land commissioners is hereby authorized to act in the capacity of landowner with reference to any lands under its management or control; except that no such lands under the control or management of the state board of land commissioners, or upon which less than two-thirds of the purchase price has been paid under contracts to purchase such lands, shall be included within any irrigation district organized under this article over the written objection of such state board of land commissioners, and upon opportunity given to offer such objection.

(2) Any such lands when included within any irrigation district shall be subject to all the terms and provisions of this article for all purposes, and the state treasurer is authorized to pay assessments for district purposes upon such lands out of the proper funds, upon order of the state board of land commissioners.

Source: L. 21: p. 532, § 15. **C.L.** § 2071. **CSA:** C. 90, § 446. **CRS 53:** § 149-2-15. **C.R.S. 1963:** § 150-2-15.

37-42-116. Irrigation district commission created. (Repealed)

Source: L. 21: p. 532, § 16. **C.L.** § 2072. **CSA:** C. 90, § 447. **CRS 53:** § 149-2-16. **C.R.S. 1963:** § 150-2-16. **L. 68:** p. 130, § 143. **L. 88:** (1) amended, p. 419, § 15, effective April 11. **L. 91:** Entire section repealed, p. 886, § 10, effective June 5.

37-42-117. Directors to adopt plans. (1) The board of directors of any irrigation district organized under this article, as soon as organized, shall adopt a definite and complete plan for carrying out the purposes of its organization, which plan shall include a definite means for the irrigation or reclamation of the lands included within such area, as well as the plans proposed for financing such undertaking. This plan shall be set out at length in the record of the proceedings of the board of directors.

(2) and (3) (Deleted by amendment, L. 91, p. 893, § 24, effective June 5, 1991.)

Source: L. 21: p. 533, § 17. **C.L.** § 2073. **CSA:** C. 90, § 448. **CRS 53:** § 149-2-17. **C.R.S. 1963:** § 150-2-17. **L. 91:** Entire section amended, p. 893, § 24, effective June 5.

37-42-118. Bond election - ballots. (1) After the plan specified in section 37-42-117 has been adopted, the board of directors may then call a district election for the purpose of voting upon the question of authorization and issuance of district bonds in an amount and in such series and dates of maturities, but none later than forty years from date of issue and bearing such interest not exceeding seven percent, as shall be first determined by resolution of said board. Notice of said election shall be given as in case of other special elections of irrigation districts, or such question may be submitted at a general election. At the time and place named in the call, the election shall be held and the question of the authorization of bonds, and any other matter named in the call, shall be submitted to vote of the landowners, who shall vote by ballot. On the ballots cast concerning the authorization and issuance of bonds shall appear a recital of the amount of bonds proposed, the series and dates of maturities, the rate of interest they shall bear, and, beneath such recital, the words "Bonds, Yes ...." and "Bonds, No ....", with a cross marked opposite the words expressing the voter's choice. Bonds shall not be construed to be authorized, and none shall be issued, except upon an affirmative vote of the majority of the total voting strength of the district.

(2) If bonds are authorized, the board of directors shall immediately cause the same to be issued. They shall be in denominations of not less than one hundred dollars and not more than one thousand dollars and shall be in the total amount and in such series and dates of maturities and bear interest as authorized by vote of the landowners. All bonds so issued shall be numbered consecutively beginning with the number one, shall become due in the order of their serial numbers, shall bear interest payable semiannually evidenced by coupons attached thereto bearing the same number as the bonds to which they are attached, and shall be registered with the county treasurer of the county wherein is situated the office of such irrigation district, and it is the duty of the county treasurer to keep a list of such bonds, serially, with the names and addresses of the owners thereof, as furnished him from time to time. Such bonds may contain a provision for redemption upon call, serially, as provided in this article, shall be in such form as prescribed by the board of directors, and shall be signed by the president of the district, attested by the secretary thereof, and countersigned by the district treasurer. Such bonds may be issued and the proceeds of their sale used for the payment of the first two years' interest thereon and for any of the several purposes of this article, except for maintenance, operation, or salaries.

(3) If a contract is proposed to be made with the United States, the question to be submitted to the voters at such special election is whether a contract shall be entered into with the United States. The notice of election shall state the maximum amount of money payable to the United States for construction purposes, exclusive of penalties and interest, and the water rights and other property, if any, to be conveyed to the United States. The ballots for such election shall contain the words "Contract with the United States, Yes" and "Contract with the United States, No", or words equivalent thereto.

Source: L. 21: p. 534, § 18. **C.L.** § 2074. **L. 27:** p. 455, § 1. **CSA:** C. 90, § 449. **CRS 53:** § 149-2-18. **C.R.S. 1963:** § 150-2-18. **L. 91:** (1) amended, p. 894, § 25, effective June 5.

37-42-119. Registered bonds. (Repealed)

Source: L. 21: p. 536, § 19. **C.L.** § 2075. **CSA:** C. 90, § 450. **CRS 53:** § 149-2-19. **C.R.S. 1963:** § 150-2-19. **L. 89:** (1) amended, p. 1132, § 74, effective July 1. **L. 91:** Entire section repealed, p. 886, § 11, effective June 5.

37-42-120. Additional bonds. If, after the issuance and sale of a series of bonds under this article, it becomes necessary to authorize an additional issue or series of bonds, the same may be authorized and sold in like manner and in accordance with the provisions of this article as to a first issue of bonds but shall be subject to said first issue.

Source: L. 21: p. 537, § 20. **C.L.** § 2076. **CSA:** C. 90, § 451. **CRS 53:** § 149-2-20. **C.R.S. 1963:** § 150-2-20. **L. 91:** Entire section amended, p. 894, § 26, effective June 5.

37-42-121. Sale of bonds - notice. The board of directors may sell bonds so authorized and issued from time to time as may be necessary for district purposes, having first by resolution declared its intention to do so and having appointed a day and hour therefor. Notice of such sale shall be given by publishing the same for twenty days in a daily newspaper published in the city of Denver, Colorado, and in such other newspapers as the board may designate. The notice shall state the time and place at which sealed bids shall be received to purchase such bonds as shall be offered, and sale shall be made to the highest responsible bidder; except that the board may reject all offers and refuse to sell in case no responsible bid is received for ninety-five cents or more on the dollar.

Source: L. 21: p. 537, § 21. **C.L.** § 2077. **CSA:** C. 90, § 452. **CRS 53:** § 149-2-21. **C.R.S. 1963:** § 150-2-21.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24.

37-42-122. Bonds - assessments. Such bonds and the interest thereon, and all payments due or to become due to the United States under any contract between the district and the United States, which bonds of the district have not been deposited with the United States, shall be paid solely by revenue derived from an annual assessment upon the lands lying within and forming a part of said district, and said lands within said district shall be and remain liable to be assessed

for such payments as provided in section 37-42-126. Public lands of the United States within any district shall be subject to taxation for all purposes of this article to the extent provided by the act of congress approved August 11, 1916, upon full compliance therewith by the district.

Source: L. 21: p. 538, § 22. **C.L.** § 2078. **CSA:** C. 90, § 453. **CRS 53:** § 149-2-22. **C.R.S. 1963:** § 150-2-22.

37-42-123. Rescission of action authorizing bonds. If the landowners of an irrigation district desire to rescind their action authorizing an issue of bonds, they may do so as to any such entire issue remaining unsold in the hands of the board of directors in the same manner as such issue was authorized and upon an affirmative vote of the majority of the total voting strength of the district, whereupon the board of directors shall cancel or destroy said bonds and shall enter that fact, reciting the numbers of such bonds so canceled or destroyed, in the minutes of their proceedings.

Source: L. 21: p. 538, § 23. **C.L.** § 2079. **CSA:** C. 90, § 454. **CRS 53:** § 149-2-23. **C.R.S. 1963:** § 150-2-23. **L. 91:** Entire section amended, p. 894, § 27, effective June 5.

37-42-124. Construction of works - bids - notice - contract - bond. (1) After a plan for construction of irrigation or other works has been adopted and approved as provided in section 37-42-117, and funds provided therefor, the board of directors shall call for bids for the construction of the whole or any part thereof. The notice shall be published for four weeks in such papers as the board shall designate as best suited to give widest publicity, and shall set forth that plans and specifications can be seen at the office of the district, that sealed bids for such construction will be received, and that the contract will be let to the lowest responsible bidder, stating the time and place for opening such bids, which, at such time and place, shall be opened in public. Within ten days from the opening of such bids, the board shall let said contract, in whole or in part, to the lowest responsible bidder, or may reject any or all of said bids and readvertise for other bids, or may proceed to construct such works under the superintendence of the officers and employees of the district. Any person to whom a contract is let under this article shall enter into a bond with good and sufficient sureties to be approved by the board, payable to such district for its use in not less than twenty-five percent of the amount stated in said contract, conditioned for the faithful performance of such contract.

(2) All preliminary engineering and construction work shall be done under the direction of a competent irrigation engineer, and shall be approved by the state engineer of Colorado; except that this section shall not apply in the case of any contract between the district and the United States.

Source: L. 21: p. 539, § 24. **C.L.** § 2080. **CSA:** C. 90, § 455. **CRS 53:** § 149-2-24. **C.R.S. 1963:** § 150-2-24.

37-42-125. Fiscal year - appropriation resolution. (1) The fiscal year of each irrigation district in this state shall commence on January 1 in each year. It is the duty of the board of directors, in accordance with the schedule prescribed by section 39-5-128, C.R.S., to determine the amount of money required to meet the maintenance, operating, and current

expenses for the ensuing fiscal year and to certify said amount by resolution to the board of county commissioners of the county in which the office of the district is located, together with such additional amounts as may be necessary to meet any deficiency in the payment of said expenses theretofore incurred. The board of directors may fix the amount payable for any tract containing one acre or less and, if so, similarly shall certify this amount to the board of county commissioners. The board of directors shall also fix the amount payable by each tract within any district with which the United States has made a contract and shall certify the same to the board of county commissioners.

(2) The amount so fixed shall be in accordance with the federal reclamation laws and the public notices, orders, and regulations issued thereunder and shall be in compliance with any contracts made by the United States with any owners of said lands and in compliance further with the contracts between the district and the United States. The resolution shall be termed the annual appropriation resolution for the next fiscal year, and any debt or liability incurred or warrant issued in excess of the amount therein stated shall be absolutely void, except upon express authority conferred by the landowners at a general or special election.

Source: L. 21: p. 539, § 25. **C.L.** § 2081. **CSA:** C. 90, § 456. **CRS 53:** § 149-2-35. **L. 63:** p. 1003, § 4. **C.R.S. 1963:** § 150-2-25. **L. 77:** (1) amended, p. 1515, § 85, effective July 15.

37-42-126. Assessment of lands - valuation. (1) It is the duty of the county assessor of any county embracing the whole or a part of any irrigation district to assess and enter upon his records as assessor in its appropriate columns the assessment of all lands, including public lands subject to assessment under the congressional act of August 11, 1916, exclusive of improvements, situate, lying, and being within any irrigation district in whole or in part of such county. Immediately after said assessment has been extended as provided by law, the assessor shall make returns of the total amount of such assessment to the board of county commissioners of the county in which the office of said district is located.

(2) All lands within the district for the purpose of taxation under this article shall be valued by the assessor at the same rate per acre; except that in no case shall any land be taxed, or subject to taxation, for irrigation district purposes under this article, or under any other or former law relative to irrigation districts, which by reason of location, or the broken uneven surface, or unsuitable character or quality of the soil is unsuitable for irrigation and cultivation, or which, from any natural cause is not capable of irrigation and cultivation, except at a financial loss, nor shall tracts of land of one acre or less be taxed for irrigation purposes if the board of directors of the irrigation district has fixed an amount payable for each of such tracts. If the amount of water available from the water system of the irrigation district is wholly insufficient for the successful growing and maturing of crops on the entire acreage of lands within the district and susceptible of irrigation therefrom, that fact may be alleged and, upon proof, shall entitle the owner of lands that have never been cultivated and irrigated from the water system of such irrigation district to the relief provided for in this article.

(3) Where a contract is entered into between the United States and an irrigation district organized under this article providing for the payment of charges at an unequal rate per acre, district land so affected shall not be valued by the county assessor under the foregoing provision of this section, but in such case the county assessor shall assess such district land in accordance

with the certificate provided for in section 37-42-125 and in compliance with the terms of such contract between the United States and the district.

Source: L. 21: p. 540, § 26. **C.L.** § 2082. **L. 25:** p. 326, § 1. **CSA:** C. 90, § 457. **CRS 53:** § 149-2-26. **L. 63:** p. 1004, § 5. **C.R.S. 1963:** § 150-2-26.

37-42-127. Levy to pay interest and expenses. (1) It is the duty of the board of county commissioners of the county in which the office of any irrigation district is located, immediately upon receipt of the returns of the total assessment of said district and upon the receipt of the certificates of the board of directors certifying the total amount of money required to be raised as provided in section 37-42-125, to fix the rate of levy necessary to provide the amount of money required to pay the interest and principal of the bonds of said district as the same becomes due; also, to fix the rate necessary to provide the amount of money required for any other purposes provided in this article which are to be raised by the levy of assessments upon the real property of said district; and to certify said respective rates to the board of county commissioners of each county embracing any portion of said district. The rate of levy necessary to raise the required amount of money on the valuation for assessment of the property of said district shall be increased fifteen percent to cover delinquencies.

(2) For the purposes of said district, it is the duty of the board of county commissioners of each county in which any irrigation district is located, in whole or in part, at the time of making levy for county purposes, to make a levy, at the rates above specified, upon all lands in said district within their respective counties and, in case of contract with the United States, in the amounts and on the tracts as fixed and certified by the board of directors. If the board of directors of an irrigation district has certified the amount payable for any tract of one acre or less, it is the duty of the board of county commissioners of each county in which the irrigation district is located, in whole or in part, also to levy such amount against each of such tracts. All taxes levied under this article are special taxes.

Source: L. 21: p. 541, § 27. **C.L.** § 2083. **CSA:** C. 90, § 458. **CRS 53:** § 149-2-27. **L. 63:** p. 1005, § 6. **C.R.S. 1963:** § 150-2-27.

37-42-128. Collection of assessments.

(1) Repealed.

(2) It is the duty of the county treasurer of any county wherein is located the whole or any part of an irrigation district to collect and receipt for all irrigation district assessments levied. The revenue laws of this state for the assessment, levying, and collection of taxes on real estate for county purposes, except as modified in this article, shall be applicable for the purposes of this article, including the enforcement of penalties and forfeitures for delinquent assessments, and, in the collection and enforcement of irrigation district assessments, the county treasurer is authorized to issue such instruments and do such acts at such times, in the same manner and with like effect, as authorized by the general revenue laws concerning such taxes upon real estate for county purposes.

(3) Repealed.

(4) The county treasurer of each county comprising all or a portion only of an irrigation district shall remit to the district treasurer all money collected or received by him or her on account of the district.

(5) Repealed.

(6) The district treasurer shall report monthly to the board of directors of the district the amount of money in the district accounts, the amount of money paid from the district accounts during the previous month, and an account of bonds retired or United States contract payments made, if any.

(7) All such district assessments collected and paid to the county treasurer shall be received by said treasurer in his official capacity, and he shall be responsible for the safekeeping, disbursement, and payment thereof the same as for other moneys collected by him as such treasurer. The county treasurer shall receive for the collection of such assessments such amount as the board of directors may allow, as provided in section 30-1-102, C.R.S. Any assessment collected and paid to the county treasurer for districts that are defunct or have not been in operation for five or more years shall be transferred by the county treasurer to the county general fund.

Source: L. 21: p. 542, § 28. **C.L.** § 2084. **CSA:** C. 90, § 459. **CRS 53:** § 149-2-28. **C.R.S. 1963:** § 150-2-28. **L. 71:** p. 330, § 14. **L. 73:** p. 1531, § 1. **L. 2017:** (1), (3), and (5) repealed and (4) and (6) amended, (HB 17-1030), ch. 16, p. 51, § 9, effective August 9.

Cross references: For collection of taxes, see article 10 of title 39.

37-42-129. Warrants - interest - call. (Repealed)

Source: L. 21: p. 545, § 29. **C.L.** § 2085. **CSA:** C. 90, § 460. **CRS 53:** § 149-2-29. **C.R.S. 1963:** § 150-2-29. **L. 71:** p. 1217, § 17. **L. 73:** p. 1531, § 2. **L. 2017:** Entire section repealed, (HB 17-1030), ch. 16, p. 52, § 10, effective August 9.

37-42-130. Call of bonds - surplus fund. If bonds are issued which are subject to redemption prior to maturity, and if, after the payment of all coupons and bonds due in any fiscal year, it is found that the bond fund of an irrigation district contains an amount of money sufficient therefor, it is the duty of the district treasurer to call such bonds as first become due and payable and to retire such indebtedness. Call shall be made by registered mail, addressed to the holder of such bonds so called at his address of record, giving the number of the bonds called, and notifying the holder thereof, that upon presentation of such bonds with all future due coupons attached, they shall be redeemed at their face value, with interest to date of call. When any bond has been so called, such fact shall be noted upon the bond register of the district treasurer, and money in the amount of its face, with interest to date of call, shall be set aside for its payment from the bond fund, and no coupons upon such bond maturing at a date later than the date of such call shall be paid. If money remains in or is paid into the bond fund after final liquidation of all bonded indebtedness, such money shall be transferred to the general fund by the treasurer of the district.

Source: L. 21: p. 546, § 30. **C.L.** § 2086. **L. 27:** p. 457, § 2. **CSA:** C. 90, § 461. **CRS 53:** § 149-2-30. **C.R.S. 1963:** § 150-2-30.

37-42-131. Payment of general expenses.

(1) Repealed.

(2) (a) For the purposes of defraying the expenses of the organization of the district and the care, operation, management, repair, and improvement of all canals, ditches, reservoirs, and works, including salaries of officers and employees, the board may:

(I) Fix rates of tolls and charges and collect them from all persons using the district's structures or water for irrigation or other purposes;

(II) Provide, in whole or in part, for the payment of the expenditures specified in this subsection (2)(a) by levy of assessments therefor, as provided in section 37-42-126; or

(III) Both fix tolls and levy assessments.

(b) If the money raised by the sale of bonds issued is insufficient and if bonds are unavailable for the completion of the plans of works adopted, the board of directors shall provide for the completion of the plans by levy of an assessment therefor in the same manner in which levies of assessments are made for other purposes.

Source: L. 21: p. 547, § 31. **C.L.** § 2087. **CSA:** C. 90, § 462. **CRS 53:** § 149-2-31. **C.R.S. 1963:** § 150-2-31. **L. 2017:** (1) repealed and (2) amended, (HB 17-1030), ch. 16, p. 53, § 11, effective August 9.

37-42-132. Relief from bonded indebtedness. (1) At any time after the expiration of two years from the date of the issuance of any bonds under this article, any landowner may relieve his lands from the burden of such bonded indebtedness in the following manner: He shall pay to the district treasurer an amount of money sufficient to retire district bonds in such ratio to the total bonded indebtedness of the district as the acreage of lands which he owns within such district bears to the total acreage thereof, subject to such bonded indebtedness, plus fifteen percent; except that, where such district may have outstanding more than one issue of bonds, the bonds of any one issue may be thus retired without reference to other issues; and where such payment is insufficient to furnish money to retire an entire bond, such landowner shall pay such further sum as shall be required to retire an entire bond, and the treasurer shall issue to him a lien bond in a denomination representing such excess payment, bearing the same serial number, of like terms, and with the same rate of interest as the bond of the last serial number so retired.

(2) The treasurer shall thereupon issue to such landowner his official receipt in duplicate, one of which receipts shall be filed with the secretary of such irrigation district and one filed for record in the office of the county clerk and recorder of the county wherein the lands involved are situated. From and after the filing, such lands shall be free and clear from any and all liens, levies, and assessments of such bonded indebtedness for which such payment was made; except that, in the case of a contract with the United States, the provisions of this section shall not apply, but, in such case, the real property of the district shall be and remain liable to be assessed for all payments provided for in such contract with the United States until the obligations under such contract have been paid.

Source: L. 21: p. 548, § 32. **C.L.** § 2088. **CSA:** C. 90, § 463. **CRS 53:** § 149-2-32. **C.R.S. 1963:** § 150-2-32. **L. 91:** (2) amended, p. 895, § 28, effective June 5.

37-42-133. Exclusion of land from district. (1) Any landowner desiring the exclusion of any of his lands from an irrigation district organized under this article shall present to the board of directors of such district his verified petition describing such lands and praying their exclusion by order of such board. He shall allege and show by certificate of the county clerk and recorder of the county wherein such lands are situate that such lands are not subject to any bonded indebtedness of such district and, by certificate of the county treasurer of such county, that all levies for the general fund of said district have been paid upon said lands. Whereupon, said board shall proceed to an examination of the matters alleged in said petition as it sees fit and shall consider the advisability of such exclusion. If it finds that such land is not burdened with any bonded indebtedness of such district, and that all levies made thereon have been paid, or proper security given for payment of such levies as are not yet payable, and that its exclusion from the district would in no way damage or injure other lands of said district, it may order such exclusion, and thereafter such lands shall be dropped from the lists of district lands for all purposes; except that such exclusion shall in no way affect or impair any of the rights or obligations of such district.

(2) The board of directors of an irrigation district is authorized to exclude any lands situate in the district where the board believes that the exclusion of such lands from such district would be in the best interest of other landowners in such district. Such board may order such exclusion, and thereafter such lands shall be dropped from the lists of district lands for all purposes; except that notice shall be published first in a newspaper in said district or county thereof for a period of two successive weeks, and, in the event there is no such newspaper published in such district, such intended order shall be posted at the office of the district board and in at least two other public places within the boundaries of said district, and notice shall also be served upon the owners of the lands proposed to be excluded before the making of such order. Proof of such posting and publication and also of such notice having been served upon the landowner shall be duly made and recorded in the minutes of the board of directors.

(3) However, when the district makes such an order, anyone having a water privilege on such land so excluded shall be reimbursed for the value of such privilege, and the owners of said lands shall have the right to appeal to the district court of the judicial district in which such land is situate to have such order reviewed and set aside, if improperly made. In case a contract has been made between the district and the United States, no change shall be made in the boundaries of the district, and the board of directors shall make no order changing the boundaries of the district until the secretary of the interior assents thereto in writing and such assent is filed with the board of directors.

Source: L. 21: p. 549, § 33. **C.L.** § 2089. **CSA:** C. 90, § 464. **CRS 53:** § 149-2-33. **C.R.S. 1963:** § 150-2-33.

37-42-134. Inclusion of land in district. (1) Landowners representing a majority of the acreage of any tracts of land susceptible of irrigation from the system of any irrigation district already organized may present their petition to the board of directors of such irrigation district, praying that such lands be included within the district. Such petition shall describe each tract of

land sought to be included within such district and give the name of the owner thereof. It shall be accompanied by a map prepared by a competent civil engineer, showing the proposed method of irrigation of the land involved and the susceptibility of its irrigation from the system of such district. Upon the filing of such petition, it is the duty of the secretary of such district to cause notice thereof to be published, at the expense of such petitioners, once each week for three successive weeks in a newspaper designated by the board and of general circulation within such district and to set said petition down for hearing before the board at its next regular meeting after the last of such publications.

(2) At the date set for hearing, such board shall proceed to hear said petition and any objections thereto that have been offered in writing by any landowner of the district or other interested person and may allow or reject said petition in whole or in part in its discretion. As a condition precedent to the granting of such petition, the board of directors shall require the payment into the bond fund of such amount, as nearly as the same can be estimated, as such land as is included by its order would have been assessed on account of such fund if it had been in such district from the date of its organization and, in addition, may require such further payments as it considers just and equitable to be paid into the general fund; but, in case any unentered public land is so included within any irrigation district, such payment shall be assessed against such lands on the records of the district and collected in the manner authorized by the act of congress of August 11, 1916.

(3) In case a contract has been made between the district and the United States, no change shall be made in the boundaries of the district unless the secretary of the interior assents thereto in writing and such assent is filed with the board of directors. Upon such assent any lands excluded from the district shall be discharged from all liens in favor of the United States under a contract with the United States.

Source: L. 21: p. 550, § 34. **C.L.** § 2090. **CSA:** C. 90, § 465. **CRS 53:** § 149-2-34. **C.R.S. 1963:** § 150-2-34. **L. 91:** (1) and (2) amended, p. 895, § 29, effective June 5.

37-42-135. District to lease surplus water. Whenever any irrigation district organized under this article 42 acquires water in excess of its own needs or becomes the owner of water or rights capable of use for other purposes than those for which it was organized, without impairing or injuring such use, it may lease the water or rights for use within or without the district for any beneficial use permitted by decree or applicable law, upon affirmative vote of the board of directors authorizing the lease, and the rentals derived from the lease shall be paid into the general fund of the district. At its option the board of directors may cancel any lease upon which any rental is past due and unpaid.

Source: L. 21: p. 552, § 35. **C.L.** § 2091. **CSA:** C. 90, § 466. **CRS 53:** § 149-2-35. **C.R.S. 1963:** § 150-2-35. **L. 2017:** Entire section amended, (HB 17-1030), ch. 16, p. 53, § 12, effective August 9.

37-42-136. Drainage of lands - surveys. The board of directors of any irrigation district may cause surveys, maps, estimates of cost, and a report of feasibility to be made looking to the drainage of the whole or any part of an irrigation district which may have become, or threatens to become, seeped or too wet or which requires drainage for profitable cultivation. Such surveys,

maps, estimates, and report shall be filed in the office of the district, and such matters shall be submitted to the landowners at a general or special election held not less than sixty days from the date of the filing of such documents. If the landowners express their approval of such drainage undertaking by affirmative vote of a majority of the votes cast at such election, the district may proceed to do such drainage work and shall have like powers with reference thereto, including the levying of an assessment or the issuing of bonds, to defray the expense thereof.

Source: L. 21: p. 552, § 36. **C.L.** § 2092. **CSA:** C. 90, § 467. **CRS 53:** § 149-2-36. **C.R.S. 1963:** § 150-2-36. **L. 91:** Entire section amended, p. 896, § 30, effective June 5.

37-42-137. Sale of surplus water - proceeds. The board of directors may sell property or assets of the district not needed for district use nor essential to its operation from time to time as it directs and upon such notice as it designates, and shall cause the proceeds thereof to be placed in the bond fund or United States contract fund of the district. If the district has no bonded or United States contract indebtedness, then the proceeds shall be placed in the general fund.

Source: L. 21: p. 553, § 37. **C.L.** § 2093. **CSA:** C. 90, § 468. **CRS 53:** § 149-2-37. **C.R.S. 1963:** § 150-2-37. **L. 2017:** Entire section amended, (HB 17-1030), ch. 16, p. 54, § 13, effective August 9.

37-42-138. Confirmation of organization and bonds. (1) The board of directors of any irrigation district organized under this article at any time may file a petition in the district court of the county wherein is situated the office of such district praying for a judicial examination and determination of the question of the validity of the organization of the district, or of any bonds issued, whether sold or not, or of any assessment levied, or of any order, act, proceeding, or contract of said district. Such petition shall set forth the facts whereon the validity of such organization or of such bonds, assessment, order, act, proceeding, or contract is founded and shall be verified by a member of the board.

(2) Thereupon a notice in the nature of a summons shall issue under the hand and seal of the clerk of said court, directed to all landowners, creditors, or other persons interested in said district, naming it, which designation shall be deemed sufficient to give the court jurisdiction of all matters and parties involved and interested. Service shall be obtained by publication of such notice as in the case of publication of summons in an action to quiet title to real property. Any landowner, creditor, or other interested person may move to dismiss or answer said petition within the time allowed therefor. All persons filing motions to dismiss or answers shall be entered as defendants in said cause and their several defenses consolidated for hearing or trial.

(3) Upon hearing, the court shall examine into all matters and things affecting the validity of the matter in controversy, shall make a finding with reference thereto, and shall enter judgment and decree as the case warrants. In reaching its conclusions in such causes, the court shall follow a liberal interpretation of the law and shall disregard informalities or omissions not affecting the substantial rights of the parties, unless it is affirmatively shown that such informalities or omissions led to a different result than would have been otherwise obtained. The Colorado rules of civil procedure shall govern matters of pleading and practice as nearly as may be. Costs may be assessed or apportioned among contesting parties in the discretion of the trial

court. Review of judgments of the district court by an appellate court may be had as in other civil causes.

Source: L. 21: p. 553, § 38. **C.L.** § 2094. **CSA:** C. 90, § 469. **CRS 53:** § 149-2-38. **C.R.S. 1963:** § 150-2-38.

37-42-139. Dissolution of district - election. (1) A plan for the dissolution of any irrigation district organized under this article may be submitted to the landowners at a special election held for that purpose. Such plan must provide for the payment of all district debts and liabilities and the disposition of district assets. If the landowners authorize such dissolution by an affirmative vote of a majority of the entire voting strength of the district, the directors shall proceed to carry out the plan so authorized and, upon the accomplishment thereof, shall file their certificate of such fact with the county clerk and recorder of each county wherein any part of said district is situated.

(2) Thereupon, the district shall be considered at an end; except that, within fifteen days from the date of the vote of the landowners authorizing such dissolution, any landowner or creditor may contest the validity of such proceeding or the legality of the proposed plan of dissolution by action in the district court of the county wherein the district office is situated, and, pending determination in such cause, no action shall be taken by the board of directors thereunder. If any funds remain in the hands of the district treasurer to the credit of such district after its dissolution, such funds shall be distributed among the landowners in proportion to the acreage of their lands within the district.

Source: L. 21: p. 555, § 39. **C.L.** § 2095. **CSA:** C. 90, § 470. **CRS 53:** § 149-2-39. **C.R.S. 1963:** § 150-2-39. **L. 91:** (1) amended, p. 896, § 31, effective June 5.

37-42-140. Districts organized after April 7, 1921. This article 42 applies only to irrigation districts organized after April 7, 1921, and no existing laws in any manner relating to irrigation districts apply to or affect irrigation districts organized after that date, but existing laws and all amendments thereto made after that date remain in and have full force and effect as to all irrigation districts organized prior to April 7, 1921. However, whenever landowners of a majority of the number of acres of the irrigable land in any irrigation district organized prior to April 7, 1921, petition the board of directors to call a special election for the purpose of submitting to the landowners entitled to vote at elections of the irrigation district a proposition to vote, at any regular or any special election called and notice given for such purpose, upon the question whether the irrigation district shall thereafter operate under this article 42, and if two-thirds of the landowners of the irrigation district voting upon the question vote in favor of coming under this article 42, upon the filing of a statement of the results of the election in the manner provided by section 37-41-112, the irrigation district is thereafter governed by this article 42. The election of the district to come under this article 42 does not invalidate any act or proceeding previously done under the laws governing the irrigation district prior to the election and does not impair any obligation of the irrigation district or any right thereunder.

Source: L. 21: p. 555, § 40. **C.L.** § 2096. **L. 31:** p. 434, § 1. **CSA:** C. 90, § 471. **CRS 53:** § 149-2-40. **C.R.S. 1963:** § 150-2-40. **L. 88:** Entire section amended, p. 1230, § 2, effective April 6. **L. 2017:** Entire section amended, (HB 17-1030), ch. 16, p. 54, § 14, effective August 9.

37-42-141. Ratification of irrigation district. If the landowners of an irrigation district entitled to vote at elections have authorized the dissolution of the district in the manner provided by section 37-42-139 but the plan of dissolution so authorized has not been implemented and the district has continued to function as an irrigation district, the district may submit the question of ratification of the district to the qualified voters in a district election as specified in section 37-42-112. If a majority of the votes cast at the election are in favor of the ratification of the district, the prior authorization of dissolution shall be deemed null and void. The directors shall file their certificate of that fact with the county clerk and recorder of the county wherein such district is situated, and the district shall be deemed, for all purposes, to be a de jure irrigation district.

Source: L. 88: Entire section added, p. 1231, § 3, effective April 6. **L. 2017:** Entire section amended, (HB 17-1030), ch. 16, p. 55, § 15, effective August 9.

ARTICLE 43

Irrigation Districts of 1905 and 1921
and Irrigation District Salinity Control Act

Cross references: For publication of legal notices, see part 1 of article 70 of title 24; for single election precinct law, see § 37-41-160.

PART 1

IRRIGATION DISTRICTS OF 1905 AND 1921

37-43-101. Definition of landowner. For the purposes of sections 37-43-101 to 37-43-103, a "landowner" shall be held to be any individual eighteen years of age or older, owning in fee within an irrigation district land in excess of one acre that is subject to irrigation district taxation or assessment, who is a citizen of the United States or has declared his or her intention to become a citizen of the United States and is a resident of the state of Colorado or who is an entryman upon public lands of the United States and is residing thereon. Any landowner shall be eligible to election as a director of the district in which the landowner is entitled to vote.

Source: L. 35: p. 664, § 3. **CSA:** C. 90, § 487. **CRS 53:** § 149-3-3. **C.R.S. 1963:** § 150-3-3. **L. 2002:** Entire section amended, p. 8, § 2, effective March 5.

37-43-102. Landowners to vote for directors on acreage basis. Landowners in irrigation districts in this state who do not have the right to vote for district directors on an acreage basis shall have such right if so authorized as provided in sections 37-43-101 and 37-43-103.

Source: L. 35: p. 663, § 1. **CSA:** C. 90, § 485. **CRS 53:** § 149-3-1. **C.R.S. 1963:** § 150-3-1.

37-43-103. Directors may submit question. At any general or special election held in any irrigation district, the board of directors may submit to the electors of the district the question of voting for directors of the district on an acreage basis; except that no landowner has the right to vote more than eighty acres in the election of directors. If at such election a majority of the votes cast are in favor of the proposition, at all elections of directors held thereafter, each landowner of the district shall be permitted to vote for each office to be filled as many votes as he has acres of land within the district which are subject to district taxes or assessments. A landowner may vote in person or by proxy, and any person acting as proxy for another must file written authority therefor with the election judges, which authority must be retained with the other election proceedings. The candidate receiving the most votes shall be declared elected.

Source: L. 35: p. 663, § 2. **CSA:** C. 90, § 486. **CRS 53:** § 149-3-2. **C.R.S. 1963:** § 150-3-2.

37-43-104. Qualifications of directors and electors. (Repealed)

Source: L. 71: p. 1347, § 2. **C.R.S. 1963:** § 150-3-89. **L. 2002:** Entire section repealed, p. 9, § 3, effective March 5.

37-43-105. Increasing number of directors. The board of directors of any irrigation district in the state of Colorado may submit to the electors of any such district the question of whether or not the number of directors of such district shall be increased from three to five.

Source: L. 45: p. 419, § 1. **CSA:** C. 90, § 487(1). **CRS 53:** § 149-3-4. **C.R.S. 1963:** § 150-3-4.

37-43-106. Calling election - ballot. Such election may be called by any board of directors and shall be called if a petition therefor, signed by thirty percent of the qualified electors in said district, as defined in section 37-43-108, is presented to any such board, which election shall be a special election and the question to be voted upon shall be submitted upon printed ballots on which the said question shall be set forth as follows:

FOR an increase of the number of directors of the .....
Irrigation District from three to five ☐
AGAINST an increase in the number of directors of the .....
Irrigation District from three to five ☐

Source: L. 45: p. 419, § 2. **CSA:** C. 90, § 487(2). **CRS 53:** § 149-3-5. **C.R.S. 1963:** § 150-3-5.

37-43-107. Voting. The preference of voters shall be indicated by inserting a cross mark following either one or the other of the foregoing propositions, and said ballot shall have printed upon the face thereof instructions to the voters, worded as follows:

"To vote for or against an increase in the number of directors of the ..... Irrigation District, a voter shall place a cross mark in the space at the right of the words expressing his wish either 'FOR' or 'AGAINST' such increase."

Source: L. 45: p. 419, § 3. **CSA:** C. 90, § 487(3). **CRS 53:** § 149-3-6. **C.R.S. 1963:** § 150-3-6.

37-43-108. Who may vote. Any qualified elector, as defined in the law under which such district is organized, owning agricultural lands of one acre or more in extent may vote at such election and is entitled to one vote and shall not vote upon an acreage basis regardless of whether or not the landowners in the particular district have the right to vote upon an acreage basis in the election of directors.

Source: L. 45: p. 420, § 4. **CSA:** C. 90, § 487(4). **CRS 53:** § 149-3-7. **C.R.S. 1963:** § 150-3-7.

37-43-109. Canvassing vote - directors-at-large. The vote shall be canvassed by the board of directors at its first regular meeting after such election, and, if a majority of landowners voting at such special election vote for an increase in the membership of directors of the said district from three to five, at their next regular meeting following such election, the board of directors shall appoint two electors within the said district to serve as directors-at-large to represent and act for the entire district and to serve until the next regular election for directors in the district.

Source: L. 45: p. 420, § 5. **CSA:** C. 90, § 487(5). **CRS 53:** § 149-3-8. **C.R.S. 1963:** § 150-3-8.

37-43-110. When directors-at-large elected. At the next general election following such special election, in the event the landowners vote in favor of an increase in the membership of the board of directors, there shall be elected two directors-at-large, one to serve for two years and one for three years, and, at each regular election thereafter held in said district immediately preceding the expiration of the term of office of any such director-at-large, a successor shall be elected to succeed him for a term of three years.

Source: L. 45: p. 420, § 6. **CSA:** C. 90, § 487(6). **CRS 53:** § 149-3-9. **C.R.S. 1963:** § 150-3-9.

37-43-111. Eligibility of directors. The law applicable to the qualification of directors shall be applicable to directors-at-large so appointed or elected.

Source: L. 45: p. 420, § 7. **CSA:** C. 90, § 487(7). **CRS 53:** § 149-3-10. **C.R.S. 1963:** § 150-3-10.

37-43-112. Agricultural college and school lands included. For the purpose of furnishing water and securing water rights for agricultural college and public school lands lying within or adjacent to the boundaries of any irrigation district organized, the state board of land commissioners is authorized to petition all such lands into such irrigation districts.

Source: L. 09: p. 429, § 1. **C.L.** § 2026. **CSA:** C. 90, § 488. **CRS 53:** § 149-3-11. **C.R.S. 1963:** § 150-3-11.

37-43-113. Petition - form and execution. All such petitions shall be in the form provided by law for the petition of other lands into such irrigation districts, and shall be signed, sealed, and acknowledged by the register of the state board of land commissioners on behalf of said board and shall in addition be countersigned by the governor of the state on behalf of the state and, when so signed, sealed, acknowledged, and filed with the board of directors of any irrigation district, shall be deemed to give the assent of said state board of land commissioners and the state of Colorado to the inclusion of all lands therein described in said irrigation district.

Source: L. 09: p. 429, § 2. **C.L.** § 2027. **CSA:** C. 90, § 489. **CRS 53:** § 149-3-12. **C.R.S. 1963:** § 150-3-12.

37-43-114. Assessments. All such lands so included in any irrigation district in this state shall be assessed for irrigation district purposes in the same manner and at the same rate as other lands in such irrigation districts.

Source: L. 09: p. 429, § 3. **C.L.** § 2028. **CSA:** C. 90, § 490. **CRS 53:** § 149-3-13. **C.R.S. 1963:** § 150-3-13.

37-43-115. Mode of payment - receipts. It is the duty of the county treasurer of each county in this state wherein any irrigation district is located and in which such lands have been so included to notify the register of the state board of land commissioners on or before February 1 of each year of the amount of district assessments due on such lands, giving therein the exact description of each tract of land so assessed and the amount of assessments due thereon. Immediately upon receiving such notice, it is the duty of the register of said state board of land commissioners to place the same before said board at its next regular meeting at which it shall examine said notice of assessments due, and, if the same is found correct, the board shall certify the same to the state treasurer who shall pay the same out of any moneys in his hands belonging to said respective land funds howsoever derived and charge the same to said respective funds. Such payment shall be by warrant from the state treasurer to the proper county treasurer, and, when so received by him, he shall issue his receipts therefor in the name of the state board of land commissioners, and shall in addition issue a duplicate receipt to said state treasurer.

Source: L. 09: p. 430, § 4. **C.L.** § 2029. **CSA:** C. 90, § 491. **CRS 53:** § 149-3-14. **C.R.S. 1963:** § 150-3-14.

37-43-116. Purchaser to pay accrued assessments. Upon the receipt of such receipts from said county treasurers, it is the duty of the register of the state board of land commissioners to enter and charge the same against each tract of land so paid on, in a book to be kept by him for that purpose, showing the amount paid, date of payment, and to whom paid. Whenever any of said tracts of land are sold, the purchaser thereof, in addition to the purchase price therefor, shall pay all of such accrued assessments so paid, together with interest thereon, from the date of payment at the rate of six percent per annum, such accrued assessments and interest thereon to be included in the total purchase price to be paid by said purchaser; except that this section shall not apply to such assessments which have been paid by the lessees of any such tracts of land theretofore leased from the state as provided in section 37-43-117.

Source: L. 09: p. 430, § 5. **C.L.** § 2030. **CSA:** C. 90, § 492. **CRS 53:** § 149-3-15. **C.R.S. 1963:** § 150-3-15.

37-43-117. Lessee to pay assessments in addition to rent. In the event that any such tracts of land so included within any irrigation district are leased from the state board of land commissioners, then all such lessees, in addition to the rental paid to said state board of land commissioners, shall pay such an additional amount to said board as will equal the district assessments levied upon such lands for the year in which such rental shall be paid; and such moneys, when so received by the register of the state board of land commissioners, shall be turned in to the state treasurer and kept in a separate fund for the payment of such assessments.

Source: L. 09: p. 430, § 6. **C.L.** § 2031. **CSA:** C. 90, § 493. **CRS 53:** § 149-3-16. **C.R.S. 1963:** § 150-3-16.

37-43-118. Purchasers to pay to register until patent. All contracts for the sale of any such lands included within any irrigation district, in addition to the purchase price to be paid, shall provide that such purchaser, on or before March 1 in each year, until he has secured a patent for such lands, shall pay to the register of the state board of land commissioners an amount to equal the district assessments so levied upon such lands for the year in which such payment is to be made, and such moneys when so received by said register shall be turned in to the state treasurer and kept in a separate fund for the payment of such assessments.

Source: L. 09: p. 431, § 7. **C.L.** § 2032. **CSA:** C. 90, § 494. **CRS 53:** § 149-3-17. **C.R.S. 1963:** § 150-3-17.

37-43-119. Board of directors may exclude land. The board of directors of an irrigation district by resolution may exclude any lands from the district, if such district does not have any outstanding unpaid bonded indebtedness and if the permission of the owner of the fee title and of any equitable owner has first been had or secured for such exclusion.

Source: L. 35: p. 665, § 1. **CSA:** C. 90, § 495. **CRS 53:** § 149-3-18. **C.R.S. 1963:** § 150-3-18.

37-43-120. Land may be excluded at time of refinancing. At any time during the refinancing of the bonded indebtedness of an irrigation district, the board of directors thereof by resolution may exclude any land from such district, provided such exclusion is known to the purchaser of the district's refunding bonds.

Source: L. 35: p. 665, § 2. **CSA:** C. 90, § 496. **CRS 53:** § 149-3-19. **C.R.S. 1963:** § 150-3-19.

37-43-121. Prior exclusion of lands. All exclusions of lands made prior to February 16, 1935, by boards of directors of irrigation districts which would be lawful under the terms and provisions of sections 37-43-119 and 37-43-120 are declared to be lawful.

Source: L. 35: p. 665, § 3. **CSA:** C. 90, § 497. **CRS 53:** § 149-3-20. **C.R.S. 1963:** § 150-3-20.

37-43-122. Irrigation districts to provide drainage. Upon presentation of a petition to the board of directors of an irrigation district signed by not less than two-thirds of the legal voters of such district, each of whom is the owner of five acres or more of lands within the district and has paid the irrigation district taxes in full upon all his real property located within said district during the calendar year preceding the presentation of said petition, any irrigation district organized under the laws relating to such districts may provide for any drainage made necessary by the irrigation provided for by such laws. The officers, agents, and employees of such districts shall have the same powers, duties, and liabilities respecting such drainage, and the construction, repair, maintenance, management, and control thereof as they have respecting such irrigation, and all laws respecting such irrigation or such irrigation districts shall be so construed, applied, and enforced as to apply to such drainage as well as such irrigation.

Source: L. 19: p. 481, § 1. **C.L.** § 2055. **CSA:** C. 90, § 498. **CRS 53:** § 149-3-21. **C.R.S. 1963:** § 150-3-21.

Cross references: For drainage of marsh lands, see article 33 of this title.

37-43-123. Title in seepage or waste waters. Whenever it appears necessary, proper, or beneficial to the lands affected thereby to drain such lands or any portion thereof on account of the irrigation which has been done, or which is intended to be done under such laws, whether for the purpose of more beneficially carrying on such irrigation, or increasing the available water supply of the district or for any other purpose, whether the irrigation works have already been constructed or not, it is the duty of the board of directors to provide for such drainage, and said board and its officers, agents, and employees shall do all necessary and proper acts for the construction, repair, maintenance, and management of drainage work for such purposes. Any irrigation district shall have a first and preferred right to the beneficial use of all seepage, waste, and percolating waters flowing within said district or collected and conveyed by drainage works constructed in any portion of the lands of the district. Any segregated lands drained under the provisions of this section and section 37-43-122 shall be immediately reinstated, placed upon the tax roll by the county assessor, and taxed for irrigation district and drainage purposes, and all of

said lands shall bear their pro rata share of all bonded indebtedness of such irrigation district. Any lands not included in said irrigation district before, which are benefited by said drainage system, shall be assessed by the county assessor and taxed for irrigation district and drainage purposes and shall bear a full proportion of all of said irrigation district bonds and costs of drainage, in accordance with the terms of payment specified by said district.

Source: L. 19: p. 481, § 2. **C.L.** § 2056. **CSA:** C. 90, § 499. **CRS 53:** § 149-3-22. **C.R.S. 1963:** § 150-3-22.

37-43-124. Sale of water rights and property. The board of directors of any irrigation district may sell or dispose of any part or all of the irrigation works, franchises, water rights, or other property of the district when authorized so to do by the vote of a two-thirds majority of the legally qualified electors of the district, in the manner and upon the conditions provided in section 37-43-125, and the authority so vested in the board of directors shall be and remain effective until such sale is fully consummated, unless previously revoked by the vote of a majority of the qualified electors of the district or such sale fails by act of the purchaser.

Source: L. 17: p. 321, § 1. **C.L.** § 1974. **CSA:** C. 90, § 500. **CRS 53:** § 149-3-23. **C.R.S. 1963:** § 150-3-23.

37-43-125. Election - notice - canvass. Whenever it is desired to sell property of the district, the board of directors, by resolution entered in the minutes of their proceedings, shall submit such questions to the qualified voters of said district at a special election of the district called for such purpose or at a general district election when noticed as provided in this section. The notice of said election shall be published and posted for the same length of time and in the same manner and the election shall be conducted the same as in case of an election for an original issue of bonds. The notice shall also contain a general description of the property, or interest therein, to be sold, the conditions of the terms of sale, the time and manner of payment, and such other information as may be necessary to fully advise the voters of the facts, together with the substance of any plan proposed to carry the same into execution and any settlement with the bondholders of the district, or any proposed contract may be published in full. The ballot shall contain such appropriate words as shall enable the electors to indicate their approval or disapproval of the propositions submitted. The returns shall be canvassed and the statements of the results of said election shall be entered and filed in the same manner as in case of an original issue of bonds. Two or more propositions may be submitted at the same election.

Source: L. 17: p. 321, § 2. **C.L.** § 1975. **CSA:** C. 90, § 501. **CRS 53:** § 149-3-24. **C.R.S. 1963:** § 150-3-24.

37-43-126. Determination of validity of sale. (1) In case, upon the canvass of a vote at such election, it is found and declared by said board of directors that a majority of the votes cast at such election have been cast in favor of selling all or part of the dams, reservoirs, canals, franchises, water rights, and other property of the district, then said board of directors may file a petition in the district court of the county wherein is located the office of such board to determine the validity of the proceedings had for the sale of the dams, reservoirs, canals,

franchises, water rights, and other property of such district. The same petition shall set forth the same facts required to be given in the notice of election.

(2) Such actions shall be in the nature of a proceeding in rem and jurisdiction of all parties interested may be had by publication of a notice of the pendency of such action at least once a week for three weeks in some paper of general circulation published in the county and district where the action is pending; except that if the district is situated in more than one county, then the publication shall be made in one newspaper in each county where the district is situated, said newspapers to be designated by the judge of the court having jurisdiction of the proceedings; or the court may provide for notice by posting not less than thirty days before the date set for hearing such petition in any county where no newspaper is published. Jurisdiction shall be complete in thirty days after the posting or last publication of such notice.

(3) Such notice shall be directed as follows:

"To all holders of indebtedness of the ..... irrigation district (inserting the name of the district whose property is to be sold, etc.); to all landowners within said district, and to all others interested in the proposed sale of the dams, reservoirs, canals, franchises, water rights, and other property of said irrigation district", and said notice shall state the filing of said petition by the board of directors, the date of filing said petition, and the court in which filed, and shall further state that the object of such petition is to obtain the sale of said dams, reservoirs, canals, franchises, water rights, and other property of the district briefly described in the same, and shall give the date set by the court for the hearing of said petition.

(4) At or before the time set for the hearing of said petition, anyone interested may appear and file written objections to such petition, and may at the time set for the hearing of said petition appear and contest the validity of the proceedings already had, and of the plan proposed for the sale of the dams, reservoirs, canals, franchises, water rights, and other property of the district or any portion thereof, including the validity of any portion of the indebtedness set out in said petition. At the one hearing the court shall determine the amount of indebtedness of said district, and may determine the validity of any portion thereof, and in said proceeding may adjust and determine the rights and liabilities of all parties, and decree an adoption and execution of the proposed plan. Such action shall be speedily tried and judgment rendered. At the hearing the court shall hear and determine the regularity, legality, and correctness of all proceedings and in doing so shall disregard any error, irregularity, or omission which does not affect the substantial rights of the parties.

(5) The rules of pleading and practice in the Colorado rules of civil procedure and in the Colorado appellate rules not inconsistent with the provisions of sections 37-43-124 to 37-43-130 are made applicable to the proceedings provided in this section. Any party shall have the right to appellate review, as provided by law and the Colorado appellate rules, within ninety days after the entering of final decree by the district court and the case shall be advanced on the docket of the appellate court and disposed of with all convenient speed. Unless appellate review is so pursued, the decree entered in said case by the district court shall be final and binding upon all parties interested in said district, whether as officer, electors, landowners, creditors, or otherwise. The costs of any contest may be allowed and proportioned between the parties or taxed to the losing party, in the discretion of the court, and no contest of any matter or thing provided for in this section shall be made other than in the time and manner specified in this section.

Source: L. 17: p. 322, § 3. **C.L.** § 1976. **CSA:** C. 90, § 502. **CRS 53:** § 149-3-25. **C.R.S. 1963:** § 150-3-25.

37-43-127. Proceedings by elector on failure of board. If no such proceedings have been filed by the board of directors within thirty days after the canvass of said vote, then any qualified elector of the district may bring an action in the district court of the county wherein the office of the board of directors is located. The board of directors shall be made parties defendant and notice shall be served on the members of the board personally, if they can be found in the county; if not, then service by publication as provided in section 37-43-125 shall be sufficient. Proceedings shall be had in the same manner and with the same effect as if brought by the board of directors.

Source: L. 17: p. 324, § 4. **C.L.** § 1977. **CSA:** C. 90, § 503. **CRS 53:** § 149-3-26. **C.R.S. 1963:** § 150-3-26.

37-43-128. Sale. The sale may be made to any person or to a corporation organized under the laws of the state of Colorado, or may be made to the United States, but no sale of water rights shall in any manner impair or be deemed to relinquish any of the sovereign rights of the state of Colorado in the waters of the state or to control and regulate the diversion, use, and distribution thereof.

Source: L. 17: p. 324, § 5. **C.L.** § 1978. **CSA:** C. 90, § 504. **CRS 53:** § 149-3-27. **C.R.S. 1963:** § 150-3-27.

37-43-129. Decree of sale. The court in its decree has the power to make the orders necessary to carry out said proposition or plan for the sale of the dams, reservoirs, canals, franchises, water rights, or other property of the district; but no plan for the sale of the entire property of irrigation districts including the dams, reservoirs, canals, franchises, water rights, and other property of the district shall be approved by the court which does not provide for the ultimate payment or liquidation of all the indebtedness of the district and adequate security for the holders thereof, and as well protect the landowners of said district.

Source: L. 17: p. 325, § 6. **C.L.** § 1979. **CSA:** C. 90, § 505. **CRS 53:** § 149-3-28. **C.R.S. 1963:** § 150-3-28.

37-43-130. Construction. Sections 37-43-124 to 37-43-131 shall be liberally construed to carry out the intent and purpose, and nothing in this article shall be held to curtail or abridge the powers of the district officers, the boards of county commissioners, or the revenue officers of the state in the assessment, levy, or collection of irrigation district taxes, or in any other particular. All such powers are expressly retained and, in addition thereto, such officers have all powers necessary or proper to enable them to fully carry out the provisions of sections 37-43-124 to 37-43-131. The procedure provided in this article shall not be deemed to affect any liens for unpaid taxes or assessments which have been duly levied and assessed, existing at the time of the filing of the petition in the district court; but nothing in sections 37-43-124 to 37-43-131 or in the procedure therein provided shall be construed in any manner to either impair, enlarge, or give

additional rights or powers to the holders of bonds or other evidences of district indebtedness. The board of directors of the district has the right to sell or otherwise dispose of any of the personal property of the district in the ordinary course of business, and nothing in sections 37-43-124 to 37-43-131 shall be taken or held to interfere with such right.

Source: L. 17: p. 325, § 7. **C.L.** § 1980. **CSA:** C. 90, § 506. **CRS 53:** § 149-3-29. **C.R.S. 1963:** § 150-3-29.

37-43-131. Distribution of proceeds. Whenever all of the property of any irrigation district has been disposed of and all of the indebtedness and obligations thereof, if any, have been discharged, the balance of the money of said district shall be distributed to the landowners in said district upon the last assessment roll in the proportion in which each acre of land has contributed to the total amount of said assessments.

Source: L. 17: p. 326, § 8. **C.L.** § 1981. **CSA:** C. 90, § 507. **CRS 53:** § 149-3-30. **C.R.S. 1963:** § 150-3-30.

37-43-132. Purposes for bond issues. Whenever irrigation districts shall be organized or created under the laws of this state, they have power to construct, build, or acquire irrigation works and to purchase or acquire rights-of-way, reservoirs, water rights, and priorities of rights to the use of water, all of which are declared to be public purposes. Such districts shall be special taxing districts with power to levy ad valorem taxes on all taxable land therein and to collect the same and to issue negotiable coupon general obligation bonds for any of said purposes, the principal of and the interest on which shall be payable from such ad valorem taxes as provided in section 37-43-136. If it is proposed that any district to be organized shall issue bonds under this part 1, the petition for the organization thereof and the notice of the election on the question of organization shall so state.

Source: L. 33-34, 2nd Ex. Sess.: p. 57, § 1. **CSA:** C. 90, § 512. **CRS 53:** § 149-3-31. **C.R.S. 1963:** § 150-3-31. **L. 88:** Entire section amended, p. 1231, § 4, effective April 6.

37-43-133. Meeting of landowners. Whenever the board of directors of any irrigation district proposes to issue negotiable coupon general obligation bonds of the district for one or more of said purposes, it shall call a meeting of the owners of land in the district, at which meeting the question of issuing such bonds shall be submitted. Notice of such meeting shall be given by publication once a week in five consecutive weekly issues of an official newspaper published nearest the center of the district, and the secretary of the board, not later than five days after the first publication of said notice, shall mail a copy of said notice, postage prepaid, to each owner of land within the district. In determining who are owners of land in the district the secretary may rely upon the records on file in the office of the county clerk and recorder of the county in which the district is located. Such notice shall designate the time and place of meeting, not less than thirty days after the first publication of the notice, the purpose and the amount of bonds proposed to be issued, the maximum rate of interest thereon not exceeding six percent per annum payable semiannually, and the time during which the bonds shall mature not exceeding twenty-five years.

Source: L. 33-34, 2nd Ex. Sess.: p. 58, § 2. **CSA:** C. 90, § 513. **CRS 53:** § 149-3-32. **C.R.S. 1963:** § 150-3-32.

37-43-134. Voting on bond issue. The president of the board of directors, or in his absence one of the other members of the board of directors of the district, shall preside at such meeting and the secretary of the board shall act as secretary of the meeting. The landowners present shall elect three of their own number to act as judges who shall determine all questions arising concerning ownership of land and the regularity and authenticity of proxies. The owners of land in the district or their duly authorized proxies shall vote by ballot containing the words "for the bonds" and "against the bonds", with spaces opposite wherein the voter may place a cross mark (X) to express his choice. Said ballot shall also have appropriate places for the signature of the voter and the number of acres of land in the district owned by the voter. Each landowner shall be entitled to cast as many votes as he has acres of land in the district. The owner of the fee title to land in the district or the owner of incomplete title to public land in the district on which a filing has been made and proceedings taken to perfect title in good faith and in full compliance with law shall be deemed to be a "landowner" for the purposes of sections 37-43-132 to 37-43-138, and all persons, corporations, partnerships, or entities owning land in the district shall be entitled to vote at said meeting in person or by their duly authorized proxy. All proxies shall be in writing and shall be acknowledged. The judges shall canvass the votes cast at any meeting held pursuant to said sections and shall certify the result thereof to the board of directors of the district.

Source: L. 33-34, 2nd Ex. Sess.: p. 58, § 3. **CSA:** C. 90, § 514. **CRS 53:** § 149-3-33. **C.R.S. 1963:** § 150-3-33.

37-43-135. Resolution of board of directors. If the result so certified shows that votes representing eighty percent of the acres of taxable land in the district have been cast in favor of the proposed bonds, the board of directors, by resolution, may authorize the issuance of negotiable coupon general obligation bonds of the district. Such resolution shall specify the purpose for which the bonds are to be issued, the date thereof, the rate of interest not exceeding six percent per annum payable semiannually, and the maturities thereof. Such bonds shall mature serially commencing not later than five years after the date thereof and extending to a time not exceeding twenty-five years after the date thereof. The amounts which shall mature in each of the years shall be determined by the board of directors of the district and specified in said resolution. The bonds shall be in the denomination of one hundred dollars or some multiple thereof. The said bonds and the coupons attached thereto shall be payable at such places, within or without the state of Colorado, as shall be designated in such resolution. The bonds shall be signed by the president of the board of directors, countersigned by the county treasurer, ex officio treasurer of the district, sealed with the seal of the district, and attested by the secretary of the board. The semiannual interest coupons attached to said bonds shall be executed with the facsimile signature of the president of the board of directors. The county treasurer, ex officio treasurer of the district, shall make a record of all bonds issued pursuant to sections 37-43-132 to 37-43-138 in a book to be kept in his office for that purpose. Bonds issued pursuant to said sections shall be sold at not less than the par value thereof.

Source: L. 33-34, 2nd Ex. Sess.: p. 59, § 4. **CSA:** C. 90, § 515. **CRS 53:** § 149-3-34. **C.R.S. 1963:** § 150-3-34.

37-43-136. Levy of tax - collection. For the purpose of paying such bonds and the interest thereon, the board of directors of any district issuing bonds under this article is authorized to levy ad valorem taxes on all taxable land within the district. Such taxes shall be certified, extended, and collected at the same time and in the same manner as other irrigation district taxes or assessments, and the revenue laws of the state of Colorado relating to the levy, collection, and enforcement of general taxes, the sale of property for the nonpayment of general taxes, and the rights of redemption shall apply, as nearly as may be, to such irrigation district taxes. The lien of irrigation district taxes levied pursuant to the provisions of sections 37-43-132 to 37-43-138 shall be on a parity with the lien of general taxes, and no sale of land for the nonpayment of general taxes shall extinguish the lien of irrigation district taxes levied to pay the principal of or the interest on any bonds issued under this part 1. In the event that the amount of taxes collected in any year is not sufficient to pay the principal of or interest on bonds due and payable in such year, the deficit shall be made up in the next annual levy.

Source: L. 33-34, 2nd Ex. Sess.: p. 60, § 5. **CSA:** C. 90, § 516. **CRS 53:** § 149-3-35. **C.R.S. 1963:** § 150-3-35. **L. 88:** Entire section amended, p. 1231, § 5, effective April 6.

Cross references: For taxation generally, see title 39.

37-43-137. Bonds receivable in payment of taxes. Bonds of any maturity issued under this part 1 may be used at face value in paying taxes levied to pay the principal of such bonds; except that bonds maturing after the year in which the bonds are so used shall have all future due coupons attached thereto and no credit shall be allowed for such coupons. Interest coupons attached to such bonds and maturing in any year may be used at face value in paying taxes levied for such interest which becomes due and payable in that year.

Source: L. 33-34, 2nd Ex. Sess.: p. 61, § 6. **CSA:** C. 90, § 517. **CRS 53:** § 149-3-36. **C.R.S. 1963:** § 150-3-36. **L. 88:** Entire section amended, p. 1232, § 6, effective April 6.

37-43-138. Construction. The provisions of sections 37-43-132 to 37-43-138 shall not be construed to be exclusive of the provisions of any other laws authorizing the issuance of irrigation district bonds, but shall be construed to be supplemental thereto, and owners of land within any existing irrigation district, with or without the owners of additional lands, may organize a new irrigation district having all the powers conferred by sections 37-43-132 to 37-43-138, by taking such steps and proceedings as may be required by law for such organization.

Source: L. 33-34, 2nd Ex. Sess.: p. 61, § 7. **CSA:** C. 90, § 518. **CRS 53:** § 149-3-37. **C.R.S. 1963:** § 150-3-37.

37-43-139. Bonds to retire warrants. Whenever any irrigation district formed under the laws of this state has issued warrants for any purposes for which said irrigation district could lawfully have issued its bonds, it is lawful for said irrigation district to issue bonds for the

purpose of retiring said warrants, submitting the question at a general or special election to the qualified voters of said district and otherwise complying with the provisions of the laws of this state in relation to the issuing of bonds by irrigation districts, and when so issued said bonds may be sold in the same manner as provided by law, at not less than ninety-five percent of the face value thereof, and the proceeds applied to the payment of said warrants and accrued interest, or said bonds may be exchanged for said warrants and accrued interest at not less than the face value of said bonds.

Source: L. 13: p. 385, § 1. **C.L.** § 1992. **CSA:** C. 90, § 519. **CRS 53:** § 149-3-38. **C.R.S. 1963:** § 150-3-38.

37-43-140. Subject to outstanding bonds. All bonds issued by any irrigation district under the provisions of section 37-43-139 shall be subject to all bonds previously issued by such district.

Source: L. 13: p. 385, § 2. **C.L.** § 1993. **CSA:** C. 90, § 520. **CRS 53:** § 149-3-39. **C.R.S. 1963:** § 150-3-39.

37-43-141. Levy of tolls or charges. The board of directors of any irrigation district within the state may annually or otherwise levy and assess such tolls or charges as may be necessary to raise moneys for the maintenance and operation or payment of existing unfunded indebtedness of the district, said tolls or charges to be levied and assessed pro rata upon each acre of land within the district for the use of water for the irrigation thereof. By resolution, the board may refuse to deliver water to any land within such district when the owner thereof, within such time as may be fixed by such resolution, fails or refuses to pay in cash, to the secretary or treasurer of the district, such tolls or charges. Where a district takes over by deed or assignment or otherwise any irrigation system or works, or parts thereof, either upon reorganization or otherwise, the board of directors of any such district in like manner may collect any and all assessments theretofore levied for maintenance and operation by its predecessor in the ownership or operation of such system, whether such predecessor is a district or a mutual company, if such assessments are assigned to and become the property of the district seeking to collect the same.

Source: L. 37: p. 785, § 1. **CSA:** C. 90, § 479(1). **CRS 53:** § 149-3-40. **C.R.S. 1963:** § 150-3-40.

37-43-142. Where payment of tolls made. Payments of tolls or charges provided for in section 37-43-141 shall in each instance be made to the secretary or treasurer of such district as may be directed by the board of directors thereof.

Source: L. 37: p. 786, § 2. **CSA:** C. 90, § 479(2). **CRS 53:** § 149-3-41. **C.R.S. 1963:** § 150-3-41.

37-43-143. Water may be refused - when. The board of directors of any irrigation district within the state of Colorado, by resolution, may refuse to deliver water to any land within

such district upon which land any tax or assessment has been levied for the payment of principal or interest due or to become due on the bonds or obligations of such district and which are then delinquent or past due under the general revenue laws of this state. Such board may continue to refuse delivery of water to such lands until all such past due or delinquent assessments have been paid in full with all interest and penalties as provided by law.

Source: L. 37: p. 786, § 3. **CSA:** C. 90, § 479(3). **CRS 53:** § 149-3-42. **C.R.S. 1963:** § 150-3-42.

37-43-144. Issuance of refunding bonds. The board of directors of any irrigation district, under the conditions provided in sections 37-43-144 to 37-43-151, may issue negotiable coupon bonds, denominated as refunding bonds for the purpose of taking up, paying off, and refunding any outstanding indebtedness of the district, whether due or not and whether such indebtedness is now existing or may be created, when there are not funds in the treasury in such district available for the payment of such indebtedness. Such refunding bonds sought to be issued shall not exceed the amount lawfully owing and unpaid upon such indebtedness so to be taken up, paid, and refunded. Such refunding bonds shall not bear interest greater in rate or amount per annum than that borne by the indebtedness to be taken up, paid, and refunded. The authority vested in the board of directors by any election held pursuant to sections 37-43-144 to 37-43-151 shall be and remain effective until the indebtedness so authorized to be refunded has been paid, redeemed, or refunded. Such refunding bonds may be issued and used to pay off all or part of any indebtedness then outstanding.

Source: L. 35: p. 670, § 1. **CSA:** C. 90, § 521. **CRS 53:** § 149-3-43. **C.R.S. 1963:** § 150-3-43.

37-43-145. Board of directors to issue bonds. (1) Whenever it is desired to issue refunding bonds under sections 37-43-144 to 37-43-151, the board of directors of the district, by resolution entered in the minutes of their proceedings, shall call a special election of the qualified voters of said district for the purpose of voting upon the issuance of such refunding bonds, or such question may be submitted at a general election of the district if the notice complies with the requirements set forth in this section. At any election held under sections 37-43-144 to 37-43-151, the question of refunding all or any part of the then outstanding indebtedness of an irrigation district may be submitted for determination, whether such indebtedness is due or not.

(2) The notice of said election shall be published and posted for the same length of time and in the same manner, and the election shall be conducted the same as in the case of an election for an original issue of bonds. The notice shall specify the time and place of holding said election, the amount and date of the indebtedness sought to be taken up and paid, the amount and rate of interest of the refunding bonds proposed to be issued, and the dates when said refunding bonds will become due.

(3) At such election the ballots shall contain the words "Refunding Bonds - Yes" and "Refunding Bonds - No". The return shall be canvassed by the board of directors in the same manner as in the case of an original issue of bonds and a similar statement of the results of said election shall be entered in the records of said board and filed with the county clerk and recorder

of the county in which the office of said district is located. If it is determined upon such canvass that a majority of the legally qualified electors of the district have voted "Refunding Bonds - Yes", the board of directors shall cause bonds in such amount to be issued. Such bonds may mature serially, with or without an option to redeem the same prior to maturity, or they may have one maturity date, not exceeding fifty years from date, and be redeemable on and after a designated date not later than ten years from the date of said bonds.

(4) If serial bonds are issued, the last series shall mature in not more than fifty years from the date of said bonds, and the first series shall become due not more than ten years from the date of said bonds, and the series shall be so arranged that some part of the principal of said bonds, never less than one percent, shall become due each year during the maturity period until the entire principal is paid. If optional bonds are issued, the board of directors of the district, when funds are available for redemption purposes at any time after the optional date, shall call for offerings for redemption, and, out of the redemption fund provided for the payment of said bonds, shall pay any bonds presented for payment pursuant to such call to any holders thereof who offer the same for payment and redemption for the lowest amount below par, including accrued interest, to the extent of the funds available.

(5) Available funds not used for the retirement of bonds shall be used in the redemption of outstanding bonds commencing with the lowest outstanding number. For the ultimate redemption of such refunding bonds, the board of county commissioners of each county embracing any portion of an irrigation district, at the time of making tax levies for county purposes commencing not more than ten years from the date of said refunding bonds, shall levy annually a separate tax upon the lands within a district subject to taxes for irrigation district purposes sufficient to discharge, at maturity, the principal of the refunding bonds issued, registered, and outstanding, pursuant to the provisions of sections 37-43-144 to 37-43-151; and except for the payment of an issue of refunding bonds payable serially, each annual tax levy for the payment of principal shall be equal, as nearly as can be. Such bonds shall be as nearly as possible in the same general form as an original issue of bonds of said district, with interest represented by coupons payable semiannually upon June 1 and December 1 of each year, at the office of the county treasurer of the county in which the organization of the district was effected, and, at the option of the board of directors, at such other places within or outside the state of Colorado as the board may designate in said bonds.

Source: L. 35: p. 671, § 2. **CSA:** C. 90, § 522. **CRS 53:** § 149-3-44. **C.R.S. 1963:** § 150-3-44.

37-43-146. Submission of question to electors. The board of directors at the same election, or at any future general or special election, may submit to the qualified voters of the district the question of whether the coupons upon such refunding bonds shall bear interest at a rate not to exceed six percent per annum after their maturity, if said coupons are not paid upon presentation. In such case the ballots shall contain the words, "Interest on coupons - Yes", and "Interest on coupons - No", or words equivalent thereto. The vote upon said question shall be canvassed at the same time and in the same manner as the vote for the issue of refunding bonds and, if a majority of the qualified electors of the district have voted "Interest on coupons - Yes", the board of directors shall certify the result and cause the same to be entered of record and filed the same as in the case of an election for refunding bonds. Thereafter, when any of said coupons

are presented for payment on or after their due dates and there are insufficient funds on hand to pay said coupons, the county treasurer shall stamp on the back of said coupons, "Not paid for want of funds", and all coupons so stamped shall bear interest from that date until paid at the same rate as the principal of the bond.

Source: L. 35: p. 673, § 3. **CSA:** C. 90, § 523. **CRS 53:** § 149-3-45. **C.R.S. 1963:** § 150-3-45.

37-43-147. Sale of bonds. In case of the sale of said refunding bonds or any portion thereof for cash, the same procedure shall be followed as in case of the sale of an original issue of bonds; but, if no bid of par or better is received at public sale, said bonds may be sold at private sale. No bond shall be sold for less than ninety-five percent of the par value thereof. The money realized from said sale shall be used only for the purpose of paying the indebtedness for which said refunding bonds were issued. Any part or all of said issue of refunding bonds may be exchanged for the indebtedness to be refunded; but the par value of the refunding bonds exchanged shall not exceed the par value of the indebtedness refunded thereby. All indebtedness so discharged, either by payment or exchange, shall immediately be canceled by the county treasurer of the county in which the office of the district is located.

Source: L. 35: p. 674, § 4. **CSA:** C. 90, § 524. **CRS 53:** § 149-3-46. **C.R.S. 1963:** § 150-3-46.

37-43-148. County treasurer to register bonds. At the time of the issue by exchange or sale of refunding bonds authorized under the provisions of sections 37-43-144 to 37-43-151, each bond shall be registered by the county treasurer, who is ex officio district treasurer, in a book to be kept by him for such purpose. Coupons evidencing unearned interest shall be detached and canceled. Each bond so registered shall have endorsed thereon the treasurer's certificates of such registration; and only such bonds so certified shall be valid; but such certificate shall be conclusive evidence that the bond so certified has been duly issued in full conformity with the provisions of sections 37-43-144 to 37-43-151. Immediately upon the registration of any refunding bond, the treasurer shall certify the fact to the board of county commissioners of the county in which the office of the district is located, in order that the requisite tax levies may be made in due course to meet the maturing interest upon and principal of such bond.

Source: L. 35: p. 674, § 5. **CSA:** C. 90, § 525. **CRS 53:** § 149-3-47. **C.R.S. 1963:** § 150-3-47.

37-43-149. Collection of taxes. Taxes for the payment of interest and principal of said refunding bonds shall be levied and thereafter collected in the same manner as provided by law for the levy and collection of taxes for the payment of interest and principal of an original issue of irrigation district bonds. Such bonds and coupons shall be receivable in payment of said taxes, as is provided in the irrigation district law concerning original bond issues. All taxes for interest shall be kept by the county treasurer as a special fund to be used in the payment of interest only, and all taxes for the redemption of such refunding bonds shall be kept by such county treasurer

as a special fund to be used for the redemption of the principal only of such refunding bonds. The revenue laws of this state for the assessment, levying, and collection of taxes on real estate for county purposes and the disbursement of such taxes, except as modified by sections 37-43-144 to 37-43-151 or by the irrigation district laws of this state, shall be applicable for the purposes of sections 37-43-144 to 37-43-151, including the enforcement of penalties and forfeitures for delinquent taxes; but if in any year a sufficient amount is not collected for payment in full of principal or interest installments falling due in such year on any specific piece of property in said irrigation district, the delinquency on such property shall be included in the next assessment thereafter levied against said piece of property.

Source: L. 35: p. 675, § 6. **CSA:** C. 90, § 526. **CRS 53:** § 149-3-48. **C.R.S. 1963:** § 150-3-48.

Cross references: For collection of taxes, see article 10 of title 39.

37-43-150. Validity of bonds examined. The validity of refunding bonds issued pursuant to sections 37-43-144 to 37-43-151 may be judicially examined, approved, and confirmed in the same manner as an original issue of bonds of such district.

Source: L. 35: p. 676, § 7. **CSA:** C. 90, § 527. **CRS 53:** § 149-3-49. **C.R.S. 1963:** § 150-3-49.

37-43-151. Relief of lands from burden of refunded indebtedness. At any refunding bond election held under the provisions of sections 37-43-144 to 37-43-151, the board of directors may submit to the voters of the district the question of giving landowners the privilege of relieving their lands from the lien of taxes or assessments to be levied for the payment of said refunding bonds and the interest thereon. If authorized by a majority of those voting on the question, any owner of land within the district, who is not in default in the payment of irrigation district taxes or assessments, may relieve his lands from the burden of such refunded indebtedness by paying to the district treasurer an amount of money sufficient to retire district bonds in such ratio to the total bonded indebtedness of the district as the acreage of lands which he owns within such district bears to the total acreage thereof subject to such bonded indebtedness plus fifteen percent for the privilege of discharging his total indebtedness to the district at one time. The treasurer shall thereupon issue to such landowner his official receipt in duplicate, one of which receipts shall be filed with the secretary of such irrigation district and one filed for record in the office of the county clerk and recorder of the county wherein the lands involved are situate, and from and after such filing, such lands shall be free and clear from all liens, levies, and assessments of such bonded indebtedness for which such payment was made.

Source: L. 35: p. 676, § 8. **CSA:** C. 90, § 528. **CRS 53:** § 149-3-50. **C.R.S. 1963:** § 150-3-50.

37-43-152. Board may contract with United States. The board of directors of any irrigation or drainage district, organized under the laws of the state of Colorado, in its discretion, whenever it is determined by such board to be for the best interests of any such district, may

contract with the United States or any governmental agency thereof to fund or refund any or all of the outstanding indebtedness of such district together with the interest accrued and unpaid thereon.

Source: L. 35: p. 677, § 1. **CSA:** C. 90, § 529. **CRS 53:** § 149-3-51. **C.R.S. 1963:** § 150-3-51.

37-43-153. Provisions of contract. Such contract and the proceedings taken by any such district pursuant thereto and in connection with the authorization and issue of refunding bonds, in case the indebtedness of such district is reduced by the issuance of such refunding bonds, may include provisions whereby the board of directors of said district covenants and agrees on behalf of said district to levy and collect assessments in excess of the amounts which would meet the principal of and the interest on said bonds as the same fall due if all such assessments were paid in full, in order to create and maintain a reserve fund to insure the prompt payment of the principal of and interest on said bonds; but such covenants and agreements shall never provide for assessments in amounts greater than such assessment would have been had such indebtedness of such district not been so reduced. Said provisions and covenants, when included in the proceedings adopted by the board of directors of any such district, shall inure to the holders of said refunding bonds.

Source: L. 35: p. 668, § 2. **CSA:** C. 90, § 530. **CRS 53:** § 149-3-52. **C.R.S. 1963:** § 150-3-52.

37-43-154. Prior contracts validated. Contracts entered into prior to April 10, 1935, between irrigation and drainage districts and the United States or any agency thereof, for any of the purposes stated in section 37-43-152, and all proceedings taken pursuant thereto for the creation of reserve funds are hereby ratified, confirmed, and validated.

Source: L. 35: p. 668, § 3. **CSA:** C. 90, § 531. **CRS 53:** § 149-3-53. **C.R.S. 1963:** § 150-3-53.

37-43-155. Powers cumulative. The powers conferred in sections 37-43-152 to 37-43-154 upon the board of directors of any irrigation or drainage district organized as provided in section 37-43-152 are cumulative in character and are in addition to all powers possessed by any such board under the laws of the state of Colorado or which may be conferred upon such board by said laws.

Source: L. 35: p. 668, § 4. **CSA:** C. 90, § 532. **CRS 53:** § 149-3-54. **C.R.S. 1963:** § 150-3-54.

37-43-156. Irrigation districts may dissolve. Any irrigation district organized under the laws of the state of Colorado may be dissolved in the manner provided in sections 37-43-156 to 37-43-166.

Source: L. 15: p. 307, § 1. **C.L.** § 2035. **CSA:** C. 90, § 533. **CRS 53:** § 149-3-55. **C.R.S. 1963:** § 150-3-55.

37-43-157. Petition - where filed - contents. A majority of the legally qualified electors of any irrigation district, or the holders of the legal title to a majority of the whole acreage of said district, or seventy-five percent or more in amount of the holders of the bonds issued by said irrigation district may propose the dissolution of said district by a petition signed by the petitioners. In case of a petition by the bondholders, said petition may be signed by said bondholders or by any one or more persons or corporations representing said bondholders and filed with the board of directors of said district, which petition shall set forth the amount of the outstanding bonds, coupons, and other indebtedness, if any, insofar as known to the petitioners, together with a general description of the same and the amount overdue thereon, if any, and the holders, insofar as known, showing the amount of each description of indebtedness and the ownership, insofar as known, of the same and also the estimated cost of the dissolution of said district. The petition shall also state the assets of said district, including the irrigation system, if any, dams, reservoirs, canals, franchises, and water rights. If any proposition has been made by the holders of said indebtedness to settle the same, said proposition, together with any plan proposed to carry the same into execution, shall be included in said petition.

Source: L. 15: p. 307, § 2. **C.L.** § 2036. **CSA:** C. 90, § 534. **CRS 53:** § 149-3-56. **C.R.S. 1963:** § 150-3-56.

37-43-158. Dissolution - special election. (1) Upon the filing of said petition with the board of directors of said district, the board shall call a special election, at which shall be submitted to the qualified electors of such district the question whether or not said district shall be dissolved, its indebtedness liquidated, and its assets distributed in accordance with the plan so proposed or, in case no plan has been proposed, in accordance with a plan which shall be proposed by said board of directors in the notice of the election. No such election shall be called until either the assent of all holders of valid indebtedness against the district known to the directors is obtained, or else provision shall be made in said plan for the ultimate payment or liquidation of the claims of such nonassenting holders, either in money or, in the alternative, until all tax levies required by the laws of the state of Colorado for the payment of such indebtedness have been made; except that action shall not be taken upon said petition and said election called, in case contract has been made between the district and the United States, until the secretary of the interior has assented thereto in writing and such assent is filed with the board of directors.

(2) Notice of such election must be given in the same manner and for the same time as notice of election of directors of an irrigation district under the laws of the state of Colorado. Such notice must specify the time of holding the election, the fact that it is proposed to dissolve the district, and a brief summary of the plan proposed for liquidating all its indebtedness or for the making of all tax levies required by the laws of the state of Colorado for the payment of such indebtedness and for disposing of its assets. Such election shall be held and the result thereof determined and declared in all respects as nearly as practicable in conformity with the provisions governing the election of directors in irrigation districts. At such election the ballot shall contain

the words "Dissolution of the District - Yes" and "Dissolution of the District - No" or words equivalent thereto.

Source: L. 15: p. 308, § 3. **L. 17:** p. 314, § 21. **C.L.** § 2037. **CSA:** C. 90, § 535. **L. 41:** p. 522, § 1. **CRS 53:** § 149-3-57. **C.R.S. 1963:** § 150-3-57.

37-43-159. Determination of validity of dissolution. (1) In case, upon the canvass of the vote at such election, it is found and declared by said board of directors that a majority of the votes cast at such election have been cast in favor of "Dissolution of the District - Yes", then the board of directors shall file a petition in the district court of the county wherein is located the office of such board to determine the validity of the proceedings had and of the proposed plan for the dissolution of such district. Such action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested may be had by publication of a notice of the pendency of the proceeding at least once a week for three weeks in some newspaper of general circulation published in the county where the action is pending; but if the district is situate in more than one county, then the publication shall be made in one newspaper in each county wherein the same is situate, such newspaper to be designated by the court having jurisdiction of the procedure. The court may provide for notice by posting the same not less than thirty days before the date set for the hearing of such petition in any county where no newspaper is published. Jurisdiction shall be complete in thirty days after the posting or last publication of such notice.

(2) The notice may be directed as follows:

"To all holders of indebtedness of the ..... irrigation district (insert the name of the district sought to be dissolved), to all landowners within said district, and to all others interested in the proposed dissolution of the said irrigation district", and said notice shall state the filing of the petition by the board of directors, the date of filing said petition and the court in which filed, and shall further state that the object of said petition is to obtain the dissolution of said irrigation district, and shall give the date set by the court for the hearing of said petition.

(3) At the time set for the hearing of said petition, anyone interested may appear and contest the validity of the proceedings already had, and of the plan proposed for the dissolution of said district or any portion thereof, including the validity of any portion of the indebtedness set out in said petition. The court shall determine the amount of the indebtedness of said district, and may determine the validity of any portion thereof, and in said proceeding, may adjust and determine the rights and liabilities of all parties and decree an adoption and execution of the proposed plan. Such action shall be speedily tried and judgment rendered.

(4) Any party shall have the right of appellate review, as provided by law and the Colorado appellate rules, at any time within thirty days after the entering of final judgment, and the case shall be heard and determined by an appellate court of the state within three months after taking the appeal. Unless appeal is made within such thirty days, the decree entered in said cause shall be final and binding upon all parties interested in said district, whether as officers, electors, landowners, creditors, or otherwise.

Source: L. 15: p. 309, § 4. **C.L.** § 2038. **CSA:** C. 90, § 536. **CRS 53:** § 149-3-58. **C.R.S. 1963:** § 150-3-58.

37-43-160. Contents of petition - procedure - costs. Such petition to the district court shall set forth the facts required to be set forth in the petition to the board of directors and all the proceedings had thereunder, and at the hearing the court shall hear and determine the regularity, legality, and correctness of all proceedings, and in doing so shall disregard any error, irregularity, or omission which does not affect the substantial rights of the parties. The rules of pleading and practice in the Colorado rules of civil procedure and in the rules of the supreme court not inconsistent with the provisions of sections 37-43-156 to 37-43-168 are made applicable to the proceeding provided in this article. The costs of any contest may be allowed and proportioned between the parties or taxed to the losing party in the discretion of the court, and no contest of any matter or thing provided for in said sections shall be made other than in the time and manner specified in sections 37-43-151 to 37-43-168.

Source: L. 15: p. 310, § 5. **C.L.** § 2039. **CSA:** C. 90, § 537. **CRS 53:** § 149-3-59. **C.R.S. 1963:** § 150-3-59.

37-43-161. Elector may bring action. If no such proceeding has been filed by the board of directors within thirty days after the canvass of said vote, then any qualified elector of the district may bring an action in the district court of the county wherein the office of the board of directors is located. The board of directors shall be made parties defendant, and notice shall be served on the members of the board personally if they can be found in the county; if not, then service by publication as provided in section 37-43-159 shall be sufficient. Proceedings shall be had in the same manner and with the same effect as if brought by the board of directors.

Source: L. 15: p. 310, § 6. **C.L.** § 2040. **CSA:** C. 90, § 538. **CRS 53:** § 149-3-60. **C.R.S. 1963:** § 150-3-60.

37-43-162. May organize corporation to acquire assets. A corporation may be organized under general laws for the purpose of acquiring the assets of said district, including the irrigation system, if any, dams, reservoirs, canals, franchises, water rights, and all other property of any nature belonging to said district, which corporation shall have all the powers, rights, and franchises of corporate bodies organized under general laws and in addition shall have such further powers as may be necessary to possess and carry on said irrigation system and exercise such franchise and water rights.

Source: L. 15: p. 311, § 7. **C.L.** § 2041. **CSA:** C. 90, § 539. **CRS 53:** § 149-3-61. **C.R.S. 1963:** § 150-3-61.

37-43-163. Decree of court. (1) The court in its decree shall have power to make the orders necessary to carry out said proposition or plan for the liquidation of the indebtedness and distribution of the property of said district, including the right to apportion any indebtedness found due, and to declare said portions of any said indebtedness liens upon the various parcels and lots of land within the district, and may decree a sale or exchange of its assets in such manner as may effectuate said proposition, as the said court may judge best, and as, in the opinion of the court, provides an adequate security for the ultimate payment or complete liquidation of all the indebtedness of said district. Said sale or exchange of said assets may be

made either in one lot or in such parcels as may be provided, and the decree may provide for conveyance of said irrigation system, including the dams, reservoirs, canals, franchises, and water rights, and also of all of the other assets of the district and for the exchange thereof for outstanding indebtedness and the cancellation of such indebtedness. Said court may also provide by decree for the ultimate payment of all or any part of the indebtedness of said district by directing a continuance of the levy and assessment of taxes upon the lands included in said district in the manner provided by the laws of this state in relation to irrigation districts.

(2) At any time prior to the actual execution of the proposed plan for dissolution, whether before or after entry of the decree, the proceeding for approval of such plan may be dismissed by the court and such dissolution may be abandoned when it is made to appear to the court that a majority of the qualified electors of the irrigation district have voted for the dismissal of such proceeding and abandonment of such proposed dissolution at an election regularly held for the purpose of voting on such question and that such dissolution plan and proceeding can feasibly and equitably be abandoned and dismissed at that time. Notice of such election shall be given in the same manner and for the same time as notice of election of directors of an irrigation district under the laws of the state of Colorado, and such notice shall specify the time of holding the election and the matter to be voted upon. Such election shall be held and the result thereof determined and declared in all respects as nearly as practicable in conformity with the provisions governing the election of directors in irrigation districts. The court in its decree dismissing any such proceeding under the provisions of this subsection (2) has the power to make all orders necessary to effectuate the abandonment of such dissolution plan and the continuation of such irrigation district.

Source: L. 15: p. 311, § 8. **C.L.** § 2042. **CSA:** C. 90, § 540. **CRS 53:** § 149-3-62. **L. 63:** p. 1007, § 1. **C.R.S. 1963:** § 150-3-62.

37-43-164. Apportionment of indebtedness. In any such proceeding for the dissolution of any irrigation district, the district court also has power, subject to such terms and conditions as it may deem just and equitable under the circumstances, to apportion the bonded indebtedness of the district among the various tracts of land within said district, each irrigable acre being liable for the same amount, and to provide for the release and extinguishment of the lien securing the bonds of said district or a part or portion thereof against all or any of said tracts of land upon the payment of all or a pro rata amount of said bonded indebtedness by the landowner either in cash or by the surrender by said landowner of an equivalent amount of said district bonds, coupons, or warrants. In the event the lien of said bonds, coupons, or warrants is so extinguished pursuant to said decree of said district court against any tract of land within said district, it is the duty of the county treasurer to issue a certificate to said landowner evidencing the extinguishment of said lien, and said certificate may be recorded and when recorded shall be conclusive evidence that the land described therein has been released and relieved from the lien securing the bonds of said district.

Source: L. 15: p. 311, § 9. **C.L.** § 2043. **CSA:** C. 90, § 541. **L. 41:** p. 523, § 2. **CRS 53:** § 149-3-63. **C.R.S. 1963:** § 150-3-63.

37-43-165. Plan must provide for adequate levies. No plan of liquidation shall be approved by the court which does not provide for the making of all levies required by the laws of the state of Colorado for the payment of all valid indebtedness of the district. In the petition mentioned in section 37-43-157, it shall not be necessary to include in the schedule of indebtedness any bond, coupon, warrant, or other indebtedness, claim, or demand which has been barred by the laws of this state, nor shall it be necessary to include in the schedule of indebtedness any bond, coupon, warrant, or other indebtedness for the payment of which all levies required by the laws of the state of Colorado have been made prior to the filing of said petition with the board of directors of said irrigation district, nor shall it be necessary in winding up the affairs of any district organized under the laws of this state to pay all or any portion of a debt or obligation of such district for the enforcement of which debt or obligation a suit is barred by the laws of this state, nor shall it be necessary to pay, except from the proceeds of tax levies therefor already made, all or any portion of a debt or obligation of such district for the payment of which all levies required by the laws of the state of Colorado have been made.

Source: L. 15: p. 312, § 10. **C.L.** § 2044. **CSA:** C. 90, § 542. **L. 41:** p. 524, § 3. **CRS 53:** § 149-3-64. **C.R.S. 1963:** § 150-3-64.

37-43-166. Foreclosure subject to prior taxes. In case the court decrees the establishment of a lien against any portion of the lands in said district, or against any of the property of said district, the decree shall provide for the foreclosure of such liens upon the failure to make any payments for which said liens are given at the time the same become due under the terms of the decree entered in such proceeding. All conditions of such foreclosure, including the existence or nonexistence of a right to redeem therefrom, shall be within the discretion of the court. Nothing in sections 37-43-156 to 37-43-168 and nothing in the procedure provided for in this article shall be deemed to affect any liens for unpaid taxes or assessments which have been duly levied and assessed and existing at the time of the filing of the petition in the district court.

Source: L. 15: p. 312, § 11. **C.L.** § 2045. **CSA:** C. 90, § 543. **CRS 53:** § 149-3-65. **C.R.S. 1963:** § 150-3-65.

37-43-167. Disposition of surplus. Whenever all the property of such irrigation district has been disposed of, and all indebtedness and obligations thereof, if any, have been discharged, the balance of the money of said district shall be distributed to the assessment payers in said district as named in the last assessment roll in the proportion in which each has contributed to the total amount of said assessments.

Source: L. 15: p. 312, § 12. **C.L.** § 2046. **CSA:** C. 90, § 544. **CRS 53:** § 149-3-66. **C.R.S. 1963:** § 150-3-66.

37-43-168. Procedure where district is solvent. Irrigation districts which are free from debt may be dissolved under sections 37-43-156 to 37-43-168. In such cases, it shall not be necessary that the proceedings for the dissolution of said district shall be passed upon by the district court, as prescribed in section 37-43-159, but, after the holding of the election in the district and the declaration of the result, a certificate, signed by the president and secretary of the

district, shall be filed with the county clerk and recorder of each county in which the district is situated, which certificate shall state the number of signers to the petition for dissolution and shall recite the calling of an election, the holding of said election, and the result thereof. Said certificate shall bear the seal of the district. It is the duty of said respective clerk and recorders to record all such certificates in the records of the respective counties, and, upon filing of such certificate with the said county clerk and recorders the dissolution of said district shall be complete.

Source: L. 15: p. 313, § 13. **C.L.** § 2047. **CSA:** C. 90, § 545. **CRS 53:** § 149-3-67. **C.R.S. 1963:** § 150-3-67.

37-43-169. Dissolution of inactive irrigation districts. Whenever, for a period of five successive years, any irrigation district organized under the laws of the state of Colorado has failed to transact any business for which such district was organized, or its board of directors has failed to hold a meeting for the purpose of transacting any business for the benefit of such district, or the board of directors has failed to certify the annual appropriation resolutions to the board of county commissioners during such period or, during such period, there has been no election of directors or there is no duly elected, qualified, and acting board of directors due to death, resignation, or otherwise, or if, for a like period, the irrigation works of the district has been abandoned by such district, the indebtedness of said irrigation district shall be paid and such irrigation district may be dissolved, not only in the manner provided by law prior to April 7, 1921, but also in the manner provided in sections 37-43-169 to 37-43-178.

Source: L. 21: p. 507, § 1. **C.L.** § 2097. **CSA:** C. 90, § 546. **CRS 53:** § 149-3-68. **C.R.S. 1963:** § 150-3-68.

37-43-170. Petition for payment of indebtedness. The president, secretary, any officer or director, any legally qualified elector of such district, or any holder of outstanding bonds of said district may file, in the district court of the county wherein is located the principal office of such irrigation district or of the counties wherein the greater portion of the acreage of such irrigation district lies, a petition, duly verified, setting forth any one or more of the foregoing reasons for the payment of the indebtedness or dissolution of such irrigation district, or both, and setting forth any other reasons showing just cause therefor, and setting forth, as nearly as such petitioner shall be able to ascertain, a list of the outstanding indebtedness of the district and the names and addresses of the creditors of the district.

Source: L. 21: p. 508, § 2. **C.L.** § 2098. **CSA:** C. 90, § 547. **CRS 53:** § 149-3-69. **C.R.S. 1963:** § 150-3-69.

37-43-171. Jurisdiction - order for hearing. Upon the filing of such petition, the district court shall be vested with jurisdiction of the subject matter and shall forthwith ascertain from testimony or other evidence, as nearly as may be, the names and addresses of all the creditors and bondholders, or their counsel or representative, of said district and shall make an order requiring each of the owners of the lands included within the boundaries of such irrigation district, and the legal holders of any indebtedness of such irrigation district, and all persons who

may be affected in any manner by such proceedings to appear before such district court upon a certain day, to be designated in such order, not less than twenty days after service of notice of such order, as provided in section 37-43-172, there to show cause why the said petition should not be granted.

Source: L. 21: p. 508, § 3. **C.L.** § 2099. **CSA:** C. 90, § 548. **CRS 53:** § 149-3-70. **C.R.S. 1963:** § 150-3-70.

37-43-172. Notice of hearing. Immediately upon the making of such order by said district court, the clerk of such court shall issue a notice of such order, in the nature of a summons, under his hand and the seal of such court, notifying all persons included within such order of the contents thereof, which notice may be served either personally in the same manner as provided for the service of summons under the Colorado rules of civil procedure, or by publication once a week for three successive weeks in some newspaper, to be designated in such order, of general circulation published in the county where such court is held, or, in case there is no such newspaper, then by posting the same in at least three conspicuous places in such county, to be designated by such order, one of which places shall be within the boundaries of such irrigation district, and by mailing a copy of such published notice, by registered mail at least thirty days before the date of any such hearing, to each of the creditors and bondholders of the district and their representatives and attorneys, insofar as known to or ascertainable by the court.

Source: L. 21: p. 508, § 4. **C.L.** § 2100. **CSA:** C. 90, § 549. **CRS 53:** § 149-3-71. **C.R.S. 1963:** § 150-3-71.

37-43-173. Notice - how addressed. Neither such notice nor such order shall be addressed to any person by name, but it shall be sufficient if it is addressed to any and all owners of land in such irrigation district, to the legal holders of any claims of indebtedness against said district, and to all persons interested in said proceedings.

Source: L. 21: p. 509, § 5. **C.L.** § 2101. **CSA:** C. 90, § 550. **CRS 53:** § 149-3-72. **C.R.S. 1963:** § 150-3-72.

37-43-174. Completion of service. Service of such published or posted notice shall be deemed complete at the expiration of ten days after the last publication or posting and mailing thereof. At the expiration of the time required by such order to show cause, and not less than twenty days after the service of such notice, whether by personal service or by publication or posting, such district court shall be vested with complete jurisdiction over both the subject matter of such petition and of all parties in any manner concerned or affected by it, and thereafter its proceedings shall be governed by the Colorado rules of civil procedure except only as modified or controlled by sections 37-43-169 to 37-43-178.

Source: L. 21: p. 509, § 6. **C.L.** § 2102. **CSA:** C. 90, § 551. **CRS 53:** § 149-3-73. **C.R.S. 1963:** § 150-3-73.

37-43-175. Answer or contest - default. Within the time required by such order to show cause, any person interested in the subject matter of such petition, including any owner of lands in said irrigation district or the holder of any of its indebtedness whether bonded or otherwise, may appear and move to dismiss, plead, or answer to such petition, or contest the same, in the same manner as in civil actions under the Colorado rules of civil procedure wherein he might be defendant; and for all purposes the nonappearance of any landowner in said district, after due notice of such order, shall be taken as his consent to the granting of such petition and all proceedings had thereon.

Source: L. 21: p. 510, § 7. **C.L.** § 2103. **CSA:** C. 90, § 552. **CRS 53:** § 149-3-74. **C.R.S. 1963:** § 150-3-74.

37-43-176. Proceedings in rem - accounting. (1) All proceedings upon such petition shall be considered as in the nature of proceedings in rem, and the court has power to make any proper orders affecting the rights of all parties interested therein, and may order all of the corporate property of said irrigation district to be sold or otherwise disposed of for the benefit of its creditors and the good of the lands or landowners thereof, and shall take a full and complete accounting of all the assets and liabilities of such district, and provide for the payment of all its indebtedness of any sort, either by the sale of its corporate property or by the levy of assessments or taxes upon all the lands within the boundaries of such district, which lands shall be assessed for the same amount per acre, or by both such means and methods. The district court may enter such other and further orders from time to time for additional levies as may be necessary to pay and discharge all the indebtedness of said district, whether in the original amount of said indebtedness or any compromise amount which may be offered by the creditors and bondholders and approved by the court.

(2) All assessments or taxes shall be collected and their collection enforced by and according to the methods provided by law for the collection of taxes and assessments for irrigation district purposes, but it shall not be necessary for any board of directors of such district to take any part in such proceedings, but certified copies of the orders, findings, or judgments of the district court filed with the board of county commissioners shall be sufficient authority for the board of county commissioners of the proper county to make the levies of taxes or assessments against the district lands in said orders, findings, or judgments provided.

(3) If the court orders the sale of any district property, a commissioner shall be appointed for such sale and conveyance of the property, and to report to the court, and any funds obtained from any such sales shall be deposited with the district treasurer for the payment of district indebtedness. Sufficient additional amounts shall be added to the levies to pay the costs of any such proceedings in the district court, and, after collection, moneys derived from such levies for such purposes shall be paid by the district treasurer upon order of court and any surplus shall be used to pay district indebtedness. In case any outstanding warrants or bonds of the district are surrendered to the court for compromise or for the purpose of aiding in the closing up of the district affairs, or for other purposes, the court may enter judgment in behalf of each such creditor for the amount of the indebtedness ascertained to be due or which such creditor consents he will accept in satisfaction of such indebtedness and such judgment shall be sufficient warrant upon the district treasurer to pay the amount thereof out of the funds of the district obtained upon levies and collection of taxes and assessments or from other sources. When all the outstanding

indebtedness of the district has been paid, the district court, if so petitioned, may enter findings and decree dissolving such irrigation district.

Source: L. 21: p. 510, § 8. **C.L.** § 2104. **CSA:** C. 90, § 553. **CRS 53:** § 149-3-75. **C.R.S. 1963:** § 150-3-75.

37-43-177. Indebtedness of inactive districts. (1) In addition to the methods provided in sections 37-43-169 to 37-43-178, the following method of providing for the naming of directors and ascertaining and providing for the payment and discharge of the indebtedness of inactive or abandoned irrigation districts may be followed:

(a) Whenever any irrigation district organized prior to April 7, 1921, in this state has no duly elected or appointed and acting board of directors, by reason of the death, resignation, expiration of the terms of office of its former directors, or from any other cause, and no action has been taken by the electors of said district to fill such vacancies in its directorate by election or appointment as provided by law, upon petition filed and presented by any landowner, creditor, or bondholder of the irrigation district and upon notice given as provided in this section, the district court in and for the county in which the office of said district is located, by order, shall appoint not less than two nor more than three persons to act as directors of said district until their successors have been elected by the district and qualified as provided by law. Such directors so appointed by the district court shall be selected either from electors of said district or from owners of lands therein, although not otherwise qualified as electors of said district. If any person so appointed refuses to qualify as such, the court may appoint others in the place of those so refusing. The persons so appointed who qualify as directors shall file a certified copy of such order of court with the county clerk and recorder of said county in lieu of the statement of the results of election of directors required to be filed by the secretary of the district by section 37-41-112, and said directors so appointed shall have all the powers of, and shall otherwise qualify in the same manner provided by law for, directors elected by the district.

(b) If it appears to the court, upon the hearing, that there are not two or more electors or owners of land in said district who are ready and willing to accept such appointment and to qualify as such directors, the court, by order duly entered, shall direct the county assessor of the county in which the office of the district is located and it is thereupon his official duty to forthwith ascertain and certify to the court and thereafter certify to the board of county commissioners of said county, on or before October 15 of that year and succeeding years until directors of said district are elected or appointed, the amount and maturities of the outstanding bonds of said district, the amount of the unpaid interest thereon, the amounts and payees of the several outstanding warrants of said district, and the number of acres of land in said district which are burdened and obligated for the payment of bonded indebtedness and the number of acres subject to taxation for the payment of the general indebtedness of such district. Such certificate by the assessor shall have the same force and effect as the annual appropriation resolution required by law to be certified to the board of county commissioners by the directors of the irrigation district.

(c) The petitioners may submit to the court in any such proceeding any offer, proposition, or contract of compromise with holders of outstanding bonds and interest coupons of said district, wherein it is proposed to issue warrants of said district in exchange for said bonds and coupons and providing for the amounts to be levied from year to year to pay such

warrants; and, if it appears to the court that said proposition or contract of compromise affords an equitable method of paying off said outstanding indebtedness, the court shall enter an order directing an election to be held at some convenient point at or near the location of the last office of the district for the purpose of submitting the question of the approval or rejection of such offer, proposition, or contract of compromise to a vote of the electors of the district. The election shall be conducted, and returns thereof made to the court, by the clerk of the court upon four weeks' published notice in the newspaper published nearest the place of holding said election. If a majority of the electors voting at said election vote in favor of said offer, proposition, or contract, or, in event no votes are cast, upon returns by the clerk, the court shall enter an order directing the carrying out of said offer, proposition, or the execution of said contract.

(d) If there are no directors of said district, the board of county commissioners of the county in which the office of the irrigation district is located, or should be located according to law, is hereby given the powers of directors of such district and shall act in the name of the district for the purpose of carrying out such offer or proposition or executing such contract and any warrants necessary to fulfill the terms of said offer, proposition, or contract, upon filing with the county clerk and recorder of said county a certified copy of said order of the court, and said board shall thereupon notify the county assessor of the amount of money to be collected from year to year as fixed and determined by said proposition or contract and the warrants so issued, which said certificate shall be followed by the county assessor in making certificate to the board of county commissioners. If the electors of the district reject such offer, proposition, or contract, the court may in like manner submit other or different propositions or contracts that may be proposed, and the proceedings shall be held open by the court for such purpose.

(e) All such proceedings before the district court shall be proceedings in rem and shall be entitled "In the matter of the ..... irrigation district, for appointment of directors and other purposes", and notice of the hearing upon such petition shall be given by publication in a newspaper of general circulation published nearest the office of the district for the time required for publication of summons as provided by the Colorado rules of civil procedure, and copies of such printed notice shall be mailed by the clerk of the court to the last-known directors and secretary of said district, as shown by the records of the county clerk and recorder of the county in which the office of the district is or was last located, and to all creditors, bondholders, or owners of warrants of said irrigation district, as nearly as the court and county assessor may be able to ascertain, at least three weeks prior to the date of such hearing. Any landowner or creditor of said district may appear and plead to or answer said petition and may offer testimony at said hearing. The court shall liberally construe sections 37-43-169 to 37-43-178 in carrying out the provisions of this section and shall retain jurisdiction of such proceedings until final provision has been made to pay off the indebtedness of any such irrigation district.

Source: L. 21: p. 512, § 9. **C.L.** § 2105. **CSA:** C. 90, § 554. **CRS 53:** § 149-3-76. **C.R.S. 1963:** § 150-3-76.

37-43-178. Appeals. Appellate review as provided by law and the Colorado appellate rules shall lie to review the orders, judgments, or decrees of the district court entered in either of the proceedings provided in sections 37-43-169 to 37-43-178, and the supreme court shall advance such cases upon its docket. The supreme court may provide for further proceedings upon said petitions and may make further rules of procedure in such cases in the same manner

and to the same extent as it may provide amendments or further rules of procedure under the Colorado rules of civil procedure.

Source: L. 21: p. 516, § 10. **C.L.** § 2106. **CSA:** C. 90, § 555. **CRS 53:** § 149-3-77. **C.R.S. 1963:** § 150-3-77.

37-43-179. Dissolution - where bondholders are unknown. Any irrigation district organized under the laws of the state of Colorado in which bonds have been issued and in which said bonds were not registered as required by law, and the whereabouts of the bondholders is unknown, and more than twenty years has elapsed since the maturity date of the last issue of said bonds in said district may be dissolved as provided in sections 37-43-179 to 37-43-182.

Source: L. 51: p. 519, § 1. **CSA:** C. 90, § 555(12). **CRS 53:** § 149-3-78. **C.R.S. 1963:** § 150-3-78.

37-43-180. Petitions for dissolution. Any person who is the owner of real property situated in said district sought to be dissolved may file a verified petition in the district court of the county wherein is located the principal office of such irrigation district or of the county wherein lies the greater portion of the acreage of such irrigation district, setting forth in said petition the facts upon which petitioner relies for dissolution of such irrigation district, including the fact that the bonds previously issued were not registered as required by law, that the whereabouts of said bondholders is unknown, and that more than twenty years has elapsed since the maturity date of the last issue of said bonds.

Source: L. 51: p. 519, § 2. **CSA:** C. 90, § 555(13). **CRS 53:** § 149-3-79. **C.R.S. 1963:** § 150-3-79.

37-43-181. Notice of hearing. (1) After the filing of said petition, the court shall thereupon enter an order fixing a day certain for the hearing of said petition, said date not to be less than forty-five days from the date on which said petition was filed. Immediately upon making such order by the district court, the clerk of said court shall issue a notice of such order, in the nature of a summons, under the hand and seal of the court, notifying all persons in interest of the contents of said order. Said notice shall be served in the same manner as provided for the service of summons under the Colorado rules of civil procedure or by publication thereof once a week for three successive weeks in a newspaper, to be designated by the court, of general circulation published in the county where such court is held, or, if there is no such newspaper in said county, publication of said notice shall be in a newspaper designated by the court.

(2) Service of said published notice shall be deemed complete at the expiration of ten days after the last publication of said notice, at which time the court shall be vested with complete jurisdiction over the subject matter of such petition and all of the parties in any manner concerned or affected by it. Before the time of completion of service of notice, any person interested in the subject matter of said petition may appear in and contest the same in the same manner as in civil actions under the Colorado rules of civil procedure. The nonappearance of any bondholder concerned at the time of the hearing of said petition, or prior thereto, shall be considered as his consent to the granting of such petition and all proceedings had thereon. All

proceedings upon such petition shall be considered as in the nature of proceedings in rem, and the court has power to make any proper orders affecting the rights of all parties concerned.

Source: L. 51: p. 520, § 3. **CSA:** C. 90, § 555(14). **CRS 53:** § 149-3-80. **C.R.S. 1963:** § 150-3-80.

37-43-182. Disposition of unpaid funds. If, at the time of the entry of the order of dissolution, there remains in the funds of any county treasurer any moneys for the redemption of said bonds, the court shall require, by its proper order, said county treasurer to disburse said funds to any persons who present bonds for redemption and in proportion to the total value of such bonds presented. Such county treasurer, before disbursing any of said money, shall cause the publication of a notice, in the manner set forth in section 37-43-181, that said funds will be disbursed on a day certain not sooner than ninety days from the date of the first publication of said notice.

Source: L. 51: p. 520, § 4. **CSA:** C. 90, § 555(15). **CRS 53:** § 149-3-81. **C.R.S. 1963:** § 150-3-81.

37-43-183. Application. The provisions of sections 37-43-183 to 37-43-189 shall apply only to irrigation districts having a bonded indebtedness of twenty dollars or more per acre and to lands in such described irrigation districts upon which the general property taxes have been delinquent and unpaid for more than five years.

Source: L. 33: p. 646, § 1. **CSA:** C. 90, § 556. **CRS 53:** § 149-3-82. **C.R.S. 1963:** § 150-3-82.

37-43-184. Treasurer to strike off lands to county. When lands situate in an irrigation district, having an outstanding bonded indebtedness or indebtedness evidenced by outstanding warrants for which there are no available funds for payment, are sold for delinquent taxes assessed for state, county, and school district purposes, or any one or more of said purposes, with or without levies for irrigation district taxes or assessments, and there are no bidders at said sale for said lands in the amount of taxes assessed against the same, the treasurer, as in other cases, shall strike said lands off to the county for the amount of the state, county, and school district taxes and issue a certificate the same as in other cases. The treasurer shall offer separately said lands for sale for irrigation district taxes or assessments, if any, and sell the same to the person who bids the amount of the assessments for irrigation purposes against said lands. Such bidder may pay in cash or by such other obligations of said district as are acceptable for such purpose. If there is no bidder when said lands are offered for sale for the irrigation district assessments, the same shall be struck off to the district. In either event a certificate of sale for irrigation district assessments shall be executed and delivered to the purchaser or said district with a notation thereon by the treasurer showing the outstanding certificate of sale held by the county and the amount thereof.

Source: L. 33: p. 646, § 1. **CSA:** C. 90, § 557. **CRS 53:** § 149-3-83. **C.R.S. 1963:** § 150-3-83.

37-43-185. Redemption. The person holding said certificate of purchase for irrigation district taxes, or the irrigation district, or any persons to whom said district assigns said certificate issued to it, upon payment of the amount due the county for state, county, and school district taxes, together with costs of sale and interest as provided by law, or for such amount as may be fixed by the board of county commissioners, may redeem from the sale to said county, and the amount so paid shall be endorsed upon and added to the certificate of sale issued for irrigation district assessments or taxes.

Source: L. 33: p. 647, § 2. **CSA:** C. 90, § 558. **CRS 53:** § 149-3-84. **C.R.S. 1963:** § 150-3-84.

37-43-186. Lands offered for sale - when. Lands covered by an outstanding certificate held by the county shall not again be offered for sale until said certificate is redeemed or assigned. Subsequent taxes assessed against said land shall be endorsed upon such certificate and shall become an additional amount due and payable thereon.

Source: L. 33: p. 647, § 3. **CSA:** C. 90, § 559. **CRS 53:** § 149-3-85. **C.R.S. 1963:** § 150-3-85.

37-43-187. When county entitled to tax deed. If any such certificate of sale issued to the county is not sold or assigned within three years from the date of the sale, thereupon the county may apply for a tax deed and shall be entitled to such tax deed the same as provided by law for other purchasers at tax sales. After the execution of said deed, the county shall be entitled to the rents, issues, and profits from any such land the same as any other owner. Such tax deed shall name the board of county commissioners as grantee and tax deeds may be executed and delivered, based upon certificates now held by counties, as well as certificates which may hereafter be issued covering lands in irrigation districts having an outstanding indebtedness, as provided in this article.

Source: L. 33: p. 648, § 4. **CSA:** C. 90, § 560. **CRS 53:** § 149-3-86. **C.R.S. 1963:** § 150-3-86.

37-43-188. County may sell by quitclaim deed. At any time the county may sell by quitclaim deed any such land so acquired for the best price obtainable in the opinion of the board, which price is to be fixed by the board of county commissioners; and the purchase price, as well as the net amount realized as rental on such lands, shall be applied upon and apportioned to the payment of taxes for state, county, and school district purposes in proportion to the amount due at the time said tax deed is executed and delivered.

Source: L. 33: p. 648, § 5. **CSA:** C. 90, § 561. **CRS 53:** § 149-3-87. **C.R.S. 1963:** § 150-3-87.

37-43-189. Continuation of lien of bonded indebtedness. No such sale shall relieve the land so sold from the lien of a bonded indebtedness, but the county, if it becomes the owner of any such land, shall not be obligated or liable for any such bonded indebtedness, interest, or

other assessments or levies on account of irrigation district purposes, but the same shall be enforceable against the land, and not otherwise.

Source: L. 33: p. 648, § 6. **CSA:** C. 90, § 562. **CRS 53:** § 149-3-88. **C.R.S. 1963:** § 150-3-88.

PART 2

IRRIGATION DISTRICT SALINITY CONTROL ACT

37-43-201. Short title. This part 2 shall be known and may be cited as the "Irrigation District Salinity Control Act".

Source: L. 88: Entire part added, p. 1227, § 1, effective April 6.

37-43-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Contracting district" means an irrigation district which has entered into a salinity control contract.

(2) "Irrigation district" means an irrigation district formed pursuant to the provisions of article 41 or 42 of this title.

(3) "Salinity control contract" means a contract made between an irrigation district and the United States pursuant to the "Colorado River Basin Salinity Control Act", 43 U.S.C. sec. 1571, as amended, for the construction, improvement, operation, and maintenance of lateral ditches and pipelines or for any combination of such purposes.

(4) "Salinity control lateral" means a lateral ditch or pipeline constructed or improved pursuant to a salinity control contract.

Source: L. 88: Entire part added, p. 1227, § 1, effective April 6.

37-43-203. Applicability - exercise of authority. The provisions of this part 2 shall apply only to irrigation districts formed prior to January 1, 1988. The powers and authority conferred by this part 2 may be exercised only within the boundaries of such an irrigation district, as such boundaries existed on January 1, 1988.

Source: L. 88: Entire part added, p. 1228, § 1, effective April 6.

37-43-204. Irrigation district - authority to contract. Subject to authorization by a vote of the electors as provided in section 37-43-211, an irrigation district formed prior to January 1, 1988, shall have and may exercise all rights and powers necessary or incidental to enter into, implement, and perform a salinity control contract.

Source: L. 88: Entire part added, p. 1228, § 1, effective April 6.

37-43-205. Special assessment. (1) (a) To the extent that the expenses of the operation and the maintenance of salinity control laterals are in excess of annual reimbursements payable

to a contracting district by the United States under a salinity control contract, the contracting district may levy special assessments upon real estate within the contracting district which is entitled to receive water through the salinity control laterals. The special assessments shall be made as provided in this article. The laws of this state relating to the review, correction, collection, and enforcement of other district taxes shall apply to the special assessment; except that revenue derived from each such special assessment shall be excluded in the year in which such assessment is first levied in computing the limitations specified in part 3 of article 1 of title 29, C.R.S.

(b) The board of directors of a contracting district shall provide and certify a description of the real estate within the contracting district and within the county which the board determines to be entitled to receive water through salinity control laterals. The assessor shall assess and enter upon his records the assessed valuation of all real estate, including public lands subject to assessment under the act of the United States congress of August 11, 1916, exclusive of improvements, which is within the contracting district and served by the salinity control laterals. Such assessment shall be based upon values at the same rate per acre. Tracts of land of one acre or less shall not be assessed if the board of directors of the contracting district has otherwise fixed the amount to be paid by each tract of one acre or less.

(c) Immediately after assessment has been made, the assessor shall make a return to the board of county commissioners of the county in which the contracting district's office is located of the total amount of assessed valuation of the real estate served by salinity control laterals within the contracting district and, if the board of directors of the contracting district has specified a fixed amount for tracts of one acre or less, the number of such tracts in the area served by such laterals within the contracting district. The board of directors of the contracting district shall certify to the board of county commissioners of the county in which the contracting district's office is located the total amount of the special assessment and the amount, if any, payable by tracts of one acre or less. The board of directors of the contracting district may include in the special assessment an amount of up to fifteen percent of the expenses of operation and maintenance not reimbursed under a salinity control contract to cover delinquencies.

(d) Upon receipt of the returns of the total assessment of the contracting district and receipt of the certification from the board of directors of the contracting district, the board of county commissioners shall levy the special assessment upon all tracts of land of one acre or less in the amount established by the board of the contracting district, if any, and shall fix the rate of levy necessary to provide the balance of the special assessment certified by the board of directors of the contracting district. The board of county commissioners of the county in which the contracting district's office is located shall certify the rates thus established to the board of county commissioners of each county in which any portion of real estate served by the salinity control laterals is located, and such boards shall make the levy, at the rate specified, upon the lands in their respective counties.

(2) In lieu of the special assessment taxes specified in subsection (1) of this section, a contracting district may charge and collect toll charges for deliveries of water through salinity control laterals to obtain additional funds to defray operation and maintenance expenses of such laterals not reimbursed under a salinity control contract. The board of directors of a contracting district may, from time to time, establish schedules of such toll charges based upon a reasonable apportionment, as determined by the board, among the users deriving water through such salinity

control laterals. Deliveries of water may be suspended or withheld from a water user who is delinquent in payment of toll charges.

Source: L. 88: Entire part added, p. 1228, § 1, effective April 6.

37-43-206. Authority to obtain loans to defray expenses. Upon authorization of its board of directors, a contracting district shall have the authority to obtain loans, upon such terms and granting such security for repayment thereof as the board deems proper, to defray the annual expenses of operation and maintenance required to perform a salinity control contract. Such loans shall not be subject to any other requirement or limitation in this article or in articles 41 to 43 of this title.

Source: L. 88: Entire part added, p. 1229, § 1, effective April 6.

37-43-207. Power of eminent domain. In order to carry out the purposes of this part 2, a contracting district shall have the power of eminent domain to acquire, within the boundaries of the district, existing lateral ditches, pipelines, and appurtenances thereto and interests therein, easements, rights-of-way, and such other rights and interests in property, including property devoted to a public purpose, as may be required in order to carry out the purposes of this part 2. The power of eminent domain granted to a contracting district pursuant to this section shall not extend to the acquisition of: Water rights; laterals which have been and as of April 6, 1988, are improved so as to achieve the purposes of the federal "Colorado River Basin Salinity Control Act" as determined by the United States bureau of reclamation; and ditch rights in a lateral with respect to which the owners of a majority of the acreage entitled to receive water therefrom have not agreed to have such lateral improved under the provisions of such federal act. If the compensation to be paid for the taking or acquisition of interests in property by a contracting district is to be paid or reimbursed by the United States, the question of whether such compensation shall be made need not be submitted to a vote of the qualified voters of such district.

Source: L. 88: Entire part added, p. 1229, § 1, effective April 6.

37-43-208. Contracts - reimbursement by United States. If payments required under contracts made by a contracting district for construction, improvement, operation, or maintenance of facilities, or for supplying of materials or services, in implementation of a salinity control contract are to be paid for or reimbursed by the United States, to the extent that such payments exceed the expenses that would have been incurred by a contracting district in the thorough and timely operation and maintenance of its salinity control lateral absent their improvement pursuant to a salinity control contract, then such contracts need not be submitted to a vote of the qualified voters of the contracting district.

Source: L. 88: Entire part added, p. 1229, § 1, effective April 6.

37-43-209. Submission of plans to state engineer - not required. (1) Notwithstanding the provisions of section 37-41-104 (1), a contracting district shall not be required to submit to the state engineer:

(a) Plans for the construction, operation, or maintenance of salinity control laterals; or

(b) Information concerning such salinity control laterals.

(2) Notwithstanding the provisions of section 37-41-104 (1), a contracting district shall not be required to obtain a decision from the state engineer as to the feasibility of construction, operation, and maintenance of salinity control laterals.

Source: L. 88: Entire part added, p. 1230, § 1, effective April 6. **L. 91:** IP(1) and (2) amended, p. 896, § 32, effective June 5.

37-43-210. Compensation of director of contracting district. Amounts paid to a director of a contracting district for services rendered pursuant to a salinity control contract shall be excluded from and not considered to be a part of compensation subject to the limitations imposed by section 37-41-108 or 37-42-110 (3).

Source: L. 88: Entire part added, p. 1230, § 1, effective April 6.

37-43-211. Creation of contracting district - election. An irrigation district proposing to become a contracting district shall submit the question of whether to become a contracting district at a special election called for that purpose. Copies of the contract proposed to be entered into shall be maintained at the office of the district from the date of notice of such election until the election is held, and such copies shall be available for inspection by landowners of the district during business hours. Each landowner who owns property within the district which is assessed for district taxes shall be entitled to cast one vote for each acre, or fraction thereof, of land owned by such landowners in the district. If a majority of the votes cast at such election are in favor of the irrigation district becoming a contracting district, such district shall be deemed to be subject to the provisions of this part 2, and the board of directors thereof shall be authorized to enter into a salinity control contract and to execute such modifications, extensions, and supplements thereto from time to time as the board shall deem appropriate.

Source: L. 88: Entire part added, p. 1230, § 1, effective April 6.

ARTICLE 44

Internal Improvement Districts Law of 1923

Cross references: For publication of legal notices, see part 1 of article 70 of title 24; for foreclosure proceedings relating to public improvements, see part 11 of article 25 of title 31; for single election precinct law, see § 37-41-160.

37-44-101. Liberal construction. This article, being necessary to secure and preserve the public health, safety, convenience, and welfare, and being necessary for the security of public and private property, shall be liberally construed to effect the purposes of this article.

Source: L. 23: p. 519, § 48. **CSA:** C. 138, § 64. **CRS 53:** § 149-5-48. **C.R.S. 1963:** § 154-4-48.

37-44-102. Petition - establishment of an internal improvement district. (1) For the purpose of the establishment of an internal improvement district, as provided for by this article, a petition shall be filed in the office of the clerk of the district court of the county which embraces the largest acreage of the proposed district, which district court is hereby vested with full jurisdiction to hear said petition and to establish such internal improvement district.

(2) Such petition shall state that it is the purpose of the petitioners to organize an internal improvement district; shall contain a general description of the boundaries of such proposed internal improvement district, the means proposed to supply storage water for the irrigation of lands embraced therein or of preventing floods, regulating streams and channels, regulating the flow of streams, and protecting public and private property from inundation or the means of supplying storage water and flood protection to the lands proposed to be included within said internal improvement district as necessary, and the name proposed for such internal improvement district; and shall name a committee of five of the petitioners to present such petition to the district court praying that the district court define and establish the boundaries of said proposed internal improvement district and submit the question of the final organization of the same to the vote of the qualified electors of said district.

(3) The petition shall be signed by a majority of the owners of the land within the limits of the territory proposed to be organized into such district, who shall have all the qualifications of electors provided for under section 37-44-105. The petition shall also be accompanied by a good and sufficient bond to be approved by the clerk of said district court, in an amount to be fixed by the court, conditioned for the payment of all costs incurred in such proceeding in case such organization shall not be effected, but in case such district is effected, then such expenses incurred in the organization thereof shall be paid by said district.

(4) In the event the proposed district intends to acquire or maintain any such drainage system, the said petition shall also set forth:

(a) In general terms, a description of the area proposed to be drained or benefited;

(b) A general description of the means to be adopted to effect such drainage;

(c) A statement of the proposed means of financing the construction of the necessary drainage works;

(d) An estimate of the probable annual expense of maintaining such drainage system;

(e) A general statement of the reasons why the construction and the maintenance of such drainage system would inure to the benefit of the irrigated lands included within the proposed district.

(5) Such petitions shall be published for at least four weeks before the time at which the same is to be presented in some newspaper of general circulation and published in each county into which any part of the proposed district extends, together with a notice signed by the committee of said petitioners selected by the petition for that purpose, giving the time and place of the presentation of the same to said district court.

Source: L. 23: p. 484, § 1. **L. 35:** p. 948, § 1. **CSA:** C. 138, § 17. **CRS 53:** § 149-5-1. **C.R.S. 1963:** § 150-4-1.

37-44-103. Powers of district. (1) Any district organized under this article has the power, whenever necessary or expedient to promote the object of the district:

(a) To provide for the drainage of lands whether lying within or without the boundaries of such district;

(b) To acquire by condemnation or otherwise such lands as are necessary for the construction, operation, and maintenance of such ditches, canals, drains, or other works as are required for the drainage of such lands;

(c) To accept grants or loans of money from the federal government, or any department or agency thereof, for the construction of such drainage ditches, canals, drains, or other works, and to enter into such contracts for the maintenance of such drainage system as are necessary to be entered into in order to procure any such grant of money or other federal aid in the construction of such drainage system;

(d) In general, to contract with the federal government, or any department or agency thereof, in such manner as shall be found necessary or advisable in order to procure federal aid in any form in the construction of any such drainage system;

(e) To provide means for the maintenance of and to maintain and operate such drainage system when so constructed or acquired.

Source: L. 23: p. 484, § 1. **L. 35:** p. 948, § 1. **CSA:** C. 138, § 17. **CRS 53:** § 149-5-1. **C.R.S. 1963:** § 150-4-1.

37-44-104. Presentation and allowance of petitions. (1) (a) When such petition is presented and it appears that the notice of presentation of said petition has been given, as required by section 37-44-102, and that said petition has been signed by the requisite number of petitioners, the district court in which said petition is presented shall proceed to define the boundaries of such proposed district, from the petition and from such application for the exclusion of lands from and inclusions of lands therein as may be made in accordance with the provisions of this article.

(b) Any owner of land included in the proposed district who is not a signer of said petition may file with said court, on or before the day fixed by said notice for the presentation of said petition, a protest against the inclusion of lands so owned by him in the proposed district and petition for its exclusion. Said protest and petition shall set out the facts and conditions by reason of which such owner seeks to have his lands excluded from said proposed district. As many different owners as desire to do so may join in the same petition.

(c) Owners of lands not included in said proposed district, in like manner, may petition for the inclusion of their lands therein.

(2) On the day fixed for such hearing, the court shall proceed to examine the petition for the formation of said district and shall determine whether the same is in proper form and signed by the requisite number of petitioners. Certificates from several county assessors as to the ownership of lands in said proposed district, if the same appear upon the last assessment rolls of their respective counties, shall be prima facie evidence of the ownership of the lands therein mentioned; but strict proof of such ownership may be required by the court in regard to any lands, the ownership of which is called in question by any interested parties.

(3) When it appears to the court that the required notice of such hearing has been given, and that such petition is in proper form and signed by the required number of landowners, the

court shall proceed to hear the same and all applications for inclusion and exclusion of lands theretofore filed with the clerk of said court. In such hearing, the court may consider:

(a) The physical condition and location of any lands for the inclusion or exclusion of which a petition has been filed;

(b) Its adaptability for agricultural use; and the sufficiency of any water supply already available for its irrigation and the need for any additional supply;

(c) The location and condition of said land with reference to other lands to be included in the proposed district;

(d) The cost and practicability of applying the proposed water supply to the irrigation of said lands, and the necessity and practicability of flood protection for said lands, if the same is sought to be included for flood protection purposes;

(e) The necessity and practicability of draining lands, either within or without the boundaries of said district;

(f) In general, any other matters which will enable the court to determine the question of whether such land should be included or excluded from said district. Lands which will not be benefited by the works of any such proposed district or lands already provided with adequate water supply for irrigation, where it is proposed to irrigate such lands, in whole or in part, from the works of such proposed district, or lands already provided with drainage, where it is proposed to drain such lands, in whole or in part, by the works to be constructed by such proposed district, shall not be included in said district or assessed for district purposes, except upon the written consent of the owner thereof, including all encumbrances, duly acknowledged in the manner provided by law for the acknowledgment of deeds.

(4) If, in the judgment of the court, the matters to be heard in connection with said petition can best be determined by reference of such matters, or any thereof to a magistrate, reference thereof may be ordered by said court and such order of reference shall expressly state what question shall be heard by said magistrate, when and where such hearing will be held, and the date on which the magistrate's report and findings shall be received and considered by the court. Said court may adjourn such hearing from time to time. If the court finds and determines that the organization of the proposed district is not in the best interests of the lands proposed to be included therein, the petition shall be denied and the proceedings dismissed. If the court finds that the formation of the district is meritorious and in the best interests of the lands to be included therein, the court by final order duly entered, shall define and establish the boundaries of such proposed district. When the boundaries of any proposed district have been examined and defined, the district court shall forthwith make an order allowing the prayer of said petitions defining and establishing the boundaries and designating the name of such proposed district.

(5) Thereupon said district court by order duly entered in said court shall call an election of all qualified electors of said district to be held for the purpose of determining whether such district shall be organized under provisions of this article and by such order shall submit the names of two or more persons from each of the five divisions of said district, who may be voted for as directors therein. For the purposes of said election the court shall divide said district into five divisions as nearly equal in size as may be practicable and shall provide that a qualified elector of each of said five divisions shall be elected as a member of the board of directors of said district by the qualified electors of the whole district. Each of said divisions shall constitute an election precinct and three qualified electors shall be appointed in each of said precincts, who

shall act as judges to conduct the election in said precinct, one of whom shall act as clerk of said election.

Source: L. 23: p. 485, § 2. **L. 35:** p. 951, § 2. **CSA:** C. 138, § 18. **CRS 53:** § 149-5-2. **C.R.S. 1963:** § 150-4-2. **L. 91:** (4) amended, p. 365, § 41, effective April 9.

37-44-105. Notice of election - voters - ballots. (1) The clerk of the district court of the county where said petition was presented shall thereupon cause a notice embodying said orders in substance, signed by the clerk of the said district court, to be issued, given, and published, giving notice of said election and the time and place thereof. The notice shall be published once a week for at least three weeks prior to such election in a newspaper of general circulation in each county into which any portion of such proposed district extends. In addition to the notice by publication, the clerk of the district court shall mail, postage prepaid, a printed copy of said notice of election to each of the owners of the lands proposed to be included in said district. Such notices shall be addressed to the last-known post office address of each of said owners as the same may appear from the certificates of the several county assessors theretofore certified to the court as provided in section 37-44-104, or which are otherwise made known to the clerk of said court, and said notices shall be mailed not less than two weeks prior to the election. The clerk shall certify and file, in the records of the proceeding, a list of the persons, and their addresses, to whom notices have been mailed.

(2) At all elections held under the provisions of this article, all persons are entitled to vote who are resident freeholders of agricultural lands within the said district or who are the owners of land to the extent of forty acres or more within said district and reside in the state of Colorado, and who are qualified electors under the general laws of the state of Colorado, and who have paid property taxes upon property located within said district during the three hundred and sixty-five days immediately preceding any such election.

(3) Electors not residing within the district are entitled to vote only within the precinct of such district wherein the majority of their lands are located. Any person entitled to vote shall also be eligible to election as director in and for the precinct of such district in which the major portion of his lands are located.

(4) The ballot to be used and cast at such election for the formation of such district shall be substantially as follows: "Internal Improvement District - Yes" or "Internal Improvement District - No", or words equivalent thereto, and shall also contain the names of persons to be voted for as members of the board of directors of said district and shall contain a sufficient number of blank spaces to permit each elector to write in the names of any persons for whom he may wish to vote as members of the board of directors. Each elector may vote for five directors, one for each precinct, and shall indicate his choice by placing a marginal cross upon the ballot opposite any name voted upon or by writing in the name of the person for whom he desires to vote, and shall also indicate his vote upon any question submitted by placing a marginal cross upon the ballot either for or against such question.

Source: L. 23: p. 489, § 3. **CSA:** C. 138, § 19. **CRS 53:** § 149-5-3. **C.R.S. 1963:** § 150-4-3.

37-44-106. Canvass of votes. The district judge, within ten days after the returns of said election have been filed with the clerk of said district court by the judges of election in the various precincts of said district, shall proceed to canvass the returns of the votes cast thereat and if it is proven to said court that at least a majority of the legal electors in said district who are also the owners of more than one-half the total acreage included in said district have voted "Internal Improvement - Yes", the said judge, by an order duly entered in said court, shall declare such territory duly organized into an internal improvement district under the name and style theretofore designated and in said order declare the persons receiving respectively the highest number of votes in each election precinct for such several offices to be duly elected to such office. Said board shall cause a copy of such order, including a plat of said district, duly certified by the clerk of said district court, to be filed for record in the office of the county clerk and recorder of each county into which any portion of the lands situated in said internal improvement district extends and, after the date of filing such order, no portion of such district shall be included in or form a part of any other internal improvement district. From and after the date of such filing, the organization of such district shall be complete, and the officers thereof shall immediately enter upon the duties of their respective offices, upon qualifying in accordance with law, and shall hold such offices respectively until their successors are elected and qualified.

Source: L. 23: p. 491, § 4. **CSA:** C. 138, § 20. **CRS 53:** § 149-5-4. **C.R.S. 1963:** § 150-4-4.

37-44-107. Plans for improvements. Upon qualification, the board of directors shall prepare, or cause to be prepared, a plan for the improvements for which the district was created. Such plan shall include such maps, profiles, plans, other data and descriptions as may be necessary to give the proper location and character of the work contemplated, and the specific property to be benefited thereby, that portion to be furnished with a supply of reservoir water for the irrigation thereof or to supplement inadequate water rights already appurtenant thereto, or used for the irrigation thereof, or any lands lying either within or without the boundaries of the district, the drainage of which may be deemed directly or indirectly beneficial to the lands within the district, and that portion of said district requiring flood protection; however, no system of drainage or irrigation already existing in said internal improvement district, or any drainage district, or irrigation district, or any water rights appertaining to or provided for any lands in said district after May 9, 1923, and not supplied by works constructed by such internal improvement district, shall be affected in any way by the passage of this article or the organization of said district.

Source: L. 23: p. 492, § 5. **L. 35:** p. 955, § 3. **CSA:** C. 138, § 21. **CRS 53:** § 149-5-5. **C.R.S. 1963:** § 150-4-5.

37-44-108. Directors - powers and duties. (1) The directors, having duly qualified, shall organize as a board, elect a president from their number, and appoint a secretary. The board has power, and it is its duty, to adopt a seal, manage and conduct the affairs and business of the district, make and execute all necessary contracts, employ such agents, attorneys, officers, and employees as may be required, and prescribe their duties, and generally perform all such acts as shall be necessary to fully carry out the purposes of this article. The board of directors has power

to construct, acquire, purchase, or condemn any drainage canals, reservoir sites, and such inlet and outlet works as may be necessary, or to acquire, by condemnation or otherwise, the right to enlarge any reservoir already constructed or partly constructed and to enlarge the inlet and outlet works thereof, or to purchase or acquire, by proceedings in eminent domain or otherwise, any reservoir, drainage system, or irrigation system already constructed or partially constructed and to enlarge and complete the same adequate to the needs of the district.

(2) No contract or award or judgment in eminent domain involving a consideration exceeding twenty-five thousand dollars shall be binding until such contract, award, or judgment has been authorized, ratified, or the payment thereof approved at an election in the same manner as is provided for the issue of bonds, and the necessity of submitting such matters to the approval of the electors shall not be avoided by entering into more than one contract with considerations of less than twenty-five thousand dollars where the whole transaction actually involved more than that amount.

(3) The board also has power to promulgate rules regulating the use of the water owned and controlled by said district, and all water owned by said district shall be apportioned and distributed for irrigation to each landowner in proportion to the benefits to said land as determined by the assessments levied against said land for irrigation purposes as provided in this article.

(4) The board of directors has the further power to lease or rent the use of water or to contract for the delivery thereof to settlers thereon or occupants of the public domain; except that, in such case, the board of directors has the further power to make a contract on behalf of the district with such settlers or occupants to the effect that any such settler or occupant, upon receiving full title to his land and upon the payment of his proportional share of the bond assessment and maintenance charges as fixed and determined by the board of directors of said district, shall include his land within said district, and such land upon such inclusion shall be entitled to all the rights and privileges of other lands of said district and subject to all of the provisions of this article. Before the execution of such contract, the board of directors shall cause a notice of such contract to be given for three successive weeks in a newspaper of general circulation in the county where the office of the district is required to be located, and a hearing upon said contract and all objections thereto shall be had as provided in this article.

(5) If upon said hearing the board of directors deems it for the best interest of the district not to execute said contract, the petition shall be rejected, but, if the board deems it for the best interest of the district that the contract be executed, the board shall execute said contract, and, in such case, the contract shall be valid and binding upon all parties thereto. When such settler or occupant has complied with said contract and obtained title to his land, upon proof of such compliance and obtaining of title and without any further notice or hearing of the matter, the board shall enter an order for the inclusion of said lands as provided in this article. If any settler or occupant fails or refuses to perform said contract, the board of directors, if it so elects, may rescind the contract and declare a forfeiture of any payments theretofore made, in which event said land shall no longer be entitled to any of the benefits to be obtained under said contract and shall not become a part of the district.

(6) The board of directors further has full power, in order to protect life and property within the district, to devise, prepare, execute, maintain, and operate any and all works and improvements provided for by the plan adopted and, to that end, may employ and secure men and equipment under the general supervision of the engineer of the district or, in its discretion,

may let contracts for such work either in the whole or in parts. In order to protect life and property, and in order to drain, protect, or relieve land, which subject to overflow or washing or which is menaced or threatened by the normal flow, flood, surplus, or overflow of water of any natural watercourse, stream, canal, or wash, whether perennial, intermittent, or flood, and in order to effect the protection of the land and other property in the district, the board of directors is empowered to clean out, straighten, widen, alter, deepen, or change the course or terminus of any ditch, drain, sewer, reservoir, watercourse, pond, lake, creek, or natural stream, in or out of said district, necessary for the proper protection of the lands in said district from overflow, washing, or drainage by reason thereof.

Source: L. 23: p. 492, § 6. **L. 35:** p. 955, § 4. **CSA:** C. 138, § 22. **CRS 53:** § 149-5-6. **C.R.S. 1963:** § 150-4-6.

Cross references: For eminent domain proceedings, see articles 1 to 7 of title 38.

37-44-109. Meetings of board - records. The board of directors shall hold a regular quarterly meeting in its office on the first Tuesday after the first Monday in January, April, July, and October and such special meetings as may be required for the proper transaction of business. All special meetings shall be called by the president of the board or any two directors. All meetings of the board shall be public, and three members shall constitute a quorum for the transaction of business, and, on all occasions requiring a vote, there shall be a concurrence of at least two members of said board. All special meetings of the board shall be held at locations which are within the boundaries of the district or which are within the boundaries of any county in which the district is located, in whole or in part, or in any county so long as the meeting location does not exceed twenty miles from the district boundaries. The provisions of this section governing the location of meetings may be waived only if the proposed change of location of a meeting of the board appears on the agenda of a regular or special meeting of the board and if a resolution is adopted by the board stating the reason for which a meeting of the board is to be held in a location other than under the provisions of this section and further stating the date, time, and place of such meeting. All records of the board must be kept open to any elector during business hours. The board and its agents and employees have the right to enter upon any land in the district, to make surveys, and to construct such works as may be necessary for the proper operation of the district. The board also has the right to acquire all lands, water rights, franchises, and other property necessary to the construction, use, maintenance, repairs, and improvements of its canals, ditches, reservoirs, and works and also has the right by purchase or condemnation to acquire rights-of-way for the construction or enlargement of any of its ditches, canals, or reservoirs or lands for reservoir sites.

Source: L. 23: p. 495, § 7. **CSA:** C. 138, § 23. **CRS 53:** § 149-5-7. **C.R.S. 1963:** § 150-4-7. **L. 90:** Entire section amended, p. 1504, § 18, effective July 1.

37-44-110. Title - tax exemption. The title to all property acquired under the provisions of this article, immediately and by operation of law, shall vest in such internal improvement district in its corporate name, and shall be held by such district in trust and is hereby dedicated and set apart for the uses and purposes set forth in this article, and shall be exempt from all

taxation, and said board is hereby empowered to hold, use, acquire, manage, occupy, and possess said property.

Source: L. 23: p. 496, § 8. **CSA:** C. 138, § 24. **CRS 53:** § 149-5-8. **C.R.S. 1963:** § 150-4-8.

37-44-111. Conveyances - power to sue. The board is hereby empowered to take conveyances or assurances for all property acquired by it under the provisions of this article and, in the name of such internal improvement district to and for the purposes expressed in this article, to institute and maintain any action or proceeding necessary or proper in order to fully carry out the provisions of this article or to enforce, maintain, and protect all rights, privileges, and immunities created by this article or acquired in pursuance thereof. In all courts, actions, or proceedings, the board may sue, appear, and defend in person or by attorneys and in the name of such internal improvement district. Judicial notice shall be taken in all actions and judicial proceedings in any court of this state of the organization and existence of any internal improvement district of this state, from and after the filing for record in the office of the county clerk and recorder of the certified copy of the order of the district court creating the same, and a certified copy of said order shall be prima facie evidence in all actions and proceedings in any court of this state of the regularity and legal sufficiency of all acts, matters, and proceedings therein recited.

Source: L. 23: p. 496, § 9. **CSA:** C. 138, § 25. **CRS 53:** § 149-5-9. **C.R.S. 1963:** § 150-4-9.

37-44-112. Bonds. (1) For the purpose of constructing, purchasing, or acquiring necessary reservoir sites, reservoirs, canals, ditches, and works and acquiring the necessary property rights therefor, for the purpose of paying an amount not to exceed the first five years' interest on the bonds authorized in this article, and for the purpose of otherwise carrying out the provisions of this article, the board of directors of any such internal improvement district, as soon after such district has been organized as may be practicable, shall estimate and determine the amount of money necessary to be raised for such purposes and shall forthwith call a special election, at which election there shall be submitted to the electors of such district possessing the qualifications prescribed by this article the question of whether or not the bonds of said district shall be issued in the amount so determined. A notice of such election shall be given by posting notices in three public places in each election precinct in said district for at least twenty days and also by publication of such notice in some newspaper published in the county where the office of the board of directors is required to be kept once a week for at least three successive weeks.

(2) Such notice shall specify the time of holding the election, the amount of bonds proposed to be issued and the amount and rate of interest on such bonds proposed to be issued, and the dates when the percentage of principal or series of said bonds will become due, if serial bonds are contemplated, or the maturity date of the entire issue, as the case may be. At such election the ballots shall contain the words, "Bonds - Yes" or "Bonds - No", or words equivalent thereto, and also such appropriate words as shall enable the electors to indicate whether such bonds shall be redeemable at the option of the district at any time after their date or payable in series, and said election must be held and the result determined and declared in all respects as

nearly as possible in conformity with the provisions of this article governing the election of officers, but no informality in conducting such election shall invalidate the same if the election has been otherwise fairly conducted. If a majority of the legal electors who are freeholders and taxpayers who represent a majority of the land within said district have voted "Bonds - Yes", the board of directors shall immediately cause bonds in such amount to be issued.

(3) If bonds are to be payable in series, each series shall consist of a definite percentage of the whole amount and number of said bonds. The time of maturity of the series of bonds and the percentage represented by each series shall be submitted to and approved by the electors at said election; but the last series shall mature in not more than fifty years from the date of said bonds, and the first series or percentage of the principal of said bonds shall become due not more than ten years from the date of said bonds, and the series shall be so arranged that some percentage of the principal of said bonds, never less than one percent, shall become due each year thereafter until the entire principal has been paid. If such bonds are made redeemable at the option of the district, they shall mature at a specific date not more than fifty years from their date of issue. If the optional form of bond is issued, the board of directors of the district, when funds are available for redemption purposes at any time before maturity, shall call for offerings for redemption and, out of the redemption fund provided for the payment of said bonds, shall pay any bonds presented for payment pursuant to such call to any holder thereof who offers the same for payment and redemption for the lowest amount below par, including accrued interest, to the extent of the funds available; otherwise said bonds shall be retired in the order of their issue numerically.

(4) The interest on said bonds shall be made payable semiannually on June 1 and December 1 of each year. The principal and interest shall be payable at the office of the county treasurer of the county in which the organization of the district was effected and at such other place as the board of directors may designate in such bond.

(5) Such bonds shall each be of the denomination of not less than one hundred dollars and nor more than one thousand dollars and shall be negotiable in form, executed in the name of the internal improvement district, and signed by the president and secretary, and the seal of the district shall be affixed thereto.

(6) Such bonds shall be numbered consecutively as issued and bear the date of their issue. Coupons for the interest shall be attached to each bond bearing the lithographed signatures of the president and secretary. Said bonds shall express on their faces that they are issued by the authority of this article, stating its title and date of approval. At the time of the issue of said bonds, each bond shall be registered by the county treasurer, who is ex officio treasurer of the internal improvement district, in a book to be kept by him for such purpose, and the interest thereon shall begin to run only from the date of such registry. Coupons evidencing unearned interest shall be detached and canceled. Each bond so registered shall have endorsed thereon the treasurer's certificate of such registration, and only such bonds so certified shall be valid, but such certificate shall be conclusive evidence that the bond so certified has been duly issued in full conformity with the provisions of this article.

(7) When the money provided by any previous issue of bonds has been exhausted by expenditures provided for in this article and it becomes necessary to raise additional money for such purposes, additional bonds may be issued, submitting the question by special election to the qualified voters of said district and otherwise complying with the provisions of this article in

respect to an original issue of such bonds, but the lien for assessments for the payment of interest and principal of any bond issue shall be a prior lien to that of any subsequent bond issue.

Source: L. 23: p. 497, § 10. **CSA:** C. 138, § 26. **CRS 53:** § 149-5-10. **C.R.S. 1963:** § 150-4-10.

37-44-113. Sale of bonds. (1) The board may sell bonds so issued from time to time in such quantities as necessary and most advantageous to raise the money for the construction of reservoirs or canals, or the purchase of reservoir sites, reservoirs, water rights and works, and otherwise to carry out the objects and purposes of this article. Before making any sale, the board at a meeting shall declare by resolution its intent to sell a specified amount of bonds and the day and hour and place of such sale and shall cause such resolution to be entered in its minutes and a notice of the sale to be published at least twenty days in a daily newspaper published in the city of Denver and in any other newspaper at its discretion. The notice shall state that sealed proposals will be received by the board at its office for the purchase of the bonds until the day and hour named in the resolution. At the time appointed the board shall open the proposals and award the purchase of the bonds to the highest responsible bidder or may reject any and all bids; but said board shall, in no event, sell any of said bonds for less than ninety-five percent of the face value thereof.

(2) The bonds and the interest thereon shall be paid by revenue derived from an annual assessment upon the real property of the district, and the real property of the district shall be and remain liable to be assessed for such payments as provided in this article.

Source: L. 23: p. 501, § 11. **CSA:** C. 138, § 27. **CRS 53:** § 149-5-11. **C.R.S. 1963:** § 150-4-11.

37-44-114. Classification of lands. (1) As soon as the plans for the development of storage water and flood protection have been determined and before the actual work thereon is begun or bonds voted, the board of directors shall proceed to make special assessments for benefits by classifying the lands in the district in tracts of forty acres, more or less, according to the legal or recognized subdivisions, on a graduated scale to be numbered according to the benefits to be received by the contemplated supply of storage water or flood protection. The tracts of land which will receive more than about equal benefits shall be marked one hundred, and such as are adjudged to receive less benefits shall be marked with a lesser number denoting their percentage of benefit. This classification when established shall remain as a basis for the levy of such assessments as may be needed for the lawful and proper purposes of the internal improvement district, but, in any district where a classification has once been made and the board of directors believes from experience and results that such former classification was or is not fairly adjusted on the several tracts of land according to benefits, which classification may be adjusted by new or additional assessments, the board of directors shall disregard such former classification and make a new classification in accordance with justice and right. When the classification is completed, it shall be properly tabulated or shown by a map, or both, and filed in the office of the district for inspection.

(2) The board of directors shall cause to be personally served upon all parties owning land to be affected by the proposed supply of storage or reservoir waters or flood protection or

other property liable to be assessed under this article and residing in the district a written or printed notice of the time and place where they will meet to hear and consider any objections that may be made to the classification of lands on the graduated scale, which notice shall be served in case of residence in the district at least ten days before the time set for the hearing by delivering a copy thereof to the party to be served. As to all persons not served personally, they shall be given notice by publishing the same in one public newspaper in each county into which such internal improvement district may extend, which notice shall be published in such newspaper once in each week until four successive weekly publications have been made, the last publication to be on a day previous to the day appointed for said hearing, and proof of the proper publication of said notice in the newspaper shall consist of the sworn certificate of the publisher of such newspaper, showing the publication to have been made in accordance with the provisions of this section.

(3) Such hearing may be adjourned from day to day by public announcement of the board of directors made at the hearing until all objections are heard. All persons duly notified of the first day of the meeting as provided in this section shall take cognizance of all adjournments without further notice. The affidavit of any creditable person that he has posted or served such notice as required by this section and the affidavit of publication of the publisher of such newspapers as to the publication of said notice shall be sufficient evidence of such facts.

Source: L. 23: p. 501, § 12. **CSA:** C. 138, § 28. **CRS 53:** § 149-5-12. **C.R.S. 1963:** § 150-4-12.

37-44-115. Objections to classifications. At the time of said meeting, the board of directors shall hear any objections made by any interested person, and, if satisfied that any injustice has been done in the classification of the tracts of land, it shall correct the same in accordance with what is right, but, if not so satisfied, it shall leave the classification as first made and enter an order to that effect. Any person appearing and urging objections who is not satisfied with the decision of the board of directors may appeal its decision to the district court having original jurisdiction in the formation of said district within ten days after the decision of the board of directors was rendered by filing with the clerk of said court a statement in writing of his objections to the assessment made against him together with a bond with security conditioned to pay such taxes as may be finally levied upon the land in question and the costs occasioned by the appeal if the board of directors is sustained by said court.

Source: L. 23: p. 503, § 13. **CSA:** C. 138, § 29. **CRS 53:** § 149-5-13. **C.R.S. 1963:** § 150-4-13.

37-44-116. Conduct of appeals. Appeals taken to the district court under the provisions of section 37-44-115 may be heard at any term thereof at such time as may be fixed by the court, and the cost of such appeal at the discretion of the court may be divided between the internal improvement district and the owner of the land who appeals the classification of the board of directors or assessed against either party. Either party may demand a jury to which shall be submitted all questions of fact as in other civil cases, and said cause shall be heard and determined as other civil causes. The classification as determined and fixed by the court shall be

entered in the records of the district in which the lands are situate and thereafter shall be the basis upon which assessments for benefits are made.

Source: L. 23: p. 504, § 14. **CSA:** C. 138, § 30. **CRS 53:** § 149-5-14. **C.R.S. 1963:** § 150-4-14.

37-44-117. Appeal not to delay. The taking of an appeal by any person as provided in section 37-44-115 shall not operate to delay the collection of any assessment from which no appeal has been taken or to delay the progress of the work or the issuing of any bonds.

Source: L. 23: p. 505, § 15. **CSA:** C. 138, § 31. **CRS 53:** § 149-5-15. **C.R.S. 1963:** § 150-4-15.

37-44-118. Modification of classification. The board of directors shall modify such classification so that the same conforms to the changes made therein in the hearings before said board, and the secretary of the district shall certify and file said classification of property of the district so modified, properly tabulated or shown by a map or both, with the county clerk and recorder of each county into which said district extends. If on appeal said classification is modified, the board shall then modify the classification, and the secretary of the district shall certify and file the same with the clerk of each county in which the district is located.

Source: L. 23: p. 505, § 16. **CSA:** C. 138, § 32. **CRS 53:** § 149-5-16. **C.R.S. 1963:** § 150-4-16.

37-44-119. Apportionment of levy. (1) On or before July 1 in each year, the board of directors shall determine the amount of money required to meet the current expenses of the district for the coming year, including the cost of construction, maintenance, including maintenance of drainage works, operating expenses, and any deficiencies in the payment of expenses already incurred, and bond interest unpaid, and also the amount of bonded indebtedness and the principal or interest which will fall due during the coming year and, by resolution, shall order such an amount of money to be raised by special assessment upon the lands of the district as may be necessary to raise the sum of money so determined, and such amount shall be apportioned among the several tracts in the name of the owner, when known, according to the acreage of each at its figure or classification on the graduated scale so that each tract may bear its equal burden proportionate to benefits.

(2) The secretary of the district shall make out a special assessment roll, hereinafter designated "assessment list", setting down in opposite columns the owners, names when known, and when unknown stating unknown, a description of the land, and the number denoting the classification of the assessment, which is current expenses and which is bonded indebtedness and interest thereon in separate columns.

Source: L. 35: p. 959, § 5. **CSA:** C. 138, § 33. **CRS 53:** § 149-5-17. **C.R.S. 1963:** § 154-4-17.

37-44-120. Assessment. The assessment list shall be completed on or before July 15, and, on the first Tuesday in August in each year and from day to day thereafter, Sundays excepted, the board of directors shall sit to hear complaints and to correct errors in such assessments until all complaints filed with the secretary are presented to the board of directors and have had an opportunity to be heard and have been determined. The classification of any lands on the graduated scale shall not be changed or determined at said hearings.

Source: L. 23: p. 506, § 18. **CSA:** C. 138, § 34. **CRS 53:** § 149-5-18. **C.R.S. 1963:** § 150-4-18.

37-44-121. Assessment list - collection. On or before September 1 in each year, the secretary shall transmit to the county assessor of each county in which said district is located, a certified copy of so much of said assessment book as relates to land within said county together with a certified copy of the order of the board of directors, and the county assessor shall attach his warrant for the collection of said amounts and deliver said certified copy of the warrant to the county treasurer of his county at the same time that the tax roll of the county is delivered, and the county treasurer shall collect said assessments as taxes are collected as a part of the tax roll of that year.

Source: L. 23: p. 506, § 19. **CSA:** C. 138, § 35. **CRS 53:** § 149-5-19. **C.R.S. 1963:** § 150-4-19.

Cross references: For collection of taxes, see article 10 of title 39.

37-44-122. Assessment book. The secretary of the board of directors shall deliver the assessment book duly certified together with a copy of the order of the board of directors, levying said assessment, to the district treasurer of said internal improvement district.

Source: L. 23: p. 507, § 20. **CSA:** C. 138, § 36. **CRS 53:** § 149-5-20. **C.R.S. 1963:** § 150-4-20.

37-44-123. Assessments affect land benefited. All districts organized under authority of this article shall be special or local improvement districts. The assessments levied by, for, or on behalf of any such district shall be local or special improvement assessments. Such assessments shall be determined and levied according to the benefits to accrue to each tract of land included in any such district and not otherwise. No tract of land so included shall be burdened by cumulative levies or otherwise for the payment of delinquencies or defaults in the payment of assessments levied against other lands in such district.

Source: L. 23: p. 507, § 21. **CSA:** C. 138, § 37. **CRS 53:** § 149-5-21. **C.R.S. 1963:** § 150-4-21.

37-44-124. County treasurer ex officio district treasurer. (1) The county treasurer of the county in which is located the office of any internal improvement district shall be and is hereby constituted ex officio district treasurer of said district, and said county treasurer shall be

liable upon his official bond and to indictment and criminal prosecution for malfeasance, misfeasance, or failure to perform any duty prescribed in this article as county treasurer or district treasurer, as is provided by law in other cases as county treasurer. Said county treasurer shall collect, receive, and receipt for all moneys belonging to said district. It is the duty of the county treasurer of each county in which any internal improvement district is located, in whole or in part, to collect and receipt for all assessments levied in the same manner and at the same time and on the same receipt as is required in the collection of taxes upon real estate for county purposes. The county treasurer of each county comprising a portion only of such internal improvement district, excepting the county treasurer of the county in which the office of said district is located, on the first Monday of every month shall remit to the district treasurer all moneys theretofore collected or received by him on account of said district. Every county treasurer shall keep a bond fund account and a general fund account. The bond fund account shall consist of all moneys received on account of interest and principal of bonds issued by said district, and said accounts for interest and principal shall be kept separate. The general fund shall consist of all other moneys received by the collection of assessments or otherwise.

(2) The district treasurer shall pay out of said bond fund when due the interest and principal of the bonds of said district at the time and place specified in said bonds and shall pay out of the said general funds only upon the order of the board of directors, signed by the president and countersigned by the secretary of the district. The district treasurer on the fifteenth day of each month shall report to the secretary of the district the amount of money in his hands to the credit of the respective funds showing the amount of warrants and bonds paid during the previous month and the amount of warrants registered, if any. All such district assessments collected and paid to the county treasurers shall be receipted for by said treasurers in their official capacity, and they shall be responsible for the safekeeping and disbursement and payment thereof the same as for other moneys collected by them as treasurers. Each county shall receive for the collection of such taxes such amount as the board of directors may allow, to be not less than twenty-five dollars nor more than one hundred dollars per year, but the board of directors may allow such an additional amount to the county in which the office of the district is located, such additional compensation, as it may determine in any event, not to exceed the sum of five hundred dollars per year.

Source: L. 23: p. 507, § 22. **CSA:** C. 138, § 38. **CRS 53:** § 149-5-22. **C.R.S. 1963:** § 150-4-22.

37-44-125. Where office of district kept. The office of the district shall be kept at such place as the board of directors may designate in the county where the petition for the formation of said district was originally filed.

Source: L. 23: p. 509, § 23. **CSA:** C. 138, § 39. **CRS 53:** § 149-5-23. **C.R.S. 1963:** § 150-4-23.

37-44-126. Election of officers - oath or affirmation - bond. (1) The regular election of the district for the purpose of electing a board of directors shall be held on the first Monday after the first Tuesday in December of each year, at which time one director shall be elected for a term of five years; except that, at the first election held to choose the first board of directors after

the organization of any internal improvement district has been effected, the person having the highest number of votes shall continue in office for the full term of five years, the next highest four years, the next highest three years, the next highest two years, and the next highest one year. If two or more persons in the same precinct have the same number of votes, their term shall be determined by lot under the direction of the judge of the district court having original jurisdiction of the formation of the said district. The person receiving the highest number of votes for any office to be filled is elected thereto.

(2) After receiving their certificates of election provided for in section 37-44-135, said officers shall take an oath or affirmation in accordance with section 24-12-101. Each member of the board of directors shall execute an official bond in the sum of five thousand dollars, which bond shall be approved by the judge of the district court of the county wherein such organization was effected and shall be filed in the office of the county clerk and recorder thereof. All official bonds shall be in the form prescribed by law for official bonds for county commissioners; except that the obligee named in said bonds shall be the internal improvement district and shall be filed with the county clerk and recorder at the same time as the filing of the oath or affirmation required by this section.

Source: L. 23: p. 509, § 24. **CSA:** C. 138, § 40. **CRS 53:** § 149-5-24. **C.R.S. 1963:** § 150-4-24. **L. 2018:** (2) amended, (HB 18-1138), ch. 88, p. 701, § 37, effective August 8.

Cross references: For the legislative declaration in HB 18-1138, see section 1 of chapter 88, Session Laws of Colorado 2018.

37-44-127. Notices of election of officers. Fifteen days prior to any election held under the provisions of this article and after the organization of an internal improvement district, the secretary shall cause notices specifying the polling place of each precinct to be posted in three public places in each precinct, giving the hour and place of holding the election, and at the same time shall post a general election notice of the election in the office of said internal improvement district.

Source: L. 23: p. 510, § 25. **CSA:** C. 138, § 41. **CRS 53:** § 149-5-25. **C.R.S. 1963:** § 150-4-25.

37-44-128. Judges and clerk of election. Prior to the time for posting said notices, the board of directors shall appoint three judges of election in each precinct, each of whom shall be a landowner within said precinct, and one of whom shall act as clerk of the election.

Source: L. 23: p. 511, § 26. **CSA:** C. 138, § 42. **CRS 53:** § 149-5-26. **C.R.S. 1963:** § 150-4-26.

37-44-129. Voters to appoint judges if necessary. If the board of directors fails to appoint judges or the appointees fail to attend at the hour designated for opening the polls on the morning of election, the voters of the precinct present at that hour may appoint one or more judges to supply the places of those absent.

Source: L. 23: p. 511, § 27. **CSA:** C. 138, § 43. **CRS 53:** § 149-5-27. **C.R.S. 1963:** § 150-4-27.

37-44-130. Administration of oath. Any judge or clerk of election may administer and certify oaths required to be administered during the progress of an election. Before opening the polls each judge and clerk shall take and subscribe an oath to faithfully perform the duties imposed upon him by law. Any qualified elector of the precinct may administer and certify said oath.

Source: L. 23: p. 511, § 28. **CSA:** C. 138, § 44. **CRS 53:** § 149-5-28. **C.R.S. 1963:** § 150-4-28.

37-44-131. Hours polls open. The polls shall be open at 8 a.m. and be kept open until 6 p.m. of the day of election.

Source: L. 23: p. 511, § 29. **CSA:** C. 138, § 45. **CRS 53:** § 149-5-29. **C.R.S. 1963:** § 150-4-29.

37-44-132. Count of ballots - certificate of returns. After closing the polls the judges of election shall forthwith proceed to count the ballots and make returns of the results of the election. It is the duty of the clerk forthwith to deliver the returns duly certified to the board of directors of the internal improvement district, together with the ballots cast.

Source: L. 23: p. 511, § 30. **CSA:** C. 138, § 46. **CRS 53:** § 149-5-30. **C.R.S. 1963:** § 150-4-30.

37-44-133. Canvass of returns - result. The board of directors shall meet at the office of the internal improvement district on the first Monday after an election and canvass the returns. If at the time of the meeting the returns have been received from all the precincts, the board of directors shall then proceed to canvass the returns. If returns have not been received from all precincts, the canvass shall be postponed from day to day until the returns have all been received or until six postponements have been had. The canvass shall be made in public by opening the returns and counting the votes of the district for each person voted for and for or against each question submitted at such election and declaring the results thereof. The board shall declare elected the person receiving the highest number of votes for each office and shall declare the result of the vote on any question submitted to the voters.

Source: L. 23: p. 511, § 31. **CSA:** C. 138, § 47. **CRS 53:** § 149-5-31. **C.R.S. 1963:** § 150-4-31.

37-44-134. Procedure in case of tie. In the event that at any regular or special election two or more persons receive the same number of votes and one is elected thereby, the election shall be determined by lot under direction of the county judge of the county in which the office of the internal improvement district is kept.

Source: L. 23: p. 512, § 32. **CSA:** C. 138, § 48. **CRS 53:** § 149-5-32. **C.R.S. 1963:** § 150-4-32.

37-44-135. Certificate of election. The secretary shall forthwith deliver to each person elected a certificate of election, signed by the secretary and authenticated with the seal of the internal improvement district.

Source: L. 23: p. 512, § 33. **CSA:** C. 138, § 49. **CRS 53:** § 149-5-33. **C.R.S. 1963:** § 150-4-33.

37-44-136. Filling vacancy. In case of vacancy in the board of directors, by death, removal, or inability from any cause to properly discharge the duties of a director, the board of county commissioners of the county where the office of said district is located shall appoint a director who shall hold his office until the next regular election in said district and until his successor is elected and qualified.

Source: L. 23: p. 512, § 34. **CSA:** C. 138, § 50. **CRS 53:** § 149-5-34. **C.R.S. 1963:** § 150-4-34.

37-44-137. Collection of assessments. The revenue laws of this state for the assessment and collection of taxes on real estate for county purposes, except as modified by this article, shall be effective for the purposes of this article, including the enforcement of penalties and forfeitures for delinquent taxes.

Source: L. 23: p. 513, § 35. **CSA:** C. 138, § 51. **CRS 53:** § 149-5-35. **C.R.S. 1963:** § 150-4-35.

Cross references: For the assessment and collection of property taxes, see articles 1 to 14 of title 39.

37-44-138. Construction contract - bond. After adopting a plan for the construction of reservoirs and works for the protection of life and property and to furnish water for the irrigation of the territory embraced within the boundaries of the internal improvement district, or to drain lands within or without the boundaries of said district, the board of directors shall give notice, by publication thereof, not less than twenty days in a newspaper published in the county in which the office of the internal improvement district is located, provided a newspaper is published therein, and in such other newspapers as it may deem advisable, calling for bids for the construction of said works or any portion thereof. If less than the whole work is advertised, then the portion so advertised must be particularly described in such notice. The notice shall set forth that plans and specifications may be seen at the office of the board and that the board shall receive sealed proposals therefor and that the contract will be let to the lowest responsible bidder, stating the time and place for opening the proposals, which bids at said time and place shall be opened in public. As soon as convenient thereafter, the board shall let said work, either in portions or as a whole, to the lowest responsible bidder, or it may reject any or all bids and readvertise for proposals, or may proceed to construct the work under its own superintendence.

Contracts for the purchase of materials shall be awarded to the lowest responsible bidder. The person to whom a contract may be awarded shall enter into a bond, with good and sufficient sureties, to be approved by the board, payable to said district for its use, for not less than ten percent of the amount of said contract, conditioned for the faithful performance of said contract. The work shall be done under the direction and to the satisfaction of the engineer in charge and shall be approved by the board.

Source: L. 35: p. 960, § 6. **CSA:** C. 138, § 52. **CRS 53:** § 149-5-36. **C.R.S. 1963:** § 150-4-36.

37-44-139. Claims - audit - payment. Except with respect to claims coming within the provisions of article 10 of title 24, C.R.S., no claim shall be paid by the district treasurer until the same is allowed by the board, and only upon warrants signed by the president and countersigned by the secretary, which warrants shall state the date authorized by the board and for what purposes. If the district treasurer has not sufficient money on hand to pay such warrant when it is presented for payment, he shall endorse thereon "not paid for want of funds, this warrant draws interest from date at six percent per annum" and endorse thereon the date when so presented over his signature, and from the time of such presentation such warrant shall draw interest at the rate of six percent per annum. All claims against the district shall be verified, and the secretary of the district is authorized to administer oaths to the parties verifying said claims, the same as a notary public might do. The district treasurer shall keep a register in which he shall enter said warrants presented for payment, showing the date and amount of such warrants, to whom payable, the date of presentation for payment, the date of payment, and the amount paid in redemption thereof, and all warrants shall be paid in their order of presentation for payment to the district treasurer. All warrants shall be drawn payable to bearer the same as for county warrants.

Source: L. 23: p. 514, § 37. **CSA:** C. 138, § 53. **CRS 53:** § 149-5-37. **C.R.S. 1963:** § 150-4-37. **L. 71:** p. 1217, § 18. **L. 75:** Entire section amended, p. 223, § 80, effective July 16. **L. 76:** Entire section amended, p. 311, § 59, effective May 20.

37-44-140. Expenses of organization. For the purpose of defraying the expenses of the organization of the district, and the repair, operation, management, and improvement of all reservoirs, inlet works, outlet works, drainage works, canals, and works for the protection of life and property from floods, washing, and inundation, including salaries of officers and employees, the board may provide, in whole or in part, for the payment of such expenditures by levy of assessments therefor as provided in section 37-44-119, if the money raised by the sale of bonds issued is insufficient. In case bonds are unavailable for the completion of the plans of works adopted, the board of directors may provide for the completion of said plans by levy of an assessment therefor in the same manner in which levy of assessments is made for other purposes.

Source: L. 23: p. 515, § 38. **L. 35:** p. 961, § 7. **CSA:** C. 138, § 54. **CRS 53:** § 149-5-38. **C.R.S. 1963:** § 150-4-38.

37-44-141. Works may cross other lands. The board of directors has the dominant power to construct said works across any stream of water, watercourses, street, avenue, highway,

railway, canal, ditch, or flume which intersects or crosses the area covered by such works or reservoir site, and, if said board and such railroad company or the owners and controllers of said property, thing, or franchise so to be crossed cannot agree upon the amount to be paid therefor, or the points or the manner of said crossing, the same shall be ascertained and determined in all respects as is provided in respect to the taking of land for public uses. The right-of-way is hereby given, dedicated, and set apart to locate, construct, and maintain said works or reservoirs over, through, or upon any of the lands which are the property of the state.

Source: L. 23: p. 515, § 39. **CSA:** C. 138, § 55. **CRS 53:** § 149-5-39. **C.R.S. 1963:** § 150-4-39.

37-44-142. Officers' compensation. The directors shall receive a salary at the rate of four dollars per day while attending meetings and for each day necessarily spent in attending to the business of the district and their actual and necessary expenses while engaged in official business. The salary of the secretary shall not exceed fifteen hundred dollars per annum. No director or any officer named in this article shall in any manner be interested, directly or indirectly, in any contract awarded or to be awarded by the board or in the profits to be derived therefrom, nor shall he or she receive any bonds, gratuity, or bribe; and for the violation of this provision such officer commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S. He or she shall also forfeit his or her office upon conviction.

Source: L. 23: p. 516, § 40. **CSA:** C. 138, § 56. **CRS 53:** § 149-5-40. **C.R.S. 1963:** § 150-4-40. **L. 77:** Entire section amended, p. 885, § 69, effective July 1, 1979. **L. 89:** Entire section amended, p. 851, § 138, effective July 1. **L. 2002:** Entire section amended, p. 1554, § 338, effective October 1.

Editor's note: The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See People v. McKenna, 199 Colo. 452, 611 P.2d 574 (1980).

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

37-44-143. Limit of indebtedness. The board of directors, or other officers of the district, shall have no power to incur any debt or liability, either by issuing bonds or otherwise, in excess of the express provisions of this article, and any debt or liability incurred in excess of such express provisions shall be and remain absolutely void.

Source: L. 23: p. 516, § 41. **CSA:** C. 138, § 57. **CRS 53:** § 149-5-41. **C.R.S. 1963:** § 150-4-41.

37-44-144. Insufficient supply. In case the volume of storage water from the reservoir or other works in any district shall not be sufficient to supply the continual wants of that portion of the district requiring reservoir water, then it is the duty of the board of directors to distribute

all water available on certain or alternate days to different localities in proportion to the benefits for which the respective lands in said district have been assessed.

Source: L. 23: p. 516, § 42. **CSA:** C. 138, § 58. **CRS 53:** § 149-5-42. **C.R.S. 1963:** § 150-4-42.

37-44-145. Judicial action on bonds. The board of directors of an internal improvement district organized under the provisions of this article may commence special proceedings, by which the proceedings of said board and of said district providing for and authorizing the issue and sale of the bonds of the district, whether said bonds have or have not been sold or disposed of, may be judicially examined, approved, and confirmed.

Source: L. 23: p. 517, § 43. **CSA:** C. 138, § 59. **CRS 53:** § 149-5-43. **C.R.S. 1963:** § 150-4-43.

37-44-146. Petition for confirmation. The board of directors shall present to the district court in which the organization of the district was elected, a petition, praying, in effect, that the proceedings may be examined, approved, and confirmed by the court. The petition shall state the facts showing the proceedings had for the issue and sale of said bonds and shall state generally that the internal improvement district was duly organized and that the first board of directors was duly elected; but the petition need not state the facts showing such organization of the district or the election of said first board of directors.

Source: L. 23: p. 517, § 44. **CSA:** C. 138, § 60. **CRS 53:** § 149-5-44. **C.R.S. 1963:** § 150-4-44.

37-44-147. Notice of hearing. The court shall fix the time for the hearing of said petition and shall order the clerk of the court to give and publish a notice of the filing of said petition. The notice shall be given and published for three successive weeks in a newspaper published in each county into which the district may extend. The notice shall state the time and place fixed for the hearing of the petition and the prayer of the petitioners and that any person interested in the organization of said district, or sale of said bonds, on or before the day fixed for the hearing of said petition, may move to dismiss or answer said petition. The petition may be referred to and described in said notice as the petition of the board of directors of ..... internal improvement district (giving its name), praying that the proceedings for the issue of said bonds of said district may be examined, approved, and confirmed by the court.

Source: L. 23: p. 517, § 45. **CSA:** C. 138, § 61. **CRS 53:** § 149-5-45. **C.R.S. 1963:** § 150-4-45.

37-44-148. Answer or pleading. Any person interested in said district, or in the issue or sale of said bonds, may move to dismiss or to answer said petition. The Colorado rules of civil procedure respecting motions to dismiss and answer to a verified complaint shall be applicable to a motion to dismiss and answer said petition. The person so moving or answering said petition shall be the defendant to the special proceeding, and the board of directors shall be the plaintiff.

Every material statement of the petition not specifically contradicted by the answer for the purpose of said special proceedings shall be taken as true, and each person failing to answer the petition shall be deemed to admit as true all the material statements of the petition. The rules of pleading and practice relating to appeals and appellate review as provided by law and the Colorado appellate rules which are not inconsistent with the provisions of this article are applicable to the special proceedings.

Source: L. 23: p. 518, § 46. **CSA:** C. 90, § 62. **CRS 53:** § 149-5-46. **C.R.S. 1963:** § 150-4-46.

37-44-149. Determination. Upon the hearing of such special proceedings, the court shall find and determine whether the notice of the filing of the petition has been duly given and published for the time and in the manner prescribed and shall have power and jurisdiction to examine and determine the legality and validity of, and approve and confirm, the proceedings for the organization of said district, from and including the petition for the organization of the internal improvement district, and all other proceedings which may affect the legality and validity of said bonds and the order of sale and the sale thereof. The court, inquiring into the regularity, legality, or correctness of said proceedings, must disregard any error, irregularity, or omission which does not affect the substantial rights of the parties to such special proceedings. The court by decree may approve and confirm such proceedings in part and disapprove and declare illegal or invalid other and subsequent parts of the proceedings. The cost of the special proceedings may be allowed and apportioned between the parties, in the discretion of the court. Appeals for review of judgments of the district court may issue as provided by law and the Colorado appellate rules as in other civil cases.

Source: L. 23: p. 519, § 47. **CSA:** C. 138, § 63. **CRS 53:** § 149-5-47. **C.R.S. 1963:** § 150-4-47.

ARTICLE 45

Water Conservancy Districts

Editor's note: The "Water Conservancy Act", enacted by House Bill No. 6 and House Bill No. 714, chapters 265 and 266, Session Laws of Colorado 1937, was originally numbered as chapter 173A in the 1938 supplement to the 1935 Colorado Statutes Annotated but was renumbered as chapter 173B in the 1941and 1942 cumulative supplements and in the 1949 replacement volume 4B to the 1935 Colorado Statutes Annotated. (See pages 48 and 49 of the disposition table for session laws 1937 located in the back of the 1953 cumulative supplement to the 1935 Colorado Statutes Annotated.)

Cross references: For publication of legal notices, see part 1 of article 70 of title 24.

Law reviews: For article, "Constitutional Law", which discusses Tenth Circuit decisions dealing with U.S. supremacy clause and retroactive legislation under the due process clause, see 63 Den. U. L. Rev. 247 (1986).

37-45-101. Short title. This article shall be known and may be cited as the "Water Conservancy Act".

Source: L. 37: p. 1311, § 2. **CSA:** C. 173B, § 16. **CRS 53:** § 149-6-2. **L. 61:** p. 843, § 1. **C.R.S. 1963:** § 150-5-2.

37-45-102. Legislative declaration. (1) It is hereby declared that to provide for the conservation of the water resources of the state of Colorado and for the greatest beneficial use of water within this state, the organization of water conservancy districts and the construction of works as defined in this article by such districts are a public use and will:

(a) Be essentially for the public benefit and advantage of the people of the state of Colorado;

(b) Indirectly benefit all industries of the state;

(c) Indirectly benefit the state of Colorado in the increase of its taxable property valuation;

(d) Directly benefit municipalities by providing adequate supplies of water for domestic use;

(e) Directly benefit lands to be irrigated from works to be constructed;

(f) Directly benefit lands now under irrigation by stabilizing the flow of water in streams and by increasing flow and return flow of water to such streams;

(g) Promote the comfort, safety, and welfare of the people of the state of Colorado.

(2) It is therefore declared to be the policy of the state of Colorado:

(a) To control, make use of, and apply to beneficial use all unappropriated waters originating in this state to a direct and supplemental use of such waters for domestic, manufacturing, irrigation, power, and other beneficial uses;

(b) To obtain from water originating in Colorado the highest duty for domestic uses and irrigation of lands in Colorado within the terms of interstate compacts;

(c) To cooperate with the United States under the federal reclamation laws and other agencies of the United States government for the construction and financing of works in the state of Colorado as defined in this article, and for the operation and maintenance thereof;

(d) To promote the greater prosperity and general welfare of the people of the state of Colorado by encouraging the organization of water conservancy districts as provided in this article.

(3) It is further declared that:

(a) The development, use, and conservation of water within this state is inextricably tied to the development and construction of works as defined in this article;

(b) The development and construction of such works shall be deemed to be the development, use, and conservation of water; and

(c) Such works are deemed to be a public use essential for the public benefit of the people of this state.

Source: L. 37: p. 1309, § 1. **CSA:** C. 173B, § 15. **CRS 53:** § 149-6-1. **C.R.S. 1963:** § 150-5-1. **L. 92:** (3) added, p. 2291, § 1, effective April 2.

37-45-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Acre-foot" or "acre-feet" may be substituted by any other commonly used unit for the measurement of water when appropriate.

(2) "Board" means the board of directors of the district.

(3) "Court" means the district court of that judicial district of the state of Colorado wherein the petition for the organization of a water conservancy district shall be filed.

(4) (a) "Elector" means a person who, at the designated time or event, is qualified to vote in general elections in this state, and:

(I) Who is a resident of the district or the area to be included in the district; or

(II) Who or whose spouse or civil union partner owns taxable real or personal property within the district or the area to be included in the district.

(b) A person who is obligated to pay general taxes under a contract to purchase real property within the district shall be considered an owner within the meaning of this subsection (4). The payment of a specific ownership tax pursuant to law shall not qualify a person as an elector. Taxable property means real or personal property subject to general ad valorem taxes.

(c) For all elections and petitions that require ownership of real property or land, a mobile home or manufactured home as defined in section 38-12-201.5 (2), 5-1-301 (29), or 42-1-102 (106)(b), C.R.S., shall be deemed sufficient to qualify as ownership of real property or land for the purpose of voting rights and petitions.

(5) "Land" or "property" is used in this article with reference to benefits, appraisals, assessments, or taxes, as political entities, according to benefits received, and public corporations shall be considered as included in such reference in the same manner as "land" or "property".

(6) "Land" or "real estate" means real estate, as "real estate" is defined by the laws of the state of Colorado, and embraces all railroads, tramroads, electrical roads, street and interurban railroads, highways, roads, streets and street improvements, telephone, telegraph, and transmission lines, gas, sewer and water systems, water rights, pipelines, and rights-of-way of public service corporations, and all other real property whether held for public or private use.

(7) "Person" means a person, firm, partnership, association, or corporation, other than a county, town, city, city and county, or other political subdivision. Similarly, "public corporation" means counties, city and counties, towns, cities, school districts, irrigation districts, water districts, park districts, subdistricts, and all governmental agencies, clothed with the power of levying or providing for the levy of general or special taxes or special assessments.

(8) "Property" means real estate and personal property.

(9) "Publication" means once a week for three consecutive weeks in at least one newspaper of general circulation in each county wherein such publication is to be made. It shall not be necessary that publication be made on the same day of the week in each of the three weeks, but not less than fourteen days, excluding the day of the first publication, shall intervene between the first publication and the last publication, and publication shall be complete on the date of the last publication.

(10) "Works" means dams, storage reservoirs, compensatory and replacement reservoirs, canals, conduits, pipelines, tunnels, power plants, and any and all works, facilities, improvements, and property necessary or convenient for the supplying of water for domestic, irrigation, power, milling, manufacturing, mining, metallurgical, and all other beneficial uses.

Source: L. 37: p. 1311, § 2. **CSA:** C. 173B, § 16. **CRS 53:** § 149-6-2. **L. 61:** p. 843, § 1. **C.R.S. 1963:** § 150-5-2. **L. 70:** p. 436, § 1. **L. 71:** p. 1347, § 1. **L. 82:** (4)(d) added, p. 546, § 8, effective April 15. **L. 90:** (4) amended, p. 1849, § 49, effective May 31. **L. 94:** (4)(c) amended, p. 706, § 12, effective April 19; (4)(c) amended, p. 2567, § 83, effective January 1, 1995. **L. 2001:** (4)(c) amended, p. 1277, § 47, effective June 5. **L. 2016:** (4)(a)(I) and (4)(a)(II) amended, (SB 16-142), ch. 173, p. 592, § 80, effective May 18.

Editor's note: Amendments to subsection (4)(c) by Senate Bill 94-092 and Senate Bill 94-001 were harmonized.

37-45-104. Name of district - bonds. The districts created under this article may be termed "water conservancy districts", and the bonds which may be issued under this article may be called "water conservancy bonds", and such designation may be engraved or printed on their face.

Source: L. 37: p. 1311, § 2. **CSA:** C. 173B, § 16. **CRS 53:** § 149-6-2. **L. 61:** p. 843, §. **C.R.S. 1963:** § 150-5-2.

37-45-105. Liberal construction. This article, being necessary to secure and preserve the public health, safety, convenience, and welfare and for the security of public and private property, shall be liberally construed to effect the purposes of this article.

Source: L. 37: p. 1358, § 39. **CSA:** C. 173B, § 53. **CRS 53:** § 149-6-41. **C.R.S. 1963:** § 150-5-41.

37-45-106. Constitutional construction clause. If the courts of the state or of the United States declare any section, provision, paragraph, clause, sentence, or phrase, or part thereof, of this article invalid or unconstitutional, or in conflict with any other section, provision, paragraph, clause, sentence, or phrase, or part thereof, of this article, then such decision shall affect only the section, provision, paragraph, clause, sentence, phrase, or part thereof declared to be unconstitutional or unauthorized and shall not affect any other part whatsoever of this article. The general assembly of the state of Colorado declares that it would have passed this article and each section, provision, paragraph, clause, sentence, or phrase hereof irrespective of the fact that any one or more of the other sections, provisions, paragraphs, clauses, sentences, or phrases, or parts thereof, are declared invalid or unconstitutional.

Source: L. 37: p. 1358, § 40. **CSA:** C. 173B, § 54. **CRS 53:** § 149-6-42. **C.R.S. 1963:** § 150-5-42.

37-45-107. Repeal - saving clause. All acts or parts of acts conflicting in any way with any of the provisions of this article in regard to the improvements or improvement districts, or regulating or limiting the power of taxation or assessments, or otherwise interfering with the accomplishment of the purposes of this article according to its terms are declared nonoperative and noneffective as to this article as completely as if they did not exist. But all such acts and parts of acts shall not in any other way be affected by this article.

Source: L. 37: p. 1358, § 41. **CSA:** C. 173B, § 55. **CRS 53:** § 149-6-43. **C.R.S. 1963:** § 150-5-43.

37-45-108. Jurisdiction of district courts. The district court sitting in and for any county in this state is hereby vested with jurisdiction when the conditions stated in section 37-45-109 are found to exist to establish water conservancy districts which may be entirely within or partly within and partly without the judicial district in which said court is located for conserving, developing, and stabilizing supplies of water for domestic, irrigation, power, manufacturing, and other beneficial uses as provided in this article; but the terms of this article shall not be construed to confer upon such district court jurisdiction to hear, adjudicate, and settle questions concerning the priority of appropriation of water between districts organized under this article and ditch companies and other owners of ditches drawing water for irrigation purposes from the same stream or its tributaries, and jurisdiction to hear and determine such questions of law and questions of right growing out of or in any way involved or connected therewith are expressly excluded from this article and shall be determined in the proper county as otherwise provided by the laws of the state of Colorado.

Source: L. 37: p. 1313, § 3. **CSA:** C. 173B, § 17. **CRS 53:** § 149-6-3. **C.R.S. 1963:** § 150-5-3.

37-45-109. Petition. (1) (a) Except as provided in subsection (2.5) of this section, before any water conservancy district is established under this article having a valuation for assessment of irrigated land, together with improvements thereon within the proposed district, of twenty million dollars or more, a petition shall be filed in the office of the clerk of the court vested with jurisdiction in a county in which all or part of the lands embraced in such proposed water conservancy district are situated, signed by not fewer than fifteen hundred owners of irrigated land situated within the limits of the territory proposed to be organized into a district but not embraced within the incorporated limits of a city or town; and each tract of land shall be listed opposite the name of the signer, each such tract, together with improvements thereon, to have a valuation for assessment of not less than two thousand dollars. Such petition shall be also signed by not fewer than five hundred owners of nonirrigated land or lands embraced in the incorporated limits of a city or town, all situated in the proposed district; and each tract of land shall be listed opposite the name of the signer, each such tract, together with improvements thereon, to have a valuation for assessment of not less than one thousand dollars.

(b) In the event a petitioner signs the petition both as owner of irrigated and nonirrigated land situated within a municipality, his name shall be counted only as an owner of irrigated lands. A signing petitioner shall not be permitted, after the filing of the petition, to withdraw his name therefrom.

(c) No district shall be formed under this subsection (1) unless the valuation for assessment of irrigated land, together with improvements thereon, within the proposed district, is twenty million dollars or more, and no city, or city and county, having a population of more than twenty-five thousand as determined by the last United States census shall be included within such district unless by and with the written consent of the chief executive officer of such city, or city and county, and with the approval of the legislative body of such municipality, and such consent may specify that the rate of taxation on the valuation for assessment of property within

said city, or city and county, under section 37-45-122, shall not exceed a maximum rate which may be less than the rates set out in section 37-45-122, and, in such case, the district shall not have power to levy an assessment on the property in said city, or city and county, at a greater rate than that specified in said consent.

(2) (a) Except as provided in subsection (2.5) of this section, before any water conservancy district shall be established under this article having a valuation for assessment of irrigated land, together with improvements thereon, within the proposed district of less than twenty million dollars, a petition shall be filed in the office of the clerk of the court vested with jurisdiction in a county in which all or part of the lands embraced in such proposed water conservancy district are situated, signed by not fewer than twenty-five percent of the owners of irrigated lands to be included in the district but not embraced within the incorporated limits of a city or town; and each tract of land shall be listed opposite the name of the signer, each such tract, together with improvements thereon, to have a valuation for assessment of not less than one thousand dollars. Such petition shall be also signed by not fewer than five percent of the owners of nonirrigated land or lands embraced in the incorporated limits of a city or town, all situated in the proposed district; and each tract of land shall be listed opposite the name of the signer, each such tract, together with improvements thereon, to have a valuation for assessment of not less than one thousand dollars.

(b) In the event a petitioner signs such a petition both as owner of irrigated and nonirrigated land situated within a municipality, his name shall be counted only as an owner of irrigated land. A signing petitioner shall not be permitted, after the filing of the petition, to withdraw his name therefrom.

(c) No district shall be formed under this subsection (2) unless the valuation for assessment of irrigated land, together with improvements thereon, within the proposed district, is less than twenty million dollars, and no city, or city and county, having a population of more than twenty-five thousand as determined by the last United States census shall be included within such district unless by and with the written consent of the chief executive officer of such city, or city and county, with the approval of the legislative body of such municipality, and such consent may specify that the rate of taxation on the valuation for assessment of property within said city, or city and county, under section 37-45-122, shall not exceed a maximum rate which may be less than the rates set out in section 37-45-122, and, in such case, the district shall not have power to levy an assessment on the property in said city, or city and county, at a greater rate than that specified in said consent.

(2.5) (a) As an alternative to the procedures set forth in subsections (1) and (2) of this section, a petition for an election on the organization of a water conservancy district may be filed with the clerk of the court vested with jurisdiction in a county in which all or part of the lands embraced in such proposed district is situated. The petition shall be signed by not less than ten percent or two hundred electors of the proposed special district, whichever number is smaller. The proposed boundary of the special district may include any part or all of any city or city and county of any size. Such petition and the hearing thereon shall otherwise comply with the provisions of this article which are not inconsistent with the provisions of this subsection (2.5).

(b) On the day fixed for the hearing, or at a continuance thereof, the court shall first ascertain, from such evidence which may be adduced, that the required number of electors of the proposed district have signed the petition. Upon said hearing, if it appears that the petition for the organization of the district has been signed and presented in conformity with this subsection

(2.5) and that the allegations of the petition are true, the court, by order duly entered of record, shall direct that the question of the organization of the water conservancy district shall be submitted at an election to be held for that purpose in accordance with the procedures set forth in sections 37-45-139 to 37-45-141. The court shall exercise all functions which are the responsibility of the board of directors of a water conservancy district as set forth in said sections.

(c) At such election, the voter shall vote for or against the organization of the water conservancy district. If a majority of the votes cast at said election are in favor of the organization, the court shall declare the district organized and give it the corporate name designated in the petition, by which it shall thereafter be known in all proceedings. However, if the proposed district includes any territory within a municipality and a majority of the votes cast by voters residing within that incorporated area are against formation of the district, the governing body of said municipality may, within thirty days after certification of the election results, petition the court organizing the district for exclusion from the district of all such incorporated territory, and the court shall exclude such territory from the district. Thereupon, the district shall be a political subdivision of the state of Colorado and a body corporate with all the powers of a public or municipal corporation.

(3) The petition shall set forth:

(a) The proposed name of said district;

(b) In cases where an election will not be held on the organization of the district, that property within the proposed district will be benefited by the accomplishment of the purposes enumerated in section 37-45-108;

(c) A general description of the purpose of the contemplated improvement and of the territory to be included in the proposed district. The description need not be given by metes and bounds or by legal subdivision, but it shall be sufficient to enable a property owner to ascertain whether his property is within the territory proposed to be organized as a district. The territory need not be contiguous if it is so situated that the organization of a single district of the territory described is calculated to promote one or more of the purposes enumerated in section 37-45-108.

(d) Whether or not any part of the proposed district is included within the boundaries of a district already in existence under the provisions of this article and, if so, the general description, as defined in paragraph (c) of this subsection (3), of the overlapping area;

(e) The valuation for assessment of all irrigated land within the boundaries of the proposed district if the district is to be organized without holding an election on the question of organization;

(f) A general designation of divisions of the district and the number of directors of the district proposed for each subdivision;

(g) A prayer for the organization of the district by the name proposed and, in the case of a petition for an election under subsection (2.5) of this section, a request for the holding of an election on the question of the organization of the district.

(4) No petition with the requisite signatures shall be declared void on account of alleged defects, but the court may permit the petition to be amended at any time to conform to the facts by correcting any errors in the description of the territory or in any other particular. However, similar petitions or duplicate copies of the same petition for the organization of the same district may be filed and together shall be regarded as one petition. All such petitions filed prior to the

hearing on the first petition filed shall be considered by the court the same as though filed with the first petition placed on file.

(5) In determining whether the requisite number of landowners have signed the petition, the court shall be governed by the names as they appear upon the tax roll which shall be prima facie evidence of such ownership.

Source: L. 37: p. 1313, § 4. **CSA:** C. 173B, § 18. **L. 39:** p. 592, § 1. **L. 49:** p. 737, § 1. **CRS 53:** § 149-6-4. **L. 61:** p. 845, § 2. **C.R.S. 1963:** § 150-5-4. **L. 67:** p. 698, § 1. **L. 81:** (1)(a), (2)(a), (3)(b), (3)(e), and (3)(g) amended and (2.5) added, p. 1752, § 1, effective June 19.

37-45-110. Bond of petitioners. At the time of filing the petition or at any time subsequent thereto and prior to the time of hearing on said petition, a bond shall be filed, with security approved by the court, sufficient to pay all expenses, including any expenses of an election, connected with the proceedings in case the organization of the district is not effected. If at any time during the proceeding the court is satisfied that the bond first executed is insufficient in amount, it may require the execution of an additional bond within a time to be fixed to be not less than ten days distant, and, upon failure of the petitioner to execute the same, the petition shall be dismissed.

Source: L. 37: p. 1316, § 5. **CSA:** C. 173B, § 19. **CRS 53:** § 149-6-5. **C.R.S. 1963:** § 150-5-5. **L. 81:** Entire section amended, p. 1754, § 2, effective June 19.

37-45-111. Notice of hearing on petition. (1) Immediately after the filing of such petition, the court wherein such petition is filed, by order, shall fix a place and time, not less than sixty days nor more than ninety days after the petition is filed, for hearing thereon, and thereupon the clerk of said court shall cause notice by publication to be made of the pendency of the petition and of the time and place of hearing thereon; the clerk of said court shall also forthwith cause a copy of said notice to be mailed by United States registered mail to the board of county commissioners of each of the several counties having territory within the proposed district.

(2) The district court in and for the county in which the petition for the organization of a water conservancy district has been filed shall thereafter for all purposes of this article, except as otherwise provided in this article, maintain and have original and exclusive jurisdiction coextensive with the boundaries of said water conservancy district and of land and other property proposed to be included in said district or affected by said district, without regard to the usual limits of its jurisdiction.

(3) No judge of such court wherein such petition is filed shall be disqualified to perform any duty imposed by this article by reason of ownership of property within any water conservancy district or proposed water conservancy district or by reason of ownership of any property that may be benefited, taxed, or assessed therein.

Source: L. 37: p. 1316, § 6. **CSA:** C. 173B, § 20. **CRS 53:** § 149-6-6. **C.R.S. 1963:** § 150-5-6.

37-45-112. Protests and hearings on petitions. (1) (a) At any time after the filing of a petition for the organization of a conservancy district having a valuation for assessment of irrigated land within the proposed district, together with improvements thereon, of twenty million dollars or more, a petition protesting the creation of said district may be filed in the office of the clerk of the court wherein the proceeding for the creation of said district is pending. Such protesting petition shall be filed at least thirty days prior to the time fixed by order of court for the hearing upon the petition to create such district, and not thereafter.

(b) Any such protesting petition shall be signed by either: Not fewer than fifteen hundred owners of the irrigated lands in said proposed district, but not embraced within the incorporated limits of a city or town, the aggregate valuation for assessment of which, together with improvements, is not less than two million dollars and also signed by not fewer than five hundred owners of nonirrigated land or lands embraced in the incorporated limits of a city or town, all such situated within the proposed district, the aggregate valuation for assessment of which, together with improvements, is not less than one million dollars; or owners of property subject to ad valorem taxes within the proposed district, regardless of number, the aggregate valuation for assessment of which property is more than fifty percent of the total valuation for assessment of all property subject to ad valorem taxes within the proposed district.

(c) The signers of any such protesting petition shall state therein a description of the taxable property owned by each, the value thereof as shown by the last preceding assessment, and that they did not sign the petition for creating the proposed district.

(2) (a) At any time after the filing of a petition for the organization of a conservancy district having a valuation for assessment of irrigated land within the proposed district, together with improvements thereon, of less than twenty million dollars, a petition protesting the creation of said district may be filed in the office of the clerk of the court wherein the proceeding for the creation of said district is pending. Such protesting petition shall be filed at least thirty days prior to the time fixed by order of court for the hearing upon the petition to create said district, and not thereafter.

(b) Any such protesting petition shall be signed by either: Not fewer than twenty-five percent of the owners of the irrigated lands within said proposed district not embraced within the incorporated limits of a city or town and also signed by not fewer than five percent of owners of nonirrigated lands or lands embraced in the incorporated limits of a city or town, all situated within the proposed district; or owners of property subject to ad valorem taxes within the proposed district, regardless of number, the aggregate valuation for assessment of which property is more than fifty percent of the total valuation for assessment of all properties subject to ad valorem taxes within the proposed district.

(c) The signers of any such protesting petition shall state therein a description of the taxable property owned by each, the value thereof as shown by the last preceding assessment, and that they did not sign the petition for creating the proposed district.

(3) In the event a petitioner signs such petition both as owner of irrigated and nonirrigated land situated within a municipality, his name shall be counted only as an owner of irrigated lands.

(4) (a) Upon the filing of any petition either for or against creation of a district, it is the duty of the clerk of the court to make as many certified copies thereof, including the signatures thereto, as there are counties in which any part of said district extends.

(b) The court shall thereupon order the mailing of such copies to the appropriate county treasurers, which order shall include directions to the county treasurers to certify by a day certain such information contained in their official files as the court may deem necessary to resolve the issues of property ownership and valuation for assessment raised in or incidental to the petitions as filed.

(5) (a) Upon the day set for the hearing upon the original petition, if it appears to the court from the information furnished by the county treasurers, and from such other evidence as may be adduced by any party in interest, that a protesting petition is not signed by the requisite number of owners of lands and of the requisite values, as applicable, the court shall thereupon dismiss said protesting petition and shall proceed with the original hearing as provided in this section.

(b) If the court finds from the evidence that a protesting petition is signed by the requisite number of owners of lands and of the requisite values, as applicable, the court shall order an election on the question of the formation of the district in accordance with the procedure set forth in sections 37-45-139 to 37-45-141. The court shall exercise all functions which are the responsibility of the board of directors of a water conservancy district as set forth in said sections.

(c) The finding of the court upon the question of total valuation, the genuineness of the signatures, and all other matters of law and fact incident to such determination shall be final and conclusive on all parties and interests whether appearing or not.

(6) (a) Any owner of real property in said proposed district not having individually signed a petition for the organization of a conservancy district may file objection to the organization and incorporation of the district. Such objection shall be limited to a denial of the statements in the petition.

(b) The owner of any real property, or interest therein subject to ad valorem taxation, within the proposed district may file a petition with the court stating reasons why said property should not be included therein and praying that said property be excluded therefrom. Such reasons may include, but shall not be limited to, the absence of benefit to the said property derived from the proposed district and the fact that the exclusion will not interfere with the purposes of the proposed district. Such petition shall be duly verified and shall describe the property sought to be excluded. The court shall hear said petition and all objections thereto at the time of the hearing on the petition for organization as an advanced matter and shall determine whether said property should be excluded or included in said district. A final order of the court shall be entered on a petition for exclusion prior to and separately from any final order granting or dismissing the petition for the organization of the district.

(c) Any petitions or objections filed under paragraph (a) or (b) of this subsection (6) shall be filed at least thirty days prior to the time fixed by order of court for hearing upon the petition to create said district and not thereafter.

(6.5) (a) The only objections or protesting petitions allowed in the case of a petition for an election under section 37-45-109 (2.5) shall be those filed under paragraph (b) of subsection (6) of this section and those which protest that such petition for an election has not been signed and presented in compliance with said section.

(b) In the event that a petition is amended to request an election, any protesting petitions not allowed under paragraph (a) of this subsection (6.5) shall be dismissed by the court and the proceedings continued as provided in section 37-45-109 (2.5).

(6.6) Any petition originally filed under section 37-45-109 (1) or (2) may, at any time, be amended to request an election on the question of the organization of the district as provided in section 37-45-109 (2.5) if the original petition stated that it may be used in the alternative to request an election on the question of the organization of the district. Any such amended petition shall then conform with the petition requirements of section 37-45-109 (2.5), and any signers to the petition originally filed shall be considered valid signers on the amended petition so long as such signers meet the requirements of section 37-45-109 (2.5).

(7) Upon said hearing on a petition filed under section 37-45-109 (1) or (2), if it appears that the petition for the organization of a water conservancy district has been signed and presented in conformity with this article, and that the allegations of the petition are true, and that no protesting petition has been filed, or if filed has been dismissed, by order duly entered of record, the court shall adjudicate all questions of jurisdiction, declare the district organized, and give it a corporate name, by which in all proceedings it shall thereafter be known, and thereupon the district shall be a political subdivision of the state of Colorado and a body corporate with all the powers of a public or municipal corporation.

(8) In such decree the court shall designate the place where the office or principal place of business of the district shall be located, which shall be within the corporate limits of the district and which may be changed by order of court from time to time. The regular meetings of the board shall be held at such office or place of business but for cause may be adjourned to any other convenient place. The official records and files of the district shall be kept at the office so established.

(9) If the court determines that a petition for organization of a water conservancy district has not been signed and presented in conformity with this article or that the material facts are not as set forth in the petition, the court shall allow the petitioner thirty days within which to cure any defects as provided in section 37-45-109 (4) or to amend the petition as provided in subsection (6.6) of this section to request an election on the question of organizing the district. Any such amendment of a petition shall be valid if amended within said thirty days. If after said thirty days any defects are not cured or the petition is not so amended, the court shall dismiss the proceedings and adjudge the costs against the signers of the petition in such proportion as it deems just and equitable. No appeal or other remedy shall lie from an order dismissing said proceeding; but nothing in this section shall be construed to prevent the filing of a subsequent petition for similar improvements or for a similar water conservancy district, and the right to renew such proceeding is expressly granted and authorized.

(10) If an order is entered establishing the district, such order shall be deemed final and no appeal or other remedy shall lie therefrom, and the entry of such order shall finally and conclusively establish the regular organization of the district against all persons except the state of Colorado, in an action in the nature of quo warranto, commenced by the attorney general within three months after said decree, declaring such district organized as provided in this article, and not otherwise. The organization of such district shall not be directly nor collaterally questioned in any action or proceeding except as expressly authorized in this article.

(11) Nothing in this article shall be construed to affect districts organized prior to May 10, 1939, under the provisions of this article.

Source: L. 37: p. 1317, § 7. **CSA:** C. 173B, § 21. **L. 39:** p. 594, § 2. **L. 49:** pp. 740, 743, §§ 2, 3. **CRS 53:** § 149-6-7. **C.R.S. 1963:** § 150-5-7. **L. 67:** p. 699, § 2. **L. 81:** (7) amended, (6.5) and (6.6) added, and (9) R&RE, pp. 1754, 1755, §§ 3, 4, effective June 19.

37-45-113. Provisions for filing and recording decree of incorporation. Within thirty days after the district has been declared a corporation by the court, the clerk of the court shall transmit to the division of local government in the department of local affairs and to the county clerk and recorder in each of the counties having lands in said district copies of the findings and the decree of the court incorporating said district. The same shall be filed with said division, and copies shall also be recorded in the office of the county clerk and recorder of each county in which a part of the district may be, where they shall become permanent records.

Source: L. 37: p. 1321, § 8. **CSA:** C. 173B, § 22. **CRS 53:** § 149-6-8. **C.R.S. 1963:** § 150-5-8. **L. 76:** Entire section amended, p. 606, § 30, effective July 1. **L. 83:** Entire section amended, p. 1228, § 12, effective July 1.

Cross references: For filing of articles of incorporation, see § 7-102-103.

37-45-114. Appointment of board of directors. (1) (a) Within thirty days after entering the decree incorporating said district, the court shall appoint a board of directors of the district with backgrounds reflecting the agricultural, municipal, industrial, and other interests in the beneficial use of water within the district. Such board shall consist of not more than fifteen persons who are residents of the counties in which the water conservancy district is situated, all of whom shall be the owners of real property in said district and knowledgeable in water matters. Directors shall be appointed so as to generally achieve geographical representation. No specific number of directors shall be required to represent any specific interest in the beneficial use of water. In order to achieve geographical representation, the court shall appoint a director from each county within the district which contains more than one percent of the total land area of the district, which person shall be the owner of real property within the district and within said county. Based on the most recent federal census, the court shall appoint the remaining directors, so far as practicable, in the same proportion that the population of each county or portion thereof within the district bears to the total population of the district. Said directors shall reside and own real property within each county, or portion thereof within the district, which is entitled to such proportional representation. The district shall maintain, for public inspection at its offices during normal working hours, a current list showing the names, counties of residence, and expiration dates of the terms of each member of the district's board of directors. Not more than sixty days and not less than forty-five days prior to expiration of a director's term, the conservancy district shall publish notice, once in a newspaper of general circulation within the district, that applications for appointment as director will be accepted by the court until thirty days prior to the expiration of the director's term. The notice shall specify the address of the court to which resumes may be sent, shall specify that the applicant must have resided within the district for a period of one year and be the owner of real property within the district, and, when applicable by decree or revised decree, shall specify that the applicant must be the owner of real property within the particular county whose director's term is expiring. If the organizational decree of the district provides criteria for the appointment of board members, the provisions of this paragraph

(a), regarding geographical and population criteria for appointment, shall not apply to districts which were created pursuant to this article prior to July 1, 1985, unless the court enters an order pursuant to paragraph (d) of this subsection (1).

(b) At the expiration of their respective terms of office as fixed by the court, appointments of one-third of the board, to the nearest whole number, shall be made by said court for terms of one year; a like number shall be appointed for terms of two years; and the remainder shall be appointed for terms of four years. Thereafter all appointments of directors shall be for terms of four years. The court shall fill, for the duration of the unexpired term, any vacancy which may occur on the board. Each director shall hold office during the term for which he is appointed and until his successor is duly appointed and has qualified and shall furnish a corporate surety bond at the expense of the district, in the amount and form fixed and approved by the court, conditioned for the faithful performance of his duties as such director.

(c) In the event that any water conservancy district extends into two or more judicial districts, or any parts thereof, the directors of such water conservancy district shall be appointed by the presiding district judges of all such judicial districts, who, sitting en banc, shall constitute "the court" for purposes of this paragraph (c) and paragraph (a) of this subsection (1). In the event of a disagreement regarding appointees, the presiding judge of each judicial district shall appoint the directors from each eligible county within his judicial district.

(d) The court which entered the organizational decree of a district created before July 1, 1985, may reopen the organizational decree in accordance with this subsection (1). If a petition to reopen any such organizational decree is filed with the court in which the decree was originally entered, such petition shall be signed by the board of directors in its discretion or by the owners of ten percent of the allocation of a district's water supply or by ten percent of the registered electors who have resided within the district for a period of one year and who are owners of real property within the district. The court shall promptly conduct a hearing for the limited purpose of reviewing and revising the organizational decree, if necessary to meet the criteria of paragraph (a) of this subsection (1), to specify the number of directors from each county according to the criteria of paragraph (a) of this subsection (1). After the initial reopening and revision of a decree under the provisions of this subsection (1), such decree may be reopened and revised only once every ten years if necessary to reflect the criteria of paragraph (a) of this subsection (1). Any revision to the decree shall take effect upon entry, but no provision of the revised decree shall remove a director then serving prior to the expiration of his term. A director whose term expires after a proper petition has been filed pursuant to this paragraph (d) shall continue to serve, and the court shall make no appointment of a successor director until such time as a revised organizational decree is entered pursuant to this paragraph (d) or until the court makes a determination that no revision is necessary. The revised decree shall stagger the terms of the directors so that no more than one-third of the terms of the directors shall expire in any given year.

(e) Upon petition or upon its own motion, the court may remove any director of a district board for malfeasance, misfeasance, willful neglect of duty, or any other cause which renders such director incapable or unfit to perform the duties of his office. Such action for removal of a director shall occur after notice and a public hearing, unless such notice and hearing is expressly waived in writing by the challenged director.

(2) In the event that a petition, signed by not fewer than ten percent of the registered electors residing in a county, or portion of a county entitled to a director, of a water conservancy

district, which electors, for the purpose of this subsection (2), are those persons entitled to vote in general elections, praying for the election of a director from that county to fill the term of office of the specified director from that county then about to expire, in lieu of the appointment thereof by the court, shall be filed with the clerk of the court at any time prior to ninety days preceding the expiration date of the term of office of such director appointed by the court, the court shall order the holding of an election in the county, or portion of a county entitled to a director, in the district for the purpose of filling the vacancy to be caused by the expiration of the term of office of the director so about to expire in lieu of the appointment of a successor by the court as provided in subsection (1) of this section.

(3) Upon the entry of such order by the court, the clerk of the court shall prepare a certified copy of such order and file the same with the board of directors which shall thereafter provide for the holding of such election for the election of such member of the board of directors in accordance with the provisions of section 37-45-139.

(4) Any director so elected shall have the qualifications required for members of the board of directors appointed by the court and shall furnish like bond as required of directors appointed by the court under subsection (1) of this section.

(5) The call of such election shall be published as required by the provisions of section 37-45-140, and such election and the canvass of returns thereof shall be held in pursuance of the provisions of section 37-45-141.

(6) Repealed.

Source: L. 37: p. 1322, § 9. **CSA:** C. 173B, § 23. **L. 45:** p. 721, § 1. **L. 49:** pp. 735, 736, §§ 1, 2. **CRS 53:** § 149-6-9. **C.R.S. 1963:** § 150-5-9. **L. 64:** p. 835, § 1. **L. 75:** (1)(b) amended, p. 1366, § 1, effective July 1. **L. 85:** (1)(a), (1)(c), and (2) amended, (1)(d) and (1)(e) added, and (6) repealed, pp. 1147, 1150, §§ 1, 3, effective June 6. **L. 96:** (2) amended, p. 1036, § 1, effective May 23.

37-45-115. Organization of the board of directors. (1) Each director shall take an oath or affirmation in accordance with section 24-12-101.

(2) Upon taking the oath, the board shall choose one of its number chairman of the board and president of the district and shall elect some suitable person secretary of the board and of the district who may or may not be a member of the board. Such board shall adopt a seal and shall keep in a visual text format that may be transmitted electronically a record of all of its proceedings, minutes of all meetings, certificates, contracts, bonds given by employees, and all corporate acts, which shall be open to inspection of all owners of property in the district as well as to all other interested parties.

(3) Each member of the board shall receive as compensation for the member's service such sum as shall be ordered by the court, not in excess of two thousand four hundred dollars per annum, payable monthly, and necessary traveling expenses actually expended while engaged in the performance of the member's duties.

(4) All special and regular meetings of the board shall be held at locations which are within the boundaries of the district or which are within the boundaries of any county in which the district is located, in whole or in part, or in any county so long as the meeting location does not exceed twenty miles from the district boundaries. The provisions of this subsection (4) may be waived only if the following criteria are met:

(a) The proposed change of location of a meeting of the board appears on the agenda of a regular or special meeting of the board; and

(b) A resolution is adopted by the board stating the reason for which a meeting of the board is to be held in a location other than under the provisions of this subsection (4) and further stating the date, time, and place of such meeting.

Source: L. 37: p. 1322, § 10. **CSA:** C. 173B, § 24. **CRS 53:** § 149-6-10. **C.R.S. 1963:** § 150-5-10. **L. 75:** (3) amended, p. 1366, § 2, effective July 1. **L. 90:** (4) added, p. 1504, § 19, effective July 1. **L. 2007:** (3) amended, p. 357, § 1, effective April 2. **L. 2009:** (2) amended, (HB 09-1118), ch. 130, p. 563, § 11, effective August 5. **L. 2018:** (1) amended, (HB 18-1138), ch. 88, p. 701, § 38, effective August 8.

Cross references: For the legislative declaration in HB 18-1138, see section 1 of chapter 88, Session Laws of Colorado 2018.

37-45-116. Meetings and records. (1) The meetings of the board of directors of a water conservancy district shall be subject to the requirements of part 4 of article 6 of title 24, C.R.S.

(2) A majority of the directors shall constitute a quorum, and a concurrence of a majority of those in attendance, in any matter within their duties, shall be sufficient for its determination, except as otherwise provided in this article.

(3) The board shall keep written minutes of its proceedings. The minutes of the board, as approved by the board, shall constitute prima facie evidence of the acts of the board recorded therein, and, when duly certified by the board's president or the board's secretary, copies of such minutes shall be received as evidence of the acts of the board in all courts equally and with like effect as the originals. The records of a water conservancy district shall be public records as defined by section 24-72-202 (6), C.R.S.

Source: L. 37: p. 1323, § 11. **CSA:** C. 173B, § 25. **CRS 53:** § 149-6-11. **C.R.S. 1963:** § 150-5-11. **L. 85:** Entire section amended, p. 1150, § 2, effective June 6. **L. 91:** (1) amended, p. 822, § 10, effective June 1.

37-45-117. Employment of agents. The secretary shall be custodian of the records of the district and of its corporate seal, and shall assist the board in such particulars as it may direct in the performance of its duties. The secretary shall attest, under the corporate seal of the district, all certified copies of the official records and files of the district that may be required of him by this article, or by any person ordering the same and paying the reasonable cost of transcription, and any portion of the record so certified and attested shall prima facie import verity. The secretary shall serve as treasurer of the district, unless a treasurer is otherwise provided for by the board. The board may also employ a chief engineer who may be an individual, partnership, or corporation; an attorney, and such other engineers, attorneys, and other agents and assistants as may be necessary; and may provide for their compensation which, with all other necessary expenditures, shall be taken as a part of the cost or maintenance of the improvement. The chief engineer shall be superintendent of all the works and improvements, and shall make a full report to the board each year, or oftener if required by the board, and may make such suggestions and recommendations to the board as he may deem proper. The secretary and treasurer and such

other agents or employees of the district as the court may direct, shall furnish corporate surety bonds, at the expense of the district, in amount and form fixed and approved by the court, conditioned upon the faithful performance of their respective duties.

Source: L. 37: p. 1323, § 12. **CSA:** C. 173B, § 26. **CRS 53:** § 149-6-12. **C.R.S. 1963:** § 150-5-12.

37-45-118. General powers. (1) The board has power on behalf of said district:

(a) To have perpetual succession;

(b) (I) (A) To take by appropriation, grant, purchase, bequest, devise, or lease, and to hold and enjoy water, waterworks, water rights, and sources of water supply, and any and all real and personal property of any kind within or without the district necessary or convenient to the full exercise of its powers;

(B) To sell, lease, encumber, alien, or otherwise dispose of water, waterworks, water rights, and sources of supply of water for use within the district;

(C) To acquire, construct, or operate, control, and use any and all works, facilities, and means necessary or convenient to the exercise of its power, both within and without the district for the purpose of providing for the use of such water within the district and to do and perform any and all things necessary or convenient to the full exercise of the powers granted in this paragraph (b).

(II) Any works or facilities planned and designed for the exportation of water from the natural basin of the Colorado river and its tributaries in Colorado, by any district created under this article, shall be subject to the provisions of the Colorado river compact and the "Boulder Canyon Project Act". Any such works or facilities shall be designed, constructed, and operated in such manner that the present appropriations of water and, in addition thereto, prospective uses of water for irrigation and other beneficial consumptive use purposes, including consumptive uses for domestic, mining, and industrial purposes, within the natural basin of the Colorado river in the state of Colorado from which water is exported will not be impaired nor increased in cost at the expense of the water users within the natural basin. The facilities and other means for the accomplishment of said purpose shall be incorporated in and made a part of any project plans for the exportation of water from said natural basin in Colorado.

(c) To have and to exercise the power of eminent domain and dominant eminent domain and in the manner provided by law for the condemnation of private property for public use to take any property necessary to the exercise of the powers granted in this article; except that such district shall not have or exercise the power of eminent domain over or by means thereof to acquire the title to or beneficial use of vested water rights for transmountain diversion, and in connection therewith such district shall not have the power to carry or transport water in transmountain diversion, the title to which has been acquired by any municipality by virtue of eminent domain proceedings against any such vested rights;

(d) (I) To construct and maintain works and establish and maintain facilities across or along any public street or highway and in, upon, or over any vacant public lands which public lands are now, or may become, the property of the state of Colorado and to construct works and establish and maintain facilities across any stream of water or watercourse; except that the district shall promptly restore any such street or highway to its former state of usefulness as nearly as may be and shall not use the same in such manner as to completely or unnecessarily

impair the usefulness thereof. The grant of the right to use such vacant state lands shall be effective upon the filing by such district with the state board of land commissioners of an application showing the boundaries, extent, and locations of the lands, rights-of-way, or easements desired for such purposes.

(II) If the land, rights-of-way, or easements for which application is made is for the construction of any aqueduct, ditch, pipeline, conduit, tunnel, or other works for the conveyance of water, or for roads, or for poles or towers and wires for the conveyance of electrical energy, or for telephonic or telegraphic communication, no compensation shall be charged the district therefor, unless in the opinion of the state board of land commissioners the construction of such works will render the remainder of the legal subdivision through which such works are to be constructed valueless or unsalable, in which event the district shall pay for the lands to be taken and for such portion of any legal subdivision which in the opinion of the board is rendered valueless or unsalable, at the rate of two dollars and fifty cents per acre. If the lands for which application is made are for purposes other than the construction of roads or works for the conveyance of water or electricity or telephonic or telegraphic communication, such district shall pay to the state for such lands at the rate of two dollars and fifty cents per acre.

(III) Upon filing such application, accompanied by map or plat showing the location or proposed location of such works or facilities, the fee title to so much of such state lands as shall be necessary or convenient to enable such district efficiently and without interference to construct, maintain, and operate its works and to establish, maintain, and operate its facilities shall be conveyed to said district by patent. If an easement or right-of-way only over such lands is sought by the district, such easement or right-of-way shall be evidenced by permit or grant executed by or on behalf of the state board of land commissioners. The state board of land commissioners may reserve easements or rights-of-way, in the public, across any lands in such patents, grants, or permits described for streets, roads, and highways theretofore established according to law. Before any such patent, grant, or permit is executed, any compensation due to the state under the provisions hereof must be paid. No fee shall be exacted from the district for any patent, permit, or grant so issued or for any service rendered hereunder.

(IV) In the use of streets, the district shall be subject to the reasonable rules and regulations of the county, city, or town where such streets lie, concerning excavation and the refilling of excavation, the relaying of pavements, and the protection of the public during periods of construction; except that the district shall not be required to pay any license or permit fees or file any bonds. The district may be required to pay reasonable inspection fees.

(e) To contract with the government of the United States or any agency thereof for the construction, preservation, operation, and maintenance of tunnels, reservoirs, regulating basins, diversion canals, and works, dams, power plants, and all necessary works incident thereto and to acquire perpetual rights to the use of water from such works and to sell and dispose of perpetual rights to the use of water from such works to persons and corporations, public and private;

(f) To list in separate ownership the lands within the district which are susceptible of irrigation from district sources and to make an allotment of water to all such lands, which allotment of water shall not exceed the maximum amount of water that the board determines could be beneficially used on such lands; to levy assessments as provided in sections 37-45-121 to 37-45-126 against the lands within the district to which water is allotted on the basis of the value per acre-foot of water allotted to said lands within the district; except that the board may divide the district into units and fix a different value per acre-foot of water in the respective units

and, in such case, shall assess the lands within each unit upon the same basis of value per acre-foot of water allotted to lands within such unit;

(g) To fix rates at which water not allotted to lands, as provided in paragraph (f) of this subsection (1), shall be sold, leased, or otherwise disposed of; but rates shall be equitable although not necessarily equal or uniform, for like classes of service throughout the district;

(h) To enter into contracts, employ and retain personal services, and employ laborers; to create, establish, and maintain such offices and positions as shall be necessary and convenient for the transaction of the business of the district; and to elect, appoint, and employ such officers, attorneys, agents, and employees therefor as found by the board to be necessary and convenient;

(i) To adopt plans and specifications for the works for which the district was organized, which plans and specifications may at any time be changed or modified by the board. Such plans shall include maps, profiles, and such other data and descriptions as may be necessary to set forth the location and character of the works, and a copy thereof shall be kept in the office of the district and open to public inspection.

(j) To appropriate and otherwise acquire water and water rights within or without the state; to develop, store, and transport water; to subscribe for, purchase, and acquire stock in canal companies, water companies, and water users' associations; to provide, sell, lease, and deliver water for municipal and domestic purposes, irrigation, power, milling, manufacturing, mining, metallurgical, and any and all other beneficial uses and to derive revenue and benefits therefrom; to fix the terms and rates therefor; and to make and adopt plans for and to acquire, construct, operate, and maintain dams, reservoirs, canals, conduits, pipelines, tunnels, power plants, and any and all works, facilities, improvements, and property necessary or convenient therefor and, in the doing of all of said things, to obligate itself and execute and perform such obligations according to the tenor thereof; but the sale, leasing, and delivery of water for irrigation, domestic, and other beneficial purposes as provided in this section, whether the water is developed by the principal district or a subdistrict thereof, shall only be made for use within the boundaries of either the principal district or the subdistrict, or both;

(k) Repealed.

(l) To invest or deposit any surplus money in the district treasury, including such money as may be in any sinking or escrow fund established for the purpose of providing for the payment of the principal of or interest on any contract or bonded or other indebtedness, or for any other purpose, not required for the immediate necessities of the district in any legal investment or depository authorized by the provisions of part 6 of article 75 of title 24, C.R.S., and such investment may be made by direct purchase of any issue of such legal investment, or part thereof, at the original sale of the same or by the subsequent purchase of such legal investment. Any legal investment thus made and held may be sold from time to time and the proceeds reinvested in any such legal investment. Sales of any such legal investment thus purchased and held shall be made in season so that the proceeds may be applied to the purposes for which the money with which the legal investments were originally purchased was placed in the treasury of the district. The functions and duties authorized by this paragraph (l) shall be performed under such rules and regulations as shall be prescribed by the board. The board may appoint, by written resolution, one or more persons to act as custodians of the money of the district. Such persons shall give surety bonds in such amounts and form and for such purposes as the board requires.

(m) To refund bonded indebtedness incurred by the district under and pursuant to such rules and regulations as shall be prescribed by the board;

(n) To borrow money and incur indebtedness and to issue bonds or other evidence of such indebtedness;

(o) To adopt bylaws not in conflict with the constitution and laws of the state for carrying on the business, objects, and affairs of the board and of the district;

(p) To participate in the formulation and implementation of nonpoint source water pollution control programs related to agricultural practices in order to implement programs required or authorized under federal law and section 25-8-205 (5), C.R.S., enter into contracts and agreements, accept funds from any federal, state, or private sources, receive grants or loans, participate in education and demonstration programs, construct, operate, maintain, or replace facilities, and perform such other activities and adopt such rules and policies as the board deems necessary or desirable in connection with nonpoint source water pollution control programs related to agricultural practices;

(q) (I) To provide park and recreation improvements and services in connection with a reservoir owned by the district and adjacent land if such improvements and services are not already being provided by another entity with respect to the reservoir and adjacent land.

(II) Once the board adopts a resolution to provide improvements and services pursuant to this paragraph (q), no other entity may provide park and recreation improvements and services with respect to the reservoir and adjacent land without the consent of the board.

(III) The district may exercise any powers that a park and recreation district has in connection with the provision of park and recreation improvements and services, including imposing rates, fees, and charges in connection with the improvements and services. The district may use any district revenues to provide the improvements and services.

(2) Nothing provided in this article shall be construed to grant to the district or board the power to generate, distribute, sell, or contract to sell electric energy except for the operation of the works and facilities of the district and except for wholesale sales of electric energy which may be made both within and without the boundaries of the district or subdistrict.

Source: L. 37: p. 1324, § 13. **CSA:** C. 173B, § 27. **L. 43:** pp. 633, 635, §§ 1, 1. **CRS 53:** § 149-6-13. **C.R.S. 1963:** § 150-5-13. **L. 71:** p. 1348, § 1. **L. 77:** (1)(j) amended, p. 1636, § 1, effective June 9. **L. 81:** (1)(l) amended, p. 620, § 4, effective April 30; (1)(k) amended, p. 1756, § 1, effective May 18. **L. 87:** (1)(k) repealed and (2) added, p. 1582, §§ 42, 43, effective July 10. **L. 88:** (1)(p) added, p. 1023, § 3, effective April 6. **L. 89:** (1)(l) amended, p. 1135, § 84, effective July 1. **L. 2005:** (1)(q) added, p. 152, § 2, effective April 5.

Cross references: For the "Boulder Canyon Project Act", see 43 U.S.C. secs. 617 to 617t.

37-45-119. Power to acquire rights-of-way. Whenever, pursuant to this article, the electors of a water conservancy district have authorized a contract with the United States for construction and acquisition of works and water rights, which contract has obligated the district to acquire rights-of-way therefor to be conveyed by the district to the United States upon reimbursement by the United States, then the district, without further election and through its board of directors, has power to do all acts for acquiring such rights-of-way, including

borrowing of and paying interest upon such sums of money as shall be required to make deposits fixed by the court for possession and to pay awards on condemnation of said rights-of-way as well as amounts up to the appraised values of the particular rights-of-way as have been fixed by the appraisers for the United States in each instance of negotiated purchases, notwithstanding the sum borrowed shall be greater than the ordinary annual incomes and revenues of the district; and all debts incurred, and interest payments made prior to February 5, 1943, for the aforesaid purposes, are expressly authorized, ratified, and approved.

Source: L. 43: p. 641, § 1. **CSA:** C. 173B, § 27(1). **CRS 53:** § 149-6-14. **C.R.S. 1963:** § 150-5-14.

Cross references: For the "Colorado River Compact", see article 61 of this title; for the "Boulder Canyon Project Act", see 43 U.S.C. secs. 617 to 617t; for eminent domain proceedings, see articles 1 to 7 of title 38.

37-45-120. Subdistricts. (1) Subdistricts may be organized upon the petition of the owners of real property, within or partly within and partly without the district, which petition shall fulfill the same requirements concerning the subdistricts as the petition outlined in section 37-45-109 is required to fulfill, concerning the organization of the main district, and shall be filed with the clerk of the court, and shall be accompanied by a bond as provided for in section 37-45-110. All proceedings relating to the organization of such subdistricts shall conform in all things to the provision of this article relating to the organization of districts; except that not more than a majority of the owners of lands, having one-half or more of the aggregate valuation for assessment of the lands in the proposed subdistrict, shall be required to sign the petition for the creation of a subdistrict and not more than twenty-five percent of the owners of lands in the proposed subdistrict shall be required to sign the protesting petition against the creation of such subdistrict.

(2) Whenever the court declares and decrees by its order duly entered of record such subdistricts to be organized, the clerk of said court shall thereupon give notice of such order to the directors of the district who shall thereupon act also as directors of the subdistrict. Thereafter, the proceedings in reference to the subdistrict in all matters shall conform to the provisions of this article; except that, in the appraisal of benefits for the purpose of such subdistricts, in the issuance of bonds, in levying of assessments, and in all other matters affecting only the subdistrict, the provisions of this article shall apply to the subdistrict as though it were an independent district, and it shall not in these things be amalgamated with the main district.

(3) The petition for organization of a subdistrict shall also contain a statement of the amount or quantity of water for which said subdistrict desires to acquire the perpetual use and the amount of money that said subdistrict is willing to pay therefor, and, prior to the entry of its decree organizing any territory into a subdistrict, the court shall obtain the verified consent of the board to furnish such perpetual use of water for the purposes therein specified to such subdistrict at a price and upon the terms mentioned in the petition. The court shall then be authorized to enter its decree of organization of such subdistrict.

Source: L. 37: p. 1331, § 14. **CSA:** C. 173B, § 28. **CRS 53:** § 149-6-15. **C.R.S. 1963:** § 150-5-15.

37-45-121. Classification of taxes and assessments - powers. (1) In addition to the other means of providing revenue for such districts, the board has the power to levy and collect taxes and special assessments for maintaining and operating such works and paying the obligations and indebtedness of the district by any one or more of the methods or combinations thereof, classified as follows:

(a) Class A: To levy and collect taxes upon all property within the district as provided in section 37-45-122;

(b) Class B: To levy and collect assessments for special benefits accruing to property within municipalities for which use of water or capacity of works is allotted as provided in section 37-45-123;

(c) Class C: To levy and collect assessments for special benefits accruing to property within public corporations for which use of water or capacity of works is allotted as provided in section 37-45-124;

(d) Class D: To levy and collect assessments for special benefits accruing to lands for which use of water or capacity of works is allotted as provided in section 37-45-125.

Source: L. 37: p. 1332, § 15. **CSA:** C. 173B, § 29. **CRS 53:** § 149-6-16. **L. 60:** p. 221, § 1. **C.R.S. 1963:** § 150-5-16. **L. 92:** (1)(b) to (1)(d) amended, p. 2291, § 2, effective April 2.

37-45-122. Levy and collection under class A. (1) As to any district formed prior to April 22, 1957, to levy and collect taxes under class A, in each year, the board shall determine the amount of money necessary to be raised by taxation, taking into consideration other sources of revenue of the district, and shall fix a rate of levy which when levied upon every dollar of valuation for assessment of property within the district and with other revenues will raise the amount required by the district to supply funds for paying expenses of organization, for surveys and plans, and for paying the costs of construction of, operating, and maintaining the works of the district. The rate shall not exceed one-half mill on the dollar, prior to the delivery of water from the works, and thereafter shall not exceed one mill on the dollar of valuation for assessment of the property within the district, except in the event of accruing defaults or deficiencies when an additional levy may be made as provided in section 37-45-126.

(2) (a) As to any district formed subsequent to April 22, 1957, to levy and collect taxes under class A, in each year, the board shall determine the amount of money necessary to be raised by taxation, taking into consideration other sources of revenue of the district, and shall fix a rate of levy which, when levied on every dollar of valuation for assessment of property within the district and with other revenues, will raise the amount required by the district to supply funds for paying expenses of organization, for surveys and plans, and for paying the costs of construction of and operating and maintaining the works of the district; except that said rate shall not exceed:

(I) In the case of a district having a valuation for assessment when formed of not more than twenty million dollars, one and one-half mill on each dollar of valuation for assessment of property within the district prior to the delivery of water from the works and thereafter not to exceed three mills on each dollar of valuation for assessment;

(II) In the case of a district having a valuation for assessment when formed of more than twenty million dollars but not more than fifty million dollars, one mill on each dollar of

valuation for assessment of property within the district prior to the delivery of water from the works and thereafter not to exceed two mills on each dollar of valuation for assessment;

(III) In the case of a district having a valuation for assessment when formed of more than fifty million dollars, not to exceed one-half mill on each dollar of valuation for assessment of property within the district prior to the delivery of water from the works and thereafter not to exceed one mill on each dollar of valuation for assessment of the property within the district.

(b) In the event of accruing defaults or deficiencies, a levy in addition to those prescribed in paragraph (a) of this subsection (2) may be made as provided in section 37-45-126.

(3) In accordance with the schedule prescribed by section 39-5-128, C.R.S., the board shall certify to the board of county commissioners of each county within the district, or having a portion of its territory within the district, the rate so fixed with directions that, at the time and in the manner required by law for levying of taxes for county purposes, such board of county commissioners shall levy such tax upon the valuation for assessment of all property within the district, in addition to such other taxes as may be levied by such board of county commissioners at the rate so fixed and determined.

(4) (a) Any district may increase the maximum mill levy to no more than nine mills for districts described in subparagraph (I) of paragraph (a) of subsection (2) of this section, to no more than six mills for districts described in subparagraph (II) of paragraph (a) of subsection (2) of this section, and to no more than three mills for districts described in subparagraph (III) of paragraph (a) of subsection (2) of this section, but any such increase in a mill levy shall be made in accordance with the election procedure provided in this subsection (4).

(b) Whenever the board of directors of the district, by resolution adopted by a majority of all of the members of the board, determines that the interests of said district and the public interest or necessity demand an increase in the mill levy for such district not greater than the maximum mill levy prescribed in paragraph (a) of this subsection (4) for the purposes therein stated, said board shall order the submission of the proposition to the electors of the district at an election held for that purpose. Any election held for the purpose of submitting any such proposition may be held separately or may be consolidated or held concurrently with any other election authorized by law at which such electors of the district shall be entitled to vote.

(c) The declaration of such election may be included within the same resolution, which resolution, in addition to such declaration of public interest or necessity, shall recite the maximum mill levy proposed which shall be no greater than that authorized by paragraph (a) of this subsection (4) for a district of like size. Such resolution shall also fix the date upon which such election shall be held and the manner of holding the same and the method of voting for or against the increase in mill levy. Such resolution shall also fix the compensation to be paid the officers of the election and shall designate the precincts and polling places and shall appoint for each polling place, from each precinct from the electors thereof, the officers of such election, which officers shall consist of three judges, one of whom shall act as a clerk, who shall constitute a board of election for each polling place. The description of precincts may be made by reference to any order of the board of county commissioners of the county in which the district or any part thereof is situated or by reference to any previous order or resolution of the board or by detailed description of such precincts. Precincts established by boards of the various counties may be consolidated for special elections held under this article.

(d) In the event any such election is called to be held concurrently with any other election or is consolidated therewith, the resolution calling the election under this article need

not designate precincts or polling places or names of officers of the election but shall contain reference to the act or order calling such other election and fixing the precincts and polling places and appointing the election officers therefrom. The resolution shall be published once a week for two consecutive weeks, the last publication of which shall be at least ten days prior to the date set for said election, in a newspaper of general circulation, printed and published within the district, and no other or further notice of such election or publication of the names of election officers or of the precincts or polling places need be given or made.

(e) The election shall be conducted in accordance with the provisions of section 37-45-141 and in the same manner as elections held in accordance with the provisions of section 37-45-142. In the event that the increase in the mill levy of the district is approved, the board of directors shall be authorized to levy taxes at the rate authorized in the election. If the proposition of increasing such mill levy is defeated, the board of directors may continue to levy taxes at rates not exceeding those authorized prior to such election.

Source: L. 37: p. 1333, § 16. **CSA:** C. 173B, § 30. **CRS 53:** § 149-6-17. **L. 57:** p. 878, § 1. **L. 63:** p. 1010, § 1. **C.R.S. 1963:** § 150-5-17. **L. 70:** p. 437, § 2. **L. 74:** (1) and (3) amended, p. 421, § 73, effective April 11. **L. 75:** (1) amended, p. 224, § 81, effective July 16. **L. 79:** (4)(a) to (4)(c) amended, p. 1353, § 1, effective July 1. **L. 80:** (4)(e) amended, p. 796, § 61, effective June 5. **L. 87:** (3) amended, p. 1409, § 9, effective April 22. **L. 2001:** (4)(b) amended, p. 1277, § 48, effective June 5.

37-45-123. Levy and collection under class B. (1) (a) To levy and collect special assessments under class B, the board shall make an allotment of water or of capacity of specified works to each petitioning municipality in the district in the manner provided in this article and in such quantity as will in the judgment of the board, when added to the then present supply of water of such municipality in the case of an allotment of water, or when added to the then present supply of capacity of all other works of such municipality in the case of an allotment of capacity of specified works, make an adequate supply for such municipality and shall fix and determine the rate and the terms upon which such water or capacity of such works shall be sold, leased, contracted for, or otherwise disposed of for use by such municipalities; except that such rates shall be equitable although not necessarily equal or uniform for like classes of services throughout the district and no municipality shall be required to make payments to secure or cover the default or failure of performance pertaining to capital debt of any other participating municipality which participates in a project in which the capacity of the specified works has been allotted to two or more participants.

(b) The board shall examine all rates charged for like classes of service throughout the district and shall by rule and regulation adjust such rates periodically as needed to make such rates within any such class of service equitable.

(2) In the event any city, city and county, or town desires to purchase, lease, contract for, or otherwise obtain the beneficial use of waters or capacity of works of the district for domestic, irrigation, or other beneficial purposes, the legislative body of such municipality shall by ordinance authorize and direct its mayor and clerk to petition the board for an allotment of water or capacity of specified works, upon terms prescribed by the board, which petition shall contain, inter alia, the following:

(a) Name of municipality;

(b) Quantity of water or capacity of works for which an allotment is sought;

(c) Rate to be paid;

(d) Whether payments are to be in cash or annual installments;

(e) Agreement by the municipality to make payments for the beneficial use of such water or capacity of works together with annual maintenance and operating charges and to be bound by the provisions of this article and the rules and regulations of the board.

(3) The secretary of the board shall cause notice of the filing of such petition to be given and published once each week for two successive weeks, in a newspaper published in the county in which said municipality is situated, which notice shall state the filing of such petition and give notice to all persons interested to appear at the office of the board, at a time named in said notice and show cause, in writing, if any they have, why the petition should not be granted.

(4) The board at the time and place mentioned in said notice or at such time to which the hearing of said petition may adjourn, shall proceed to hear the petition and objections thereto, presented in writing, by any person showing cause why said petition should not be granted. The failure of any person interested to show cause shall be deemed an assent on such person's part to the granting of said petition. At its discretion, the board may accept or reject said petition; but, if it deems it for the best interest of the district that said petition be granted, the board shall enter an order granting said petition, and, from and after such order, the said municipality shall be deemed to have purchased, leased, contracted for, or otherwise acquired the beneficial use of water or capacity of works as set forth in said order.

(5) If said petition is granted, the board shall determine the amount of money necessary to be raised by taxation in each year from property within such municipality to pay the annual installments and a fair proportionate amount of estimated operating and maintenance charges for the next succeeding year, as provided in the order granting said petition, and shall prepare a statement showing the tax rate to be applied to all property in such municipality, which rate shall be the rate fixed by resolution of the board, modified to the extent necessary to produce from each such municipality only the amount of money apportioned thereto in said resolution, less any amount paid or undertaken to be paid by such municipality in cash or as credited thereto by payments from the general funds of such municipality. Upon receipt by the board of county commissioners of each county, wherein such municipality is located, of a certified copy of such resolution showing the tax rate to be applied to all property in each municipality and showing the municipalities and the property which is exempt therefrom, if any, it is the duty of the county officers to levy and collect such tax in addition to such other tax as may be levied by such board of county commissioners at the rate so fixed and determined.

Source: L. 37: p. 1334, § 17. **CSA:** C. 173B, § 31. **CRS 53:** § 149-6-18. **C.R.S. 1963:** § 150-5-18. **L. 92:** (1), (2), and (4) amended, p. 2292, § 3, effective April 2.

37-45-124. Levy and collection under class C. (1) (a) To levy and collect special assessments upon lands under class C, the board shall make an allotment of water or of capacity of specified works to each of the petitioning public corporations, other than municipalities, within the district in the manner as provided in this section, in such quantity as will in the judgment of the board, when added to the present supply of water of such public corporation in the case of an allotment of water, or when added to the then present supply of capacity of all other works of such public corporation in the case of an allotment of capacity of specified works,

make an adequate supply for such public corporation and shall fix and determine the rate and terms at which such water or capacity of works shall be sold, leased, contracted for, or otherwise disposed of to such public corporation; except that such rates shall be equitable although not necessarily equal or uniform for like classes of services throughout the district.

(b) The board shall examine all rates charged for like classes of service throughout the district and shall by rule and regulation adjust such rates periodically as needed to make such rates within any such class of service equitable.

(2) In the event any such public corporation desires to purchase, lease, contract for, or otherwise obtain the beneficial use of waters or capacity of works of the district, the board of such public corporation by resolution shall authorize and direct its president and secretary to petition the board for an allotment of water or of capacity of specified works, upon terms prescribed by the board, which petition shall contain, inter alia, the following:

(a) Name of public corporation;

(b) Quantity of water or capacity of works for which allotment is sought;

(c) Rate to be paid;

(d) Whether payments are to be made in cash or annual installments;

(e) Agreement by such public corporation to make payments for the beneficial use of such water or capacity of works, together with annual maintenance and operating charges, and to be bound by the provisions of this article and the rules and regulations of the board.

(3) The secretary of the board shall cause notice of the filing of such petition to be given and published, which notice shall state the filing of such petition and give notice to all persons interested to appear at the office of the board at a time named in said notice and show cause in writing why the petition should not be granted. The board at the time and place mentioned in said notice, or at such time to which the hearing of said petition may be adjourned, shall proceed to hear the petition and objections thereto, presented in writing, by any person showing cause why said petition should not be granted. The failure of any person interested to show cause shall be deemed an assent on such person's part to the granting of said petition. At its discretion, the board may accept or reject said petition; but, if it deems it for the best interest of the district that said petition be granted, the board shall enter an order to that effect granting said petition and, from and after such order, the public corporation or persons therein shall be deemed to have purchased, leased, contracted for, or otherwise acquired the beneficial use of water or capacity of works as set forth in said order.

(4) If said petition is granted, the board shall determine the amount of money necessary to be raised by assessment in each year on lands within such public corporation, less any amount paid or undertaken to be paid by such public corporation in cash or as credited thereto by payments from the general fund of such public corporation, and shall certify to the county assessor of the county in which the lands of such public corporation are located the amount of the assessment, plus a fair proportionate amount of the estimated operating and maintenance charges for the next succeeding year on each tract of land on or before October 1 of each year, and such county assessor shall extend the amount of such assessment, plus said operating and maintenance charges, on the tax roll as an assessment against the lands upon which said assessment is made.

Source: L. 37: p. 1336, § 18. **CSA:** C. 173B, § 32. **CRS 53:** § 149-6-19. **L. 60:** p. 222, § 2. **C.R.S. 1963:** § 150-5-19. **L. 92:** (1) to (3) amended, p. 2293, § 4, effective April 2.

37-45-125. Levy and collection under class D. (1) To levy and collect special assessments upon lands under class D, the board shall make an allotment of water or of capacity of specified works to petitioning owners of lands in the district, upon which water may be beneficially used in the manner as provided in this article, in such amount as will in the judgment of the board, together with the present supply of water for such lands in the case of an allotment of water, or when added to the then present supply of capacity of all other works in the case of an allotment of capacity of specified works, make an adequate water supply for such lands and shall fix and determine the rate and the terms at which water or capacity of works shall be sold, leased, contracted for, or otherwise disposed of, for use on said lands.

(2) In the event that any person or private corporation elects to purchase, lease, contract for, or otherwise obtain the beneficial use of waters or capacity of works of the district, such person or corporation shall petition the board for an allotment of water or of capacity of specified works, upon terms prescribed by the board, which petition shall contain, inter alia, the following:

(a) Name of applicant;

(b) Quantity of water or capacity of works for which allotment is sought;

(c) Descriptions of lands upon which the water or capacity of works will be used and attached;

(d) Rate to be paid;

(e) Whether payment will be made in cash or annual installments;

(f) Agreement that the annual installments and the charges for maintenance and operating shall become a tax lien upon the lands for which such water or capacity of works is petitioned and allotted and to be bound by the provision of this article and the rules and regulations of the board.

(3) (a) In its discretion the board may accept or reject said petition, but, if it deems it for the best interest of the district that said petition be granted, the board shall enter an order granting said petition, and from and after such order, said petitioner shall be deemed to have agreed to the purchase, lease, contract, or other means of acquiring the beneficial use of water or capacity of works under the terms set forth in said petition and order. Such order shall provide for payment on the basis of rate per unit of measure of water allotted in the case of an allotment of water, or on the basis of rate per unit of capacity allotted in the case of an allotment of works to said lands within the district; except that the board may divide the district into units and fix a different rate in the respective units; and further except that such rates shall be equitable although not necessarily equal or uniform for like classes of services throughout the district.

(b) The board shall examine all rates charged for like classes of service throughout the district and shall by rule and regulation adjust such rates periodically as needed to make such rates within any such class of service equitable.

(4) The secretary of the board shall cause notice of the filing of such petition to be given and published, which notice shall state the filing of such petition and give notice to all persons interested to appear at the office of the board at a time named in said notice and show cause in writing why the petition should not be granted. The board at the time and place mentioned in said notice, or at such time to which the hearing on said petition may be adjourned, shall proceed to hear the petition and objections thereto, presented in writing, by any person showing cause why said petition should not be granted. The failure of any person interested to show cause shall be deemed an assent on such person's part to the granting of said petition. At its discretion, the

board may accept or reject said petition; but, if it deems it for the best interest of the district that said petition be granted, the board shall enter an order to that effect granting said petition, and, from and after such order, the petitioner or persons interested therein shall be deemed to have purchased, leased, contracted for, or otherwise acquired the beneficial use of water or capacity of works as set forth in said order.

(5) If such petition is granted, the board shall cause a certified copy of the order granting said petition to be recorded in the county in which said lands are located, and, thereafter, the annual installments and annual operating and maintenance charges shall be a perpetual tax lien upon such lands. On or before October 1 of each year, the board shall certify to the county assessor of the county within the district in which such lands are located the amount of the annual installments, plus a fair proportionate amount of the estimated operating and maintenance charges apportioned to said lands for the next succeeding year, and such county assessor shall extend the amount so certified on the tax roll as a flat special assessment against the lands for which such water is petitioned and allotted.

Source: L. 37: p. 1338, § 19. **CSA:** C. 173B, § 33. **CRS 53:** § 149-6-20. **C.R.S. 1963:** § 150-5-20. **L. 92:** (1) to (4) amended, p. 2294, § 5, effective April 2.

37-45-126. Levies cover defaults and deficiencies. The board, in making the annual assessments and levies, shall take into account the maturing indebtedness for the ensuing year as provided in its contracts or the maturing of bonds and interest on all bonds and deficiencies and defaults of prior years and shall make ample provision for the payment thereof. In case the proceeds of such levies and assessments made under the provisions of this article, together with other revenues of the district, are not sufficient to punctually pay the annual installments on its contracts or bonds and interest thereon and to pay defaults and deficiencies, then the board shall make such additional levies of taxes or assessments as may be necessary for such purposes; and, notwithstanding any limitations by contract, order, tax lien, or otherwise, such taxes and assessments shall be made and shall continue until the indebtedness of the district is fully paid; except that the additional levies authorized by this section may not be made to cover defaults and deficiencies with respect to evidences of indebtedness authorized and issued by a district pursuant to any law if such evidences of indebtedness declare on their faces that they are payable solely from revenues derived from payments made with respect to contracts which are entered into pursuant to this article and further except that the amount of such additional levies of taxes under class A shall not in any one year exceed an amount that would be raised by a levy of one-half mill against the valuation for assessment of such property as fixed for general tax purposes and further except that such levies for defaults and deficiencies shall not, at any time, be made to impose upon class A payments in excess of twenty-five percent of the anticipated revenue from all sources to be raised for the specific purpose of payment of existing defaults and deficiencies and further except that, in making such additional levies or assessments, the board shall take into account all sources of revenue and equitably distribute the burden of such defaults and deficiencies according to the uses and benefits as provided in this article.

Source: L. 37: p. 1341, § 20. **CSA:** C. 173B, § 34. **CRS 53:** § 149-6-21. **C.R.S. 1963:** § 150-5-21. **L. 75:** Entire section amended, p. 1367, § 3, effective July 1. **L. 81:** Entire section amended, p. 1757, § 1, effective May 27.

37-45-127. Objections to assessments - appeal. (1) Prior to October 1 of each year in which assessments are made, the board shall appoint a time and place where it will meet within the district for the purpose of hearing objections to assessments, and prior notice of such hearing shall be given by publication in two issues, a week apart, in some newspaper of general circulation published in each county; except that, if there is any county in the district in which there is no newspaper published, such notice shall be published in an adjoining county. Said notice shall notify the owners of property in the district that in the secretary's office may be found and examined a description of the property so assessed, the amount of the assessment thereon fixed by the board, and the time and place fixed by the board for the hearing of objections to such assessments. It shall not be necessary for said notice to contain separate descriptions of the lots or tracts of real estate, but it is sufficient if the notice contains such descriptions as will inform the owner whether or not his real estate is covered by such descriptions, and to inform the owner where can be found of record the amount of assessments.

(2) If, in the opinion of any person whose property is assessed, his property has been assessed too high, or has been erroneously or illegally assessed, at any time before the date of such hearing, he may file written objections to such assessments, stating the grounds of such objections, which statement shall be verified by the affidavit of said person or his agent. In such hearing the board shall hear such evidence and arguments as may be offered concerning the correctness or legality of such assessment and may modify or amend the same.

(3) Any owner of property desiring to appeal from the findings of the board as to assessment, within thirty days from the finding of the board, shall file with the clerk of the court a written notice making demand for trial by the court. The appellant at the same time shall file a bond with good and sufficient security to be approved by the clerk of said court in a sum not exceeding two hundred dollars to the effect that, if the finding of the court is not more favorable to the appellant than the finding of the board, the appellant shall pay the cost of the appeal. The appellant shall state definitely from what part of the order the appeal is taken. In case more than one appeal is taken, upon its showing that the same may be consolidated without injury to the interests of anyone, the court may consolidate and try the same together.

(4) The court shall not disturb the findings of the board unless the findings of the board in any case are manifestly disproportionate to the assessments imposed upon other property in the district created under this article. The trial shall be to the court, and the matter shall take precedence before the court and shall be taken up as promptly as may be after the appeal is filed. If no appeal is taken from the findings of the board within the time prescribed in this section, or after the findings of the court in case an appeal is taken from the findings of the board, then the assessment shall be final and conclusive evidence that said assessments have been made in proportion to the benefits conferred upon the property in said district by reason of the improvements to be constructed under the provisions of this article, and such assessments shall constitute a perpetual lien upon such property so assessed until paid.

Source: L. 37: p. 1342, § 21. **CSA:** C. 173B, § 35. **CRS 53:** § 149-6-22. **C.R.S. 1963:** § 150-5-22.

37-45-128. Officers levy and collect taxes and assessments. It is the duty of the officer or body having authority to levy taxes within each county, city and county, or town to levy the taxes and special assessments as provided in this article, and it is the duty of all county or city

and county officials charged with the duty of collecting taxes to collect such taxes and special assessments in the time, form, and manner and with like interest and penalties as county or city and county taxes are collected and, when collected, to pay the same to the district ordering its levy or collection, and the payment of such collections shall be made through the secretary of the district and paid into the depository thereof to the credit of the district. All taxes and assessments made under this article together with all interest thereon and penalties for default in payment thereof, and all costs in collecting the same, until paid, shall constitute a perpetual lien on a parity with the tax lien of general, state, county, city, town, or school taxes, and no sale of such property to enforce any general, state, county, city, town, or school tax or other liens shall extinguish the perpetual lien of such taxes and assessments.

Source: L. 37: p. 1344, § 22. **CSA:** C. 173B, § 36. **CRS 53:** § 149-6-23. **C.R.S. 1963:** § 150-5-23.

37-45-129. Sale for delinquencies. If the taxes or assessments levied are not paid, then the real property shall be sold at the regular tax sale for the payment of said taxes and assessments, interest, and penalties in the manner provided by the statutes of the state of Colorado for selling property for payment of general taxes. If there are no bids at said tax sale for the property so offered under class A and class B, said property shall be struck off to the county, and the county shall account to the district in the same manner as provided by law for accounting for school, town, and city taxes. If there are no bids for the property so offered under class C and class D, said property shall be struck off to the district, and the tax certificate shall be issued in the name of the district, and the board shall have the same power with reference to sale of said tax certificate as vested in county commissioners and county treasurers when property is struck off to the counties.

Source: L. 37: p. 1345, § 23. **CSA:** C. 173B, § 37. **CRS 53:** § 149-6-24. **C.R.S. 1963:** § 150-5-24.

Cross references: For tax sales, see article 11 of title 39.

37-45-130. Exemptions. All property of whatever kind and nature owned by the state and by towns, cities, school districts, drainage districts, irrigation districts, park districts, water districts, or any other governmental agency within said district shall be exempt from assessment and levy by the board as provided by this article for the purposes of this article.

Source: L. 37: p. 1346, § 24. **CSA:** C. 173B, § 38. **CRS 53:** § 149-6-25. **C.R.S. 1963:** § 150-5-25.

37-45-131. Sale of water by contract. The board may sell, lease, or otherwise dispose of the use of water or capacity in works by term contracts or by contracts for the perpetual use of the water or works to public corporations, districts, as that term is defined in section 37-45.1-102 (1), utilities, persons, mutual ditch companies, water users' associations, and other private corporations for irrigation, domestic, municipal, industrial, commercial, or other authorized uses as provided by contracts, in writing, authorized and entered into by the board. The board shall

require that security be given to secure the payments to be made under the contracts, which security may include the security specified in section 37-45-132 or such other security as the board determines to be appropriate. The contracts may include the contractual provisions specified in section 31-35-402 (1)(h) as determined by the board.

Source: L. 37: p. 1346, § 25. **CSA:** C. 173B, § 39. **CRS 53:** § 149-6-26. **L. 60:** p. 223, § 3. **C.R.S. 1963:** § 150-5-26. **L. 2018:** Entire section amended, (HB 18-1073), ch. 64, p. 615, § 1, effective August 8.

Editor's note: Section 3 of chapter 64 (HB 18-1073), Session Laws of Colorado 2018, provides that the act changing this section applies to conduct occurring on or after August 8, 2018.

37-45-132. Contracts - security - enforcement. (1) To meet the annual installments as provided in contracts for the use of water:

(a) A water users' association may bind itself to levy an annual assessment on the use of water and to secure same by liens on land and water rights or in such manner as may be provided by law;

(b) A mutual ditch or irrigation company may bind itself by mortgage upon its irrigation works and system or to levy annual assessments upon its stockholders;

(c) Any person or corporation landowner may create a mortgage lien upon lands or give other security satisfactory to the board; and all such contracts shall provide for forfeiture of the use of water for nonpayment of assessments or installments in the same manner and procedure as provided by statute for forfeiture of stock in a mutual ditch company;

(d) A public corporation shall meet the annual installments as provided in sections 37-45-123 and 37-45-124.

Source: L. 37: p. 1346, § 26. **CSA:** C. 173B, § 40. **CRS 53:** § 149-6-27. **L. 60:** p. 223, § 4. **C.R.S. 1963:** § 150-5-27.

Cross references: For forfeiture of stock in a ditch company, see § 7-42-104 (4).

37-45-133. Sinking fund. Whenever a contract of indebtedness has been created by the district, it shall be lawful for the board to make the annual levy of taxes and special assessments in such amount as will create a surplus of funds to meet the annual installments of indebtedness or the payment of bonds and interest and the necessary maintenance and operating charges, and the board shall cause such surplus funds to be placed in a sinking fund which may be used for the payments of contingencies, defaults, and delinquencies and to pay the future annual installments of indebtedness on contract or bonds and interest.

Source: L. 37: p. 1347, § 27. **CSA:** C. 173B, § 41. **CRS 53:** § 149-6-28. **C.R.S. 1963:** § 150-5-28.

37-45-134. Additional powers. (1) The board has the following powers concerning the management, control, delivery, use, and distribution of water by the district:

(a) To make and enforce all reasonable rules and regulations for the management, control, delivery, use, and distribution of water;

(b) To withhold the delivery of water upon which there are any defaults or delinquencies of payment;

(c) To provide for and declare forfeitures of rights to the use of water upon default or failure to comply with any order, contract, or agreement for the purchase, lease, or use of water and to resell, lease, or otherwise dispose of water upon which forfeiture has been declared;

(d) To allocate and reallocate the use of water to lands within the district;

(e) To provide for and grant the right, upon terms, to transfer water from lands to which water has been allocated to other lands within the district and to discharge liens from lands to which the same was theretofore attached and to create liens, as provided in this article, upon lands to which the use of such water is transferred.

Source: L. 37: p. 1347, § 28. **CSA:** C. 173B, § 42. **CRS 53:** § 149-6-29. **C.R.S. 1963:** § 150-5-29.

37-45-135. Allotment of water to disabled landowner or administrator. Where the landowner in a water conservancy district, organized under this article, is under disability by reason of infancy, insanity, or otherwise, or lands are held under administration, executorship, guardianship, conservatorship, trusteeship, receivership, or other similar proceeding, the administrator, executor, guardian, conservator, trustee, receiver, or other like officer shall be considered the "landowner" for all purposes within this article; and, when authorized by the court having jurisdiction of the estate or lands, such administrator, executor, guardian, conservator, trustee, receiver, or other like officer may petition for an allotment of water in such quantity as determined by such court as will, together with the present supply of water for irrigation purposes, make an adequate supply for the irrigation of such lands; or, in the event such administrator, executor, guardian, conservator, trustee, receiver, or other like officer has, prior to February 28, 1939, petitioned for a supply of water for irrigation of lands so held, the court having jurisdiction of the estate or lands may ratify or confirm the petition for such quantity of water as it may determine will make an adequate supply for the irrigation of such lands, and such petition so made and authorized or ratified and confirmed shall have the same effect and be binding upon all parties interested in such lands to the same extent as though made by a landowner while not under disability.

Source: L. 39: p. 590, § 21 **CSA:** C. 173B, § 42(1). **CRS 53:** § 149-6-30. **C.R.S. 1963:** § 150-5-30.

37-45-136. Inclusion of lands. (1) The boundaries of any district organized under the provisions of this article may be changed in the manner prescribed in this article, but the change of boundaries of the district shall not impair or affect its organization or its rights in or to property or any of its rights or privileges whatsoever, nor shall it affect or impair or discharge any contract, obligation, lien, or charge for or upon which it might be liable or chargeable had such change of boundaries not been made.

(2) The owners of lands may file a petition with the board, in writing, praying that such lands be included in the district. The petition shall describe the tracts or body of land owned by

the petitioners, and such petition shall be deemed to give the assent of the petitioners to the inclusion in said district of the lands described in the petition, and such petition must be acknowledged in the same manner that conveyances of land are required to be acknowledged. The secretary of the board shall cause notice of filing of such petition to be given and published in the county in which the lands are situated, which notice shall state the filing of such petition, names of petitioners, descriptions of lands mentioned, and the prayer of said petitioners, giving notice to all persons interested to appear at the office of the board at any time named in said notice and show cause in writing why the petition should not be granted. At the time and place mentioned or at such time to which the hearing may be adjourned, the board shall proceed to hear the petition and all objections thereto, presented in writing by any person showing cause why said petition should not be granted. The failure of any person interested to show cause shall be deemed an assent on his part to the inclusion of such lands in the district as prayed for in the petition. If the petition is granted, the board shall make an order to that effect and file the same with the clerk of the court, and, upon order of the court, said lands shall be included in the district.

(3) (a) In addition to the method provided in subsections (1) and (2) of this section, additional areas, either contiguous or noncontiguous to the district, and including irrigated lands, nonirrigated lands, towns and cities, and other lands and any one or more of the same, may be included in the district by petition, which petition shall be filed in the district court of the county in which the petition for organization of the original district was filed, signed by not fewer than twenty-five percent of the owners of irrigated lands in said area but not embraced within the corporate limits of a city or town; and each tract of land shall be listed opposite the name of the signer. Each such tract together with the improvements thereon shall have a valuation for assessment of not less than one thousand dollars. The petition shall also be signed by not fewer than five percent of the owners of nonirrigated lands or lands embraced within the incorporated limits of a city or town, all situated in the area embraced in said petition; and each tract of land shall be listed opposite the name of the signer. Each such tract together with improvements thereon shall have a valuation for assessment of not less than one thousand dollars. Said petition shall set forth a general description of the territory in the area sought to be included in the district, the name of the district in which it is sought to be included, and a statement that the property sought to be included will be benefited by the accomplishment of the purposes for which the original district was formed and shall pray for the inclusion of the area in the district.

(b) No petition with the requisite signatures shall be declared null and void on account of alleged defects, but the court may permit the petition to be amended at any time to conform to the facts by correcting any errors in the description of the territory or in any other particular. However, similar petitions or duplicate copies of the same petition for the inclusion of the same area may be filed and shall together be regarded as one petition. All such petitions filed prior to the hearing on the first petition filed shall be considered by the court the same as though filed with the first petition placed on file.

(c) In determining whether the requisite number of landowners has signed the petition, the names as they appear upon the tax roll shall be prima facie evidence of such ownership.

(d) At the time of filing the petition or at any time subsequent thereto, and prior to the time of hearing on said petition, a bond shall be filed, with security approved by the court, sufficient to pay all expenses connected with the proceedings in case the inclusion of the area is not effected. If at any time during the proceeding the court is satisfied that the bond first

executed is insufficient in amount, it may require the execution of an additional bond within a time to be fixed to be not less than ten days distant, and, upon failure of the petitioner to execute the same, the petition shall be dismissed.

(e) Immediately after the filing of such petition, the court wherein such petition is filed, by order, shall fix a place and time, not less than sixty days nor more than ninety days after the petition is filed, for hearing thereon, and thereupon the clerk of said court shall cause notice by publication to be made of the pendency of the petition and of the time and place of hearing thereon. The clerk of said court shall also forthwith cause a copy of said notice to be mailed by registered mail to the board of county commissioners of each of the several counties having territory within the area proposed to be included within the district.

(f) No city, or city and county, having a population of more than twenty-five thousand as determined by the last United States census shall be included within such area proposed to be included within the district unless by and with the written consent of the chief executive officer of such city, or city and county, with the approval of the legislative body of such municipality, and such consent may specify that the rate of taxation on the valuation for assessment of property within said city, or city and county, under section 37-45-122, shall not exceed a maximum rate which may be less than the rates set out in said section 37-45-122, and in such case the district shall not have power to levy an assessment on the property in said city, or city and county, at a greater rate than that specified in said consent.

(g) Not less than thirty days prior to the time fixed by order of court for the hearing on said petition, and not thereafter, a petition may be filed in the office of the clerk of the court wherein the proceeding for inclusion is pending, signed by not fewer than twenty percent of the owners of irrigated lands in said area but not embraced within the incorporated limits of a city or town, who have not signed the petition for inclusion, and also signed by not fewer than five percent of the owners of nonirrigated lands or lands embraced in the incorporated limits of a city or town, all situated in said area proposed to be included within the district, who have not signed the petition for inclusion, protesting the inclusion of said area. The signers of said protesting petition shall state therein the land owned by each and also shall state the value thereof as shown by the last preceding assessment.

(h) In the event a petitioner signs such petition both as owner of irrigated and nonirrigated land situated within a municipality, his name shall be counted only as an owner of irrigated lands.

(i) Upon the day set for the hearing upon the original petition, if it appears to the court that said protesting petition is not signed by the requisite number of owners of lands and of the requisite value, the court shall thereupon dismiss said protesting petition and shall proceed with the original hearing as provided in this section.

(j) If the court finds from the evidence that said protesting petition is signed by the requisite number of owners of lands, and of the requisite values, the court shall forthwith dismiss the original petition for inclusion. The finding of the court upon the question of such valuation, the genuineness of the signatures, and all matters of law and fact incident to such determination shall be final and conclusive on all parties in interest whether appearing or not.

(k) Any owner of real property in said proposed area not having individually signed a petition for the inclusion, and desiring to object to the inclusion, on or before ten days prior to the date set for the cause to be heard, may file objection to the inclusion.

(l) Such objection shall be limited to a denial of the statements in the petition and shall be heard by the court as an advanced case without unnecessary delay.

(m) Any owner of irrigated land in said proposed area who has not individually signed a petition for the inclusion of the area within the district and who desires to have his irrigated lands excluded from said district, on or before ten days prior to the date set for the cause to be heard, may file a petition in said district court asking to have his irrigated lands excluded therefrom. Any petition so filed shall be heard by the district court on the date set for the hearing of the petition for inclusion of the area, and the district court shall exclude such irrigated lands from the area proposed for inclusion within the district.

(n) Upon said hearing, if it appears that a petition for the inclusion has been signed and presented, as provided in this subsection (3), in conformity with this article, and that the allegations of the petition are true, and that no protesting petition has been filed, or if filed has been dismissed by order duly entered of record, the court shall adjudicate all questions of jurisdiction and declare the area included in the district to the same extent and as fully as if said area had been included in the original petition for the organization of the district; except that, prior to the entry of its decree including such area within the district, the court shall obtain the verified consent of the board of directors of the district to the inclusion of such area, which consent shall set forth the terms and conditions upon which said area shall be included, which terms may include the price and value per acre-foot of water to be allotted and contracted for use within said included area and which said terms and conditions shall be embodied in the decree of said court.

(o) If the court finds that no petition has been signed and presented in conformity with this section, or that the material facts are not as set forth in the petition filed, it shall dismiss said proceedings and adjudge the costs against the signers of the petition in such proportion as it deems just and equitable. No appeal or other remedy lies from an order dismissing said proceeding; but nothing in this article shall be construed to prevent the filing of a subsequent petition for similar purposes, and the right so to renew such proceeding is expressly granted and authorized.

(3.5) (a) As an alternative to the procedures set forth in subsections (2) and (3) of this section, a petition for inclusion and for an election on inclusion of lands within a water conservancy district may be filed in the district court of the county in which the petition for organization of the original district was filed. The petition shall be signed by not less than twenty-five percent of the owners of agricultural lands of the area embraced by the proposed lands to be included and by not less than ten percent of the electors of said area embraced by the proposed lands to be included. The petition shall show that the board of directors of the district has given its verified approval to the inclusion of such area in the district and shall recite the terms and conditions upon which said area shall be included, if any, which the board of directors of the district may have required, in its discretion, as a prerequisite to the inclusion. The board of directors of the district may require, as one of the conditions of its approval of the proposed inclusion, that the petitioners post a sufficient bond to cover the costs of the election. If no bond is so required, the district shall be deemed to have agreed to pay the costs of the election. The proposed boundary of the lands to be included within the district may include any part or all of any county, city, or city and county of any size. Such petition and the hearing thereon shall otherwise comply with the provisions of this section which are not inconsistent with the provisions of this subsection (3.5).

(b) On the day fixed for hearing, or at a continuance thereof, the court shall first ascertain, from such evidence which may be adduced, that the required number of electors of the area to be included in the district have signed the petition and that the board of directors has approved the inclusion of lands in the district. Upon said hearing, if it appears that the petition for inclusion has been signed and presented in conformity with this subsection (3.5) and that the allegations of the petition are true, the court, by order duly entered of record, shall direct that the question of the inclusion of lands in the water conservancy district be submitted at an election, to be held for that purpose, of electors of the area embraced within the inclusion petition. Such election shall be conducted by the board of directors of the district in the same manner set forth in sections 37-45-139 to 37-45-141.

(c) At such election the voter shall vote for or against the inclusion of lands in the water conservancy district. If the terms and conditions on inclusion have been set by the board of directors of the district, said terms and conditions shall be identified to the electors. If a majority of votes cast at said election are in favor of inclusion, the court, on the motion of the board of directors of the district, shall declare the area included in the district to the same extent and as fully as if said area had been included in the original petition for the organization of the district; except that, if the proposed inclusion in a district includes any territory within a municipality and a majority of the votes cast by the voters residing within that incorporated area are against inclusion in the district, the governing body of said municipality may, within thirty days after certification of the election results, petition the court for exclusion from the district of such incorporated area, and the court shall exclude such territory from the district. Any order of the court so including lands in a district shall incorporate the terms and conditions, if any, for inclusion which the board of directors of the district has required as a prerequisite to inclusion.

(3.6) Whenever a municipality has annexed land into its boundaries and that municipality at the time of annexation previously had lands within its boundaries included within the district, upon consent of the governing body of the municipality, and upon consent by the board of directors of the district, the annexed lands shall be deemed to have been included within the district, subject to terms and conditions as determined by the board of directors of the district that shall not be inconsistent with the terms and conditions of previous applicable inclusion orders relating to that municipality. The municipality shall promptly transmit to the district a certified copy of the municipality's annexation ordinance. Upon receipt of the municipality's annexation ordinance, the board of directors of the district shall promptly act to grant or deny consent to the inclusion of the newly annexed lands into the district. If the board of directors of the district consents to such inclusion, and the municipality agrees to any terms and conditions to the inclusion adopted by the board of directors of the district, the district shall file with the court a certified copy of the municipality's annexation ordinance and a petition of the district for inclusion of the annexed lands that states the terms and conditions of inclusion as determined by the board of directors of the district. Upon the district's filing of a certified copy of the municipality's annexation ordinance and a petition of the district for inclusion of the annexed lands, the court shall enter an order including such lands within the boundaries of the district, upon the terms and conditions set forth in the petition.

(4) As a part of any order entered establishing the inclusion of lands or areas into the district, the court shall designate the division of the district to which such included lands or areas shall be attached or shall, in combination with or in lieu of the foregoing, create a new division

from such included lands or areas and appoint the directors therefor; but the total number of directors of the district shall not exceed fifteen.

(5) (a) If an order is entered establishing the inclusion of lands or areas into the district, such order shall be deemed final and no appeal or other remedy lies therefrom, and the entry of such order shall finally and conclusively establish the inclusion of the lands or areas against all persons except the state of Colorado, in an action in the nature of quo warranto commenced by the attorney general within three months after said decree declaring such lands or areas included as provided, and not otherwise. The inclusion of said lands or areas shall not be directly or collaterally questioned in any suit, action, or proceeding except as expressly authorized in this section.

(b) Upon the entry of such decree, the clerk of the court shall transmit, to the division of local government in the department of local affairs and to the county clerk and recorder in each of the counties in which said lands or areas are located, copies of the findings and decree of the court including such lands or areas in the district. The same shall be recorded with said division, and copies shall also be filed in the office of the county clerk and recorder in each county in which a part of the district may be, where they shall become permanent records.

Source: L. 37: p. 1348, § 29. **CSA:** C. 173B, § 43. **L. 51:** p. 827, § 1. **CRS 53:** § 149-6-31. **L. 61:** p. 846, § 3. **C.R.S. 1963:** § 150-5-31. **L. 76:** (5)(b) amended, p. 606, § 31, effective July 1. **L. 83:** (3.5) and (3.6) added, p. 1390, § 1, effective May 16; (5)(b) amended, p. 1228, § 13, effective July 1. **L. 99:** (3.6) amended, p. 50, § 1, effective August 4.

37-45-137. Exclusion of lands. (1) (a) The owner in fee of any lands constituting a portion of any district, regardless of the valuation for assessment of such district, or, if the valuation for assessment of an existing district is less than three hundred million dollars, not less than fifteen owners of land in an overlapping area as described in section 37-45-109 (3)(d) who are petitioners for the formation of a new district proposed to be organized under the provisions of this article which includes lands within such existing district, may file with the board a petition praying that such lands be excluded and taken from said district. Petitions shall describe the lands which the petitioners desire to have excluded. Such petition must be acknowledged in the same manner and form as required in case of a conveyance of land and be accompanied by a deposit of money sufficient to pay all costs of the exclusion proceedings.

(b) The secretary of the board shall cause a notice of filing of such petition to be published in a newspaper of general circulation in the county in which said lands, or the major portion thereof, are located, the final publication to be made not less than ten days prior to the date set for the hearing thereon. If such petition has been filed by the proponents of a new district, individual notice shall also be given to those landowners of the existing district whose lands are included in the request for exclusion, by mailing a copy of such notice by registered or certified mail not less than ten days prior to the date set for the hearing thereon to each such landowner at his last-known address, as shown by the records of the treasurer of the county in which the lands are located. The notice shall state the filing of such petition, the names of petitioners, and, if applicable, the name of the proposed new district, descriptions of lands mentioned in said petition, and the prayer of said petitioners, and it shall notify all persons interested to appear at the office of said board at the time named in said notice, showing cause in writing why said petition should not be granted.

(c) The board at the time and place mentioned in the notice, or at the time to which the hearing of said petition may be adjourned, shall proceed to hear the petition and all objections thereto, presented in writing, by any person showing cause why the prayer of the petition should not be granted. The filing of such petition shall be deemed an assent by each such petitioner to the exclusion from the district of his lands mentioned in the petition or any part thereof.

(d) If the board deems it not for the best interest of the district that the lands mentioned in the petition or some portion thereof are excluded from the district, the board shall order that said petition be denied; but, if the board deems it for the best interest of the district that the lands mentioned in the petition, or some portion thereof, be excluded from the district and, if there are no outstanding bonds of the district, the board may order the lands mentioned in the petition, or some portion thereof, to be excluded from the district. If such exclusion is granted at the request of a proposed new district, it shall be conditioned to take effect only upon the legal creation of the proposed new district.

(e) In case contract has been made between the district and the United States or any agency thereof, no change shall be made in the boundaries of the district unless the secretary of the interior assents thereto in writing and such assent is filed with the board. Upon such assent, any lands excluded from the district upon order of the court shall be discharged from all liens in favor of the United States under the contract with the United States or under bonds deposited with its agents.

(f) Upon allowance of such petition, the board shall file a certified copy of the order of the board making such change with the clerk of the court, and, upon order of the court, said lands shall be excluded from the district.

(2) Following organization of a district under this article at any time prior to authorization for the incurring of bonded or other indebtedness under the election procedures set forth in sections 37-45-139 to 37-45-142 and prior to the execution of a contract with the United States or any of its agencies, the governing body of any city, city and county, or town, regardless of its population, originally included in the district without consent given in the manner provided in section 37-45-109, and over an express objection made in writing to the court in which the petition for organization has been filed at any time prior to the date upon which the court declares the district organized, may pass an ordinance declaring all property, real and personal, within the limits of said public corporation, to be lands and property excluded from the district. Upon service by registered or certified mail of a certified copy of said ordinance upon the division of local government in the department of local affairs, the board of directors of the district, the court organizing said district, the assessor or treasurer, and the county clerk and recorder of the county in which that public corporation is located, said city, city and county, or town, and all lands and property within its limits, shall forthwith be automatically excluded from the district, and said property and lands within the limits of said public corporation shall thereafter be free of any tax levied by the district; except that, if such exclusion occurs after March 15 of any year, said lands and property, and the owners thereof, shall be liable for any existing levy made under section 37-45-122, only for the taxable year of the exclusion, said liability in no event to exceed one-half mill on the dollar of valuation of the property, real and personal, within the limits of said public corporation.

(3) Nothing in this section shall be construed to interfere or conflict with or amend any proceeding now pending in any district court in the state of Colorado.

Source: L. 37: p. 1349, § 30. **CSA:** C. 173B, § 44. **CRS 53:** § 149-6-32. **L. 57:** pp. 882, 884, §§ 1, 2. **L. 61:** p. 851, § 4. **C.R.S. 1963:** § 150-5-32. **L. 76:** (2) amended, p. 606, § 32, effective July 1.

Cross references: For acknowledgments in the conveyance of land, see article 35 of title 38.

37-45-138. Board to execute contracts - issue bonds. To pay for construction, operation, and maintenance of said works, and expenses preliminary and incidental thereto, the board is authorized to enter into a contract with the United States or any agency thereof, providing for payment in installments or to issue negotiable bonds of the district. If bonds are authorized, the board shall set a maximum net effective interest rate, and such bonds shall bear interest at a rate such that the net effective interest rate of the issue of bonds does not exceed the maximum net effective interest rate authorized. Interest shall be payable annually or semiannually and shall be due and payable not more than fifty years from their dates. The form, terms, and provisions of said bonds, provisions for their payment, and conditions for their retirement and calling, not inconsistent with law, shall be determined by the board, and they shall be issued in payment of the works, equipment, expenses, and interest during the period of construction. When any bonded indebtedness has been authorized pursuant to section 37-45-139, and when the board has entered into a contract with the United States or any agency thereof whereby the United States or any agency thereof has agreed to purchase such bonds, at an interest rate established in such contract, the board may issue interim notes bearing interest at a net effective interest rate not exceeding the maximum net effective interest rate authorized for the bonds, the interim notes to be payable at the termination of such contract, or at such time not exceeding three years after the date of their issuance and on such terms and conditions as the board may determine. No interim note may be extended or funded except by the issuance of bonds. Bonds also may be issued to pay interim notes as they become due or may be exchanged for the interim notes as the board may determine. Said bonds or interim notes shall be executed in the name of and on behalf of the district and signed by the president of the board with the seal of the district affixed thereto and attested by the secretary of the board. Said bonds or interim notes shall be in such denominations as the board shall determine and shall be payable to bearer and may be registered in the office of the county treasurer of the county wherein the organization of the district has been effected, with the interest coupons payable to bearer, which coupons shall bear the facsimile signature of the president of the board. Such bonds and interim notes shall be exempt from all state, county, municipal, school, and other taxes imposed by any taxing authority of the state of Colorado. Such bonds or interim notes may be sold at par, above par, or below par, but the net effective interest rate to the district, including any discount, but exclusive of any discount payable for costs of the issue, shall not exceed the maximum net effective interest rate authorized for such issue of bonds. Such bonds or interim notes may be used as security for any depository bond or obligation where any kind of bonds or other securities must or may, by law, be deposited as security. Any resolution authorizing, or other instrument appertaining to, any bonds or interim notes under this article may provide that each bond or interim note therein authorized shall recite that it is issued under authority of this article. Such recital shall be conclusive evidence of full compliance with all of the provisions of this article,

and all bonds and interim notes issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value.

Source: L. 37: p. 1351, § 31. **CSA:** C. 173B, § 45. **CRS 53:** § 149-6-33. **C.R.S. 1963:** § 150-5-3. **L. 69:** p. 1233, § 1. **L. 70:** p. 437, § 3.

37-45-139. Contracts - submission to electors. (1) Whenever the board incorporated under this article, by resolution adopted by a majority of the said board, determines that the interests of said district and the public interest or necessity demand the acquisition, construction, or completion of any source of water supply, waterworks, or other improvements or facilities or the making of any contract with the United States or other persons or corporations to carry out the objects or purposes of said district, wherein the annual obligation created will require a greater annual expenditure than the annual income and revenue that the district is estimated to permit, said board shall order the submission of the proposition of incurring such obligation or bonded or other indebtedness for the purposes set forth in said resolution to the electors of the district at an election held for that purpose pursuant to the provisions of this section and section 37-45-142; except that no such election shall be required when the evidence of indebtedness evidencing the obligation created expressly states that it is payable solely from revenues derived from payments made with respect to contracts which are entered into pursuant to this article.

(2) Any election held for the purpose of submitting any proposition of incurring such obligation or indebtedness may be held separately or may be consolidated or held concurrently with any other election authorized by law at which such qualified electors of the district are entitled to vote.

(3) The declaration of public interest or necessity required in this section and the provisions for the holding of such election may be included within one and the same resolution, which resolution, in addition to such declaration of public interest or necessity, shall recite the objects and purposes for which the indebtedness is proposed to be incurred, the estimated cost of the works or improvements, as the case may be, the amount of principal of the indebtedness to be incurred therefor, and the maximum net effective rate of interest to be paid on such indebtedness. Such resolution shall also fix the date upon which such election shall be held and the manner of holding the same and the method of voting for or against the incurring of the proposed indebtedness. Such resolution shall also fix the compensation to be paid the officers of the election and shall designate the precincts and polling places and shall appoint for each polling place, from each precinct from the electors thereof, the officers of such election, which officers shall consist of three judges, one of whom shall act as clerk, who shall constitute a board of election for each polling place.

(4) The description of precincts may be made by reference to any order of the board of county commissioners of the county in which the district or any part thereof is situated or by reference to any previous order or resolution of the board or by detailed description of such precincts. Precincts established by the boards of the various counties may be consolidated for special elections held under this article. In the event any such election is called to be held concurrently with any other election or is consolidated therewith, the resolution calling the election under this article need not designate precincts or polling places or the names of officers of election but shall contain reference to the act or order calling such other election and fixing the precincts and polling places and appointing election officers therefrom.

Source: L. 37: p. 1352, § 32. **CSA:** C. 173B, § 46. **CRS 53:** § 149-6-34. **C.R.S. 1963:** § 150-5-34. **L. 70:** p. 438, § 4. **L. 81:** (1) amended, p. 1759, § 1, effective May 22.

37-45-140. Publication of call. The resolution provided in section 37-45-139 shall be published once a week for two consecutive weeks, the last publication of which shall be at least ten days prior to the date set for said election, in a newspaper of general circulation within the district, and no other or further notice of such election or publication of the names of election officers or of the precincts or polling places need be made.

Source: L. 37: p. 1354, § 33. **CSA:** C. 173B, § 47. **CRS 53:** § 149-6-35. **L. 61:** p. 853, § 5. **C.R.S. 1963:** § 150-5-35.

37-45-141. Conduct of election. (1) The respective election boards shall conduct the election in their respective precincts in the manner prescribed by law for the holding of general elections and shall make their returns to the court or secretary of the district, as applicable. At any regular or special meeting of the board held not later than five days following the date of such election, the returns thereof shall be canvassed and the results declared.

(2) In the event that any election held under this article is consolidated with any primary or general election, the returns thereof shall be made and canvassed at the time and in the manner provided by law for the canvass of the returns of such primary or general election. It is the duty of such canvassing body to promptly certify and transmit to the board or court, as applicable, a statement of the result of the vote upon the proposition submitted under this article. Upon receipt of such certificate, it is the duty of the board or court to tabulate and declare the results of the election held under this article.

Source: L. 37: p. 1354, § 34. **CSA:** C. 173B, § 48. **CRS 53:** § 149-6-36. **C.R.S. 1963:** § 150-5-36. **L. 81:** Entire section amended, p. 1755, § 5, effective June 19.

Cross references: For elections generally, see title 1.

37-45-142. Bond elections - subsequent elections. (1) No debt required by section 37-45-139 to be submitted to the electors of the district shall be incurred unless the proposition to create such debt is first submitted to and approved by the electors of the district.

(2) In the event it appears from the returns that the proposition submitted has been approved by a majority of those voting at the election as required under subsection (1) of this section, the district is authorized to incur such indebtedness or obligations, enter into such contract, or issue and sell such bonds of the district, all for the purpose and object provided for in the proposition submitted under this section and in the resolution therefor and in the amount so provided and at a net effective interest rate not exceeding the maximum net effective interest rate recited in such resolution. Submission of the proposition of incurring such obligation or bonded or other indebtedness at such an election shall not prevent or prohibit submission of the same or other propositions at subsequent elections called for such purpose.

(3) (a) The board, having received approval at an election to issue bonds and having determined that the limitations of the original election question are too restrictive to permit the

advantageous sale of the bonds so authorized, may submit at another election held for such purpose:

(I) The question of issuing the bonds, or any portion thereof, at a higher maximum net effective interest rate than the maximum interest rate or maximum net effective interest rate approved at the original election; or

(II) The question of issuing the bonds, or any portion thereof, to mature over a longer period of time than the maximum period of maturity approved at the original election.

(b) An election held pursuant to this subsection (3) shall be held in substantially the same manner as an election to authorize bonds initially, except as may be required for the submission of the limited question or questions permitted under this subsection (3).

(c) If a majority of those voting at an election held pursuant to this subsection (3) fails to approve the changes submitted, such result shall not impair the authority of the board at a later time to issue the bonds originally approved within the limitations established at the first election.

Source: L. 37: p. 1355, § 35. **CSA:** C. 173B, § 49. **CRS 53:** § 149-6-37. **C.R.S. 1963:** § 150-5-37. **L. 70:** p. 439, § 5. **L. 71:** p. 1347, § 3.

37-45-143. Confirmation of contract proceedings. (1) In its discretion, the board may file a petition in the court at any time, praying for a judicial examination and determination of any power conferred or of any tax or assessment levied or of any act, proceeding, or contract of the district, whether or not said contract has been executed, including proposed contracts for the acquisition, construction, maintenance, or operation of works for the district. Such petition shall set forth the facts whereon the validity of such power, assessment, act, proceeding, or contract is founded and shall be verified by the president of the board. Notice of the filing of said petition shall be given by the clerk of the court, under the seal thereof, stating in brief outline the contents of the petition and showing where a full copy of any contract therein mentioned may be examined. The notice shall be served by publication in at least five consecutive issues of a weekly newspaper of general circulation published in the county in which the principal office of the district is located and by posting the same in the office of the district at least thirty days prior to the date fixed in said notice for the hearing on said petition.

(2) Any owner of property in the district or person interested in the contract or proposed contract may appear and move to dismiss or answer said petition at any time prior to the date fixed for said hearing or within such further time as may be allowed by the court; and the petition shall be taken as confessed by all persons who fail to appear.

(3) The petition and notice shall be sufficient to give the court jurisdiction, and, upon hearing, the court shall examine into and determine all matters and things affecting the question submitted, shall make such findings with reference thereto, and shall render such judgment and decree thereon as the case warrants. Costs may be divided or apportioned among the contesting parties in the discretion of the trial court. Review of the judgment of the court may be had as in other similar cases; except that such review must be applied for within thirty days after the time of the rendition of such judgment or within such additional time as may be allowed by the court within the thirty days. The Colorado rules of civil procedure shall govern in matters of pleading and practice where not otherwise specified in this article. The court shall disregard any error, irregularity, or omission which does not affect the substantial rights of the parties.

Source: L. 37: p. 1355, § 36. **CSA:** C. 173B, § 50. **CRS 53:** § 149-6-38. **C.R.S. 1963:** § 150-5-38.

37-45-144. Correction of faulty notices. In every case where a notice is provided for in this article, if the court finds for any reason that due notice was not given, the court shall not thereby lose jurisdiction, and the proceeding in question shall not thereby be void or be abated, but in that case the court shall order due notice to be given, and shall continue the hearing until such time as notice shall be properly given, and thereupon shall proceed as though notice had been properly given in the first instance.

Source: L. 37: p. 1357, § 37. **CSA:** C. 173B, § 51. **CRS 53:** § 149-6-39. **C.R.S. 1963:** § 150-5-39.

37-45-145. Early hearings. All cases in which there arises a question of the validity of the organization of a water conservancy district, or a question of the validity of any proceeding under this article, shall be advanced as a matter of immediate public interest and concern and heard at the earliest practicable moment. The courts shall be open at all times for the purposes of this article.

Source: L. 37: p. 1357, § 38. **CSA:** C. 173B, § 52. **CRS 53:** § 149-6-40. **C.R.S. 1963:** § 150-5-40.

37-45-146. Dissolution of districts. Any water conservancy district organized may be dissolved in the manner specified in sections 37-45-146 to 37-45-152 if such district has not been authorized to incur bonded or other indebtedness under the election procedures set forth in sections 37-45-139 to 37-45-142 and such district has not incurred bonded or other indebtedness pursuant to the provisions of any other law; except that, if such district has entered into a contract with the United States or any other agency thereof, no dissolution shall take place unless the secretary of the interior of the United States has first consented thereto.

Source: L. 57: p. 885, § 1. **CRS 53:** § 149-6-44. **C.R.S. 1963:** § 150-5-44. **L. 75:** Entire section amended, p. 1367, § 4, effective July 1.

37-45-147. Election for dissolution - petition or resolution filed. (1) An election submitting the proposition of dissolution of the district may be initiated by the filing of a copy of a resolution adopted by three-fourths of all the members of the board of directors of such district requesting such an election or by the filing of a petition requesting such election. Such resolution or petition shall be filed in the district court which formed said district.

(2) Any such petition so filed shall be accompanied by a good and sufficient bond for five hundred dollars with not less than two sureties approved by the court, and, if a majority of the qualified electors do not vote for dissolution in the election specified in this article, the amount of such bond shall be forfeited to the district, otherwise the same shall be discharged.

(3) If the valuation for assessment of irrigated land together with improvements thereon within said district when formed is in excess of twenty million dollars, such petition shall bear signatures of any owners of irrigated land equal in number to two-thirds or more of the number

of such type of owners required by section 37-45-109, upon a petition for the formation of such a district. Such irrigated land shall be situated within the limits of the district and shall not be embraced within the incorporated limits of any city or town. Said petition shall also bear the signatures of any owners of nonirrigated land or land embraced within the incorporated limits of a city or town equal in number to two-thirds or more of the number of such type of owners required by said section upon a petition for the formation of such a district, said land to be situated within the limits of the district.

(4) If the valuation for assessment of irrigated land and improvements thereon within such district when formed is less than twenty million dollars, said petition shall contain the same number and type of signatures required by section 37-45-109 upon petitions for the formation of such a district. In either case the petition shall set forth opposite each signature the description of the land and the valuation for assessment thereof together with any improvements. Similar petitions or duplicate copies of the same petition may be filed together and shall be regarded as one petition. No petition with the requisite signatures shall be declared void on account of alleged defects, but the court may permit the petition to be amended from time to time to conform to the facts by correcting errors in descriptions, valuation, or any other particular.

Source: L. 57: p. 885, § 1. **CRS 53:** § 149-6-45. **C.R.S. 1963:** § 150-5-45.

37-45-148. Notice of election. Upon presentation of such petition or resolution, the court shall cause a notice to be published forthwith at least once each week for four consecutive weeks in a newspaper of general circulation in each county where the district or parts thereof lie. Such notice shall recite that a petition or resolution for dissolution of the district has been filed, shall describe generally the territory of the district, and shall further specify the time and places of election, which time shall not be less than sixty days nor more than ninety days after the date of the last publication of the notice. If an objection to the petition or resolution is filed in such court by an owner of land situated within said district within twenty days from the date of the last publication of the notice, the court may, if necessary, continue the election from time to time until all objections are disposed of. Due notice of the time and places of any continued election shall be given in the manner and form prescribed above.

Source: L. 57: p. 886, § 1. **CRS 53:** § 149-6-46. **C.R.S. 1963:** § 150-5-46.

37-45-149. Objections to resolution or petition. Objections to a resolution for an election shall be confined to the question of whether sufficient directors voted in favor of the same. Objections to a petition for such election shall be confined to the question of whether sufficient qualified owners of land situate within the district have signed the petition for such election. Such petition shall be accepted as prima facie evidence of all facts stated therein, and all signatures affixed to such petition shall be presumed to be those of qualified owners residing within the boundaries of the district until the contrary is proven. No signer of a petition shall be permitted to withdraw his name from such petition after it is filed, except for fraud. All objections shall be heard as an advanced case on the docket of the court. Nothing in this section shall be construed to prevent the filing of subsequent resolutions or petitions for the same purpose, but elections on the proposition of dissolution shall not be held more frequently than once every three years.

Source: L. 57: p. 887, § 1. **CRS 53:** § 149-6-47. **C.R.S. 1963:** § 150-5-47.

37-45-150. Election procedure - ballot. (1) Any election held for the purpose of submitting the proposition of dissolution of a district may be held separately or may be consolidated or held concurrently with any other election authorized by law. The election shall be conducted by the secretary of the board of directors of such district under the supervision of the court, and the court shall fix the manner of holding the same and shall also fix the compensation to be paid the officers of the election and shall designate the precincts and polling places. The court shall also appoint for each polling place and for each precinct from the electors thereof the officers of such election, which officers shall consist of three judges, one of whom shall act as clerk, who shall constitute a board of election for each polling place.

(2) The description of precincts may be made by reference to any order of the board of county commissioners of the county in which the district or any part thereof is situated or by reference to any previous order or resolution of the board or by detailed description of such precincts. Precincts established by the boards of the various counties may be consolidated for special elections held under this article. In the event any such election is called to be held concurrently with any other election or is consolidated therewith, the court order need not designate precincts or polling places or the names of officers of election but shall contain a reference to the act or order calling such other election and fixing the precincts and polling places and appointing election officers therefrom. The election shall be conducted in accordance with the provisions of section 37-45-141.

(3) The results of such election shall be certified promptly by the secretary of the board of directors to the court. It is the duty of the secretary of the board of directors of the district to prepare ballots to be used at the election on which shall be inscribed the words "For Dissolution" and "Against Dissolution". The costs of the election and ballots shall be paid by the district under the supervision of the court, and the district shall be authorized, under the supervision of the court, to borrow funds for this purpose. Irrespective of any other provision of this article, the district shall not be required or authorized to hold any election on the proposition of such borrowing.

Source: L. 57: p. 887, § 1. **CRS 53:** § 149-6-48. **C.R.S. 1963:** § 150-5-48.

37-45-151. Majority vote determines question. The electors of the district shall be qualified to vote on the question of dissolving the district. If a majority of votes are for dissolution of the district, the district shall be dissolved as provided in section 37-45-152. Any objections to the election, or proceedings to invalidate the election, must be filed in the court within thirty days from the date of the election. Errors, omissions, and irregularities not affecting substantial rights shall be disregarded.

Source: L. 57: p. 888, § 1. **CRS 53:** § 149-6-49. **C.R.S. 1963:** § 150-5-49. **L. 70:** p. 440, § 6.

37-45-152. Winding up and dissolution - order entered. (1) In the event the vote is for dissolution, any qualified signer of the petition for the election, or the board of directors of such district may, within such time as may be fixed by the court, present a written plan for the

winding up of the affairs of the district. Such plan may specify that the affairs of the district be wound up by the board of directors of the district or by a receiver appointed by the court for that purpose. On a day fixed by the court, the court shall consider such plan and shall enter an order establishing therefrom a plan for the winding up of such affairs. The court shall retain continuing jurisdiction to modify such plan from time to time and shall supervise such winding up.

(2) If no such plan is presented on or before the day set by the court, the court shall appoint a receiver to wind up the affairs of the district under the court's supervision. Upon the appointment of any receiver all authority of the board of directors of the district shall terminate; except that its authority to levy taxes for the payment of the obligations of the district and the costs of winding up shall continue until the district is dissolved. Such board shall levy taxes within the limits imposed by this article sufficient to pay expeditiously such obligations and costs, and, if a receiver has been appointed, all tax collections shall be delivered to such receiver.

(3) When it appears to the satisfaction of the court that all obligations of the district have been discharged, and the costs of winding up the districts paid, such court shall enter an order dissolving the district, and a certified copy of such order shall be recorded by the clerk of the court in all counties in which the district may be situate. All funds remaining in the hands of such receiver or board of directors after such dissolution shall be divided among the counties comprising any part of such district in proportion to the total valuation of taxable property in such county within the boundaries of such district, as determined by the tax roll of such counties in the treasurer's hands, for the calendar year preceding the year in which such dissolution occurs, and said receiver or members of the board of directors shall thereupon be discharged by the court.

Source: L. 57: p. 888, § 1. **CRS 53:** § 149-6-50. **C.R.S. 1963:** § 150-5-50.

37-45-153. Validation and recreation of water conservancy districts. (1) The following water conservancy districts, originally organized under the provisions of this article, are hereby validated and recreated: Alamosa-La Jara Water Conservancy District; Animas-La Plata Water Conservancy District; Badger-Beaver Water Conservancy District; Basalt Water Conservancy District; Battlement Mesa Water Conservancy District; Bluestone Water Conservancy District; Bostwick Park Water Conservancy District; Central Colorado Water Conservancy District; Collbran Water Conservancy District; Conejos Water Conservancy District; Costilla County Water Conservancy District; Crawford Water Conservancy District; Dolores Water Conservancy District; Florida Water Conservancy District; Fruitland Mesa Water Conservancy District; Grand Mesa Water Conservancy District; Great Northern Water Conservancy District; Groundwater Management Subdistrict, Central Colorado Water Conservancy District; Huerfano County Water Conservancy District; Jackson County Water Conservancy District; Juniper Water Conservancy District; La Plata Water Conservancy District; Lower South Platte Water Conservancy District; Mancos Water Conservancy District; Michigan River Water Conservancy District; Middle Park Water Conservancy District; Municipal Subdistrict, Northern Colorado Water Conservancy District; North Fork Water Conservancy District; North La Junta Water Conservancy District; Northern Colorado Water Conservancy District; Pot Hook Water Conservancy District; Purgatoire River Water Conservancy District; Saint Vrain and Left Hand Water Conservancy District; San Luis Valley Water Conservancy District; San Miguel Water Conservancy District; Silt Water Conservancy District; Southeastern

Colorado Water Conservancy District; Tri-County Water Conservancy District; Trinchera Water Conservancy District; Upper Arkansas Water Conservancy District; Upper Gunnison River Water Conservancy District; Upper South Platte Water Conservancy District; Upper Yampa Water Conservancy District; Ute Water Conservancy District; West Divide Water Conservancy District; and Yellow Jacket Water Conservancy District.

(2) The territory of such water conservancy districts shall be the same as set forth or established for each such district by Colorado court orders entered pursuant to this article as of February 23, 1983.

(3) The provisions of this article, including changes in territory, shall continue to govern such districts, and the districts shall continue to function in all respects as they did prior to February 23, 1983; except that such districts shall be deemed to have been created by statute, irrespective of any organizational process set forth in this article or the district's method of original organization.

(4) All actions undertaken by such districts under or pursuant to the authority or apparent authority of this article prior to February 23, 1983, shall be considered as those of de facto officers and directors and as valid and effective should the original organization of such districts be ruled invalid in any respect.

(5) The purpose of this section is to validate and recreate such districts and to continue them in existence as constituted prior to February 23, 1983, without interruption in order to provide financial security and stability in water development in this state and to ensure that obligations and projects undertaken, or to be undertaken, by such existing districts under or pursuant to this article are honored and carried out should the original organization of such existing districts be ruled invalid in any respect.

Source: L. 83: Entire section added, p. 1392, § 1, effective February 23.

ARTICLE 45.1

Water Activities - Enterprise Status

Law reviews: For article, "Water Activity Enterprises", see 22 Colo. Law. 2555 (1993).

37-45.1-101. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that in order to provide for the continued beneficial use of all waters originating in Colorado, the establishment of water activity enterprises within or by water conservancy districts, water conservation districts, and other entities of state and local government is critical to the health and welfare of the people of the state of Colorado. The general assembly further finds that water activities are necessary to:

(a) Provide a secure water supply for domestic use;

(b) Continue to provide water for agricultural use;

(c) Supply water for power, milling, manufacturing, mining, metallurgical, fish, wildlife, recreational, and all other beneficial uses;

(d) Secure water to which the state is entitled under its interstate water compacts and equitable apportionment decrees;

(e) Treat, reclaim, conserve, recharge, augment, exchange, or reuse water supplies within the state; and

(f) Provide wholesale and retail water supply and wastewater services.

Source: L. 93: Entire article added, p. 102, § 1, effective March 30.

37-45.1-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "District" means any state or local governmental entity that has authority to conduct water activities, including a water conservancy district created pursuant to article 45 of this title, a water conservation district created by article 46, 47, 48, or 50 of this title, a water and sanitation district or other entity created pursuant to title 32, C.R.S., an entity created pursuant to title 29, C.R.S., or this title, a county, or a municipality.

(2) "Grant" means a cash payment of public funds made directly to a water activity enterprise by the state or a local governmental entity or a district, which cash payment is not required to be repaid. "Grant" does not include public funds paid or advanced to a water activity enterprise by the state or a local governmental entity or district in exchange for an agreement by a water activity enterprise to provide services including the provision of water, the capacity of project works, materials, or other water activities, nor does "grant" include refunds made in the current or next fiscal year, gifts, any payments directly or indirectly from federal funds or earnings on federal funds, collections for another government, pension contributions by employees and pension fund earnings, reserve transfers or expenditures, damage awards, or property sales.

(3) "Water activity" includes but is not limited to the diversion, storage, carriage, delivery, distribution, collection, treatment, use, reuse, augmentation, exchange, or discharge of water and includes the provision of wholesale or retail water or wastewater or storm water services and the acquisition of water or water rights.

(4) "Water activity enterprise" includes any government water activity business owned by a district, which enterprise receives under ten percent of its annual revenues in grants from all Colorado state and local governments combined and which is authorized to issue its own revenue bonds pursuant to this article or any other applicable law.

(5) "Water project or facility" includes a dam, storage reservoir, compensatory or replacement reservoir, canal, conduit, pipeline, tunnel, power plant, water or wastewater treatment facility, and any and all works, facilities, improvements, and property necessary or convenient for the purpose of conducting a water activity.

Source: L. 93: Entire article added, p. 103, § 1, effective March 30. **L. 2004:** (1) amended, p. 1930, § 2, effective August 4. **L. 2010:** (5) amended, (HB 10-1422), ch. 419, p. 2120, § 171, effective August 11.

37-45.1-103. Establishment of enterprises. (1) Any district which under applicable provisions of law has its own bonding authority may establish or may continue to maintain water activity enterprises for the purpose of pursuing or continuing water activities, including water acquisition or water project or facility activities, including the construction, operation, repair, and replacement of water or wastewater facilities. Any water activity enterprise established or

maintained pursuant to this article is excluded from the provisions of section 20 of article X of the state constitution.

(2) (a) Each water activity enterprise shall be wholly owned by a single district and shall not be combined with any water activity enterprise owned by another district; however, each district may establish more than one water activity enterprise and each water activity enterprise may conduct or continue to conduct one or more water activities as may be determined by the governing body of the water activity enterprise.

(b) This subsection (2) shall not limit the authority of a water activity enterprise to contract with any other person or entity, including other districts or water activity enterprises.

(3) The governing body of the water activity enterprise shall be the governing body of the district which owns the enterprise or such governing body as may be prescribed by applicable laws, city and county, county, or municipal charters, county resolutions, municipal ordinances, or intergovernmental agreements which designate a different governing body for the water activity enterprise.

(4) The governing body of each water activity enterprise may exercise the district's legal authority relating to water activities, but no enterprise may levy a tax which is subject to section 20 (4) of article X of the state constitution.

Source: L. 93: Entire article added, p. 103, § 1, effective March 30.

37-45.1-104. Enterprise revenue bonding authority. (1) Each water activity enterprise, through its governing body, may issue or reissue revenue bonds in accordance with and through the provisions of subsection (2) of this section.

(2) The water activity enterprise is authorized to issue or reissue bonds, notes, or other obligations payable from the revenues derived or to be derived from the function, service, benefits, or facility or the combined functions, services, benefits, or facilities of the enterprise or from any other available funds of the enterprise. The terms, conditions, and details of said bonds, notes, and other obligations, the procedures related thereto, and the refunding thereof shall be set forth in the resolution authorizing said bonds, notes, or other obligations and shall, as nearly as may be practicable, be substantially the same as those provided in part 4 of article 35 of title 31, C.R.S., relating to water and sewer revenue bonds; except that the purposes for which the same may be issued shall not be so limited and except that said bonds, notes, and other obligations may be sold at public or private sale. Each bond, note, or other obligation issued under this subsection (2) shall recite in substance that said bond, note, or other obligation, including the interest thereon, is payable from the revenues and other available funds of the water activity enterprise pledged for the payment thereof. Notwithstanding any other provision of law to the contrary, such bonds, notes, and other obligations may be issued to mature at such times not beyond forty years from their respective issue dates, shall bear interest at such rates, and shall be sold at, above, or below the principal amount thereof, all as shall be determined by the governing body of the water activity enterprise. Notwithstanding anything in this section to the contrary, in the case of short-term notes or other obligations maturing not later than one year after the date of issuance thereof, the governing body of the water activity enterprise may authorize officials of the enterprise to fix principal amounts, maturity dates, interest rates, and purchase prices of any particular issue of such short-term notes or obligations, subject to such limitations as to maximum term, maximum principal amount outstanding, and maximum net effective interest

rates as the governing body shall prescribe by resolution. Such action may be taken only at a public meeting preceded by adequate notice, and the action of the governing body of the water activity enterprise shall be properly recorded on the permanent records of the governing body of the enterprise. The powers provided in this section for water activity enterprises shall not modify, limit, or affect the powers conferred by any other law either directly or indirectly.

Source: L. 93: Entire article added, p. 104, § 1, effective March 30.

37-45.1-105. Article X, section 20 matters. (1) Contracts pertaining to a water project, facility, or activity entered into prior to November 4, 1992, and bonded indebtedness incurred prior to November 4, 1992, or refunding of such bonded indebtedness, which involve a levy or assessment or a pledge of a levy or assessment under any provision of law governing the district to provide revenues to the district or cover default or deficiencies in bonded indebtedness payments are not affected or impaired by the passage of section 20 of article X of the state constitution.

(2) Lands which are included in a district with authority to conduct a water activity shall be subject to the same mill levies and other taxes levied or to be levied on other similarly situated lands at the time such additional lands are included. Such newly included lands are additions to taxable real property, and application of such levies and other taxes to such newly included lands is not subject to the limitations of section 20 (4) of article X of the state constitution. This subsection (2) is intended to place newly included lands and similarly situated existing lands within a district on an equal basis.

(3) Water project loan agreements subject to repayment or contracts for services including the provision of water, capacity of project works, materials, or other water activities, which involve the payment of funds for such services to a district or its water activity enterprise by a state or local governmental entity or by another district or water activity enterprise, shall not be considered "grants" within the meaning of section 20 (2)(d) of article X of the state constitution. Notwithstanding the provisions of section 6 (3) of article XI of the state constitution, where such agreement or contract shall in whole or in part constitute a general obligation of such local governmental entity or district, and where such agreement or contract provides that such local governmental entity or district shall be required to accept and pay for water, capacity, materials, or other water activities agreed or contracted for by a defaulting local governmental entity or district, such agreement or contract shall not be entered into unless the question of incurring such general obligation has been submitted to and approved at an election conducted by such local governmental entity or district in accordance with applicable election laws.

Source: L. 93: Entire article added, p. 105, § 1, effective March 30.

37-45.1-106. Contracts. (1) A district or its water activity enterprise may contract with the Colorado water conservation board or any other governmental source of funding for loans and grants related to water activity enterprise functions, and a district or its water activity enterprise may contract with the Colorado water resources and power development authority for loans or other available financial assistance related to water activity enterprise functions.

(2) Revenues collected by a district for services rendered by a water activity enterprise which it owns, including but not limited to the revenues raised by rates on each class of service under article 45, 46, 47, or 48 of this title, are not subject to the limitations of subsections (4) and (7) of section 20 of article X of the state constitution.

(3) The rates or a change in the rates charged by a district for its water activity enterprise services, including the provision of water, capacity of project works, materials, or other water activities provided by or through the water activity enterprise, shall not be deemed a tax subject to the limitations of section 20 (4) and (7) of article X of the state constitution.

(4) A district or its water activity enterprise may contract with any other person, including a district or a water activity enterprise of another district, for the use of water or a water project or facility, which contract may contain provisions specified in section 31-35-402 (1)(h) as determined by the district or water activity enterprise.

Source: L. 93: Entire article added, p. 106, § 1, effective March 30. **L. 2018:** (4) added, (HB 18-1073), ch. 64, p. 615, § 2, effective August 8.

Editor's note: Section 3 of chapter 64 (HB 18-1073), Session Laws of Colorado 2018, provides that the act changing this section applies to conduct occurring on or after August 8, 2018.

37-45.1-107. Construction. The authority of this article is in addition to all other authority provided by law. Nothing contained in this article shall be construed to require the establishment, operation, or continuation of a water activity enterprise or to limit the authority of any state or local government to utilize other policies and procedures for establishing, operating, or continuing water activity enterprises or to establish and operate other types of enterprises for any other lawful purpose.

Source: L. 93: Entire article added, p. 106, § 1, effective March 30.

ARTICLE 46

Colorado River Water Conservation District

37-46-101. Legislative declaration. In the opinion of the general assembly of the state of Colorado, the conservation of the water of the Colorado river in Colorado for storage, irrigation, mining, and manufacturing purposes and the construction of reservoirs, ditches, and works for the purpose of irrigation and reclamation of additional lands not yet irrigated, as well as to furnish a supplemental supply of water for lands now under irrigation, are of vital importance to the growth and development of the entire district and the welfare of all its inhabitants and that, to promote the health and general welfare of the state of Colorado, an appropriate agency for the conservation, use, and development of the water resources of the Colorado river and its principal tributaries should be established and given such powers as may be necessary to safeguard for Colorado, all waters to which the state of Colorado is equitably entitled under the Colorado river compact.

Source: L. 37: p. 997, § 1. **CSA:** C. 138, § 199(1). **CRS 53:** § 149-8-1. **C.R.S. 1963:** § 150-7-1.

37-46-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Colorado river" is construed to embrace and include any tributaries or streams which flow into the Colorado river which may be found in any part of the territory embraced in said district.

(2) "District" means the "Colorado River Water Conservation District". The district is a body corporate and politic and a political subdivision of the state of Colorado.

(3) "Person" means a person, firm, partnership, association, or corporation.

(4) "Property", as used in sections 37-46-109 (1), 37-46-109.3, 37-46-126 (1), and 37-46-126.2 to 37-46-126.6, includes both real and personal property. In other parts of said article relating to special assessments, unless otherwise specified, it means real estate as the words "real estate" are defined by the law of the state of Colorado and embraces all railroads, tram roads, electric railroads, state and interurban railroads, highways, telephone, telegraph, and transmission lines, water systems, water rights, pipelines, and rights-of-way of public service corporations, and all other real property, whether held for public or private use.

(5) "Subdistrict" or "subdivision" includes the kind or character of special improvement districts created under this article, including subdistricts organized under the name and style of "Water Users' Association No. .... of the Colorado River Water Conservation District" and "Special Improvement District No. .... of the Colorado River Water Conservation District". A subdistrict or subdivision is a body corporate and politic and a political subdivision of the state of Colorado. A subdistrict or subdivision does not have regulatory authority over a water conservation district, water conservancy district, irrigation district, or other water user outside its geographic boundaries; however, a subdistrict or subdivision may enter into a voluntary contract, stipulation, or other agreement with a water conservation district, water conservancy district, irrigation district, or other water user outside its geographic boundaries.

Source: L. 37: p. 1025, § 25. **CSA:** C. 138, § 199(25). **CRS 53:** § 149-8-25. **C.R.S. 1963:** § 150-7-25. **L. 77:** (2) and (5) amended, p. 1638, § 1, effective June 9. **L. 79:** (4) amended, p. 1355, § 1, effective May 31. **L. 2016:** (5) amended, (SB 16-145), ch. 281, p. 1150, § 1, effective August 10.

37-46-103. District body corporate - area. There is hereby created a water conservation district to be known and designated as the "Colorado River Water Conservation District". Such district is hereby declared to be a body corporate under the laws of Colorado. Said district shall comprise the following area and territory of the state of Colorado: Grand county, Routt county, Moffat county, Rio Blanco county, Ouray county, Mesa county, Garfield county, Pitkin county, Eagle county, Delta county, Gunnison county, Summit county, those parts of Hinsdale and Saguache counties lying west and north of the continental divide and within the drainage basin of the Gunnison river, and that part of Montrose county not included in the Southwestern water conservation district as set forth and described in section 37-47-103.

Source: L. 37: p. 998, § 2. **CSA:** C. 138, § 199(2). **L. 51:** p. 691, § 1. **CRS 53:** § 149-8-2. **L. 55:** p. 937, § 1. **L. 61:** p. 854, § 1. **C.R.S. 1963:** § 150-7-2.

37-46-104. Board of directors. (1) The Colorado river water conservation district shall be managed and controlled by a board of fifteen directors. One of said directors shall be from each of the respective counties in said district. He shall be selected by the board of county commissioners of the county in which he resides. He may be a member of the board of county commissioners of such county. He shall have been a resident of such county, or if only a part of a county is included within the boundaries of the said district, a resident of such included part for a period of at least two years prior to the date of his appointment and shall be a freeholder who has paid taxes in the county of his residence during the calendar year next preceding his appointment. The members of said board shall hold office for a term of three years and until their successors are appointed and qualified, except as otherwise provided in this article. The regular term of office of each director shall commence on the third Tuesday of January following his appointment. The board of county commissioners of the county in which a director, whose term of office is about to expire, resides shall, at its first meeting in January, appoint a successor who shall take office on the third Tuesday in January following his appointment.

(2) The members of the board of directors of said district who are now in office shall hold their respective office for the period of time for which they were selected to serve, and their tenure of office shall not be affected by this amendatory section. Within sixty days after April 7, 1961, each of the boards of county commissioners of the counties of Hinsdale and Saguache shall appoint a director from such county with the qualifications above prescribed to serve as a member of the board of directors of the Colorado river water conservation district. The director from Hinsdale county shall hold office until the third Tuesday of January, 1962, and the director from Saguache county shall hold office until the third Tuesday of January, 1963. Upon expiration of the several terms of office of the directors appointed under the terms of this section, successors shall be appointed as provided in this section to serve for the regular term of three years.

Source: L. 37: p. 998, § 3. **CSA:** C. 138, § 199(3). **L. 51:** p. 692, §§ 2, 3. **CRS 53:** § 149-8-3. **L. 55:** p. 937, § 2. **L. 61:** p. 854, § 2. **C.R.S. 1963:** § 150-7-3.

37-46-105. Compensation of directors. The board of directors of the district shall receive as compensation a sum not to exceed one hundred dollars per day while actually engaged in the business of said district, and, in addition, said directors shall be entitled to their actual traveling and transportation expenses when away from their respective places of residence on district business.

Source: L. 37: p. 1026, § 26. **CSA:** C. 138, § 199(26). **CRS 53:** § 149-8-26. **L. 61:** p. 856, § 3. **C.R.S. 1963:** § 150-7-26. **L. 83:** Entire section amended, p. 1394, § 1, effective May 26. **L. 2007:** Entire section amended, p. 357, § 2, effective April 2.

37-46-106. Vacancies - secretary and treasurer. The office of director shall become vacant when any member ceases to reside in the county from which the director was appointed. In the event a vacancy occurs in said office by reason of death, resignation, removal, or otherwise, it shall be filled by the board of county commissioners of the county from which said member originally came. Each director shall take an oath or affirmation in accordance with section 24-12-101. The board of directors of said district shall appoint a secretary and a

treasurer. The same individual may at the election of the board hold both of said offices. The board shall likewise hire such other employees, including engineers and attorneys, as may be required to properly transact the business of the district, and said board is authorized to provide for the compensation of the secretary and treasurer and other appointees. The treasurer shall be required by the board to give bond with corporate surety in such amount as the board may fix and which it deems sufficient to protect the funds in the hands of the treasurer or under the treasurer's control. Such bond is subject to the approval of the board.

Source: L. 37: p. 999, § 4. **CSA:** C. 138, § 199(4). **CRS 53:** § 149-8-4. **C.R.S. 1963:** § 150-7-4. **L. 2018:** Entire section amended, (HB 18-1138), ch. 88, p. 702, § 39, effective August 8.

Cross references: For the legislative declaration in HB 18-1138, see section 1 of chapter 88, Session Laws of Colorado 2018.

37-46-107. General powers. (1) In its corporate capacity, the district shall have the power:

(a) To sue and be sued in the name of the Colorado river water conservation district;

(b) To acquire, operate, and hold in the name of the district such real and personal property as may be necessary to carry out the provisions of this article and to sell and convey such property or its products, as provided in this article, or when said property is no longer needed for the purposes of said district;

(c) To make surveys and conduct investigations to determine the best manner of utilizing stream flows within the district and the amount of such stream flow or other water supply, and to locate ditches, irrigation works, and reservoirs to store or utilize water for irrigation, mining, manufacturing, or other purposes, and to make filings upon said water and initiate appropriations for the use and benefit of the ultimate appropriators, and to perform all acts and things necessary or advisable to secure and insure an adequate supply of water, present and future, for irrigation, mining, manufacturing, and domestic purposes within said districts;

(d) To make contracts with respect to the relative rights of said district under its claims and filings and the rights of any other person, association, or organization seeking to divert water from any of the streams within said district;

(e) To contract with any agencies, officers, bureaus, and departments of the state of Colorado or the United States, including the department of corrections, to obtain services or labor for the initiation, the construction, or any other acquisition of irrigation works, ditches and ditch rights, canals, reservoirs, power plants, or retaining ponds within the district or to acquire, by purchase, rental, lease, or exchange, water, water rights, or electricity (or any combination thereof) from the state or the United States, acting by and through any such agency, officer, bureau, or department, but not to acquire any electricity for sale by the district as a public utility either to the public or to any other user (other than any sale to any subdistrict or to any water conservancy district located wholly or in part within the Colorado river water conservation district and other than any sale of electricity at wholesale to any person or governmental entity);

(f) To enter upon any privately owned land or other real property for the purpose of making surveys or obtaining other information, without obtaining any order so to do, but without causing any more damage than is necessary to crops or vegetation upon such land;

(g) To organize special assessment districts at different times for the purpose of establishing effective agencies to secure funds to construct reservoirs or other irrigation works under various types and plans of financing, including, among others, by issuance of revenue warrants only, by the issuance of bonds or revenue obligations constituting a lien up to a specified amount against the lands in said special improvement district, and payable out of special assessments or by general obligations of such special improvement districts;

(h) To contract with the United States government, the bureau of reclamation, or other agencies of the United States government for the construction of any such works and the issuance of such obligations as the special improvement districts may have the power to issue in payment of costs of construction and maintenance of said works;

(i) To have and exercise the power of eminent domain and, in general, to have and exercise rights and powers of eminent domain conferred upon other agencies as provided in articles 1 to 7 of title 38, C.R.S.; but the district, any subdivision thereof, or the special improvement districts therein shall neither have nor exercise the power of eminent domain against the state or state agencies nor acquire thereby any electric generation facilities, electric distribution lines, or any conditional or absolute decrees for the use of water;

(j) To file upon and hold for the use of the public sufficient water of any natural stream to maintain a constant stream flow in the amount necessary to preserve fish and to use such water in connection with retaining ponds for the propagation of fish for the benefit of the public;

(k) To exercise such implied powers and perform such other acts as may be necessary to carry out and effect any of the express powers hereby conferred upon such district;

(l) To participate in the formulation and implementation of nonpoint source water pollution control programs related to agricultural practices in order to implement programs required or authorized under federal law and section 25-8-205 (5), C.R.S., enter into contracts and agreements, accept funds from any federal, state, or private sources, receive grants or loans, participate in education and demonstration programs, construct, operate, maintain, or replace facilities, and perform such other activities and adopt such rules and policies as the board deems necessary or desirable in connection with nonpoint source water pollution control programs related to agricultural practices.

(2) The board of directors of the district acting as the governing body, in the name and on the behalf of the district, may issue revenue bonds to finance, in whole or in part, the construction or other acquisition of works, reservoirs, or other improvements for the beneficial use of water for the purposes for which it has been or may be appropriated, including, without limitation, the hydrogeneration of electricity, or the acquisition by purchase, rental, lease, or exchange of water, or the purchase or exchange of water rights or electricity and appurtenances (or any combination thereof), and to finance incidental expenses pertaining thereto, whether or not the interest on such bonds may be subject to taxation. Such revenue bonds shall be issued in such denominations and with such maximum net effective interest rate as may be fixed by the board of directors of the district and shall bear interest such that the net effective interest rate of the bonds does not exceed the maximum net effective interest rate authorized. The board shall pledge only bond proceeds, sale proceeds, rental or lease proceeds, service charges, and other income from such works or other improvements or from the sale, rental, or lease of water or the sale of electricity (or any combination thereof), and the district shall not be otherwise obligated for the payment thereof. At the time such revenue bonds are issued, the board of directors of the district shall make and enter in the minutes of the proceeding a resolution in which the due dates

of such revenue bonds, the rates of interest thereon, the general provisions of the bonds, and a recital that the same are payable only out of bond proceeds, sale proceeds, rental and lease proceeds, service charges, and other income from such works or other improvements and from the sale, rental, lease, or exchange of water or the sale or exchange of electricity (or any combination thereof) are set forth. In addition, the board of directors shall require the payment of rental or lease charges, service charges, or other charges by the political subdivisions or persons who are to use or derive benefits from the water or other services furnished by such works or improvements or otherwise. Such charges shall be sufficient to pay operation and maintenance expenses thereof, to meet said bond payments, to accumulate and maintain reserve and replacement accounts pertaining thereto as set forth in such resolution, and to provide funds sufficient for the further development of water resources for all of the foregoing beneficial purposes. Such resolution shall be irrepealable during the time that any of the revenue bonds are outstanding and unpaid. Except as provided in sections 11-55-101 to 11-55-106, C.R.S., the revenue bonds shall be signed "Colorado River Water Conservation District, By ....., President. Attest ....., Secretary", and they shall be countersigned by the treasurer.

Source: L. 37: p. 1000, § 5. **CSA:** C. 138, § 199(5). **CRS 53:** § 149-8-5. **C.R.S. 1963:** § 150-7-5. **L. 77:** (2) added, p. 1639, § 2, effective June 9; (1)(e) amended, p. 954, § 29, effective August 1. **L. 81:** IP(1), (1)(e), and (2) amended and (1)(i) R&RE, pp. 1761, 1762, §§ 1, 2, effective June 19. **L. 88:** (1)(l) added, p. 1023, § 4, effective April 6.

37-46-108. Principal office - meetings. The board of directors of said district shall designate a place within the district where the principal office is to be maintained and may change such place from time to time. Regular quarterly meetings of said board shall be held at said office on the third Tuesday in the months of January, April, July, and October. The board is also empowered to hold such special meetings as may be required for the proper transaction of business. All special meetings of the board shall be held at locations which are within the boundaries of the district or which are within the boundaries of any county in which the district is located, in whole or in part, or in any county so long as the meeting location does not exceed twenty miles from the district boundaries. The provisions of this section governing the location of meetings may be waived only if the proposed change of location of a meeting of the board appears on the agenda of a regular or special meeting of the board and if a resolution is adopted by the board stating the reason for which a meeting of the board is to be held in a location other than under the provisions of this section and further stating the date, time, and place of such meeting. Special meetings may be called by the president of the board or by any three directors. Meetings of the board shall be public, and proper minutes of the proceedings of said board shall be preserved and shall be open to the inspection of any elector of the district during business hours.

Source: L. 37: p. 1002, § 6. **CSA:** C. 138, § 199(6). **CRS 53:** § 149-8-6. **C.R.S. 1963:** § 150-7-6. **L. 90:** Entire section amended, p. 1505, § 20, effective July 1.

37-46-109. Authority of board to levy taxes. (1) (a) In addition to other means of providing revenue for the district, the board of directors has the power to fix the amount of an assessment upon the property within the district, not to exceed two and one-half mills for every

dollar of valuation for assessment therein as a level or general levy to be used for the purpose of paying the expenses of organization, for surveys and plans, to pay the salaries of officers and the per diem allowed to directors and their expenses, for the costs and expenses of construction or partial construction of any project designed or intended to accomplish the utilization of water, by storage or otherwise, for any beneficial uses or purposes, and for other incidental expenses which may be incurred in the administration of the affairs of the district.

(b) and (c) Repealed.

(d) Upon the receipt of any proceeds of a tax levy made under paragraph (a) of this subsection (1), if any items of expense have already been paid in whole or in part from any other sources by the district, they may be repaid from receipts of such levy. Such levy may be made, although the work proposed or any part thereof may have been found impractical or for other reasons abandoned. The collection of data and the payment of expenses therefor, including the compensation of engineers and attorneys and clerical assistants, to conserve the water of the district and to enable the district to adopt plans and projects for the orderly development of the district are hereby declared to be a matter of general benefit to the public welfare and such that taxes for said purposes may be properly imposed in the opinion of the general assembly.

(e) If this subsection (1) or any clause, phrase, or part thereof is held unconstitutional or invalid by any court of competent jurisdiction, such decision shall not affect the validity or force of any other part of this section or any other part of this law, and the general assembly hereby declares it would have enacted the remainder of this article without this subsection (1).

(2) The board of said district may, in lieu of the level or general tax authorized by subsection (1) of this section, levy special assessments upon all real estate within the district, except such real estate as is exempted in this article, to raise funds to pay expenses of organization, salaries, expenses, and per diem allowances of officers and directors and to prepare a general plan for the maintenance of constant stream flow and adequate water supplies in all the principal tributaries and the main stream of the Colorado river in said district and provide for future development of the district and insure water therefor. Such assessments shall be made in proportion to the benefits to each piece of real estate accruing by reason of the adoption of a comprehensive plan of development of the natural resources of the district as a whole. The board of directors, if it deems it advisable at any time before levying special assessments, shall appraise the benefits to the several parcels of real estate within the district which shall result from the organization of said district and the general plans and development aforesaid. The board may adopt rules for such purpose and provide inter alia for notice and hearing to all persons affected thereby. A permanent record, arranged by counties, of the benefits which will accrue to each tract of land shall be kept, and such benefits shall be apportioned over a series of years, the amount to be collected each year to be in the discretion of the board; but the amount of such assessment to be levied and assessed against the real property in said district in any one year shall not exceed a total of seventy-five hundred dollars, and it is hereby declared that the amount of special benefits accruing annually to the real estate in said district is in excess of such amount. All property owned by the state, counties, cities, towns, school districts, or other governmental agencies shall be exempt from taxation or special levies under this article.

(3) Prior to October 15 of each year in which an assessment is made, the board of directors shall appoint a time and place where it will meet within the district for the purpose of hearing objections to assessments at least thirty days prior to the dates so appointed. Notice of such hearing shall be given by posting a notice thereof at or near the door of the treasurer's office

in each county in said district and by publishing said notice in a legal newspaper not less than three consecutive times within a period of thirty days, immediately prior to the hearing. The notice posted in each county shall be sufficient if it pertains to the property subject to assessment in said county only and need not contain the description of, or any reference to, property situated in other counties also affected by such assessment. The notice shall contain a description of the real estate so assessed in the county in which said notice is posted and published, the amount of the assessment fixed by the board, and the time and place fixed by the board for the hearing of objections to such assessments. It shall not be necessary for the notice to contain a separate description of the lots or tracts of real estate, but it shall be sufficient if the said notice contains such descriptions as will inform the owner whether or not his real estate is covered by such descriptions, and to inform the owner of the amount of special assessments thereon.

(4) If, in the opinion of any person whose real estate is assessed, his property has been assessed too high or has been erroneously or illegally assessed, at any time before the date of such hearing, he may file written objections to such assessments, stating the ground of such objections, which statement shall be verified by the affidavit of said person or some other person familiar with the facts. At such hearing the board shall hear such evidence and argument as may be offered concerning the correctness or legality of such assessment and may modify or amend the same. Any owner of property desiring to appeal from the finding of the board as to assessments, within thirty days from the finding of the board, shall file with the clerk of the district court of the county in which the property is situated, a written notice making demand for a trial by the court. At the same time, the appellant shall file a bond with good and sufficient security, to be approved by the clerk of said court, in a sum not exceeding two hundred dollars, to the effect that, if the finding of the court is not more favorable to the appellant than the finding of the board, the appellant will pay the costs of the appeal. The appellant shall state definitely from what part of the order the appeal is taken. In case more than one appeal is taken, upon a showing that the same may be consolidated without injury to the interests of anyone, the court may consolidate and try the appeals together.

(5) The court shall not disturb the findings of the board unless the finding of the board in any case is manifestly disproportionate to the assessments imposed upon other property in the district created under this article. The trial shall be to the court, and the matter shall take precedence before the court and shall be taken up as promptly as may be after the appeal is filed. If no appeal is taken from the finding of the board within the time prescribed in this section, or after the finding of the district court in case an appeal is taken from the finding of the board, then said assessments shall be final and conclusive evidence that said assessments have been made in proportion to the benefits conferred upon each tract of real estate of said district by reason of the general plans of survey, comprehensive plan of development, and the completion of improvements to be constructed under the provisions of this article, and such assessments shall constitute a perpetual lien as provided in section 37-46-121 upon the real estate so assessed until paid.

Source: L. 37: p. 1003, § 7. **CSA:** C. 138, § 199(7). **CRS 53:** § 149-8-7. **L. 58:** p. 323, § 1. **C.R.S. 1963:** § 150-7-7. **L. 69:** p. 1235, § 1. **L. 79:** (1)(c) repealed and (1)(d) amended, pp. 1360, 1355, §§ 8, 2, effective May 31. **L. 83:** (1)(a) and (1)(d) amended and (1)(b) repealed, pp. 1394, 1396, §§ 2, 5, effective May 26.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24.

37-46-109.3. Taxes - determination and collection. (1) In addition to other means of providing revenue for the district, the board of directors, in the name of the district, has the power to levy and collect general ad valorem taxes on or against all taxable property within the district, subject to the limitations provided in section 37-46-109 (1).

(2) To levy and collect general ad valorem taxes, the board shall determine in each year the amount of money to be raised by taxation, including, without limitation, tax levies to retire and pay indebtedness incurred by the district by contract other than the issuance of bonds pursuant to section 37-46-133 and other provisions in this article supplemental thereto, taking into consideration other sources of revenue of the district, and shall fix a rate of levy, without limitation as to rate or amount, but subject to the limitations provided in section 37-46-109 (1), which, when levied upon every dollar of valuation for assessment of taxable property within the district and together with any other moneys of the district, will raise the amount required by the district annually to supply funds for the payment of costs and expenses specified in section 37-46-109 (1) and this subsection (2).

(3) In accordance with the schedule prescribed by section 39-5-128, C.R.S., the board of directors shall certify to the board of county commissioners of each county within the district or having a portion of its territory within the district the rate so fixed in order that, at the time and in the manner required by law for the levying of taxes, such board of county commissioners shall levy such tax upon the valuation for assessment of all taxable property within the district.

(4) The body having authority to levy taxes within each such county shall levy the taxes certified to it, and all officials charged with the duty of collecting taxes shall collect such taxes levied by the district in accordance with sections 37-46-126.5 and 37-46-126.6.

Source: L. 79: Entire section added, p. 1356, § 3, effective May 31. **L. 83:** (2) amended, p. 1395, § 3, effective May 26.

37-46-109.4. Levies to cover district's deficiencies. The board of directors, in certifying annual levies for the district, shall take into account the maturing indebtedness incurred by the district by contract other than the issuance of bonds for the ensuing year as provided in its contracts and deficiencies and defaults of prior years and shall make ample provision for the payment thereof. In case the moneys produced from such levies, together with other revenues of the district, are not sufficient to pay punctually the annual installments of such contracts and interest thereon and to pay defaults and deficiencies, the board shall make such additional levies of taxes as may be necessary for such purposes, and such taxes shall be made and shall continue to be levied until the indebtedness of the district is fully paid.

Source: L. 79: Entire section added, p. 1356, § 3, effective May 31.

37-46-110. Organization. (1) Notwithstanding the organization of the district provided for in this section, public irrigation districts organized under and pursuant to article 4 of chapter 149, CRS 53, and irrigation districts organized under and pursuant to articles 41 and 42 of this title, and any other form or organization designed or intended to acquire, construct, or maintain reservoirs, ditches, and similar works for irrigation or other beneficial purposes under any law of

the state of Colorado or of the United States may be organized to cover and include areas within the Colorado river water conservation district and may likewise embrace territory within that district and partly out of the district. The board of directors, whenever in their opinion such form of organization will help promote the local interests or accomplish improvements for any part of said district, may recommend the organization of any such type of organization.

(2) In addition to such forms of organization, whenever in the opinion of the board of directors of said district it is feasible and necessary that ditches, canals, reservoirs, or other works which benefit only a part of the district should be constructed, a local improvement district or subdivision, or as many of such local improvement districts as may be necessary, may be created as provided in this article. Said local improvement district, when organized under the provisions of this law, shall be designated as "Water Users' Association No. ..... in the Colorado River Water Conservation District", or as "Special Improvement District No. ..... in the Colorado River Water Conservation District". Each subdistrict shall be numbered consecutively as created or organized. The board of directors, the engineers, attorneys, secretary, and other officers, agents, and employees of the district, so far as it may be necessary, shall serve in the same capacity for such subdivisions or subdistricts. A contract and agreement between the main district and the subdistrict may be made in the same manner as contracts and agreements between two districts.

Source: L. 37: p. 1008, § 8. **CSA:** C. 138, § 199(8). **CRS 53:** § 149-8-8. **C.R.S. 1963:** § 150-7-8.

Editor's note: The public irrigation law, article 4 of chapter 149, CRS 53, referred to in subsection (1), was repealed, but the provisions of said article 4 were preserved as to all districts formed under that article prior to 1963. (See L. 63, p. 1009.)

37-46-111. Rules and regulations. The district has the power to make general rules and regulations for the conduct of its business, as well as the conduct of the business of any subdistrict therein, and by such rules and regulations may provide for the rental of water or other services which are to be furnished by said subdistrict, to any municipality, public irrigation district, or irrigation district, or other quasi-municipal corporation in this state, and to make contracts for the payment of the rental to be charged for any such water or services.

Source: L. 37: p. 1028, § 30. **CSA:** C. 138, § 199(30). **CRS 53:** § 149-8-30. **C.R.S. 1963:** § 150-7-30.

37-46-112. Petition. (1) Except as specified in section 37-46-114.5, before any subdistrict is established under this article, a petition shall be filed in the office of the clerk of the district court of the county in which the territory to be included in the subdistrict, or the greater part of the territory is located, signed by the board of directors of the district or by a majority of the owners of land located within the limits of the territory proposed to be organized into a subdistrict.

(2) The petition shall set forth:

(a) The proposed name of said subdistrict, whether it shall be designated "Water Users' Association No. .... in the Colorado River Water Conservation District", or "Special Improvement District No. .... in the Colorado River Water Conservation District";

(b) That property within the proposed subdistrict will be benefited by the proposed reservoirs, ditches, canals, works, or other improvements and shall set forth in a general way the nature and estimated cost thereof, together with a general statement of the nature of the anticipated benefits to be derived therefrom;

(c) A full description of the territory to be included in the proposed subdistrict. The description need not be given by metes and bounds or by legal subdivision, but it shall be sufficient to enable a property owner to ascertain whether his property is within the territory proposed to be organized in a subdistrict. Such territory need not be contiguous, if it is so situated that the organization as a single subdistrict of the territory described is such as to promote one or more of the objectives of this article as to all parts of the area proposed to be included.

(d) A general description of the methods proposed to finance the proposed works or other improvements, whether by revenue warrants pledging the income from the proposed works, special improvement bonds to be paid by special assessments on the property benefited in an amount on each tract of land not in excess of the appraised benefits, contracts of water users or water users' associations creating liens or mortgages on lands within the subdistrict, or general obligation bonds constituting a lien against the real property embraced in such subdistrict, and which indebtedness shall never be an obligation of the district itself. If general obligations are proposed, the petition shall allege and show that all lands in the subdistrict will be benefited in an amount not less than the total amount of general obligation bonds to be issued exclusive of interest.

(e) If such a petition is filed by the board of directors of the district, it shall contain a statement to the effect that a majority of the landowners of the territory in the proposed subdistrict petitioned the board of directors to organize said subdistrict, and a copy of the petition of said landowners shall be attached as an exhibit to the petition for organization of the subdistrict.

(f) The petition shall pray for the organization of a subdistrict by the name proposed.

(3) To determine whether a majority of landowners in said district have signed the petition, in the event the petition is signed by landowners, or have petitioned the board of directors of the district, in the event the petition is filed by the board of directors, the court may require the county treasurer of each county in which territory proposed to be included in said subdistrict is situated to furnish a certified list of names of landowners within said area, and the court shall be governed by the names as they appear upon said copy of the tax roll, and the same shall be prima facie evidence of ownership, and, if said tax roll shows a majority of the landowners have signed the main petition or petitioned the district for said organization, the same shall be considered as prima facie evidence that a majority of said landowners are in favor of the organization of said proposed subdistrict.

Source: L. 37: p. 1009, § 9. **CSA:** C. 138, § 199(9). **CRS 53:** § 149-8-9. **C.R.S. 1963:** § 150-7-9. **L. 2016:** (1) amended, (SB 16-145), ch. 281, p. 1152, § 3, effective August 10.

37-46-113. Notice of hearing on petition. (1) Immediately after the filing of a petition created pursuant to section 37-46-112, the court, by order, shall fix a place and time, not less than sixty-three days nor more than ninety-one days after the petition is filed, for a hearing on the petition, and the clerk of the court shall provide notice by publication, which may be substantially the same as provided in section 37-8-101, of the petition and of the time and place of the hearing on the petition. The clerk of the court shall also send the notice by United States first-class mail or by electronic service using the e-filing system of the judicial department to the board of county commissioners of each of the counties having territory within the proposed subdistrict and, if the petition is filed by landowners, and not by the board of directors, to the board of directors of the district.

(2) The district court in and for the county in which the petition for the organization of a subdistrict has been filed, for all purposes of this article, except as otherwise provided in this article, thereafter shall maintain and have original and exclusive jurisdiction coextensive with the boundaries of said subdistrict of lands and other property proposed to be included in said subdistrict or affected by said district, without regard to the usual limits of its jurisdiction.

(3) No judge of such court wherein such petition is filed shall be disqualified to perform any duty imposed by this article by reason of ownership of property within any subdistrict or proposed subdistrict or by reason of ownership of any property that may be benefited, taxed, or assessed therein.

Source: L. 37: p. 1011, § 10. **CSA:** C. 138, § 199(10). **CRS 53:** § 149-8-10. **C.R.S. 1963:** § 150-7-10. **L. 2016:** (1) amended, (SB 16-145), ch. 281, p. 1152, § 4, effective August 10. **L. 2017:** (1) amended, (HB 17-1142), ch. 66, p. 209, § 3, effective September 1.

37-46-114. Protesting of petitions. (1) After the filing of a petition for the organization of a subdistrict pursuant to section 37-46-112, a written protest objecting to the organization of the subdistrict may be filed with the court clerk up to thirty days before the date for the hearing on the petition, but not after the date of the hearing. The protest must be signed by a majority of the landowners in the proposed subdistrict. The clerk of the court shall then make as many certified copies of the written protest, including the signatures, as there are counties into any part of which the proposed subdistrict extends and provide a copy to the county treasurer of each of the counties.

(2) It is the duty of each of such county treasurers to determine from the last tax rolls of his county, and to certify to said district court under his official seal, prior to the day fixed for the hearing, the total number of owners of land situate in such proposed subdistrict within his county and the total number of owners of land situate in such proposed subdistrict within his county who have signed such protest. Such certificate shall constitute prima facie evidence of the facts so stated therein and shall be so received and considered by the court.

(3) Upon the day set for the hearing upon the original petition, if it appears to the court from such certificate and from such other evidence as may be adduced by any party in interest that the said protest is not signed by a majority of the owners of land within the proposed subdistrict, the court shall thereupon dismiss said protest and shall proceed with the hearing on the petition. If it appears to the court at said hearing that the protest is signed by any person or corporation who signed the original petition for the organization of said subdistrict, either to the court or to the district, then the signature of any such landowner upon the protest shall be

disregarded and not counted. The board of county commissioners of any county in which any part of said proposed subdistrict is situate, or any owner of real property in said proposed subdistrict who has not signed the petition for the organization of said subdistrict, on or before the date set for the cause to be heard, may file objections to the organization and incorporation of the district. Such objections shall be limited to a denial of the statements in the petition and shall be heard by the court as an advanced case without unnecessary delay.

(4) Upon said hearing, if it appears that said petition has been signed and presented in accordance with the requirements of this article and that the allegations of the petition are true, the court shall enter a decree and therein adjudicate all questions of jurisdiction and declare the subdistrict organized and designate the name of said subdistrict, by which in all subsequent proceedings it shall thereafter be designated and known, and thereafter said subdistrict shall be deemed a special improvement district.

(5) Such order shall be binding upon the real property within the subdistrict, and no appeal or other remedy shall lie therefrom, and entry of such order shall finally and conclusively establish the regular organization of said subdistrict against all persons except the state of Colorado in an action in the nature of quo warranto to be commenced by the attorney general within three months after said decree is entered and not otherwise. Within ten days after such subdistrict has been declared duly organized by the court, the clerk of said court shall transmit to the county clerk and recorder in each of the counties having lands in said subdistrict copies of the findings and decree of the court establishing said subdistrict. The same shall be recorded in the office of the county clerk and recorder, where they shall become permanent records.

Source: L. 37: p. 1012, § 11. **CSA:** C. 138, § 199(11). **CRS 53:** § 149-8-11. **C.R.S. 1963:** § 150-7-11. **L. 83:** (5) amended, p. 1228, § 14, effective July 1. **L. 2016:** (1) amended, (SB 16-145), ch. 281, p. 1152, § 5, effective August 10.

37-46-114.5. Alternative procedure for organizing a subdistrict. (1) (a) Notwithstanding the process for creating a subdistrict established in sections 37-46-112 to 37-46-114, a petition for an election on the organization of a subdistrict may be filed with the clerk of the court that has jurisdiction over all or part of the geographic area to be represented by the proposed subdistrict. The petition must be:

(I) Duly approved by the district's board of directors;

(II) Approved by a unanimous vote of the members of the district's board of directors who were appointed by the counties that lie wholly or partially within the boundaries of the proposed subdistrict; and

(III) Signed by at least the lesser of ten percent or two hundred of the electors living in the geographic area to be represented by the proposed subdistrict.

(b) The petition must include:

(I) The name of the proposed subdistrict;

(II) A general description of the purpose of the proposed subdistrict consistent with section 37-46-112 (2). The description need not be given by measurements and boundaries or by legal subdivision, but it must be sufficient to enable a property owner to ascertain whether the property owner's property is within the territory proposed to be organized as a subdistrict. If the proposed subdistrict is intended to promote one or more of the purposes set forth in section 37-

46-101, the territory of the subdistrict need not be contiguous. The boundary of the proposed subdistrict may include all or any part of any city, county, or city and county, regardless of size.

(III) A statement whether any part of the proposed subdistrict is included within the boundaries of an existing subdistrict established under this article and, if so, a general description of the overlapping geographic area;

(IV) A general designation of any subdivisions of the subdistrict and the number of directors proposed for each subdivision; and

(V) A formal request for the organization of the subdistrict by the name proposed and a request to hold an election on the question of the organization of the subdistrict.

(2) (a) (I) On the day fixed for a hearing on the petition, or at a continuance of the hearing date, the court shall first ascertain whether the requirements of subsection (1) of this section have been satisfied.

(II) The court shall not declare a petition with the requisite signatures void on account of alleged defects in the petition, but may require the petition to be amended at any time to correct any errors, including an error in the description of the territory. If duplicate or similar petitions for the organization of a subdistrict are filed before a hearing is held on the first petition filed, the court shall regard the first and any duplicate or similar petitions as one petition.

(III) If, at the hearing, it appears that the petition for the organization of a subdistrict has been signed and presented in conformity with this section and that the claims of the petition are true, the court, by order entered into the record, shall direct that the question of the organization of the subdistrict be submitted at an election within the boundaries of the proposed subdistrict to be held for that purpose in accordance with the laws of this state for conducting a general election or a special election held on the first Tuesday in November of an odd-numbered year.

(b) At an election on the organization of a subdistrict, a voter may vote for or against the organization of the subdistrict. If a majority of the votes cast at the election are in favor of the organization of a subdistrict, the court shall declare the subdistrict organized and give it the corporate name designated in the petition, by which name it will be known for all proceedings. Upon organization of the subdistrict, the subdistrict will be a body corporate and political subdivision of the state of Colorado with all of the powers afforded to a subdistrict or subdivision by this article.

Source: L. 2016: Entire section added, (SB 16-145), ch. 281, p. 1150, § 2, effective August 10.

37-46-115. Board of directors to prepare plans. Upon organization of such subdistrict, the board of directors of said district, acting as the board of directors of said subdistrict, are authorized and required to prepare and adopt as the official plans for said subdistrict a comprehensive detailed plan showing the nature of the improvements or works, including all canals, reservoirs, and ditches, whether within or without the district, and the estimated cost of each principal part of said system or works.

Source: L. 37: p. 1015, § 12. **CSA:** C. 138, § 199(12). **CRS 53:** § 149-8-12. **C.R.S. 1963:** § 150-7-12.

37-46-116. Appointment of appraisers. As soon as such official plan has been prepared and adopted and is on file in the office of said district, upon petition of the district, the court shall appoint a board of appraisers consisting of three members. The qualifications of said appraisers and all proceedings before them shall be in accordance with the provisions of the law pertaining to the duties and qualifications of appraisers under the conservancy law of Colorado as set forth in article 4 of this title; except that, where reference is made in said law to districts, it shall apply to subdistricts organized under this article.

Source: L. 37: p. 1015, § 13. **CSA:** C. 138, § 199(13). **CRS 53:** § 149-8-13. **C.R.S. 1963:** § 150-7-13.

37-46-117. Compensation of appraisers. Appraisers when appointed under the provisions of this article shall receive a compensation of ten dollars per day during the time that they are engaged in the performance of their duties.

Source: L. 37: p. 1017, § 15. **CSA:** C. 138, § 199(15). **CRS 53:** § 149-8-15. **C.R.S. 1963:** § 150-7-15.

37-46-118. Board bound by financing plan. (1) The board of directors of the district shall be bound by the plan of financing set forth in the petition for the organization of the subdistrict and approved by decree of the district court. The appointment of appraisers shall not be necessary in the event that the plan adopted provides that general obligations of the subdistrict are to be issued or provides for the issuance of revenue warrants which are a lien and charge upon the rental and income from the irrigation works or reservoirs or other improvements to be constructed under the plan adopted and the rental derived from any such works.

(2) The warrants shall be payable in such denominations, with a maximum net effective interest rate which may be fixed by the board of directors of said district pursuant to the order and decree of the court. Such warrants shall bear interest such that the net effective interest rate of the warrants does not exceed the maximum net effective interest rate authorized. The board shall pledge the income and rentals from said irrigation works or water supplied therethrough, and the subdistrict shall not be otherwise obligated for the payment thereof.

(3) At the time said revenue warrants are issued, the board of directors of the district shall make and enter in the minutes of the proceeding a resolution in which the due dates of said revenue warrants, the rate of interest thereon, the general provisions of said bonds, and a recital that the same are payable out of rental and income only are set forth and shall require the payment of an assessment or annual rental charge by the persons who are to use or derive benefit from the water or other service furnished through said improvements or works, sufficient to meet said payments, and the resolution shall be irrepealable during the time that any of said revenue warrants are outstanding and unpaid. The revenue warrants shall be signed "Water Users' Association No. .... in the Colorado River Water Conservation District, By ....., President. Attest ....., Secretary" or "Special Improvement District No. .... in the Colorado River Water Conservation District, By ....., President. Attest ....., Secretary". They shall be countersigned by the treasurer.

(4) General obligation bonds of said subdistrict shall be signed in the same manner as provided in this section for revenue warrants and shall recite that the same are issued pursuant to

the provisions of this article and are to be payable at the time and in the manner and with the rate of interest therein specified and that the same were issued under and pursuant to a decree of court and a resolution of the board of directors authorizing the issue of said obligations and referring to the date of said resolution. Said bonds shall further recite that they are payable from funds to be derived by assessments and tax levies against the property in said subdistrict and not otherwise, and that the same are not to be deemed as an obligation of the Colorado river water conservation district but only as an obligation of said subdistrict, and that the district itself is not obligated in any manner for the payment of said bonds.

Source: L. 37: p. 1015, § 14. **CSA:** C. 138, § 199(14). **CRS 53:** § 149-8-14. **C.R.S. 1963:** § 150-7-14. **L. 70:** p. 440, § 7.

37-46-119. Directors may make assessments. (1) In the event that the plans for the organization of said district, including the petition and the decree entered thereon, provide for a plan of financing the construction or acquisition of the works, or other improvements proposed, by special assessments to be levied against the appraised benefits to property within said subdistrict, then the board of directors may make assessments from time to time as required, and said board in making said assessments shall be guided by the procedure for the levy of similar assessments under the conservancy law of the state of Colorado and particularly the provisions of said law appearing in sections 37-5-104 to 37-5-106, and the same shall apply to subdistricts created under this article. The board of directors from time to time, as the affairs of the subdistrict may demand, may levy on all property upon which benefits have been appraised an assessment of such portion of said benefits as may be found necessary by said board to pay the cost of the appraisal, the preparation and execution of the official plan for said subdistrict, superintendence of construction, and administration during the period of construction, plus ten percent of said total to be added for contingencies, but not to exceed in the total of principal the appraised benefits so adjudicated.

(2) The assessments, to be known as the "construction fund assessment", shall be apportioned to and levied on each tract of land or other property in said district in proportion to the benefits appraised and not in excess thereof, and in case bonds are issued, as provided in section 37-46-120, then the amount of interest which will accrue on such bonds as estimated by said board of directors shall be included in and added to said assessment, but the interest to accrue on account of the issuance of said bonds shall not be construed as a part of the cost of construction in determining whether or not the expenses and cost of making said improvement are or are not equal to or in excess of the benefits appraised.

(3) As soon as said assessment is levied, the secretary of the subdistrict, at the expense thereof, shall prepare in duplicate an assessment of the subdistrict. It shall be in the form of a well-bound book endorsed and named "Construction Fund Assessment Record of Water Users' Association No. .... (or Special Improvement District No. ...., as the case may be) of the Colorado River Water Conservation District". Said record shall be in the form of similar records for conservancy districts under the laws of this state, particularly as provided by section 37-5-104. Said assessments may be paid in the manner provided by section 37-5-105, relating to conservancy districts under the laws of this state. All proceedings provided in said sections with respect to conservancy districts shall apply to the assessments, the records thereof, and the manner of payment of assessments of subdistricts organized under this article.

Source: L. 37: p. 1017, § 16. **CSA:** C. 138, § 199(16). **CRS 53:** § 149-8-16. **C.R.S. 1963:** § 150-7-16.

37-46-120. Improvement district bonds. (1) The board of directors of said district may issue as obligations of the subdistrict, not as an obligation of the Colorado river water conservation district, improvement district bonds to be paid out of special assessments made by said board of directors against all lands in the subdistrict, not exceeding in the aggregate principal amount of ninety percent of the amount of benefits assessed against said lands and unpaid at the time of issue of said bonds. The bonds shall contain a recital to the effect that they are issued under and in accordance with the provisions of this article as special improvement district bonds and are payable out of special assessments to be levied against the property in said subdistrict as provided in this article, and not otherwise. Such improvement district bonds shall be signed, "Water Users' Association No. .... (or Special Improvement District No. ...., as the case may be) of the Colorado River Water Conservation District, By ....., President", and countersigned "....., Treasurer".

(2) Otherwise said bonds shall be in such denominations and become due at such dates, with interest payable either annually or semiannually at such rate subject to a maximum net effective interest rate, and contain such other provisions as may be fixed by the board of directors, if said provisions are not inconsistent with the terms of this article. Except as otherwise expressly modified in this article, the law relating to the form and issuance of bonds of conservancy districts under the laws of this state, particularly section 37-5-106, shall apply and govern officers of the district in the issuance and sale of said bonds, and other provisions of said law with respect to the levy of assessments or the payment of said bonds with interest, and particularly section 37-5-110, shall likewise be applicable to the bonds of a subdistrict organized under this article.

Source: L. 37: p. 1019, § 17. **CSA:** C. 138, § (199)17. **CRS 53:** § 149-8-17. **C.R.S. 1963:** § 150-7-17. **L. 70:** p. 441, § 8.

37-46-121. Assessments perpetual lien. All assessments on account of special improvements against appraised benefits and interest thereon and penalties for default of payment thereof, together with costs of collecting the same, from the date of the filing of the "construction fund assessment" record and the "maintenance fund assessment" record in the office of the county treasurer of the county wherein the lands and property are situate, shall constitute a perpetual lien in an amount not in excess of the benefits severally appraised upon the land and other property against which said assessments have been levied and such benefits appraised to which only the lien of the general, state, county, city, town, or school district taxes shall be paramount, and any sale of such property and the issuance of a tax deed conveying title thereto, to enforce any general, state, county, city, town, or school district tax, or any other lien, shall extinguish the perpetual lien of said assessment. Any landowner at any time may pay the full amount of said assessment, and thereafter the property of any such landowner shall be clear and free from said lien and shall not be subject to assessment for and on account of benefits appraised against any other land or default in the payment of assessments made against any other land.

Source: L. 37: p. 1020, § 18. **CSA:** C. 138, § 199(18). **CRS 53:** § 149-8-18. **C.R.S. 1963:** § 150-7-18. **L. 79:** Entire section amended, p. 1357, § 4, effective May 31. **L. 83:** Entire section amended, p. 1395, § 4, effective May 26.

37-46-122. Invalid assessments - board remedy. If any assessment made under the provisions of this article proves invalid, the board of directors by subsequent or amended acts or proceedings, promptly and without delay, shall remedy all defects or irregularities, as the case may require, by making and providing for the collection of new assessments, or otherwise.

Source: L. 37: p. 1021, § 19. **CSA:** C. 138, § 199(19). **CRS 53:** § 149-8-19. **C.R.S. 1963:** § 150-7-19.

37-46-123. Assessment record as evidence. The record of assessments contained in the respective assessment records of the district shall be prima facie evidence in all courts of all matters therein contained.

Source: L. 37: p. 1021, § 20. **CSA:** C. 138, § 199(20). **CRS 53:** § 149-8-20. **C.R.S. 1963:** § 150-7-20.

37-46-124. Remedies in case of faulty notice. Whenever in this article notice is provided for, if the court finds that due notice was not given, jurisdiction shall not thereby be lost or the proceedings abated or held void, but the court shall continue the hearing until such time as proper notice may be given and thereupon shall proceed as though proper notice had been given in the first instance. If any appraisement, assessment, levy, or other proceeding relating to said district is held defective, then the board of directors may file a motion in the cause in which said district was organized to perfect any such defect, and the court shall set a time for hearing thereon. If the original notice as a whole is held to be sufficient but faulty only with reference to publication as to certain particular lands or as to service as to certain persons, publication of the defective notice may be ordered as to the particular lands, or service may be made on the persons not properly served, and said notice is thereby corrected without invalidating the original notice as to other lands or persons.

Source: L. 37: p. 1021, § 21. **CSA:** C. 138, § 199(21). **CRS 53:** § 149-8-21. **C.R.S. 1963:** § 150-7-21.

37-46-125. Lawful contracts. (1) When the petition for the organization of a subdistrict and the decree for such organization so provide, it is lawful for any said subdistrict to make contracts as follows:

(a) A water users' association may bind itself to levy an annual assessment for the use of water and to secure same by liens on land and water rights or in such manner as may be provided by law.

(b) Any person or corporation landowner may create a mortgage lien upon lands or give other security satisfactory to the board or any other contracting agency, and all such contracts shall provide for forfeiture of the use of water for nonpayment of assessments or installments in

the same manner and procedure as provided by statute for forfeiture of stock in a mutual ditch company.

Source: L. 37: p. 1023, § 23. **CSA:** C. 138, § 199(23). **CRS 53:** § 149-8-23. **C.R.S. 1963:** § 150-7-23.

Cross references: For forfeiture of stock in a ditch company, see § 7-42-104 (4).

37-46-126. Issuance of general obligation bonds and revenue bonds. (1) The board of directors of the district acting as the governing body, in the name and on the behalf of the subdistrict as provided in section 37-46-110 and not otherwise, when authorized by the plan of organization and decree of court organizing said subdistrict to do so, may issue general obligation bonds or otherwise incur a general obligation indebtedness to finance, in whole or in part, the construction or other acquisition of works, reservoirs, or other improvements for the beneficial use of water for the purposes for which it has been or may be appropriated, including, without limitation, the hydrogeneration of electricity, or the acquisition by purchase, rental, lease, or exchange of water, or the purchase or exchange of water rights or electricity and appurtenances (or any combination thereof), and to finance incidental expenses pertaining thereto, whether or not the interest on such bonds may be subject to taxation. Said obligations shall bear interest at a rate such that the net effective interest rate of the issue does not exceed the maximum net effective interest rate authorized. Interest shall be payable semiannually, but the first installment of interest may evidence interest for not exceeding two years from the date of issue, and said obligations may be issued and made payable in series becoming due over a term of not less than five years and not more than fifty years after the date of issue. Such bonds or other indebtedness is to be paid from general ad valorem taxes levied from time to time, as the bonds or other indebtedness and interest thereon become due, against the taxable property in said subdistrict and not otherwise; but such taxes may be diminished to the extent other revenues are made available to pay such debt service as the same becomes due. The board of directors of the district shall certify to the boards of county commissioners of the several counties in which said subdistrict or any part thereof is located the amount of the levy necessary to pay said bonds or installments of principal of other indebtedness as they mature and also to pay the interest becoming due on all outstanding bonds or other indebtedness, and the procedure for the assessment and collection of revenue or taxes of the county and state are, except as may be otherwise provided in this article, made applicable and are to be followed in the levy of assessments for payment of taxes and collection of principal and interest on such general obligations.

(2) The board of directors of the district acting as the governing body, in the name and on the behalf of the subdistrict, may issue revenue bonds to finance, in whole or in part, the construction or other acquisition of works, reservoirs, or other improvements for the beneficial use of water for the purposes for which it has been or may be appropriated, including, without limitation, the hydrogeneration of electricity, or the acquisition by purchase, rental, lease, or exchange of water, or the purchase or exchange of water rights or electricity and appurtenances (or any combination thereof), and to finance incidental expenses pertaining thereto, whether or not the interest on such bonds may be subject to taxation. Such revenue bonds shall be issued in such denominations and with such maximum net effective interest rate as may be fixed by the

board of directors of the subdistrict and shall bear interest such that the net effective interest rate of the bonds does not exceed the maximum net effective interest rate authorized. The board shall pledge only bond proceeds, sale proceeds, rental or lease proceeds, service charges, and other income from such works or other improvements or from the sale, rental, lease, or exchange of water or the sale or exchange of electricity (or any combination thereof), and the subdistrict shall not be otherwise obligated for the payment thereof. At the time said revenue bonds are issued, the board of directors of the subdistrict shall make and enter in the minutes of the proceeding a resolution in which the due dates of such revenue bonds, the rates of interest thereon, the general provisions of the bonds, and a recital that the same are payable only out of bond proceeds, sale proceeds, rental and lease proceeds, service charges, and other income from such works or other improvements and from the sale, rental, lease, or exchange of water or the sale or exchange of electricity (or any combination thereof) are set forth. In addition, the board of directors shall require the payment of rental or lease charges, service charges, or other charges by the political subdivisions or persons who are to use or derive benefits from the water or other services furnished by such works or improvements or otherwise. Such charges shall be sufficient to pay operation and maintenance expenses thereof, to meet said bond payments, to accumulate and maintain reserve and replacement accounts pertaining thereto as set forth in such resolution, and to provide funds sufficient for the further development of water resources for all of the foregoing beneficial purposes. Such resolution shall be irrepealable during the time that any of the revenue bonds are outstanding and unpaid. Except as provided in sections 11-55-101 to 11-55-106, C.R.S., the revenue bonds shall be signed "Water Users' Association No. .... in the Colorado River Water Conservation District, By ....., President. Attest ....., Secretary" or "Special Improvement District No. .... in the Colorado River Water Conservation District, By ....., President. Attest ....., Secretary", and they shall be countersigned by the treasurer.

Source: L. 37: p. 1022, § 22. **CSA:** C. 138, § 199(22). **CRS 53:** § 149-8-22. **C.R.S. 1963:** § 150-7-22. **L. 70:** p. 441, § 9. **L. 77:** Entire section amended, p. 1639, § 3, effective June 9. **L. 79:** (1) amended, p. 1357, § 5, effective May 31. **L. 81:** Entire section amended, p. 1763, § 3, effective June 19.

37-46-126.2. Subdistrict's levy of taxes. In addition to other means of providing revenue for a subdistrict, the board of directors, in the name of the subdistrict, has the power to levy and collect general ad valorem taxes on or against all taxable property within the subdistrict, subject to the limitations provided in section 37-46-126.3 (1), in part 3 of article 1 of title 29, C.R.S., and in any other law which by its terms is applicable to the subdistrict and which imposes tax limitations or expenditure limitations thereon.

Source: L. 79: Entire section added, p. 1358, § 6, effective May 31.

37-46-126.3. Levy and collection of subdistrict's taxes. (1) The board of directors, in the name of the subdistrict, after it has been organized, shall determine the amount of money necessary to be raised by a levy on the taxable property in the subdistrict and shall fix a rate of levy, not to exceed five mills, which when levied upon every dollar of valuation for assessment of taxable property within the subdistrict will raise the amount required by the subdistrict during the ensuing fiscal year to supply funds for paying expenses of organization, costs of surveys and

plans, salaries of any employees of the subdistrict, per diem allowed to directors and their expenses pertaining to the subdistrict, and other incidental expenses which may be incurred in the administration of the affairs of the subdistrict, paying the costs and expenses of construction of any project designed or intended to accomplish the utilization of water, by storage or otherwise, for any beneficial uses or purposes, and promptly paying in full, when due, all interest on and principal of general obligation bonds and other general obligation indebtedness of the subdistrict, but the limitation of five mills imposed in this section on the amount of levy shall not apply to levies made for the purpose of paying the principal of and interest on the general obligation bonds and other general obligation indebtedness of the subdistrict. Except for levies to pay such indebtedness, a two-thirds vote of the membership of the board shall be required to fix the amount of each of such levies.

(2) To levy and collect general ad valorem taxes, the board shall determine in each year the amount of money necessary to be raised by taxation, taking into consideration other sources of revenue of the subdistrict, and shall fix a rate of levy, without limitation of rate or amount, but subject to the provisions of subsection (1) of this section, which, when levied upon every dollar of valuation for assessment of taxable property within the subdistrict and together with any other moneys of the subdistrict, will raise the amount required by the subdistrict annually to supply funds for the payment of the expenses provided in subsection (1) of this section.

(3) In accordance with the schedule prescribed by section 39-5-128, C.R.S., the board of directors shall certify to the board of county commissioners of each county within the subdistrict, or having a portion of its territory within the subdistrict, the rate so fixed in order that, at the time and in the manner required by law for the levying of taxes, such board of county commissioners shall levy such tax upon the valuation for assessment of all taxable property within the subdistrict in such county.

(4) Upon the receipt of any proceeds of tax levies made under subsection (1) of this section, if any items of expense have already been paid in whole or in part from any other sources by the subdistrict, they may be repaid from receipts of such levies. Such levies may be made, although the work proposed or any part thereof may have been found impractical or for any other reasons abandoned. The collection of data and the payment of expenses therefor, including the compensation of engineers, attorneys, and clerical assistants, to conserve water of the subdistrict, are hereby declared to be a matter of general benefit to the public welfare and such that taxes for such purposes may be properly imposed in the opinion of the general assembly.

(5) The limitations in and other provisions of part 3 of article 1 of title 29, C.R.S., and any other law which by its terms is applicable to the subdistrict and which imposes tax limitations or expenditure limitations thereon, other than the tax limitation in subsection (1) of this section, shall not apply to the subdistrict until the fifth year after the date on which the subdistrict is created or May 31, 1979, whichever date is later.

Source: L. 79: Entire section added, p. 1358, § 6, effective May 31.

37-46-126.4. Levies to cover subdistrict deficiencies. The board of directors, in certifying annual levies for the subdistrict, shall take into account the maturing indebtedness for the ensuing year as provided in its contracts, maturing bonds and interest on bonds, and deficiencies and defaults of prior years and shall make ample provision for the payment thereof.

In case the moneys produced from such levies, together with other revenues of the subdistrict, are not sufficient to pay punctually the annual installments of its contracts or bonds and interest thereon and to pay defaults and deficiencies, the board shall make such additional levies of taxes as may be necessary for such purposes, and such taxes shall be made and shall continue to be levied until the indebtedness of the subdistrict is fully paid.

Source: L. 79: Entire section added, p. 1359, § 6, effective May 31.

37-46-126.5. County to levy and collect. (1) The body having authority to levy taxes within each county in which the district is situate wholly or in part if it levies taxes to pay expenses or to retire and pay indebtedness incurred by contract other than the issuance of bonds, or both to pay such expenses and to retire and pay such indebtedness, and each county in which a subdistrict is situate wholly or in part if it levies taxes pursuant to sections 37-46-126 (1) and 37-46-126.2 to 37-46-126.4, shall levy the taxes provided in this article.

(2) All officials charged with the duty of collecting taxes shall collect such taxes levied by the district or subdistrict, as the case may be, at the time and in the form and manner and with the interest and penalties as other taxes are collected and, when collected, shall pay the same to the district or subdistrict levying the tax.

(3) The payment of such collection shall be made on or before the tenth day of the next succeeding calendar month to the treasurer of the district or subdistrict levying the taxes and paid into the depository thereof to the credit of such district or subdistrict.

(4) All taxes levied under this article, together with interest thereon and penalties for default in payment thereof, and all costs of collecting the same shall constitute, until paid, a perpetual lien on and against the property taxed, and such lien shall be on a parity with the tax lien of other general ad valorem taxes.

Source: L. 79: Entire section added, p. 1359, § 6, effective May 31.

37-46-126.6. Delinquent taxes. (1) If the taxes levied are not paid, then delinquent real property shall be sold at the regular tax sale for the payment of such taxes, interest, and penalties in the manner provided by statute for selling real property for the nonpayment of taxes. If there are no bids at such tax sale for the property so offered, the property shall be struck off to the county, and the county shall account to the district or the subdistrict levying the taxes in the same manner as provided by law for accounting for school, town, and city taxes.

(2) Delinquent personal property shall be distrained and sold as provided by law.

(3) Nothing in this article, neither the tax limitations in sections 37-46-109 (1) and 37-46-126.3 (1) nor otherwise, shall be construed as preventing the collection in full of the proceeds of all levies of taxes by the district or subdistrict levying the taxes authorized by this article, including, without limitation, any delinquencies, interest, penalties, and costs.

Source: L. 79: Entire section added, p. 1360, § 6, effective May 31.

37-46-127. Maintenance assessment. (1) To maintain, operate, and preserve ditches, canals, reservoirs, or other improvements made pursuant to this article, and to strengthen, repair, and restore the same, when needed, and, for the purpose of defraying any incidental expenses of

the subdistrict, upon completion of a works provided for in the plan for any such subdistrict, on or before the first Monday in November of each year thereafter, the board of directors may certify to the board of county commissioners of the county in which said subdistrict or any part thereof is located an assessment on each tract of land and upon public corporations subject to assessment under this article, for the purpose of raising funds to be used for the maintenance of said improvements. If an appraisal of benefits has been made against the lands in said district, assessments shall be apportioned by the county treasurer and by the board of directors of said district against the property therein upon the basis of the appraisal of benefits originally made. If no such appraisal has been made and the form of organization and financing is such that revenue warrants or general obligations of the subdistrict have been issued, then said assessment shall be made on the basis of the valuation for assessment of the property subject to assessment in said subdistrict.

(2) Such assessment shall not exceed five mills on each dollar of the valuation for assessment of the property in said subdistrict in any one year, unless the court shall by order authorize an assessment of a larger percentage. The assessment shall be levied by resolution of the board of directors and shall be enrolled in a well-bound record to be known as the maintenance fund assessment record and shall be substantially the form provided for similar records of conservancy districts under the laws of the state of Colorado, particularly as provided by section 37-5-107. Assessments so certified shall be levied by the board of county commissioners of the counties in which said subdistrict is situate, on the property of said district in their respective counties, to be collected by the treasurers of the several counties and delivered to the treasurer of the district in like manner and with like effect as is provided for the collection and return of other assessments under this article. The whole assessment shall be due and payable as and when taxes for county purposes levied in the same year are due and payable. The said maintenance assessments shall be in addition to any assessments which have been levied against benefits appraised for and on account of construction.

Source: L. 37: p. 1023, § 24. **CSA:** C. 138, § 199(24). **CRS 53:** § 149-8-24. **C.R.S. 1963:** § 150-7-24.

37-46-128. Annual levy limit. (1) The district has no power of taxation or right to levy or assess taxes, except as provided in sections 37-46-109 to 37-46-109.4, 37-46-126.5, and 37-46-126.6. The district has no power to contract or incur any obligation or indebtedness except as expressly provided in this article, and then any obligation or indebtedness so contracted or incurred is to be payable out of the funds derived through the limited tax provided in section 37-46-109 (1) and the unlimited tax provided in section 37-46-109.3 (2) to retire and pay indebtedness incurred by the district by contract other than the issuance of bonds and not otherwise; except that the district for and in behalf of any subdistrict or improvement district created under this article has the right to issue obligations as expressly authorized in this article and not otherwise.

(2) All assessments under this article shall be collected by the county treasurer of the respective counties in which said real estate is situated at the same time and in the same manner as is provided by law for the collection of taxes for county and state purposes, and if said assessments are not paid, then the real estate shall be sold at the regular tax sale for the payment of said assessments, interest, and penalties in the manner provided by the statutes of the state of

Colorado for selling property for the payment of general taxes. If there are no bids at said tax sale for the property so offered, said property shall be struck off to the district, and the tax certificates shall be issued in the name of the district, and the board of directors has the same power with reference to the sale of said tax certificates as is vested in county commissioners and county treasurers when property is struck off to the counties.

(3) Tax deeds may be issued, based upon said certificates of sale in the same manner that deeds are executed on tax sales on general state and county taxes.

Source: L. 37: p. 1026, § 27. **CSA:** C. 138, § 199(27). **CRS 53:** § 149-8-27. **C.R.S. 1963:** § 150-7-27. **L. 69:** p. 1235, § 2. **L. 79:** (1) amended p. 1360, § 7, effective May 31.

Cross references: For collection of taxes and tax sales, see articles 10 and 11 of title 39.

37-46-129. Investment of surplus funds. The board of directors of said district may invest any surplus funds of the district, including any funds in the construction fund assessment not needed for immediate use to pay the cost of construction of any project in any one of the subdistricts or to pay bonds or coupons or to meet current expenses, in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S. The board of directors of said district may require any funds of the district, or of any subdistrict, to be deposited with such depository or bank as may be designated by the board and shall likewise have authority to require the treasurer of the district to take from such depository a bond with corporate surety to insure payment of any such deposit or to require such depository to pledge securities of the same kind as those in which the district is authorized to invest its funds to insure payment of any such deposit.

Source: L. 37: p. 1027, § 28. **CSA:** C. 138, § 199(28). **CRS 53:** § 149-8-28. **C.R.S. 1963:** § 150-7-28. **L. 89:** Entire section amended, p. 1123, § 50, effective July 1.

37-46-130. Sinking fund. Such district may provide for a sinking fund for the ultimate payment of any of the obligations of any subdistrict. Said sinking fund may be invested as provided in section 37-46-129.

Source: L. 37: p. 1028, § 29. **CSA:** C. 138, § 199(29). **CRS 53:** § 149-8-29. **C.R.S. 1963:** § 150-7-29.

37-46-131. Court confirmation. (1) (a) In its discretion, the board of directors, on the behalf and in the name of the district or any subdistrict which is a party in interest, may file a petition at any time in the district court in and for the county in which the district's principal office is maintained or, if both the district and one or more subdistricts are parties to the petition, in the district court in and for the county in which any such subdistrict was organized, praying for a judicial examination and determination of any power conferred or of any taxes or rates or other charges levied, or of any act, proceeding, or contract of the district, the subdistrict, or the subdistricts, or any combination thereof, as the case may be, whether or not said contract has been executed, including, without limitation, proposed contracts for the acquisition, improvement, equipment, maintenance, operation, or disposal of any properties or facilities for

the benefit of the district, the subdistrict, or the subdistricts, as the case may be, and so including a proposed issue of revenue warrants, revenue bonds, special assessment bonds, or general obligation bonds, issued or to be issued on behalf of any such entity. Such petition shall set forth the facts whereon the validity of such power, tax, assessment, charge, act, proceeding, or contract is founded and shall be verified by the president of the board of directors.

(b) Such action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested may be had by publication, mail, and posting, as provided in this article. Notice of the filing of the petition shall be given by the clerk of the court, under the seal thereof, stating in brief outline the contents of the petition and also stating where a full copy of any contract therein mentioned may be examined. The notice shall be served by publication at least once a week for five consecutive weeks in a daily or a weekly newspaper of general circulation published in the county in which the principal office of the district is located, by mailing copies of the notice by registered or certified mail, return receipt requested, to the boards of county commissioners of the several counties in which the parties in interest in such action are located wholly or in part, and by posting the same in the office of the district at least thirty days prior to the date fixed in said notice for the hearing on said petition. Jurisdiction shall be complete after such publication, mailing, and posting.

(c) Any owner of property in the district or any subdistrict filing the petition or any person interested in the contract or proposed contract or in the premises may appear and move to dismiss or answer the petition at any time prior to the date fixed for the hearing or within such further time as may be allowed by the court; and the petition shall be taken as confessed by all persons who fail to appear.

(2) The petition and notice shall be sufficient to give the court jurisdiction; and, upon hearing, the court shall examine into and determine all matters and things affecting the question submitted and shall make such findings with reference thereto and render such judgment and decree thereon as the case warrants. Costs may be divided or apportioned among any contesting parties in the discretion of the trial court. Review of the judgment of the court may be had as in other similar cases; except that such review must be applied for within thirty days after the time of the rendition of such judgment or within such additional time as may be allowed by the court within thirty days. The Colorado rules of civil procedure shall govern in matters of pleadings and practice where not otherwise specified in this article. The court shall disregard any error, irregularity, or omission which does not affect the substantial rights of the parties.

Source: L. 37: p. 1028, § 31. **CSA:** C. 138, § 199(31). **CRS 53:** § 149-8-31. **C.R.S. 1963:** § 150-7-31. **L. 77:** Entire section R&RE, p. 1640, § 4, effective June 9.

37-46-132. Allocation of water or service. In order to enable a subdistrict organized under the provisions of this article to furnish water to lands which have not been irrigated and had, up to the time of the construction of the works to be constructed by said subdistrict, no water supply and, at the same time, to enable other areas within the same subdistrict to obtain a supplemental supply of water or to enable said subdistrict to furnish a complete service to certain lands, certain areas, certain persons, or municipalities within the district and to supplement an existing supply or service to other persons, localities, and municipalities, prior to the time that an appraisement of benefits is made in any such subdistrict, the board of directors may make a resolution setting forth the amount of water or the kind of service to be allocated to specified

classes or areas, and such limitation shall be taken into consideration by the appraisers in the appraisal of benefits with respect to lands affected by any such limitation. Like conditions and restrictions may be provided for payment by certain lands or persons of revenue warrants which pledge the income from the works of said subdistricts, but no such limitation shall govern the payment of any general obligations of any such subdistrict.

Source: L. 37: p. 1029, § 32. **CSA:** C. 138, § 199(32). **CRS 53:** § 149-8-32. **C.R.S. 1963:** § 150-7-32.

37-46-133. Election to authorize debt. Except for the issuance of refunding bonds or other funding or refunding of obligations which does not increase the net indebtedness of the district or any subdistrict so proceeding, no indebtedness shall be incurred by the issuance of general obligation bonds of any subdistrict or by any contract by which the district or a subdistrict agrees to repay as general obligations or other obligations constituting a "general obligation debt by loan in any form", as such term is used in section 6 of article XI of the state constitution, of the district or subdistrict, respectively, to the federal government, the state, any political subdivision, or any person over a term not limited to the then current fiscal year any project costs advanced thereby under any contract for the acquisition or improvement of the facilities or any interest therein, or for any project, advanced by the issuance of securities of such a political subdivision or person to defray any cost of the project or of the facilities or an interest therein thereby acquired and becoming a part of the facilities of the district or subdistrict, or otherwise advanced, unless a proposal of issuing the subdistrict's general obligation bonds or of incurring an indebtedness by the district or subdistrict by making such a contract is submitted to the electors of the district or subdistrict, as the case may be, and is approved by a majority of such electors voting on the proposal at an election held for that purpose in accordance with this article and with all laws amendatory thereof and supplemental thereto.

Source: L. 77: Entire section added, p. 1642, § 5, effective June 9. **L. 81:** Entire section amended, p. 1764, § 4, effective June 19.

37-46-134. Definition of elector. (1) An "elector", "elector of the district", or "elector of the subdistrict", or any term of similar import, means a person:

(a) Who, at the time of the election, is qualified to vote in general elections in this state; and

(b) Who is a resident of the district or subdistrict proposing to incur an indebtedness at the time of the election.

(2) Registration pursuant to the laws concerning general elections or any other laws shall not be required.

Source: L. 77: Entire section added, p. 1642, § 5, effective June 9.

37-46-135. Elections. Whenever in this article an election of the electors of the district or a subdistrict therein is permitted or required, the election may be held separately at a special election or may be held concurrently with any primary or general election held under the laws of

this state; but no election shall be held at the same time as any regular election of any city, town, or school district if any part of the area thereof is located within the boundaries of the district.

Source: L. 77: Entire section added, p. 1642, § 5, effective June 9.

37-46-136. Election resolution. (1) The board of directors shall call any election by resolution adopted at least thirty days prior to the election.

(2) Such resolution shall recite the objects and purposes of the election, the date upon which such election shall be held, and the form of the ballot.

(3) In the case of any election not to be held concurrently with a primary or general election, the board of directors shall provide in the election resolution or by supplemental resolution for the appointment of sufficient judges and clerks of the election, who shall be electors of the district or the subdistrict holding the debt election, and in such event shall set their compensation. The election resolution or a supplemental resolution shall also then designate the precincts and polling places, but a supplemental resolution may modify such a description of precincts and polling places without repeating such description in full. The description of precincts may be made by reference to any order of the governing body of any county, municipality, or other political subdivision in which the district or subdistrict or any part thereof is situated, or by reference to any previous order or other instrument of such a governing body, or by detailed description of such precincts, or by other sufficient description.

(4) Precincts established by any such governing body may be consolidated in the election resolution by the board of directors in a sufficient number which it deems expedient for the convenience of the electors for any election not to be held concurrently with a primary or general election.

(5) If the election shall be held concurrently with a primary or general election held under the laws of this state, the judges of election for such primary or general election shall be designated as the judges of the election for the election held pursuant to this article, and they shall receive such additional compensation, if any, as the board of directors shall set by the election resolution.

Source: L. 77: Entire section added, p. 1642, § 5, effective June 9.

37-46-137. Conduct of election. (1) Except as otherwise provided in this article, an election held pursuant to this article shall be opened and conducted in the manner then provided by the laws of this state for the conduct of general elections.

(2) If an election is held concurrently with a primary or general election, the county clerk and recorder of each county in which the district or subdistrict holding the debt election is located shall perform for the district or subdistrict election the acts provided by law to be performed by such officials. If an election is not held concurrently with a primary or general election, such acts shall be performed by the secretary of the district with the assistance of the county clerk and recorders. The board of directors and county clerk and recorders are authorized to agree among themselves upon the division of such acts and the determination of persons to perform them.

(3) An elector of the district may vote in any election by absentee voter's ballot under such terms and conditions, and in substantially the same manner insofar as is practicable, as prescribed in article 13.5 of title 1, C.R.S., except as specifically modified in this article.

(4) All acts required or permitted therein to be performed by a county clerk and recorder shall be performed by each one respectively in the event of a primary or general election and by the secretary or assistant secretary of the board of directors in the event of any other election, unless the services of the county clerk and recorder in each such county are contracted for, but no oath shall be administered by the secretary or assistant secretary unless he is also an officer authorized to administer oaths.

(5) Application may be made for an absentee voter's ballot not more than twenty days and not less than four days before the election.

(6) No consideration shall be given nor distinction made with reference to any person's affiliation or the lack thereof.

(7) The return envelope for the absentee voter's ballot must have printed on its face an affidavit substantially in the following form:

"State of Colorado, County of ....., I, ..., being first duly sworn according to law, depose and say that my residence and post-office address is .....; that I am a person qualified to vote in general elections in the State of Colorado and am a resident of the Colorado River Water Conservation District or Water Users' Association No. .... or Special Improvement District No. .... in the Colorado River Water Conservation District, as may be appropriate, at the time of this election.

.....
Signature of voter

Subscribed and sworn to before me this ... day of....., 20....

.....
(Signature of notary public,
county clerk and recorder,
or other officer authorized
to administer oaths)
(SEAL)

.....
Title of office"

(8) In any such election at which voting machines are used, the board of directors shall provide paper ballots for absentee voters containing the same question as is to be submitted to the electors by the voting machines, subject to subsection (9) of this section.

(9) The district or subdistrict may provide for mail voters to cast their mail voters' ballots on voting machines expressly provided for that purpose, if each mail voter indicates by affidavit that he or she is qualified to vote at the election and will be a mail voter, pursuant to article 13.5 of title 1, C.R.S., and all laws supplemental thereto.

Source: L. 77: Entire section added, p. 1643, § 5, effective June 9. **L. 80:** (3) and (9) amended, p. 416, § 33, effective January 1, 1981. **L. 92:** (3) and (9) amended, p. 924, § 195, effective January 1, 1993. **L. 96:** (9) amended, p. 1775, § 81, effective July 1. **L. 99:** (6) amended, p. 164, § 26, effective August 4. **L. 2008:** (9) amended, p. 1913, § 124, effective

August 5. **L. 2009:** (9) amended, (HB 09-1216), ch. 165, p. 730, § 9, effective August 5. **L. 2013:** (3) amended, (HB 13-1303), ch. 185, p. 751, § 134, effective May 10. **L. 2014:** (3), (5), IP(7), (8), and (9), amended, (HB 14-1164), ch. 2, p. 75, § 48, effective February 18.

Cross references: (1) For the "Uniform Election Code of 1992", see articles 1 to 13 of title 1.

(2) In 2013, subsection (3) was amended by the "Voter Access and Modernized Elections Act". For the short title and the legislative declaration, see sections 1 and 2 of chapter 185, Session Laws of Colorado 2013.

(3) For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

37-46-138. Notice of election. Notice of such election shall be given by publication by three consecutive weekly insertions in at least one newspaper of general circulation in the district or subdistrict holding the election, as determined by the board of directors. No other notice of an election held under this article need be given, unless otherwise provided by the board. A supplemental notice may be given by publication at such times and places as the board may determine to be necessary or convenient for correcting or otherwise modifying the original notice of election or for any other purpose.

Source: L. 77: Entire section added, p. 1644, § 5, effective June 9.

37-46-139. Polling places. (1) All polling places designated by resolution for an election shall be within the territorial limits of the district or subdistrict holding the election; but, if an election of the district or subdistrict is held concurrently with a primary or general election, the polling place for each precinct located wholly or partially within the district or subdistrict shall be the polling place for such precinct for the district or subdistrict election, regardless of whether or not such polling place is within the district or subdistrict.

(2) If the election of the district or subdistrict is not held concurrently with a primary or general election held under the laws of this state, there shall be one polling place in each of the election precincts which are used in the primary and general elections or in each of the consolidated precincts fixed by the board of directors, as the case may be.

Source: L. 77: Entire section added, p. 1644, § 5, effective June 9.

37-46-140. Election supplies. (1) The secretary of the district shall provide at each polling place ballots or ballot labels, or both, ballot boxes or voting machines, or both, instructions, electors' affidavits, and other materials and supplies required for an election by any law; and the secretary may provide ballots and marking devices suitable for voting and for the votes on the ballots to be counted on electronic vote-tabulating devices.

(2) Election officials may require the execution of an affidavit by any person desiring to vote at any election of the district or subdistrict to evidence his qualifications to vote, which affidavit shall be prima facie evidence of the facts stated therein.

Source: L. 77: Entire section added, p. 1645, § 5, effective June 9.

37-46-141. Election returns. (1) In the case of any election held under this article which is not held concurrently with a primary or general election, the election officials shall make their returns directly to the secretary of the district for the board of directors.

(2) In the case of any election held under this article which is consolidated with any primary or general election, the returns thereof shall be made and canvassed at the time and in the manner provided by law for the canvass of the returns of such primary or general election. Such canvassing body shall certify promptly and shall transmit to the secretary of the district for the board of directors a statement of the result of the vote upon any proposition submitted under this article.

(3) Upon receipt by the board of directors of election returns from election officials or upon receipt of such certificate from each such canvassing body, the board shall tabulate and declare the results of the election at any regular or special meeting held not earlier than five days following the date of the election.

(4) The board of directors shall cause the results of the election to be published at least one time in at least one newspaper having general circulation in the district.

Source: L. 77: Entire section added, p. 1645, § 5, effective June 9.

37-46-142. Debt election contests. (1) Any election declared to have carried on an authorization to issue any bonds, by approval of the bond question, or otherwise to incur an indebtedness by approval of the question thereon may be contested by any elector of the district or subdistrict holding the debt election by suit against it as contestee and defendant in any district court of any county in which the district or subdistrict holding the election is wholly or partially situate:

(a) When illegal votes have been received or legal votes rejected at the polls in sufficient numbers to change the results;

(b) For any error or mistake on the part of any of the judges of election, any county clerk and recorder, the secretary of the district, or their respective officers and employees in counting or declaring the result of the election, if the error or mistake is sufficient to change the result;

(c) For malconduct, fraud, or corruption on the part of any of the judges of election, any county clerk and recorder, the secretary of the district, or their respective officers and employees, if the malconduct, fraud, or corruption is sufficient to change the result;

(d) When the bonds or other indebtedness is authorized to be issued for an invalid purpose; or

(e) For any other cause which shows that the bonds or other indebtedness is not validly authorized at the election.

(2) The style and form of process, the manner of service of process and papers, the fees of officers, and judgment for costs and execution thereon shall be according to the rules and practices of the court.

(3) Before the court shall take jurisdiction of the contest, the contestor shall file with the clerk of the court a bond, with sureties, to be approved by the judge thereof, running to the district or subdistrict holding the debt election as contestee and conditioned to pay all costs in case of failure of the contestor to maintain his contest.

(4) When the validity of any bond or other indebtedness election is contested, the plaintiff or plaintiffs, within thirty days after the returns of the election are canvassed and the

results thereof declared and published, or last published, as the case may be, shall file with the clerk of the court a verified written complaint setting forth specifically:

(a) The name of the party contesting the election and a statement that the plaintiff or each plaintiff is an elector of the district or subdistrict holding the election;

(b) The proposition or propositions voted on at the election which are contested, the name of the district or the subdistrict as defendant and contestee, and the date of the election; and

(c) The particular grounds of such contest.

(5) No such contest shall be maintained and no election shall be set aside or held invalid unless such a complaint is filed within the period prescribed in subsection (4) of this section.

(6) Except as otherwise provided in this article, the election laws pertaining to contested election cases of municipal offices as provided in part 13 of article 10 of title 31, C.R.S., of the "Colorado Municipal Election Code of 1965", as from time to time amended, shall be applicable to bond or other indebtedness elections; but any such contest shall be regarded as one contesting the outcome of the vote on the proposition authorizing the issuance of securities or otherwise incurring the indebtedness, rather than election to office, and the district or subdistrict as contestee, rather than a person declared to have been elected to office, shall be regarded as the defendant.

(7) If the board of directors declares the proposition authorizing the issuance of bonds or otherwise incurring the indebtedness to have carried and no contest is duly filed or if such a contest is filed after it is favorably terminated, the board may issue the bonds or otherwise incur the indebtedness authorized at the election at one time or from time to time.

Source: L. 77: Entire section added, p. 1645, § 5, effective June 9.

37-46-143. Covenants and other provisions in bonds. (1) Any resolution providing for the issuance of any bonds under this article payable from pledged revenues and any indenture or other instrument or proceedings pertaining thereto may at the discretion of the board of directors contain covenants or other provisions, notwithstanding that such covenants and provisions may limit the exercise of powers conferred by this article, in order to secure the payment of such bonds, in agreement with the holders of such bonds, including, without limitation, covenants or other provisions as to any one or more of the following:

(a) The pledged revenues and, in the case of general obligations, the taxes to be fixed, charged, or levied and the collection, use, and disposition thereof, including, without limitation, the foreclosure of liens for delinquencies, the discontinuance of services, facilities, or use of any properties or facilities, prohibition against free service, the collection of penalties and collection costs, and the use and disposition of any moneys of the district or subdistrict issuing bonds, derived or to be derived, from any source designated;

(b) The acquisition, improvement, or equipment of all or any part of properties pertaining to any project or any facilities;

(c) The creation and maintenance of reserves or sinking funds to secure the payment of the principal of and the interest on any bonds or of the operation and maintenance expenses of any facilities, or part thereof, and the source, custody, security, regulation, use, and disposition of any such reserves or funds, including, without limitation, the powers and duties of any trustee with regard thereto;

(d) Limitations on the powers of the district or subdistrict to acquire or operate, or permit the acquisition or operation of, any structures, facilities, or properties which may compete or tend to compete with any facilities;

(e) The vesting in a corporate or other trustee or trustees of such property, rights, powers, and duties in trust as the board of directors may determine, which may include any or all of the rights, powers, and duties of the trustee appointed by the holders of bonds, and limiting or abrogating the rights of such holders to appoint a trustee, or limiting the rights, duties, and powers of such trustee;

(f) Events of default, rights, and liabilities arising therefrom and the rights, liabilities, powers, and duties arising upon the breach by the district or subdistrict of any covenants, conditions, or obligations;

(g) The terms and conditions upon which the holders of the bonds or of a specified portion, percentage, or amount thereof, or any trustee therefor, shall be entitled to the appointment of a receiver, which receiver may enter and take possession of any facilities or service, operate and maintain the same, prescribe fees, rates, and other charges, and collect, receive, and apply all revenues thereafter arising therefrom in the same manner as the district or subdistrict itself might do;

(h) A procedure by which the terms of any resolution authorizing bonds or any other contract with any holders of district or subdistrict bonds, including, without limitation, an indenture of trust or similar instrument, may be amended or abrogated, and as to the proportion, percentage, or amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(i) The terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived; and

(j) All such acts and things as may be necessary or convenient or desirable in order to secure the bonds or, in the discretion of the board of directors, tend to make the bonds more marketable, notwithstanding that such covenant, act, or thing may not be enumerated in this article, it being the intention of this article to give to the board of directors power to do in the name and on behalf of the district or subdistrict all things in the issuance of district or subdistrict bonds and for their security, except as expressly limited in this article.

Source: L. 77: Entire section added, p. 1647, § 5, effective June 9.

37-46-144. Liens on pledged revenues. (1) Revenues pledged for the payment of any bonds, as received by or otherwise credited to the district or subdistrict issuing bonds under this article, shall immediately be subject to the lien of each such pledge without any physical delivery thereof, any filing, or any further act.

(2) The lien of each such pledge and the obligation to perform the contractual provisions made in the authorizing resolution or other instrument pertaining thereto shall have priority over any or all other obligations or liabilities of the district or subdistrict, except as may be otherwise provided in this article or in the resolution or other instrument, and subject to any prior pledges and liens theretofore created.

(3) The lien of each such pledge shall be valid and binding as against all persons having claims of any kind in tort, in contract, or otherwise against the district or subdistrict, irrespective of whether or not such persons have notice thereof.

Source: L. 77: Entire section added, p. 1648, § 5, effective June 9.

37-46-145. Rights - powers of holders of bonds - trustees. (1) Subject to any contractual limitations binding upon the holders of any issue or series of bonds of the district or subdistrict issuing bonds under this article, or the trustee therefor, including, without limitation, the restriction of the exercise of any remedy to a specified proportion, percentage, or number of such holders, and subject to any prior or superior rights of others, any holder of bonds, or the trustee therefor, shall have the right and power, for the equal benefit and protection of all holders of bonds similarly situated:

(a) By mandamus or other suit, action, or proceeding at law or in equity, to enforce his rights against the district, subdistrict, or board of directors, or any combination thereof, or any of the officers, agents, and employees of the district or subdistrict to require and compel such district, subdistrict, or board or any of such officers, agents, or employees to perform and carry out their respective duties, obligations, or other commitments under this article and their respective covenants and agreements with the holder of any bond;

(b) By action or suit in equity, to require the district or subdistrict to account as if it were the trustee of an express trust;

(c) By action or suit in equity, to have a receiver appointed, which receiver may enter and take possession of any facilities and any pledged revenues for the payment of the bonds, prescribe sufficient fees, rates, and other charges derived from the facilities, and collect, receive, and apply all pledged revenues or other moneys pledged for the payment of the bonds in the same manner as the district or subdistrict itself might do in accordance with the obligations of the district or subdistrict; and

(d) By action or suit in equity, to enjoin any acts or things which may be unlawful or in violation of the rights of the holder of any bonds and to bring suit thereupon.

Source: L. 77: Entire section added, p. 1648, § 5, effective June 9.

37-46-146. Investments and securities. (1) The board of directors of the district or subdistrict, respectively, issuing bonds under this article, subject to any contractual limitations from time to time imposed upon the district or subdistrict by any resolution authorizing the issuance of the outstanding bonds of the district or subdistrict or by any trust indenture or other proceedings pertaining thereto, may cause to be invested and reinvested any proceeds of taxes, any pledged revenues, and any proceeds of bonds issued under this article in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S., and may cause such proceeds of taxes, revenues, district or subdistrict bonds, and securities to be deposited in any trust bank or trust banks within or without or both within and without this state and secured in such manner and subject to such terms and conditions as the board of directors may determine, with or without the payment of any interest on such deposit, including, without limitation, time deposits evidenced by certificates of deposit.

(2) Any such securities and any certificates of deposit thus held may, from time to time, be sold, and the proceeds may be so reinvested or redeposited as provided in this section.

(3) Sales and redemptions of any such securities and certificates of deposit thus held shall, from time to time, be made in season, so that the proceeds may be applied to the purposes for which the money with which such securities and certificates of deposit were originally acquired was placed in the district or subdistrict treasury.

(4) Any gain from any such investments or reinvestments may be credited to any fund or account pledged for the payment of any district or subdistrict bonds issued under this article, including any reserve therefor, or any other fund or account pertaining to a project or any facilities, or the district's or subdistrict's general fund, subject to any contractual limitations in any proceedings pertaining to outstanding district or subdistrict bonds.

(5) It is lawful for any commercial bank incorporated under the laws of this state which may act as depository of the proceeds of any bonds issued under this article, any securities owned by the district or subdistrict, any proceeds of taxes, any pledged revenues, and any moneys otherwise pertaining to a project or any facilities, or any combination thereof, to furnish such indemnifying bonds and to pledge such securities as may be required by the board of directors.

Source: L. 77: Entire section added, p. 1649, § 5, effective June 9. **L. 89:** (1), (2), (3), and (5) amended, p. 1123, § 51, effective July 1.

37-46-147. Rents and charges. (1) (a) The district, any subdistrict, and any political subdivision of the state of Colorado contracting with the district or subdistrict and fixing and collecting annual rentals, service charges, and other charges, or any combination thereof, are, in supplementation of the powers provided in this article, authorized to fix and collect rents, rates, fees, tolls, and other charges, in this article sometimes referred to as "service charges", for direct or indirect connection with, or the use or services of, a water system, electrical system, joint system, or other facilities, including, without limitation, connection charges, minimum charges, and charges for the availability of service.

(b) Such service charges may be charged to and collected in advance or otherwise by a district from any political subdivision or person and by any political subdivision from any person contracting for such connection or use or services or from the owner or occupant, or any combination thereof, of any real property which directly or indirectly is or has been or will be connected with any such facilities, and the political subdivision or owner or occupant of any such real property shall be liable for and shall pay such service charges to the district, subdistrict, or political subdivision fixing the service charges at the time when and place where such service charges are due and payable.

(c) Such service charges of the district or subdistrict may accrue from any date on which the board of directors reasonably estimates, in any resolution authorizing the issuance of any securities or other instrument pertaining thereto or in any contract with any political subdivision or person, that any facilities or project being acquired or improved and equipped will be available for service or use.

(2) (a) Such rents, rates, fees, tolls, and other charges, being in the nature of use or service charges, shall, as nearly as the district, subdistrict, or political subdivision fixing the service charges shall deem practicable and equitable, be reasonable, and such service charges

shall be uniform throughout the district, subdistrict, or political subdivision for the same type, class, and amount of use or service of the facilities and may be based or computed either: On measurements of water, flow devices, or electric meters, duly provided and maintained by the district, subdistrict, or political subdivision, or any user as approved by the district, subdistrict, or political subdivision fixing such charges; or on the consumption of water or electricity in or on or in connection with the political subdivision, or any person, or real property, making due allowance for commercial use of water and infiltration of groundwater and discharge of surface runoff to the facilities, or on the number and kind of water or electric outlets on or in connection with the political subdivision, person, or real property, or on the water or electric fixtures or facilities in or on or in connection with the political subdivision, person, or real property; or on the number of persons residing or working in or on or otherwise connected or identified with the political subdivision, person, or real property, or on the capacity of the improvements in or on or connected with the political subdivision, person, or real property; or upon the availability of service or readiness to serve by the facilities; or on any other factors determining the type, class, and amount of use or service of the facilities; or on any combination of any such factors.

(b) Reasonable penalties may be fixed for any delinquencies, including, without limitation, interest on delinquent service charges from any date due at a rate of not exceeding one percent per month or fraction thereof, reasonable attorneys' fees, and other costs of collection.

(3) The district, subdistrict, or political subdivision fixing the service charges shall prescribe and, from time to time when necessary, revise a schedule of such service charges, which shall comply with the terms of any contract of the district, subdistrict, or political subdivision fixing the service charges.

(4) The general assembly has determined and declared that the obligations, arising from time to time, of the district, any subdistrict, any political subdivision, or any person to pay service charges fixed in connection with any facilities shall constitute general obligations of the district, subdistrict, political subdivision, or person charged with their payment; but, as such obligations accrue for current services and benefits from, and the use of, any such facilities, the obligations shall not constitute an indebtedness of the district, any subdistrict, or any political subdivision within the meaning of any constitutional, charter, or statutory limitation or any other provision restricting the incurrence of any debt.

(5) No board, agency, bureau, commission, or official, other than the board of directors of the district or subdistrict, respectively, or the governing body of the political subdivision fixing the service charges, has authority to fix, prescribe, levy, modify, supervise, or regulate the making of service charges or to prescribe, supervise, or regulate the performance of services pertaining to the facilities thereof, as authorized by this article; but this subsection (5) shall not be construed to be a limitation on the contracting powers of the board of directors of the district or any subdistrict, respectively, or the governing body of any such political subdivision.

Source: L. 77: Entire section added, p. 1650, § 5, effective June 9.

37-46-148. Miscellaneous powers. (1) The district and any subdistrict thereof shall also have the following powers:

(a) To pay or otherwise defray and to contract to pay or defray, for any term not exceeding seventy-five years, without an election, except as otherwise provided in this article,

the principal of, any prior redemption premiums due in connection with, any interest on, and any other charges pertaining to any securities or other obligations of the federal government, any subdistrict or the district, respectively, any political subdivision, or any person which were incurred in connection with any property thereof subsequently acquired by the district or any subdistrict and relating to either's facilities;

(b) To establish, operate, and maintain facilities within the district or any subdistrict or elsewhere, across or along any public street, highway, bridge, or viaduct or any other public right-of-way or in, upon, under, or over any vacant public lands, which public lands now are, or may become, the property of a political subdivision of this state, without first obtaining a franchise from the political subdivision having jurisdiction over the same; but the district or subdistrict shall cooperate with any political subdivision having such jurisdiction, shall promptly restore any such public street, highway, bridge, or viaduct or any such other public right-of-way to its former state of usefulness as nearly as may be and shall not use the same in such manner as permanently to impair completely or materially the usefulness thereof;

(c) To adopt, amend, repeal, enforce, and otherwise administer such reasonable resolutions, rules, regulations, and orders as the district or subdistrict shall deem necessary or convenient for the operation, maintenance, management, government, and use of the facilities of the district or subdistrict, as the case may be, and any other facilities under its control, whether situated within or without or both within and without the territorial limits of the district or subdistrict; and

(d) (I) To adopt, amend, repeal, enforce, and otherwise administer under the police power such reasonable resolutions, rules, regulations, and orders pertaining to water or electric services performed by any person through the district's or subdistrict's facilities or pertaining to facilities of the district or subdistrict, any political subdivision, or any person, or any combination thereof, reasonably affecting the activities of the district or subdistrict, directly or indirectly, as the board of directors may from time to time deem necessary or convenient.

(II) No such resolution, rule, regulation, or order shall be adopted or amended except by action of the board of directors on the behalf and in the name of the district or subdistrict, respectively, after a public hearing thereon is held by the board of directors, in connection with which any political subdivision owning or authorizing any facilities comparable to facilities of the district or subdistrict, as the case may be, whether therein or thereout, or both therein and thereout, and other persons of interest have an opportunity to be heard, after mailed notice of the hearing is given at least thirty days prior to the hearing by the secretary to each such political subdivision wholly or partly within the district or subdistrict proceeding under this article, and after notice of such hearing is given by publication at least once a week for three consecutive weeks in at least one newspaper of general circulation in the district or such subdistrict by the secretary to persons of interest, both known and unknown, the first publication to be made at least thirty days prior to the hearing.

Source: L. 77: Entire section added, p. 1651, § 5, effective June 9.

37-46-149. Cooperative powers. (1) The district and any subdistrict have the power to utilize and may utilize private industry, by contract, to carry out the design, construction, operation, management, manufacturing, marketing, planning, and research and development functions of the district or any subdistrict proceeding under this article, unless the district or

subdistrict determines that it is in the public interest to adopt another course of action. The district or subdistrict, or both, may enter into long-term contracts with private persons, not exceeding a term of seventy-five years, without an election, for the performance of any such functions of the district or subdistrict, which, in the opinion of the district or subdistrict, can desirably and conveniently be carried out by a private person under contract; but any such contract shall contain such terms and conditions as shall enable the district or subdistrict to retain reasonable supervision and control of such functions to be carried out or performed by such private persons pursuant to such contract.

(2) Subject to the provisions of section 37-46-133, the district and any subdistrict have the following powers:

(a) To accept contributions, grants, or loans from the state and the federal government for the purpose of financing the planning, acquisition, improvement, equipment, maintenance, and operation of any enterprise in which the district or subdistrict, or both, are authorized to engage, and to enter into contracts and cooperate with, and accept cooperation from, the federal government, the state, the subdistrict or the district, respectively, any political subdivision, any private firm, and any other person, or any combination thereof, in the planning, acquisition, improvement, equipment, maintenance, and operation and in financing the planning, acquisition, improvement, equipment, maintenance, and operation of any such enterprise in accordance with any legislation which the general assembly, congress, the governing body of any political subdivision, the board of directors or other governing body of any private firm, any other person, or any combination thereof may have adopted prior to the adoption of this article or may thereafter adopt, under which aid, assistance, and cooperation may be furnished by such cooperating entity or entities or other persons in the planning, acquisition, improvement, equipment, maintenance, and operation or in financing the planning, acquisition, improvement, equipment, maintenance, and operation of any such enterprise, including, without limitation, costs of engineering, architectural, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action preliminary to the acquisition, improvement, or equipment of any facilities, or any part thereof, and to do any and all things necessary in order to avail itself of such aid, assistance, and cooperation under any state, federal, or other legislation;

(b) To enter into, without any election, joint operating or service contracts and agreements; acquisition, improvement, equipment, or disposal contracts; contracts for the purchase, sale, rental, lease, as lessor or lessee, or exchange of water or the purchase, sale, or exchange of water rights or electricity (or any combination thereof) but not to acquire any electricity for sale by the district or any subdistrict as a public utility either to the public or to any other user (other than any sale to any subdistrict or the district, respectively, or to any water conservancy district located wholly or in part within the Colorado river water conservation district and other than any sale of electricity by the district or any subdistrict thereof at wholesale to any person or governmental entity); or other arrangements, for any term not exceeding seventy-five years, with the federal government, the state, the subdistrict or the district, respectively, any political subdivision, any private firm, or any other person, or any combination thereof, concerning the facilities and any project or property pertaining thereto, whether acquired or undertaken by the district, by the subdistrict, by the federal government, by any political subdivision of this state or any other state, or by any person, and to accept contributions, grants, or loans from the cooperating entity or entities or other persons in connection therewith;

(c) To enter into and perform without any election, when determined by the board of directors to be in the public interest, contracts and agreements, for any term not exceeding seventy-five years, with the federal government, the subdistrict or the district, respectively, any political subdivision, or any person, or any combination thereof, for the provision and operation by the subdistrict or the district, respectively, of any facilities pertaining to such facilities of the district or subdistrict, as the case may be, any part thereof, or any project relating thereto, and the payment periodically thereby to the district or subdistrict of amounts at least sufficient, if any, in the determination of the board, to compensate the district or subdistrict for the cost of providing, operating, and maintaining such facilities serving the federal government, the subdistrict or the district, respectively, any political subdivision, or such other person, or any combination thereof, or otherwise;

(d) To enter into and perform, without any election, contracts and agreements, for any term not exceeding seventy-five years, on a public bid basis, a competitive basis, or a negotiated basis, as the board of directors may determine, with the federal government, the subdistrict or the district, respectively, any political subdivision, any private firm, or any other person, or any combination thereof, for or concerning the planning, construction, lease, other acquisition, improvement, equipment, operation, maintenance, lease, other disposal, and financing, or any other combination thereof, of any property pertaining to the facilities of the district or subdistrict or to any project of the district or subdistrict, including, without limitation, any contract or agreement, for any term not exceeding seventy-five years, pertaining to the joint ownership of the facilities as tenants in common thereamong or providing for the exchange of water or electric power for backup water or power, the pooling of resources, or the designation of a manager for any such project or facilities supervised by an engineering and operating committee of co-owners or otherwise supervised, and otherwise to contract with water or power producers or users, or any combination thereof;

(e) To cooperate with and act in conjunction with the federal government or any of its engineers, officers, boards, commissions, or departments, or with the state or any of its engineers, officers, boards, commissions, or departments, or with any political subdivision or any person in the acquisition, improvement, and equipment of any facilities or any part thereof authorized for the district or subdistrict or for any other works, acts, or purposes provided for in this article and to adopt and carry out any definite plan or system of work for any such purpose;

(f) To cooperate with the federal government, the subdistrict or district, respectively, any political subdivision, or any person, or any combination thereof, by an agreement therewith by which the district or the subdistrict may:

(I) Acquire and provide, without cost to the cooperating entity or entities, the land, easements, and rights-of-way necessary for the acquisition, improvement, and equipment of any properties;

(II) Hold the cooperating entity or entities free from and save it or them harmless from any claim for damages arising from the acquisition, improvement, equipment, maintenance, and operation of any facilities;

(III) Maintain and operate any facilities in accordance with regulations prescribed by the cooperating entity or entities; and

(IV) Establish and enforce regulations, if any, concerning the facilities which are satisfactory to the cooperating entity or entities;

(g) To provide, by any contract for any term not exceeding seventy-five years, or otherwise, without an election:

(I) For the joint use of personnel, equipment, and facilities of the district, the subdistrict, any political subdivision, or any person, or any combination thereof, including, without limitation, public buildings constructed by or under the supervision of the board of directors, the governing body of the political subdivision, or the board of directors or other governing body of a private firm or other person concerned, upon such terms and agreements and within such areas within the district or subdistrict, or otherwise, as may be determined, for the promotion and protection of health, comfort, safety, life, welfare, and property of the inhabitants of the district or subdistrict and any such political subdivision and any other persons of interest, and for water or electric services;

(II) For the joint employment of clerks, stenographers, and other employees pertaining to the facilities or any project, now existing or hereafter established, upon such terms and conditions as may be determined for the equitable apportionment of the expenses resulting therefrom;

(h) To provide for comprehensive planning and, where possible, coordinate operations of the district or subdistrict with the subdistrict or district, respectively, any and all such political subdivisions, private firms, and other persons, or any combination thereof, pertaining to water conservation and use and to the generation and use of electricity.

Source: L. 77: Entire section added, p. 1652, § 5, effective June 9. **L. 81:** (2)(b) and (2)(d) amended, p. 1765, § 5, effective June 19.

37-46-150. Joint action entity. (1) The district or subdistrict and any other cooperating entity or entities relating to any project or facilities in which the district or the subdistrict is a party in interest may create a joint action entity, a separate body corporate, for the planning, construction, lease, other acquisition, improvement, equipment, operation, maintenance, disposal, and financing of any enterprise or properties relating to such project or such facilities.

(2) A joint action entity may exercise the powers granted to the district or the subdistrict by this article, other than the levy or fixing and collection of taxes, assessments, and service charges and the making and revising of rules and regulations under the police power.

Source: L. 77: Entire section added, p. 1655, § 5, effective June 9.

37-46-151. Correlative powers of political subdivisions. Any political subdivision of this state has the correlative powers to enable it to participate in cooperation with the district or any subdistrict in either's exercise of powers granted thereto by this article or otherwise granted by law.

Source: L. 77: Entire section added, p. 1655, § 5, effective June 9.

ARTICLE 47

Southwestern Water Conservation District

37-47-101. Legislative declaration - rivers named. In the opinion of the general assembly of the state of Colorado, the conservation of the water of the San Juan and Dolores rivers and their tributaries for storage, irrigation, mining, and manufacturing purposes and the construction of reservoirs, ditches, and works for the purpose of irrigation and reclamation of additional lands not yet irrigated, as well as to furnish a supplemental supply of water for lands now under irrigation, is of vital importance to the growth and development of the entire district and the welfare of all its inhabitants and that, to promote the health and general welfare of the state of Colorado, an appropriate agency for the conservation, use, and development of the water resources of the San Juan and Dolores rivers and their principal tributaries should be established and given such powers as may be necessary to safeguard for Colorado, all waters to which the state of Colorado is equitably entitled.

Source: L. 41: p. 866, § 1. **CSA:** C. 173B, § 56. **CRS 53:** § 149-9-1. **C.R.S. 1963:** § 150-8-1.

37-47-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "District" means the "Southwestern Water Conservation District". The district is a body corporate and politic and a political subdivision of the state of Colorado.

(2) "Person" means a person, firm, partnership, association, or corporation.

(3) "Property", as used in section 37-47-109 (1), includes both real and personal property. In other parts of said article relating to special assessments, unless otherwise specified, it means real estate as "real estate" is defined by the law of the state of Colorado and embraces all railroads, tram roads, electric railroads, state and interurban railroads, highways, telephone, telegraph and transmission lines, water systems, water rights, pipelines, and rights-of-way of public service corporations, and all other real property, whether held for public or private use.

(4) "San Juan and Dolores rivers" embraces and includes any and all tributaries or streams which flow into the San Juan and Dolores rivers which may be found in any part of the territory embraced in said district.

(5) "Subdistrict" or "subdivision" embraces and includes the kind or character of special improvement districts created under the provisions of this article, including subdistricts organized under the name and style of "Water Users' Association No. ..... of the Southwestern Water Conservation District" and "Special Improvement District No. ..... of the Southwestern Water Conservation District". A subdistrict or subdivision is a body corporate and politic and a political subdivision of the state of Colorado.

Source: L. 41: p. 886, § 25. **CSA:** C. 173B, § 80. **CRS 53:** § 149-9-25. **C.R.S. 1963:** § 150-8-25. **L. 77:** (1) and (5) amended, p. 1655, § 6, effective June 9.

37-47-103. Creation and name of district. There is hereby created a water conservation district to be known and designated as the "Southwestern Water Conservation District". Such district is hereby declared to be a body corporate under the laws of Colorado. Said district shall comprise the following area and territory: The counties of San Miguel, Dolores, Montezuma, Archuleta, San Juan, La Plata, all that part of Hinsdale county not included in the Colorado river water conservation district as set forth in section 37-46-103, that part of Mineral county lying south and west of the continental divide and being within the drainage basin of the San Juan

river, and all that part of Montrose county described as follows: Beginning at the point where the common boundary of Montrose county and San Miguel county meets the boundary of Ouray county; thence northerly along the county line to a point on the range line between ranges eleven and twelve west, township forty-seven north; thence westerly along the north line of sections twenty-four, twenty-three, twenty-two, twenty-one, twenty, and nineteen township forty-seven north, range twelve west; thence northerly on the east range line of township forty-seven north, range thirteen west; to the northeast corner of township forty-seven north, range thirteen west; thence westerly on the south line of township forty-eight north, range thirteen west; to the southeast corner of section thirty-four; thence northerly on the east line of sections thirty-four, twenty-seven, and twenty-two, to the northeast corner of section twenty-two; thence westerly on the north line of sections twenty-two, twenty-one, twenty, and nineteen township forty-eight north, range thirteen west, to the east range line of township forty-eight north, range fourteen west; thence northerly along the range line to its intersection with the south line of township forty-nine north, range thirteen west; thence westerly on the township line to the southeast corner of township forty-nine north, range fifteen west; thence northerly on the range line between ranges fourteen and fifteen west, township forty-nine north, to its intersection with the north boundary line of said Montrose county; thence westerly along the north boundary of said Montrose county to its intersection with the west boundary line of the state of Colorado; thence southerly on the west boundary of the state of Colorado to the southwest corner of said Montrose county; thence easterly on the south boundary of Montrose county to the place of beginning, all townships and ranges of the New Mexico principal meridian; all of said southwestern water conservation district lying and being in the state of Colorado.

Source: L. 41: p. 867, § 2. **CSA:** C. 173B, § 57. **L. 43:** p. 643, § 1. **L. 45:** p. 726, § 1. **CRS 53:** § 149-9-2. **L. 61:** p. 857, § 1. **C.R.S. 1963:** § 150-8-2.

37-47-104. Board of directors. (1) The southwestern water conservation district shall be managed and controlled by a board of nine directors. The members of said board shall hold their office for staggered terms of three years, with three members appointed each year, and until their successors are appointed and qualified. One member of said board shall be selected from each of the respective counties in said water conservation district and, at the time of his or her appointment, shall have been a resident of said county or, if only a part of a county is included within the boundaries of said district, a resident of such included part for at least two years prior to the date of his or her appointment and shall be a freeholder who has paid taxes upon real estate in the county of his or her residence during the calendar year next preceding his or her appointment. The member shall be appointed by the board of county commissioners of the county in which the member resides. The member may be a member of the board of county commissioners of such county. The members of said board shall annually select one of their number to act as president and presiding officer until the first regular board meeting of the next calendar year.

(2) (a) Immediately upon organization the members of said board shall be divided by lot or chance into three classes. The term of office of the members of the first class shall expire on the third Tuesday in January, 1942; the term of office of the members of the second class shall expire on the third Tuesday in January, 1943; and the term of office of the members of the third class shall expire on the third Tuesday in January, 1944; except that, on and after March 11,

1943, terms of office shall expire on the fourth Tuesday in January, instead of the third Tuesday in January, as provided in this subsection (2).

(b) Notwithstanding subsection (2)(a) of this section, on and after September 1, 2018, terms of office expire on the day of the first regular board meeting held in the fourth calendar year following the member's appointment. At the first meeting of the board of county commissioners held in January, and every three years thereafter, the boards of county commissioners of the counties of residence of the members whose terms expire shall appoint successors to take office on the date of the first regular meeting of the board of the southwestern water conservation district following such appointments.

(3) The members of the board of directors of said district who are in office on April 7, 1961, shall hold their respective offices for the period of time for which they were selected to serve, and their tenure of office shall not be affected by this amendatory section. Within sixty days after April 7, 1961, the board of county commissioners of Mineral county shall appoint a director from such county, with the qualifications prescribed in this section, to serve as a member of the board of directors of the southwestern water conservation district until the fourth Tuesday in January, 1963. Upon expiration of such term of office, a successor shall be appointed as provided to serve for the regular term of three years.

Source: L. 41: p. 867, § 3. **CSA:** C. 173B, § 58. **L. 43:** p. 644, § 2. **CRS 53:** § 149-9-3. **L. 61:** p. 858, § 2. **C.R.S. 1963:** § 150-8-3. **L. 2018:** (1) and (2) amended, (SB 18-176), ch. 130, p. 855, § 2, effective August 8.

37-47-105. Allowance for directors. The directors of the district shall receive as reimbursement for nontravel expenses a sum of up to one hundred dollars per day while actually engaged in the business of said district and in addition shall be entitled to their actual traveling and transportation expenses when away from their respective places of residence on district business.

Source: L. 41: p. 886, § 26. **CSA:** C. 173B, § 81. **CRS 53:** § 149-9-26. **L. 61:** p. 860, § 3. **C.R.S. 1963:** § 150-8-26. **L. 81:** Entire section amended, p. 1767, § 1, effective April 29. **L. 2006:** Entire section amended, p. 70, § 1, effective August 7.

37-47-106. Vacancy in office of director. The office of director shall become vacant when any member ceases to reside in the county from which the director was appointed. In the event a vacancy occurs in said office by reason of death, resignation, removal, or otherwise, it shall be filled by the board of county commissioners of the county from which said member originally came. Each director shall take an oath or affirmation in accordance with section 24-12-101. The board of directors of said district shall appoint a secretary and a treasurer. The same individual, at the election of the board, may hold both of said offices. The board shall likewise hire such other employees, including engineers and attorneys, as may be required to properly transact the business of the district, and said board is authorized to provide for the compensation of the secretary and treasurer and other appointees. The treasurer shall be required by the board to give bond with corporate surety in such amount as the board may fix and which it deems sufficient to protect the funds in the hands of the treasurer or under the treasurer's control. Such bond is subject to the approval of the board.

Source: L. 41: p. 868, § 4. **CSA:** C. 173B, § 59. **CRS 53:** § 149-9-4. **C.R.S. 1963:** § 150-8-4. **L. 2018:** Entire section amended, (HB 18-1138), ch. 88, p. 702, § 40, effective August 8.

Cross references: For the legislative declaration in HB 18-1138, see section 1 of chapter 88, Session Laws of Colorado 2018.

37-47-107. Powers of district. (1) Such district, in its corporate capacity, shall have power:

(a) To sue and be sued in the name of the southwestern water conservation district;

(b) To acquire, operate, and hold in the name of the district such real and personal property as may be necessary to carry out the provisions of this article and to sell and convey such property or its products as provided in this article or when said property is no longer needed for the purposes of said district;

(c) To make surveys and conduct investigations to determine the best manner of utilizing stream flows within the district and the amount of such stream flow or other water supply, and to locate ditches, irrigation works, and reservoirs to store or utilize water for irrigation, mining, manufacturing, or other purposes, and to make filings upon said water and initiate appropriations for the use and benefit of the ultimate appropriators, and to perform all acts and things necessary or advisable to secure and insure an adequate supply of water, present and future, for irrigation, mining, manufacturing, and domestic purposes within said districts;

(d) To make contracts with respect to the relative rights of said district under its claims and filings and the rights of any other person, association, or organization seeking to divert water from any of the streams within said district;

(e) To contract with any agencies, officers, bureaus, and departments of the state of Colorado and the United States, including the department of corrections, to obtain services or labor for the initiation or construction of irrigation works, canals, reservoirs, power plants, or retaining ponds within said district;

(f) To enter upon any privately-owned land or other real property for the purpose of making surveys or obtaining other information, without obtaining any order so to do, but without causing any more damage than is necessary to crops or vegetation upon such land;

(g) To organize special assessment districts at different times for the purpose of establishing effective agencies to secure funds to construct reservoirs or other irrigation works under various types and plans of financing, including among others, by issuance of revenue warrants only, by the issuance of bond or revenue obligations constituting a lien up to a specified amount against the lands in said special improvement district, and payable out of special assessments or by general obligations of such special improvement districts;

(h) To contract with the United States government, the bureau of reclamation, or other agencies of the United States government for the construction of any such works and the issuance of such obligations as the special improvement districts may have the power to issue in payment of costs of construction and maintenance of said works;

(i) To exercise the power of eminent domain to acquire ditches, reservoirs, or other works or lands or rights-of-way therefor which said district or any subdivision thereof, or special improvement districts created pursuant to the power conferred, may need to carry out the plans of said district or the improvement districts therein, and in general to exercise all rights and

powers of eminent domain conferred upon other agencies as provided in articles 1 to 7 of title 38, C.R.S.;

(j) To file upon and hold for the use of the public sufficient water of any natural stream to maintain a constant stream flow in the amount necessary to preserve fish, and to use such water in connection with retaining ponds for the propagation of fish for the benefit of the public;

(j.5) To make loans or grants to any public entity, nonprofit corporation, not-for-profit corporation, carrier ditch company, mutual ditch or reservoir company, unincorporated ditch or reservoir company, and cooperative association within the boundaries of the district to carry out the purposes of the district;

(k) To exercise such implied powers and perform such other acts as may be necessary to carry out and effect any of the express powers hereby conferred upon such district;

(l) To participate in the formulation and implementation of nonpoint source water pollution control programs related to agricultural practices in order to implement programs required or authorized under federal law and section 25-8-205 (5), C.R.S., enter into contracts and agreements, accept funds from any federal, state, or private sources, receive grants or loans, participate in education and demonstration programs, construct, operate, maintain, or replace facilities, and perform such other activities and adopt such rules and policies as the board deems necessary or desirable in connection with nonpoint source water pollution control programs related to agricultural practices.

(2) The district, in its own name, may issue revenue bonds to finance, in whole or part, the construction of works, reservoirs, or other improvements for the beneficial use of water for the purposes for which it has been or may be appropriated, whether or not the interest on such bonds may be subject to taxation. Such revenue bonds shall be issued in such denominations and with such maximum net effective interest rate as may be fixed by the board of directors of the district and shall bear interest such that the net effective interest rate of the bonds does not exceed the maximum net effective interest rate authorized. The board shall pledge only rental proceeds, service charges, and other income (or any combination thereof) from such works or other improvements, and the district shall not be otherwise obligated for the payment thereof. At the time such revenue bonds are issued, the board of directors of the district shall make and enter in the minutes of the proceeding a resolution in which the due dates of such revenue bonds, the rates of interest thereon, the general provisions of the bonds, and a recital that the same are payable only out of rental proceeds, service charges, and other income (or any combination thereof) are set forth. In addition, the board of directors shall require the payment of rental charges, service charges, or other charges by the political subdivisions or persons who are to use or derive benefits from the water or other services furnished by such works or improvements. Such charges shall be sufficient to pay operation and maintenance expenses thereof, to meet said bond payments, and to accumulate and maintain reserve and replacement accounts pertaining thereto as set forth in such resolution. Such resolution shall be irrepealable during the time that any of the revenue bonds are outstanding and unpaid. The revenue bonds shall be signed "Southwestern Water Conservation District, By ....., President. Attest ....., Secretary", and they shall be countersigned by the treasurer.

Source: L. 41: p. 868, § 5. **CSA:** C. 173B, § 60. **CRS 53:** § 149-9-5. **C.R.S. 1963:** § 150-8-5. **L. 77:** (2) added, p. 1655, § 7, effective June 9; (1)(e) amended, p. 954, § 30, effective

August 1. **L. 88:** (1)(l) added, p. 1023, § 5, effective April 6. **L. 89:** (1)(j.5) added, p. 1416, § 1, effective April 5. **L. 90:** (1)(j.5) amended, p. 1618, § 1, effective May 24.

37-47-108. Principal office - meetings. The board of directors of the district shall designate a place within the district where the principal office is to be maintained and may change such place from time to time. Regular meetings of said board shall be held at said office at least once every three months. The board is also empowered to hold such special meetings as may be required for the proper transaction of business. All special meetings of the board shall be held at locations which are within the boundaries of the district or which are within the boundaries of any county in which the district is located, in whole or in part, or in any county so long as the meeting location does not exceed twenty miles from the district boundaries. The provisions of this section governing the location of meetings may be waived only if the proposed change of location of a meeting of the board appears on the agenda of a regular or special meeting of the board and if a resolution is adopted by the board stating the reason for which a meeting of the board is to be held in a location other than under the provisions of this section and further stating the date, time, and place of such meeting. Special meetings may be called by the president of the board or by any three directors. Meetings of the board shall be public, and proper minutes of the proceedings of said board shall be preserved and shall be open to the inspection of any elector of the district during business hours.

Source: L. 41: p. 870, § 6. **CSA:** C. 173B, § 61. **L. 43:** p. 646, § 3. **CRS 53:** § 149-9-6. **C.R.S. 1963:** § 150-8-6. **L. 90:** Entire section amended, p. 1505, § 21, effective July 1. **L. 2018:** Entire section amended, (SB 18-176), ch. 130, p. 854, § 1, effective August 8.

37-47-109. Assessment and levy by board. (1) (a) As soon as the district has been organized and a board of directors has been appointed and qualified, such board of directors shall have the power and authority to fix the amount of an assessment upon the property within the district not to exceed six-tenths of one mill for every dollar of valuation for assessment therein, as a level or general levy to be used for the purpose of paying the expenses of organization, for surveys and plans, to pay the salary of officers and the per diem allowed to directors and their expenses, and for other incidental expenses which may be incurred in the administration of the affairs of the district. A two-thirds vote of the membership of said board shall be required to fix the amount of said levy.

(b) The amount of assessment on each dollar of valuation for assessment shall, in accordance with the schedule prescribed by section 39-5-128, C.R.S., be certified to boards of county commissioners of the various counties in which the district is located and by them included in their next annual levy for state and county purposes. Such amount so certified shall be collected for the use of such district in the same manner as are taxes for county purposes, and the revenue laws of the state for the levy and collection of taxes on real estate for county purposes, except as modified in this article, shall be applicable to the levy and collection of the amount certified by the board of directors of said district as aforesaid, including the enforcement of penalties, forfeiture, and sale for delinquent taxes.

(c) All collections made by the county treasurer pursuant to such levy shall be paid to the treasurer of the conservancy district on or before the tenth day of the next succeeding calendar month. If any items of expense have already been paid in whole or in part from any other sources

by the said district, they may be repaid from receipts of such levy. Such levy may be made, although the work proposed or any part thereof may have been found impracticable or for other reasons abandoned. The collection of data and the payment of expenses therefor, including salaries of engineers and attorneys and clerical assistants, to conserve the water of said district and to enable said district to adopt plans for the orderly development of said district are hereby declared to be a matter of general benefit to the public welfare, and such that a tax for said purposes may be properly imposed, in the opinion of the general assembly.

(d) If this subsection (1) or any clause, phrase, or part thereof is held unconstitutional or invalid by any court of competent jurisdiction, such decision shall not affect the validity or force of any other part of this section or any other part of this article, and the general assembly hereby declares it would have enacted the remainder of this article without this subsection (1).

(2) In lieu of the level or general tax authorized by subsection (1) of this section, the board may levy special assessments upon all real estate within the district, except such real estate as is exempted in this article, to raise funds to pay expenses of organization, salaries, expenses, and per diem allowances of officers and directors and to prepare a general plan for the maintenance of constant stream flow and adequate water supplies in all the principal tributaries and the main stream of the San Juan and Dolores rivers in said district and provide for future development of the district and insure water therefor. Such assessments shall be made in proportion to the benefits to each piece of real estate accruing by reason of the adoption of a comprehensive plan of development of the natural resources of the district as a whole. The board of directors, if it deems it advisable at any time before levying special assessments, shall appraise the benefits to the several parcels of real estate within the district which shall result from the organization of said district and the general plans and development. The board may adopt rules for such purpose and provide inter alia for notice and hearing to all persons affected thereby. A permanent record arranged by counties of the benefits which will accrue to each tract of land shall be kept, and such benefits shall be apportioned over a series of years, the amount to be collected each year to be in the discretion of the board; but the amount of such assessment to be levied and assessed against the real property in said district in any one year shall not exceed a total of seven thousand five hundred dollars, and it is hereby declared that the amount of special benefits accruing annually to the real estate in said district is in excess of such amount. All property owned by the state, counties, cities, towns, school districts, or other governmental agencies shall be exempt from taxation or special levies under this article.

(3) Prior to October 15 of each year in which an assessment is made, the board of directors shall appoint a time and place where it will meet within the district for the purpose of hearing objections to assessments at least thirty days prior to the dates so appointed. Notice of such hearing shall be given by posting a notice thereof at or near the door of the treasurer's office in each county in said district and by publishing said notice in a legal newspaper not less than three consecutive times within a period of thirty days, immediately prior to the hearing. The notice posted in each county shall be sufficient if it pertains to the property subject to assessment in said county only and need not contain the description of or any reference to property situated in other counties also affected by such assessment. Said notice shall contain a description of the real estate so assessed in the county in which said notice is posted and published, the amount of the assessment fixed by the board, and the time and place or places fixed by the board for the hearing of objection to such assessments. It shall not be necessary for the said notice to contain a separate description of the lots or tracts of real estate, but it shall be sufficient if the said notice

contains such descriptions as will inform the owner whether or not his real estate is covered by such descriptions, and to inform the owner of the amount of special assessments thereon.

(4) If, in the opinion of any person whose real estate is assessed, his property has been assessed too high or has been erroneously or illegally assessed, at any time before the date of such hearing, he may file written objections to such assessments, stating the ground of such objections, which statement shall be verified by the affidavit of said person or some other person familiar with the facts. At such hearing the board shall hear evidence and argument offered concerning the correctness or legality of such assessment and may modify or amend the same. Any owner of property desiring to appeal from the finding of the board as to assessments within thirty days from the finding of the board shall file with the clerk of the district court of the county in which the property is situated a written notice making demand for a trial by the court. At the same time, the appellant shall file a bond with good and sufficient security, to be approved by the clerk of said court, in a sum not exceeding two hundred dollars, to the effect that, if the finding of the court is not more favorable to the appellant than the finding of the board, the appellant will pay the costs of the appeal. The appellant shall state definitely from what part of the order the appeal is taken. In case more than one appeal is taken, upon a showing that the appeals may be consolidated without injury to the interests of anyone, the court may consolidate and try the same together.

(5) The court shall not disturb the findings of the board unless the finding of the board in any case is manifestly disproportionate to the assessments imposed upon other property in the district created under this article. The trial shall be to the court, and the matter shall take precedence before the court and shall be taken up as promptly as may be after the appeal is filed. If no appeal is taken from the finding of the board within the time prescribed in this section, or after the finding of the district court in case an appeal is taken from the finding of the board, then said assessments shall be final and conclusive evidence that said assessments have been made in proportion to the benefits conferred upon each tract of real estate of said district by reason of the general plans of survey, comprehensive plan of development, and the completion of improvements to be constructed under the provisions of this article, and such assessments shall constitute a perpetual lien as provided in this article upon the real estate so assessed until paid.

Source: L. 41: p. 870, § 7. **CSA:** C. 173B, § 62. **CRS 53:** § 149-9-7. **L. 59:** p. 833, § 1. **C.R.S. 1963:** § 150-8-7. **L. 73:** p. 1533, § 1. **L. 87:** (1)(b) amended, p. 1409, § 10, effective April 22.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24; for collection of taxes, see article 10 of title 39.

37-47-110. Creation of subdistricts. (1) Notwithstanding the organization of the district provided for in this article, public irrigation districts organized under article 4 of chapter 149, CRS 53, and irrigation districts organized under articles 41 and 42 of this title, and any other form or organization designed or intended to acquire, construct, or maintain reservoirs, ditches, and similar works for irrigation or other beneficial purposes under any law of the state of Colorado or of the United States, may be organized to cover and include areas within the southwestern water conservation district and may likewise embrace territory within that district and partly out of the district. Whenever in their opinion such form of organization will help

promote the local interests or accomplish improvements for any part of said district, the board of directors may recommend the organization of any such type of organization.

(2) In addition to such forms of organization, whenever in the opinion of the board of directors of said district it is feasible and necessary that ditches, canals, reservoirs, or other works which benefit only a part of the district should be constructed, a local improvement district or subdivision, or as many of such local improvement districts as may be necessary, may be created. Such local improvement district, when organized under the provisions of this article, shall be designated as "Water Users' Association No. .... in the Southwestern Water Conservation District", or as "Special Improvement District No. .... in the Southwestern Water Conservation District". Each subdistrict shall be numbered consecutively as created or organized. The board of directors, the engineers, attorneys, secretary, and other officers, agents, and employees of the district, so far as it may be necessary, shall serve in the same capacity for such subdivision or subdistricts. A contract and agreement between the main district and the subdistrict may be made in the same manner as contracts and agreements between two districts.

Source: L. 41: p. 874, § 8. **CSA:** C. 173B, § 63. **CRS 53:** § 149-9-8. **C.R.S. 1963:** § 150-8-8.

Editor's note: The public irrigation law, article 4 of chapter 149, CRS 53, referred to in subsection (1) of this section, was repealed, but the provisions of said article 4 were preserved as to all districts formed under that article prior to 1963. (See L. 63, p. 1009.)

37-47-111. Rules and regulations. Such district has the power to make general rules and regulations for the conduct of its business, as well as the conduct of the business of any subdistrict therein, and by such rules and regulations may provide for the rental of water or other services which are to be furnished by said subdistrict, to any municipality, public irrigation district, or irrigation district, or other quasi-municipal corporation in this state, and to make contracts for the payment of the rental to be charged for any such water or services.

Source: L. 41: p. 888, § 30. **CSA:** C. 173B, § 85. **CRS 53:** § 149-9-30. **C.R.S. 1963:** § 150-8-30.

37-47-112. Procedure for establishment of subdistricts. (1) Before any subdistrict is established under this article, a petition shall be filed in the office of the clerk of the district court of the county in which the territory to be embraced in said subdistrict or the greater part thereof is situate, signed by the board of directors of the district or by a majority of the owners of land situate within the limits of the territory proposed to be organized into a subdistrict.

(2) The petition shall set forth:

(a) The proposed name of said subdistrict, whether it shall be designated "Water Users' Association No. .... in the Southwestern Water Conservation District", or "Special Improvement District No. .... in the Southwestern Water Conservation District";

(b) That property within the proposed subdistrict will be benefited by the proposed reservoirs, ditches, canals, works, or other improvements and shall set forth in a general way the nature and estimated cost thereof, together with a general statement of the nature of the anticipated benefits to be derived therefrom;

(c) A full description of the territory to be included in the proposed subdistrict. Said description need not be given by metes and bounds or by legal subdivision, but it shall be sufficient to enable a property owner to ascertain whether his property is within the territory proposed to be organized in a subdistrict. Such territory need not be contiguous, if it is so situated that the organization as a single subdistrict of the territory described is such as to promote or tend to promote one or more of the objectives of this article as to all parts of the area proposed to be included.

(d) A general description of the methods proposed to finance the proposed works or other improvements, whether by revenue warrants pledging the income from the proposed works, special improvement bonds to be paid by special assessments on the property benefited in an amount on each tract of land not in excess of the appraised benefits, contracts of water users or water users' associations creating liens or mortgages on lands within the subdistrict, or general obligation bonds constituting a lien against the real property embraced in such subdistrict and which indebtedness shall never be an obligation of the district. If general obligations are proposed, the petition shall allege and show that all lands in the subdistrict will be benefited in an amount not less than the total amount of general obligation bonds to be issued exclusive of interest.

(e) If such a petition is filed by the board of directors of the district, it shall contain a statement to the effect that a majority of the landowners of the territory in the proposed subdistrict petitioned the board of directors to organize said subdistrict, and a copy of the petition of said landowners shall be attached as an exhibit to the petition for organization of the subdistrict;

(f) Said petition shall pray for the organization of a subdistrict by the name proposed.

(3) To determine whether a majority of landowners in said district have signed the petition, in the event the petition is signed by landowners, or have petitioned the board of directors of the district, in the event the petition is filed by the board of directors, the court may require the county treasurer of each county in which territory proposed to be included in said subdistrict is situated to furnish a certified list of names of landowners within said area, and the court shall be governed by the names as they appear upon said copy of the tax roll, and the same shall be prima facie evidence of ownership, and, if said tax roll shows a majority of the landowners have signed the main petition or petitioned the district for said organization, the same shall be considered as prima facie evidence that a majority of said landowners are in favor of the organization of said proposed subdistrict.

Source: L. 41: p. 874, § 9. **CSA:** C. 173B, § 64. **CRS 53:** § 149-9-9. **C.R.S. 1963:** § 150-8-9.

37-47-113. Time and place of hearing on petition. (1) Immediately after the filing of such petition the court wherein such petition, is filed, by order, shall fix a place and time, not less than sixty days nor more than ninety days after the petition is filed, for hearing thereon, and, thereupon, the clerk of said court shall cause notice by publication, which may be substantially the same as provided in section 37-8-101, to be made of the pendency of the petition and of the time and place of the hearing thereon. The clerk of said court shall also forthwith cause a copy of said notice to be mailed by United States registered mail to the board of county commissioners

of each of the several counties having territory within the proposed subdistrict and to the board of directors of said district in the event that said petition is filed by the landowners.

(2) The district court in and for the county in which the petition for the organization of a subdistrict has been filed shall thereafter, for all purposes of this article, except as otherwise provided in this article, maintain and have original and exclusive jurisdiction coextensive with the boundaries of said subdistrict, of lands and other property proposed to be included in said subdistrict or effected by said subdistrict, without regard to the usual limits of its jurisdiction.

(3) No judge of such court wherein such petition is filed shall be disqualified to perform any duty imposed by this article by reason of ownership of property within any subdistrict or proposed subdistrict or by reason of ownership of any property that may be benefited, taxed, or assessed therein.

Source: L. 41: p. 876, § 10. **CSA:** C. 173B, § 65. **CRS 53:** § 149-9-10. **C.R.S. 1963:** § 150-8-10.

37-47-114. Recording of protest - procedure - decree - fee. (1) At any time after the filing of a petition for the organization of a subdistrict, and not less than thirty days prior to the time fixed by the order of the court for the hearing upon said petition, and not thereafter, a protest may be filed in the office of the clerk of the court wherein the proceedings for the organization of such subdistrict is pending, signed by a majority of the owners of the land in said proposed subdistrict protesting the organization or creation of said subdistrict. It is the duty of the clerk of the court forthwith, upon filing of said protest, to make as many certified copies thereof, including the signatures thereto, as there are counties into any part of which said proposed subdistrict extends and forthwith to place in the hands of the county treasurer of each of such counties one of said certified copies.

(2) It is the duty of each of such county treasurers to determine from the last tax rolls of his county, and to certify to said district court under his official seal, prior to the day fixed for the hearing, the total number of owners of land situate in such proposed subdistrict within his county and the total number of owners of land situate in such proposed subdistrict within his county who have signed such protest. Such certificate shall constitute prima facie evidence of the facts so stated therein and shall be so received and considered by the court.

(3) Upon the day set for the hearing upon the original petition, if it appears to the court from such certificate and from such other evidence as may be adduced by any party in interest that the said protest is not signed by a majority of the owners of land within the proposed subdistrict, the court shall thereupon dismiss said protest and shall proceed with the hearing on the petition. If it appears to the court at said hearing that the protest is signed by any person or corporation who signed the original petition for the organization of said subdistrict, either to the court or to the district, then the signature of any such landowner upon the protest shall be disregarded and not counted. The board of county commissioners of any county in which any part of said proposed subdistrict is situate, or any owner of real property in said proposed subdistrict who has not signed the petition for the organization of said subdistrict, on or before the date set for the cause to be heard, may file objections to the organization and incorporation of the district. Such objections shall be limited to a denial of the statements in the petition and shall be heard by the court as an advanced case without unnecessary delay.

(4) Upon said hearing, if it appears that said petition has been signed and presented in accordance with the requirements of this article and that the allegations of the petition are true, the court shall enter a decree and therein adjudicate all questions of jurisdiction and declare the subdistrict organized and designate the name of said subdistrict, by which in all subsequent proceedings it shall thereafter be designated and known, and thereafter said subdistrict shall be deemed a special improvement district.

(5) Such order shall be binding upon the real property within the subdistrict, and no appeal or other remedy lies therefrom, and entry of such order shall finally and conclusively establish the regular organization of said subdistrict against all persons except the state of Colorado in an action in the nature of quo warranto to be commenced by the attorney general within three months after said decree is entered and not otherwise. Within ten days after such subdistrict has been declared duly organized by the court, the clerk of said court shall transmit to the county clerk and recorder in each of the counties having lands in said subdistrict copies of the findings and decree of the court establishing said subdistrict. The same shall be recorded in the office of the county clerk and recorder where they shall become permanent records.

Source: L. 41: p. 877, § 11. **CSA:** C. 173B, § 66. **CRS 53:** § 149-9-11. **C.R.S. 1963:** § 150-8-11. **L. 83:** (5) amended, p. 1228, § 15, effective July 1.

37-47-115. Plan for subdistrict. Upon organization of such subdistrict, the board of directors of said district, acting as the board of directors of said subdistrict, are authorized and required to prepare and adopt as the official plans for said subdistrict a comprehensive detailed plan showing the nature of the improvements or works, including all canals, reservoirs, and ditches, whether within or without the district, and the estimated cost of each principal part of said system or works.

Source: L. 41: p. 878, § 12. **CSA:** C. 173B, § 67. **CRS 53:** § 149-9-12. **C.R.S. 1963:** § 150-8-12.

37-47-116. Appointment of appraisers. As soon as such official plan has been prepared and adopted and is on file in the office of said district, the court, upon petition of the district, shall appoint a board of appraisers consisting of three members. The qualifications of said appraisers and all proceedings before them shall be in accordance with the provisions of the law pertaining to the duties and qualifications of appraisers under the conservancy law of Colorado as set forth in article 4 of this title; except that, where reference is made to districts, it shall apply to subdistricts organized under this article.

Source: L. 41: p. 879, § 13. **CSA:** C. 173B, § 68. **CRS 53:** § 149-9-13. **C.R.S. 1963:** § 150-8-13.

37-47-117. Compensation of appraisers. Appraisers when appointed under the provisions of this article shall receive a compensation of ten dollars per day during the time that they are engaged in the performance of their duties.

Source: L. 41: p. 880, § 15. **CSA:** C. 173B, § 70. **CRS 53:** § 149-9-15. **C.R.S. 1963:** § 150-8-15.

37-47-118. Directors bound by financing plan. (1) The board of directors of said district shall be bound by the plan of financing set forth in the petition for the organization of the subdistrict and approved by the decree of the district court. The appointment of appraisers shall not be necessary in the event that the plan adopted provides that general obligations of the subdistrict are to be issued or provides for the issuance of revenue warrants which shall be a lien and charge upon the rental and income from the irrigation works or reservoirs or other improvements to be constructed under the plan adopted and the rental derived from any such works. Said warrants shall be payable in such denominations, with interest at a rate not exceeding six percent per annum which may be fixed by the board of directors of said district pursuant to the order and decree of the court. The board shall pledge the income and rentals from said irrigation works or water supplied therethrough, and the subdistrict shall not be otherwise obligated for the payment thereof.

(2) At the time said revenue warrants are issued, the board of directors of the district shall make and enter in the minutes of the proceeding a resolution in which the due dates of said revenue warrants, the amount of interest thereon, which shall not exceed six percent per annum, the general provisions of said revenue warrants and a recital that the same are payable out of rental and income only are set forth and shall require the payment of an assessment or annual rental charge by the persons who are to use or derive benefit from the water or other service furnished through said improvements or works, sufficient to meet said payments, and the resolution shall be irrepealable during the time that any of said revenue warrants are outstanding and unpaid. Said revenue warrants shall be signed "Water Users' Association No. .... in the Southwestern Water Conservation District, By ...., President, Attest ...., Secretary", or "Special Improvement District No. .... in the Southwestern Water Conservation District, By ...., President, Attest ...., Secretary". They shall be countersigned by the treasurer.

(3) General obligation bonds of said subdistrict shall be signed in the same manner as provided for revenue warrants and shall recite that the same are issued pursuant to the provisions of this article and are to be payable at the time and in the manner and with the rate of interest therein specified, and that the same were issued under and pursuant to a decree of court and a resolution of the board of directors authorizing the issue of said obligations and referring to the date of said resolution. Said bonds shall further recite that they are payable from funds to be derived by assessments and tax levies against the property in said subdistrict and not otherwise, and that the same are not to be deemed as an obligation of the southwestern water conservation district but only as an obligation of said subdistrict, and that the district itself is not to be obligated in any manner for the payment of said bonds.

Source: L. 41: p. 879, § 14. **CSA:** C. 173B, § 69. **CRS 53:** § 149-9-14. **C.R.S. 1963:** § 150-8-14.

37-47-119. Assessments - procedure in making. (1) In the event that the plans for the organization of said district, including the petition and the decree entered thereon, provide for a plan of financing the construction or acquisition of the works, or other improvements proposed, by special assessments to be levied against the appraised benefits to property within said

subdistrict, then said board of directors may make assessments from time to time, as required, and in making said assessments, said board shall be guided by the procedure for the levy of similar assessments under the conservancy law of the state of Colorado and particularly the provisions of said law appearing in sections 37-5-104 to 37-5-106, and the same shall apply to subdistricts created under this article.

(2) From time to time, as the affairs of the subdistrict may demand, the board of directors may levy on all property upon which benefits have been appraised an assessment of such portion of said benefits as may be found necessary by said board to pay the cost of the appraisal, the preparation, and execution of the official plan for said subdistrict, superintendence of construction and administration during the period of construction, plus ten percent of said total to be added for contingencies, but not to exceed in the total of principal the appraised benefits so adjudicated. The assessments, to be known as the "construction fund assessment", shall be apportioned to and levied on each tract of land or other property in said district in proportion to the benefits appraised and not in excess thereof, and in case bonds are issued, as provided in section 37-47-120, then the amount of interest which will accrue on such bonds as estimated by said board of directors shall be included in and added to the said assessment, but the interest to accrue on account of the issuance of said bonds shall not be construed as a part of the cost of construction in determining whether or not the expenses and cost of making said improvement are or are not equal to or in excess of the benefits appraised.

(3) As soon as said assessment is levied, the secretary of the subdistrict, at the expense thereof, shall prepare in duplicate an assessment of the subdistrict. It shall be in the form of a well-bound book endorsed and named "Construction Fund Assessment Record of Water Users' Association No. ...., or Special Improvement District No. ...., of the Southwestern Water Conservation District". Said record shall be in the form of similar records for conservancy districts under the laws of this state, particularly as provided in section 37-5-104. Said assessments may be paid in the manner provided in section 37-5-105, relating to conservancy districts under the laws of this state. All proceedings provided in said sections with respect to conservancy districts shall apply to the assessments, the records thereof, and the manner of payment of assessments of subdistricts organized under this article.

Source: L. 41: p. 880, § 16. **CSA:** C. 173B, § 71. **CRS 53:** § 149-9-16. **C.R.S. 1963:** § 150-8-16.

37-47-120. Improvement district bonds. (1) The board of directors of said district may issue as obligations of the subdistrict, not as an obligation of the southwestern water conservation district, improvement district bonds to be paid out of special assessments made by said board of directors against all lands in the subdistrict, not exceeding in the aggregate amount of ninety percent of the amount of benefits assessed against said lands and unpaid at the time of issue of said bonds. Such bonds shall contain a recital to the effect that they are issued under and in accordance with the provisions of this article as special improvement district bonds and are payable out of special assessments to be levied against the property in said subdistrict and not otherwise.

(2) Said improvement district bonds shall be signed, "Water Users' Association No. .... or Special Improvement District No. ...., of the Southwestern Water Conservation District, By ....., President", and countersigned "....., Treasurer". Otherwise said bonds shall be in

such denominations and become due at such dates, with interest at such rate, payable either annually or semiannually, but not exceeding the rate of six percent per annum, and contain such other provisions as may be fixed by the board of directors, if said provisions are not inconsistent with the terms of this article. Except as otherwise expressly modified in this article, the law relating to the form and issuance of bonds of conservancy districts under the laws of this state, particularly section 37-5-106, shall apply and govern officers of the district in the issuance and sale of said bonds, and other provisions of said law with respect to the levy of assessments for the payment of said bonds with interest, and particularly section 37-5-110, shall likewise be applicable to the bonds of a subdistrict organized under this article.

Source: L. 41: p. 881, § 17. **CSA:** C. 173B, § 72. **CRS 53:** § 149-9-17. **C.R.S. 1963:** § 150-8-17.

37-47-121. Assessments constitute perpetual lien. All assessments on account of special improvements against appraised benefits and interest thereon and penalties for default of payment thereof, together with the cost of collecting the same, from the date of the filing of the "construction fund assessment" record and the "maintenance fund assessment" record in the office of the treasurer of the county wherein the lands and property are situate, shall constitute a perpetual lien in an amount not in excess of the benefits severally appraised upon the land and other property against which said assessments have been levied and such benefits appraised, to which only the lien of the general, state, county, city, town, or school taxes shall be paramount, but no sale of said property, to enforce any general, state, county, city, town, school tax, or other lien, shall extinguish the perpetual lien of said assessment. At any time any landowner may pay the full amount of said assessment, and thereafter the property of any such landowner shall be clear and free from said lien and shall not be subject to assessment for and on account of benefits appraised against any other land or default in the payment of assessments made against any other land.

Source: L. 41: p. 882, § 18. **CSA:** C. 173B, § 73. **CRS 53:** § 149-9-18. **C.R.S. 1963:** § 150-8-18.

37-47-122. Directors to remedy defects in assessments. If any assessment made under the provisions of this article proves invalid, the board of directors shall, by subsequent or amended acts or proceedings, promptly and without delay remedy all defects or irregularities, as the case may require, by making and providing for the collection of new assessments, or otherwise.

Source: L. 41: p. 883, § 19. **CSA:** C. 173B, § 74. **CRS 53:** § 149-9-19. **C.R.S. 1963:** § 150-8-19.

37-47-123. Record of assessments as evidence. The record of assessments contained in the respective assessment records of the district shall be prima facie evidence in all courts of all matters therein contained.

Source: L. 41: p. 883, § 20. **CSA:** C. 173B, § 75. **CRS 53:** § 149-9-20. **C.R.S. 1963:** § 150-8-20.

37-47-124. Defects in notice perfected. Whenever notice is provided for in this article, if the court finds that due notice was not given, jurisdiction shall not thereby be lost or the proceedings abated or held void, but the court shall continue the hearing until such time as proper notice may be given and shall thereupon proceed as though proper notice had been given in the first instance. If any appraisement, assessment, levy, or other proceeding relating to said district is held defective, then the board of directors may file a motion in the cause in which said district was organized to perfect any such defect, and the court shall set a time for hearing thereon. If the original notice as a whole is held to be sufficient but faulty only with reference to publication as to certain particular lands or as to service as to certain persons, publication of the defective notice may be ordered as to the particular lands, or service may be made on the persons not properly served, and said notice is thereby corrected without invalidating the original notice as to other lands or persons.

Source: L. 41: p. 883, § 21. **CSA:** C. 173B, § 76. **CRS 53:** § 149-9-21. **C.R.S. 1963:** § 150-8-21.

37-47-125. Contracts of subdistricts. (1) When the petition for the organization of a subdistrict and the decree for such organization so provide, it shall be lawful for any subdistrict to make contracts as follows:

(a) A water users' association may bind itself to levy an annual assessment for the use of water and to secure same by liens on land and water rights or in such manner as may be provided by law.

(b) Any person or corporation landowner may create a mortgage lien upon lands or give other security satisfactory to the board or any other contracting agency, and all such contracts shall provide for forfeiture of the use of water for nonpayment of assessments or installments in the same manner and procedure as provided by statute for forfeiture of stock in a mutual ditch company.

Source: L. 41: p. 884, § 23. **CSA:** C. 173B, § 78. **CRS 53:** § 149-9-23. **C.R.S. 1963:** § 150-8-23.

Cross references: For forfeiture of stock in a ditch company, see § 7-42-104 (4).

37-47-126. Issuance of general obligation bonds and revenue bonds. (1) In the name of the subdistrict and not otherwise, when authorized by the plan of organization and decree of court organizing said subdistrict to do so, the district may issue general obligations or bonds which shall constitute a lien against the real property in said subdistrict. Said obligations shall bear interest at a rate such that the net effective interest rate of the issue does not exceed the maximum net effective interest rate authorized. Interest shall be payable semiannually, and said obligations may be issued and made payable in series becoming due not less than five years and not more than fifty years after the date of issue. Such bonds are to be paid from assessments levied from time to time, as the bonds and interest thereon become due, against the real property

in said district and not otherwise. The board of directors of said district shall certify to the boards of county commissioners of the several counties in which said subdistrict or any part thereof is located the amount of the levy necessary to pay said bonds as they mature, and also to pay the interest becoming due on all outstanding bonds, at the same time that like certificates are made under this article for assessments on special improvement district bonds, and the procedure for the assessment and collection of revenue or taxes of the county and state are, except as may be otherwise provided in this article, made applicable and are to be followed in the levy of assessments for payment of taxes and collection of principal and interest on such general obligations.

(2) The subdistrict, in its own name, may issue revenue bonds to finance, in whole or in part, the construction of works, reservoirs, or other improvements for the beneficial use of water for the purposes for which it has been or may be appropriated, whether or not the interest on such bonds may be subject to taxation. Such revenue bonds shall be issued in such denominations and with such maximum net effective interest rate as may be fixed by the board of directors of the subdistrict and shall bear interest such that the net effective interest rate of the bonds does not exceed the maximum net effective interest rate authorized. The board shall pledge only rental proceeds, service charges, and other income (or any combination thereof) from such works or other improvements, and the subdistrict shall not be otherwise obligated for the payment thereof. At the time said revenue bonds are issued, the board of directors of the subdistrict shall make and enter in the minutes of the proceeding a resolution in which the due dates of such revenue bonds, the rates of interest thereon, the general provisions of the bonds, and a recital that the same are payable only out of rental proceeds, service charges, and other income (or any combination thereof) are set forth. In addition, the board of directors shall require the payment of rental charges, service charges, or other charges by the political subdivisions or persons who are to use or derive benefits from the water or other services furnished by such works or improvements. Such charges shall be sufficient to pay operation and maintenance expenses thereof, to meet said bond payments, and to accumulate and maintain reserve and replacement accounts pertaining thereto as set forth in such resolution. Such resolution shall be irrepealable during the time that any of the revenue bonds are outstanding and unpaid. The revenue bonds shall be signed "Water Users' Association No. ... in the Southwestern Water Conservation District, By ....., President. Attest ....., Secretary" or "Special Improvement District No. .... in the Southwestern Water Conservation District, By ....., President. Attest ....., Secretary", and they shall be countersigned by the treasurer.

Source: L. 41: p. 884, § 22. **CSA:** C. 173B, § 77. **CRS 53:** § 149-9-22. **C.R.S. 1963:** § 150-8-22. **L. 77:** Entire section amended, p. 1656, § 8, effective June 9.

37-47-127. Board to certify assessments. (1) To maintain, operate, and preserve ditches, canals, reservoirs, or other improvements made pursuant to this article, and to strengthen, repair, and restore the same, when needed, and for the purpose of defraying any incidental expenses of the subdistrict, the board of directors may, upon completion of a works provided for in the plan for any such subdistrict, on or before the first Monday in November of each year thereafter, certify to the board of county commissioners of the county in which said subdistrict or any part thereof is located an assessment on each tract of land and upon public corporations subject to assessment under this article, for the purpose of raising funds to be used

for the maintenance of said improvements. If an appraisal of benefits has been made against the lands in said district, assessments shall be apportioned by the county treasurer and by the board of directors of said district against the property therein upon the basis of the appraisal of benefits originally made. If no such appraisal has been made and the form of organization and financing is such that revenue warrants or general obligations of the subdistrict have been issued, then said assessment shall be made on the basis of the valuation for assessment of the property subject to assessment in said subdistrict.

(2) Said assessment shall not exceed five mills on each dollar of the valuation for assessment of the property in said subdistrict in any one year, unless the court shall by order authorize an assessment of a larger percentage. Said assessment shall be levied by resolution of the board of directors and shall be enrolled in a well-bound record to be known as the maintenance fund assessment record and shall be substantially the form provided for similar records of conservancy districts under the laws of the state of Colorado, particularly as provided by section 37-5-107. Assessments so certified shall be levied by the board of county commissioners of the counties in which said subdistrict is situate, on the property of said district in their respective counties, to be collected by the treasurers of the several counties and delivered to the treasurer of the district in like manner and with like effect as is provided for the collection and return of other assessments under this article. The whole assessment shall be due and payable as and when taxes for county purposes levied in the same year are due and payable. The said maintenance assessments shall be in addition to any assessments which have been levied against benefits appraised for and on account of construction.

Source: L. 41: p. 884, § 24. **CSA:** C. 173B, § 79. **CRS 53:** § 149-9-24. **C.R.S. 1963:** § 150-8-24.

37-47-128. Limitations on power to levy and contract. (1) The district has no power of taxation or right to levy or assess taxes, except an annual levy, not exceeding six-tenths of a mill on each dollar of the valuation for assessment of property in said district, as provided in section 37-47-109. The district has no power to contract or incur any obligation or indebtedness except as expressly provided in this article, and then any obligation or indebtedness so contracted or incurred is to be payable out of the funds derived through said limited tax and not otherwise; except that said district for and in behalf of any subdistrict or improvement district created under this article has the right to issue obligations as expressly authorized in this article and not otherwise.

(2) All assessments under this article shall be collected by the county treasurer of the respective counties in which said real estate is situated at the same time and in the same manner as is provided by law for the collection of taxes for county and state purposes, and, if said assessments are not paid, then the real estate shall be sold at the regular tax sale for the payment of said assessments, interest, and penalties in the manner provided by the statutes of the state of Colorado for selling property for the payment of general taxes. If there are no bids at said tax sale for the property so offered, said property shall be struck off to the district, and the tax certificates shall be issued in the name of the district, and the board of directors has the same power with reference to the sale of said tax certificates as is now vested in county commissioners and county treasurers when property is struck off to the counties.

(3) Tax deeds may be issued, based upon said certificates of sale, in the same manner that deeds are executed on tax sales on general state and county taxes.

Source: L. 41: p. 887, § 27. **CSA:** C. 173B, § 82. **CRS 53:** § 149-9-27. **C.R.S. 1963:** § 150-8-27. **L. 73:** p. 1533, § 2.

37-47-129. Investment of surplus funds. The board of directors of said district may invest any surplus funds of the district including any funds in the construction fund assessment not needed for immediate use to pay the cost of construction of any project in any one of the subdistricts, or to pay bonds or coupons or to meet current expenses, in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S. The board of directors of said district may require any funds of the district, or of any subdistrict, to be deposited with such depository or bank as may be designated by the board and likewise shall have authority to require the treasurer of the district to take from such depository a bond with corporate surety to insure payment of any such deposit or to require such depository to pledge securities of the same kind as those in which the district is authorized to invest its funds to insure payment of any such deposit.

Source: L. 41: p. 887, § 28. **CSA:** C. 173B, § 83. **CRS 53:** § 149-9-28. **C.R.S. 1963:** § 150-8-28. **L. 89:** Entire section amended, p. 1124, § 52, effective July 1.

37-47-130. Sinking fund. Said district may provide for a sinking fund for the ultimate payment of any of the obligations of any subdistrict. Such sinking fund may be invested as provided in section 37-47-129.

Source: L. 41: p. 888, § 29. **CSA:** C. 173B, § 84. **CRS 53:** § 149-9-29. **C.R.S. 1963:** § 150-8-29.

37-47-131. Court confirmation. (1) (a) In its discretion, the board of directors, on the behalf and in the name of the district or any subdistrict which is a party in interest, may file a petition at any time in the district court in and for the county in which the district's principal office is maintained or, if both the district and one or more subdistricts are parties to the petition, in the district court in and for the county in which any such subdistrict was organized, praying for a judicial examination and determination of any power conferred or of any taxes or rates or other charges levied, or of any act, proceeding, or contract of the district, the subdistrict, or the subdistricts, or any combination thereof, as the case may be, whether or not said contract has been executed, including, without limitation, proposed contracts for the acquisition, improvement, equipment, maintenance, operation, or disposal of any properties or facilities for the benefit of the district, the subdistrict, or the subdistricts, as the case may be, and so including a proposed issue of revenue warrants, revenue bonds, special assessment bonds, or general obligation bonds, issued or to be issued on behalf of any such entity. Such petition shall set forth the facts whereon the validity of such power, tax, assessment, charge, act, proceeding, or contract is founded and shall be verified by the president of the board of directors.

(b) Such action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested may be had by publication, mail, and posting, as provided in this article. Notice

of the filing of the petition shall be given by the clerk of the court, under the seal thereof, stating in brief outline the contents of the petition and also stating where a full copy of any contract therein mentioned may be examined. The notice shall be served by publication at least once a week for five consecutive weeks in a daily or a weekly newspaper of general circulation published in the county in which the principal office of the district is located, by mailing copies of the notice by registered or certified mail, return receipt requested, to the boards of county commissioners of the several counties in which the parties in interest in such action are located wholly or in part, and by posting the same in the office of the district at least thirty days prior to the date fixed in said notice for the hearing on said petition. Jurisdiction shall be complete after such publication, mailing, and posting.

(c) Any owner of property in the district or any subdistrict filing the petition or any person interested in the contract or proposed contract or in the premises may appear and move to dismiss or answer the petition at any time prior to the date fixed for the hearing or within such further time as may be allowed by the court; and the petition shall be taken as confessed by all persons who fail to appear.

(2) The petition and notice shall be sufficient to give the court jurisdiction; and, upon hearing, the court shall examine into and determine all matters and things affecting the question submitted and shall make such findings with reference thereto and render such judgment and decree thereon as the case warrants. Costs may be divided or apportioned among any contesting parties in the discretion of the trial court. Review of the judgment of the court may be had as in other similar cases; except that such review must be applied for within thirty days after the time of the rendition of such judgment or within such additional time as may be allowed by the court within thirty days. The Colorado rules of civil procedure shall govern in matters of pleadings and practice where not otherwise specified in this article. The court shall disregard any error, irregularity, or omission which does not affect the substantial rights of the parties.

Source: L. 41: p. 888, § 31. **CSA:** C. 173B, § 86. **CRS 53:** § 149-9-31. **C.R.S. 1963:** § 150-8-31. **L. 77:** Entire section R&RE, p. 1657, § 9, effective June 9.

37-47-132. Subdistrict furnishing water to nonirrigated land. In order to enable a subdistrict organized under the provisions of this article to furnish water to lands which have not been irrigated and had, up to the time of the construction of the works to be constructed by said subdistrict, no water supply and, at the same time, to enable other areas within the same subdistrict to obtain a supplemental supply of water or to enable said subdistrict to furnish a complete service to certain lands, certain areas, certain persons or municipalities within the district and to supplement an existing supply or service to other persons, localities, and municipalities, prior to the time that an appraisement of benefits is made in any such subdistrict, the board of directors may make a resolution setting forth the amount of water or the kind of service to be allocated to specified classes or areas, and such limitation shall be taken into consideration by the appraisers in the appraisal of benefits with respect to lands affected by any such limitation. Like conditions and restrictions may be provided for payment by certain lands or persons of revenue warrants which pledge the income from the works of said subdistricts, but no such limitation shall be contained or govern the payment of any general obligations of any such subdistrict.

Source: L. 41: p. 889, § 32. **CSA:** C. 173B, § 87. **CRS 53:** § 149-9-32. **C.R.S. 1963:** § 150-8-32.

37-47-133. Election to authorize debt. Except for the issuance of refunding bonds or other funding or refunding of obligations which does not increase the net indebtedness of the district or any subdistrict so proceeding, no indebtedness shall be incurred by the issuance of general obligation bonds of any subdistrict or by any contract by which the district or a subdistrict agrees to repay as general obligations or other obligations constituting a "general obligation debt by loan in any form", as such term is used in section 6 of article XI of the state constitution, of the district or subdistrict, respectively, to the federal government, any political subdivision, or any person over a term not limited to the then current fiscal year any project costs advanced thereby under any contract for the acquisition or improvement of the facilities or any interest therein, or for any project, advanced by the issuance of securities of such a political subdivision or person to defray any cost of the project or of the facilities or an interest therein thereby acquired and becoming a part of the facilities of the district or subdistrict, or otherwise advanced, unless a proposal of issuing the subdistrict's general obligation bonds or of incurring an indebtedness by the district or subdistrict by making such a contract is submitted to the electors of the district or subdistrict, as the case may be, and is approved by a majority of such electors voting on the proposal at an election held for that purpose in accordance with this article and with all laws amendatory thereof and supplemental thereto.

Source: L. 77: Entire section added, p. 1658, § 10, effective June 9.

37-47-134. Definition of elector. (1) An "elector", "elector of the district", or "elector of the subdistrict", or any term of similar import, means a person:

(a) Who, at the time of the election, is qualified to vote in general elections in this state; and

(b) Who is a resident of the district or subdistrict proposing to incur an indebtedness at the time of the election.

(2) Registration pursuant to the laws concerning general elections or any other laws shall not be required.

Source: L. 77: Entire section added, p. 1659, § 10, effective June 9.

37-47-135. Elections. Whenever in this article an election of the electors of the district or a subdistrict therein is permitted or required, the election may be held separately at a special election or may be held concurrently with any primary or general election held under the laws of this state; but no election shall be held at the same time as any regular election of any city, town, or school district if any part of the area thereof is located within the boundaries of the district.

Source: L. 77: Entire section added, p. 1659, § 10, effective June 9.

37-47-136. Election resolution. (1) The board of directors shall call any election by resolution adopted at least thirty days prior to the election.

(2) Such resolution shall recite the objects and purposes of the election, the date upon which such election shall be held, and the form of the ballot.

(3) In the case of any election not to be held concurrently with a primary or general election, the board of directors shall provide in the election resolution or by supplemental resolution for the appointment of sufficient judges and clerks of the election, who shall be electors of the district or the subdistrict holding the debt election, and in such event shall set their compensation. The election resolution or a supplemental resolution shall also then designate the precincts and polling places, but a supplemental resolution may modify such a description of precincts and polling places without repeating such description in full. The description of precincts may be made by reference to any order of the governing body of any county, municipality, or other political subdivision in which the district or subdistrict or any part thereof is situated, or by reference to any previous order or other instrument of such a governing body, or by detailed description of such precincts, or by other sufficient description.

(4) Precincts established by any such governing body may be consolidated in the election resolution by the board of directors in a sufficient number which it deems expedient for the convenience of the electors for any election not to be held concurrently with a primary or general election.

(5) If the election shall be held concurrently with a primary or general election held under the laws of this state, the judges of election for such primary or general election shall be designated as the judges of the election for the election held pursuant to this article, and they shall receive such additional compensation, if any, as the board of directors shall set by the election resolution.

Source: L. 77: Entire section added, p. 1659, § 10, effective June 9.

37-47-137. Conduct of election. (1) Except as otherwise provided in this article, an election held pursuant to this article shall be opened and conducted in the manner then provided by the laws of this state for the conduct of general elections.

(2) If an election is held concurrently with a primary or general election, the county clerk and recorder of each county in which the district or subdistrict holding the debt election is located shall perform for the district or subdistrict election the acts provided by law to be performed by such officials. If an election is not held concurrently with a primary or general election, such acts shall be performed by the secretary of the district with the assistance of such county clerk and recorders. The board of directors and such county clerk and recorders are authorized to agree among themselves upon the division of such acts and the determination of persons to perform them.

(3) An elector of the district may vote in any election by absentee voter's ballot under such terms and conditions, and in substantially the same manner insofar as is practicable, as prescribed in article 13.5 of title 1, C.R.S., of the "Uniform Election Code of 1992", except as specifically modified in this article.

(4) All acts required or permitted therein to be performed by a county clerk and recorder shall be performed by each one respectively in the event of a primary or general election and by the secretary or assistant secretary of the board of directors in the event of any other election, unless the services of the county clerk and recorder in each such county are contracted for, but

no oath shall be administered by the secretary or assistant secretary unless he is also an officer authorized to administer oaths.

(5) Application may be made for an absentee voter's ballot not more than twenty days and not less than four days before the election.

(6) No consideration shall be given nor distinction made with reference to any person's political party affiliation or the lack thereof.

(7) The return envelope for the absentee voter's ballot shall have printed on its face an affidavit substantially in the following form:

"State of Colorado, County of ....., I, ..., being first duly sworn according to law, depose and say that my residence and post-office address is .....; that I am a person qualified to vote in general elections in the State of Colorado and am a resident of the Southwestern Water Conservation District or Water Users' Association No. ..... or Special Improvement District No. ..... in the Southwestern Water Conservation District, as may be appropriate, at the time of this election.

.....
Signature of voter

Subscribed and sworn to before me this ... day of....., 20....

.....
(Signature of notary public,
county clerk and recorder,
or other officer authorized
to administer oaths)
(SEAL)

.....
Title of office"

(8) In any such election at which voting machines are used, the board of directors shall provide paper ballots for absentee voters containing the same question as is to be submitted to the electors by the voting machines, subject to the provisions of subsection (9) of this section.

(9) The district or subdistrict may provide for mail voters to cast their mail voters' ballots on voting machines expressly provided for that purpose, if each mail voter indicates by affidavit that he or she is qualified to vote at the election and will be a mail voter, pursuant to article 13.5 of title 1, C.R.S., and all laws supplemental thereto.

Source: L. 77: Entire section added, p. 1660, § 10, effective June 9. **L. 80:** (3) and (9) amended, p. 416, § 34, effective January 1, 1981. **L. 96:** (9) amended, p. 1775, § 82, effective July 1. **L. 2008:** (9) amended, p. 1913, § 125, effective August 5. **L. 2009:** (9) amended, (HB 09-1216), ch. 165, p. 730, § 10, effective August 5. **L. 2013:** (3) amended, (HB 13-1303), ch. 185, p. 751, § 135, effective May 10; (3) amended, (HB 13-1300), ch. 316, p. 1699, § 113, effective August 7. **L. 2014:** (3), (5), IP(7), (8), and (9) amended, (HB 14-1164), ch. 2, p. 76, § 49, effective February 18.

Editor's note: Amendments to subsection (3) by House Bill 13-1300 and House Bill 13-1303 were harmonized.

Cross references: (1) For the "Uniform Election Code of 1992", see articles 1 to 13 of title 1.

(2) In 2013, subsection (3) was amended by the "Voter Access and Modernized Elections Act". For the short title and legislative declaration, see sections 1 and 2 of chapter 185, Session Laws of Colorado 2013.

(3) For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

37-47-138. Notice of election. Notice of such election shall be given by publication by three consecutive weekly insertions in at least one newspaper of general circulation in the district or subdistrict holding the election, as determined by the board of directors. No other notice of an election held under this article need be given, unless otherwise provided by the board. A supplemental notice may be given by publication at such times and places as the board may determine to be necessary or convenient for correcting or otherwise modifying the original notice of election or for any other purpose.

Source: L. 77: Entire section added, p. 1661, § 10, effective June 9.

37-47-139. Polling places. (1) All polling places designated by resolution for an election shall be within the territorial limits of the district or subdistrict holding the election; but, if an election of the district or subdistrict is held concurrently with a primary or general election, the polling place for each precinct located wholly or partially within the district or subdistrict shall be the polling place for such precinct for the district or subdistrict election, regardless of whether or not such polling place is within the district or subdistrict.

(2) If the election of the district or subdistrict is not held concurrently with a primary or general election held under the laws of this state, there shall be one polling place in each of the election precincts which are used in the primary and general elections or in each of the consolidated precincts fixed by the board of directors, as the case may be.

Source: L. 77: Entire section added, p. 1661, § 10, effective June 9.

37-47-140. Election supplies. (1) The secretary of the district shall provide at each polling place ballots or ballot labels, or both, ballot boxes or voting machines, or both, instructions, electors' affidavits, and other materials and supplies required for an election by any law; and the secretary may provide ballots and marking devices suitable for voting and for the votes on the ballots to be counted on electronic vote-tabulating devices.

(2) Election officials may require the execution of an affidavit by any person desiring to vote at any election of the district or subdistrict to evidence his qualifications to vote, which affidavit shall be prima facie evidence of the facts stated therein.

Source: L. 77: Entire section added, p. 1661, § 10, effective June 9.

37-47-141. Election returns. (1) In the case of any election held under this article which is not held concurrently with a primary or general election, the election officials shall make their returns directly to the secretary of the district for the board of directors.

(2) In the case of any election held under this article which is consolidated with any primary or general election, the returns thereof shall be made and canvassed at the time and in the manner provided by law for the canvass of the returns of such primary or general election. Such canvassing body shall certify promptly and shall transmit to the secretary of the district for the board of directors a statement of the result of the vote upon any proposition submitted under this article.

(3) Upon receipt by the board of directors of election returns from election officials or upon receipt of such certificate from each such canvassing body, the board shall tabulate and declare the results of the election at any regular or special meeting held not earlier than five days following the date of the election.

(4) The board of directors shall cause the results of the election to be published at least one time in at least one newspaper having general circulation in the district.

Source: L. 77: Entire section added, p. 1662, § 10, effective June 9.

37-47-142. Debt election contests. (1) Any election declared to have carried on an authorization to issue any bonds, by approval of the bond question, or otherwise to incur an indebtedness by approval of the question thereon may be contested by any elector of the district or subdistrict holding the debt election by suit against it as contestee and defendant in any district court of any county in which the district or subdistrict holding the election is wholly or partially situate:

(a) When illegal votes have been received or legal votes rejected at the polls in sufficient numbers to change the results;

(b) For any error or mistake on the part of any of the judges of election, any county clerk and recorder, the secretary of the district, or their respective officers and employees in counting or declaring the result of the election, if the error or mistake is sufficient to change the result;

(c) For malconduct, fraud, or corruption on the part of any of the judges of election, any county clerk and recorder, the secretary of the district, or their respective officers and employees, if the malconduct, fraud, or corruption is sufficient to change the result;

(d) When the bonds or other indebtedness is authorized to be issued for an invalid purpose; or

(e) For any other cause which shows that the bonds or other indebtedness is not validly authorized at the election.

(2) The style and form of process, the manner of service of process and papers, the fees of officers, and judgment for costs and execution thereon shall be according to the rules and practices of the court.

(3) Before the court shall take jurisdiction of the contest, the contestor shall file with the clerk of the court a bond, with sureties, to be approved by the judge thereof, running to the district or subdistrict holding the debt election as contestee and conditioned to pay all costs in case of failure of the contestor to maintain his contest.

(4) When the validity of any bond or other indebtedness election is contested, the plaintiff or plaintiffs, within thirty days after the returns of the election are canvassed and the results thereof declared and published, or last published, as the case may be, shall file with the clerk of the court a verified written complaint setting forth specifically:

(a) The name of the party contesting the election and a statement that the plaintiff or each plaintiff is an elector of the district or subdistrict holding the election;

(b) The proposition or propositions voted on at the election which are contested, the name of the district or the subdistrict as defendant and contestee, and the date of the election; and

(c) The particular grounds of such contest.

(5) No such contest shall be maintained and no election shall be set aside or held invalid unless such a complaint is filed within the period prescribed in subsection (4) of this section.

(6) Except as otherwise provided in this article, the election laws pertaining to contested election cases of municipal offices as provided in part 13 of article 10 of title 31, C.R.S., of the "Colorado Municipal Election Code of 1965", as from time to time amended, shall be applicable to bond or other indebtedness elections; but any such contest shall be regarded as one contesting the outcome of the vote on the proposition authorizing the issuance of securities or otherwise incurring the indebtedness, rather than election to office, and the district or subdistrict as contestee, rather than a person declared to have been elected to office, shall be regarded as the defendant.

(7) If the board of directors declares the proposition authorizing the issuance of bonds or otherwise incurring the indebtedness to have carried and no contest is duly filed or if such a contest is filed after it is favorably terminated, the board may issue the bonds or otherwise incur the indebtedness authorized at the election at one time or from time to time.

Source: L. 77: Entire section added, p. 1662, § 10, effective June 9.

37-47-143. Covenants and other provisions in bonds. (1) Any resolution providing for the issuance of any bonds under this article payable from pledged revenues and any indenture or other instrument or proceedings pertaining thereto may at the discretion of the board of directors contain covenants or other provisions, notwithstanding that such covenants and provisions may limit the exercise of powers conferred by this article, in order to secure the payment of such bonds, in agreement with the holders of such bonds, including, without limitation, covenants or other provisions as to any one or more of the following:

(a) The pledged revenues and, in the case of general obligations, the taxes to be fixed, charged, or levied and the collection, use, and disposition thereof, including, without limitation, the foreclosure of liens for delinquencies, the discontinuance of services, facilities, or use of any properties or facilities, prohibition against free service, the collection of penalties and collection costs, and the use and disposition of any moneys of the district or subdistrict issuing bonds, derived or to be derived, from any source designated;

(b) The acquisition, improvement, or equipment of all or any part of properties pertaining to any project or any facilities;

(c) The creation and maintenance of reserves or sinking funds to secure the payment of the principal of and the interest on any bonds or of the operation and maintenance expenses of any facilities, or part thereof, and the source, custody, security, regulation, use, and disposition of any such reserves or funds, including, without limitation, the powers and duties of any trustee with regard thereto;

(d) Limitations on the powers of the district or subdistrict to acquire or operate, or permit the acquisition or operation of, any structures, facilities, or properties which may compete or tend to compete with any facilities;

(e) The vesting in a corporate or other trustee or trustees of such property, rights, powers, and duties in trust as the board of directors may determine, which may include any or all of the rights, powers, and duties of the trustee appointed by the holders of bonds, and limiting or abrogating the rights of such holders to appoint a trustee, or limiting the rights, duties, and powers of such trustee;

(f) Events of default, rights, and liabilities arising therefrom and the rights, liabilities, powers, and duties arising upon the breach by the district or subdistrict of any covenants, conditions, or obligations;

(g) The terms and conditions upon which the holders of the bonds or of a specified portion, percentage, or amount thereof, or any trustee therefor, shall be entitled to the appointment of a receiver, which receiver may enter and take possession of any facilities or service, operate and maintain the same, prescribe fees, rates, and other charges, and collect, receive, and apply all revenues thereafter arising therefrom in the same manner as the district or subdistrict itself might do;

(h) A procedure by which the terms of any resolution authorizing bonds or any other contract with any holders of district or subdistrict bonds, including, without limitation, an indenture of trust or similar instrument, may be amended or abrogated, and as to the proportion, percentage, or amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(i) The terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived; and

(j) All such acts and things as may be necessary or convenient or desirable in order to secure the bonds or, in the discretion of the board of directors, tend to make the bonds more marketable, notwithstanding that such covenant, act, or thing may not be enumerated in this article, it being the intention of this article to give to the board of directors power to do in the name and on behalf of the district or subdistrict all things in the issuance of district or subdistrict bonds and for their security, except as expressly limited in this article.

Source: L. 77: Entire section added, p. 1663, § 10, effective June 9.

37-47-144. Liens on pledged revenues. (1) Revenues pledged for the payment of any bonds, as received by or otherwise credited to the district or subdistrict issuing bonds under this article, shall immediately be subject to the lien of each such pledge without any physical delivery thereof, any filing, or any further act.

(2) The lien of each such pledge and the obligation to perform the contractual provisions made in the authorizing resolution or other instrument pertaining thereto shall have priority over any or all other obligations or liabilities of the district or subdistrict, except as may be otherwise provided in this article or in the resolution or other instrument, and subject to any prior pledges and liens theretofore created.

(3) The lien of each such pledge shall be valid and binding as against all persons having claims of any kind in tort, in contract, or otherwise against the district or subdistrict, irrespective of whether or not such persons have notice thereof.

Source: L. 77: Entire section added, p. 1664, § 10, effective June 9.

37-47-145. Rights - powers of holders of bonds - trustees. (1) Subject to any contractual limitations binding upon the holders of any issue or series of bonds of the district or subdistrict issuing bonds under this article, or the trustee therefor, including, without limitation, the restriction of the exercise of any remedy to a specified proportion, percentage, or number of such holders, and subject to any prior or superior rights of others, any holder of bonds, or the trustee therefor, shall have the right and power, for the equal benefit and protection of all holders of bonds similarly situated:

(a) By mandamus or other suit, action, or proceeding at law or in equity, to enforce his rights against the district, subdistrict, or board of directors, or any combination thereof, or any of the officers, agents, and employees of the district or subdistrict to require and compel such district, subdistrict, or board or any of such officers, agents, or employees to perform and carry out their respective duties, obligations, or other commitments under this article and their respective covenants and agreements with the holder of any bond;

(b) By action or suit in equity, to require the district or subdistrict to account as if it were the trustee of an express trust;

(c) By action or suit in equity, to have a receiver appointed, which receiver may enter and take possession of any facilities and any pledged revenues for the payment of the bonds, prescribe sufficient fees, rates, and other charges derived from the facilities, and collect, receive, and apply all pledged revenues or other moneys pledged for the payment of the bonds in the same manner as the district or subdistrict itself might do in accordance with the obligations of the district or subdistrict; and

(d) By action or suit in equity, to enjoin any acts or things which may be unlawful or in violation of the rights of the holder of any bonds and to bring suit thereupon.

Source: L. 77: Entire section added, p. 1665, § 10, effective June 9.

37-47-146. Investments and securities. (1) The board of directors of the district or subdistrict, respectively, issuing bonds under this article, subject to any contractual limitations from time to time imposed upon the district or subdistrict by any resolution authorizing the issuance of the outstanding bonds of the district or subdistrict or by any trust indenture or other proceedings pertaining thereto, may cause to be invested and reinvested any proceeds of taxes, any pledged revenues, and any proceeds of bonds issued under this article in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S., and may cause such proceeds of taxes, revenues, district or subdistrict bonds, and securities to be deposited in any trust bank or trust banks within or without or both within and without this state and secured in such manner and subject to such terms and conditions as the board of directors may determine, with or without the payment of any interest on such deposit, including, without limitation, time deposits evidenced by certificates of deposit.

(2) Any such securities and any certificates of deposit thus held may, from time to time, be sold, and the proceeds may be so reinvested or redeposited as provided in this section.

(3) Sales and redemptions of any such securities and certificates of deposit thus held shall, from time to time, be made in season so that the proceeds may be applied to the purposes for which the money with which such securities and certificates of deposit were originally acquired was placed in the district or subdistrict treasury.

(4) Any gain from any such investments or reinvestments may be credited to any fund or account pledged for the payment of any district or subdistrict bonds issued under this article, including any reserve therefor, or any other fund or account pertaining to a project or any facilities, or the district's or subdistrict's general fund, subject to any contractual limitations in any proceedings pertaining to outstanding district or subdistrict bonds.

(5) It is lawful for any commercial bank incorporated under the laws of this state which may act as depository of the proceeds of any bonds issued under this article, any securities owned by the district or subdistrict, any proceeds of taxes, any pledged revenues, and any moneys otherwise pertaining to a project or any facilities, or any combination thereof, to furnish such indemnifying bonds and to pledge such securities as may be required by the board of directors.

Source: L. 77: Entire section added, p. 1665, § 10, effective June 9. **L. 89:** (1) to (3) and (5) amended, p. 1124, § 53, effective March 21.

37-47-147. Rents and charges. (1) (a) The district, any subdistrict, and any political subdivision of the state of Colorado contracting with the district or subdistrict and fixing and collecting annual rentals, service charges, and other charges, or any combination thereof, are, in supplementation of the powers provided in this article, authorized to fix and collect rents, rates, fees, tolls, and other charges, in this article sometimes referred to as "service charges", for direct or indirect connection with, or the use or services of, a water system, electrical system, joint system, or other facilities, including, without limitation, connection charges, minimum charges, and charges for the availability of service.

(b) Such service charges may be charged to and collected in advance or otherwise by a district from any political subdivision or person and by any political subdivision from any person contracting for such connection or use or services or from the owner or occupant, or any combination thereof, of any real property which directly or indirectly is or has been or will be connected with any such facilities, and the political subdivision or owner or occupant of any such real property shall be liable for and shall pay such service charges to the district, subdistrict, or political subdivision fixing the service charges at the time when and place where such service charges are due and payable.

(c) Such service charges of the district or subdistrict may accrue from any date on which the board of directors reasonably estimates, in any resolution authorizing the issuance of any securities or other instrument pertaining thereto or in any contract with any political subdivision or person, that any facilities or project being acquired or improved and equipped will be available for service or use.

(2) (a) Such rents, rates, fees, tolls, and other charges, being in the nature of use or service charges, shall, as nearly as the district, subdistrict, or political subdivision fixing the service charges shall deem practicable and equitable, be reasonable, and such service charges

shall be uniform throughout the district, subdistrict, or political subdivision for the same type, class, and amount of use or service of the facilities and may be based or computed either: On measurements of water, flow devices, or electric meters, duly provided and maintained by the district, subdistrict, or political subdivision, or any user as approved by the district, subdistrict, or political subdivision fixing such charges; or on the consumption of water or electricity in or on or in connection with the political subdivision, or any person, or real property, making due allowance for commercial use of water and infiltration of groundwater and discharge of surface runoff to the facilities, or on the number and kind of water or electric outlets on or in connection with the political subdivision, person, or real property, or on the water or electric fixtures or facilities in or on or in connection with the political subdivision, person, or real property; or on the number of persons residing or working in or on or otherwise connected or identified with the political subdivision, person, or real property, or on the capacity of the improvements in or on or connected with the political subdivision, person, or real property; or upon the availability of service or readiness to serve by the facilities; or on any other factors determining the type, class, and amount of use or service of the facilities; or on any combination of any such factors.

(b) Reasonable penalties may be fixed for any delinquencies, including, without limitation, interest on delinquent service charges from any date due at a rate of not exceeding one percent per month or fraction thereof, reasonable attorneys' fees, and other costs of collection.

(3) The district, subdistrict, or political subdivision fixing the service charges shall prescribe and, from time to time when necessary, revise a schedule of such service charges, which shall comply with the terms of any contract of the district, subdistrict, or political subdivision fixing the service charges.

(4) The general assembly has determined and declared that the obligations, arising from time to time, of the district, any subdistrict, any political subdivision, or any person to pay service charges fixed in connection with any facilities shall constitute general obligations of the district, subdistrict, political subdivision, or person charged with their payment; but, as such obligations accrue for current services and benefits from, and the use of, any such facilities, the obligations shall not constitute an indebtedness of the district, any subdistrict, or any political subdivision within the meaning of any constitutional, charter, or statutory limitation or any other provision restricting the incurrence of any debt.

(5) No board, agency, bureau, commission, or official, other than the board of directors of the district or subdistrict, respectively, or the governing body of the political subdivision fixing the service charges, has authority to fix, prescribe, levy, modify, supervise, or regulate the making of service charges or to prescribe, supervise, or regulate the performance of services pertaining to the facilities thereof, as authorized by this article; but this subsection (5) shall not be construed to be a limitation on the contracting powers of the board of directors of the district or any subdistrict, respectively, or the governing body of any such political subdivision.

Source: L. 77: Entire section added, p. 1666, § 10, effective June 9.

37-47-148. Miscellaneous powers. (1) The district and any subdistrict thereof shall also have the following powers:

(a) To pay or otherwise defray and to contract to pay or defray, for any term not exceeding seventy-five years, without an election, except as otherwise provided in this article,

the principal of, any prior redemption premiums due in connection with, any interest on, and any other charges pertaining to any securities or other obligations of the federal government, any subdistrict or the district, respectively, any political subdivision, or any person which were incurred in connection with any property thereof subsequently acquired by the district or any subdistrict and relating to either's facilities;

(b) To establish, operate, and maintain facilities within the district or any subdistrict or elsewhere, across or along any public street, highway, bridge, or viaduct or any other public right-of-way or in, upon, under, or over any vacant public lands, which public lands now are, or may become, the property of a political subdivision of this state, without first obtaining a franchise from the political subdivision having jurisdiction over the same; but the district or subdistrict shall cooperate with any political subdivision having such jurisdiction, shall promptly restore any such public street, highway, bridge, or viaduct or any such other public right-of-way to its former state of usefulness as nearly as may be and shall not use the same in such manner as permanently to impair completely or materially the usefulness thereof;

(c) To adopt, amend, repeal, enforce, and otherwise administer such reasonable resolutions, rules, regulations, and orders as the district or subdistrict shall deem necessary or convenient for the operation, maintenance, management, government, and use of the facilities of the district or subdistrict, as the case may be, and any other facilities under its control, whether situated within or without or both within and without the territorial limits of the district or subdistrict; and

(d) (I) To adopt, amend, repeal, enforce, and otherwise administer under the police power such reasonable resolutions, rules, regulations, and orders pertaining to water or electric services performed by any person through the district's or subdistrict's facilities or pertaining to facilities of the district or subdistrict, any political subdivision, or any person, or any combination thereof, reasonably affecting the activities of the district or subdistrict, directly or indirectly, as the board of directors may from time to time deem necessary or convenient.

(II) No such resolution, rule, regulation, or order shall be adopted or amended except by action of the board of directors on the behalf and in the name of the district or subdistrict, respectively, after a public hearing thereon is held by the board of directors, in connection with which any political subdivision owning or authorizing any facilities comparable to facilities of the district or subdistrict, as the case may be, whether therein or thereout, or both therein and thereout, and other persons of interest have an opportunity to be heard, after mailed notice of the hearing is given at least thirty days prior to the hearing by the secretary to each such political subdivision wholly or partly within the district or subdistrict proceeding under this article, and after notice of such hearing is given by publication at least once a week for three consecutive weeks in at least one newspaper of general circulation in the district or such subdistrict by the secretary to persons of interest, both known and unknown, the first publication to be made at least thirty days prior to the hearing.

Source: L. 77: Entire section added, p. 1668, § 10, effective June 9.

37-47-149. Cooperative powers. (1) The district and any subdistrict have the power to utilize and may utilize private industry, by contract, to carry out the design, construction, operation, management, manufacturing, marketing, planning, and research and development functions of the district or any subdistrict proceeding under this article, unless the district or

subdistrict determines that it is in the public interest to adopt another course of action. The district or subdistrict, or both, may enter into long-term contracts with private persons, not exceeding a term of seventy-five years, without an election, for the performance of any such functions of the district or subdistrict, which, in the opinion of the district or subdistrict, can desirably and conveniently be carried out by a private person under contract; but any such contract shall contain such terms and conditions as shall enable the district or subdistrict to retain reasonable supervision and control of such functions to be carried out or performed by such private persons pursuant to such contract.

(2) Subject to the provisions of section 37-47-133, the district and any subdistrict have the following powers:

(a) To accept contributions, grants, or loans from the state and the federal government for the purpose of financing the planning, acquisition, improvement, equipment, maintenance, and operation of any enterprise in which the district or subdistrict, or both, are authorized to engage, and to enter into contracts and cooperate with, and accept cooperation from, the federal government, the state, the subdistrict or the district, respectively, any political subdivision, any private firm, and any other person, or any combination thereof, in the planning, acquisition, improvement, equipment, maintenance, and operation and in financing the planning, acquisition, improvement, equipment, maintenance, and operation of any such enterprise in accordance with any legislation which the general assembly, congress, the governing body of any political subdivision, the board of directors or other governing body of any private firm, any other person, or any combination thereof may have adopted prior to the adoption of this article or may thereafter adopt, under which aid, assistance, and cooperation may be furnished by such cooperating entity or entities or other persons in the planning, acquisition, improvement, equipment, maintenance, and operation or in financing the planning, acquisition, improvement, equipment, maintenance, and operation of any such enterprise, including, without limitation, costs of engineering, architectural, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action preliminary to the acquisition, improvement, or equipment of any facilities, or any part thereof, and to do any and all things necessary in order to avail itself of such aid, assistance, and cooperation under any state, federal, or other legislation;

(b) To enter into, without any election, joint operating or service contracts and agreements; acquisition, improvement, equipment, or disposal contracts; or other arrangements for any term not exceeding seventy-five years, with the federal government, the state, the subdistrict or the district, respectively, any political subdivision, any private firm, or any other person, or any combination thereof, concerning the facilities, and any project or property pertaining thereto, whether acquired or undertaken by the district, by the subdistrict, by the federal government, by any political subdivision of this state or any other state, or by any person; and to accept contributions, grants, or loans from the cooperating entity or entities or other persons in connection therewith;

(c) To enter into and perform without any election, when determined by the board of directors to be in the public interest, contracts and agreements, for any term not exceeding seventy-five years, with the federal government, the subdistrict or the district, respectively, any political subdivision, or any person, or any combination thereof, for the provision and operation by the subdistrict or the district, respectively, of any facilities pertaining to such facilities of the district or subdistrict, as the case may be, any part thereof, or any project relating thereto, and the

payment periodically thereby to the district or subdistrict of amounts at least sufficient, if any, in the determination of the board, to compensate the district or subdistrict for the cost of providing, operating, and maintaining such facilities serving the federal government, the subdistrict or the district, respectively, any political subdivision, or such other person, or any combination thereof, or otherwise;

(d) To enter into and perform, without any election, contracts and agreements, on a public bid basis, a competitive basis, or a negotiated basis, as the board of directors may determine, with the federal government, the subdistrict or the district, respectively, any political subdivision, any private firm, or any other person, or any combination thereof, for or concerning the planning, construction, lease, other acquisition, improvement, equipment, operation, maintenance, disposal, and financing of any property pertaining to the facilities of the district or subdistrict or to any project of the district or subdistrict, including, without limitation, any contract or agreement for any term not exceeding seventy-five years, pertaining to the joint ownership of the facilities as tenants in common thereamong, providing for the exchange of water or electric power, for backup water or power, pooling of resources, the designation of a manager for any such project or facilities supervised by an engineering and operating committee of co-owners, or otherwise supervised; and otherwise to contract with water or power producers or users, or both;

(e) To cooperate with and act in conjunction with the federal government or any of its engineers, officers, boards, commissions, or departments, or with the state or any of its engineers, officers, boards, commissions, or departments, or with any political subdivision or any person in the acquisition, improvement, and equipment of any facilities or any part thereof authorized for the district or subdistrict or for any other works, acts, or purposes provided for in this article and to adopt and carry out any definite plan or system of work for any such purpose;

(f) To cooperate with the federal government, the subdistrict or district, respectively, any political subdivision, or any person, or any combination thereof, by an agreement therewith by which the district or the subdistrict may:

(I) Acquire and provide, without cost to the cooperating entity or entities, the land, easements, and rights-of-way necessary for the acquisition, improvement, and equipment of any properties;

(II) Hold the cooperating entity or entities free from and save it or them harmless from any claim for damages arising from the acquisition, improvement, equipment, maintenance, and operation of any facilities;

(III) Maintain and operate any facilities in accordance with regulations prescribed by the cooperating entity or entities; and

(IV) Establish and enforce regulations, if any, concerning the facilities which are satisfactory to the cooperating entity or entities;

(g) To provide, by any contract for any term not exceeding seventy-five years, or otherwise, without an election:

(I) For the joint use of personnel, equipment, and facilities of the district, the subdistrict, any political subdivision, or any person, or any combination thereof, including, without limitation, public buildings constructed by or under the supervision of the board of directors, the governing body of the political subdivision, or the board of directors or other governing body of a private firm or other person concerned, upon such terms and agreements and within such areas within the district or subdistrict, or otherwise, as may be determined, for the promotion and

protection of health, comfort, safety, life, welfare, and property of the inhabitants of the district or subdistrict and any such political subdivision and any other persons of interest, and for water or electric services;

(II) For the joint employment of clerks, stenographers, and other employees pertaining to the facilities or any project, now existing or hereafter established, upon such terms and conditions as may be determined for the equitable apportionment of the expenses resulting therefrom;

(h) To provide for comprehensive planning and, where possible, coordinate operations of the district or subdistrict with the subdistrict or district, respectively, any and all such political subdivisions, private firms, and other persons, or any combination thereof, pertaining to water conservation and use and to the generation and use of electricity.

Source: L. 77: Entire section added, p. 1669, § 10, effective June 9.

37-47-150. Joint action entity. (1) The district or subdistrict and any other cooperating entity or entities relating to any project or facilities in which the district or the subdistrict is a party in interest may create a joint action entity, a separate body corporate, for the planning, construction, lease, other acquisition, improvement, equipment, operation, maintenance, disposal, and financing of any enterprise or properties relating to such project or such facilities.

(2) A joint action entity may exercise the powers granted to the district or the subdistrict by this article, other than the levy or fixing and collection of taxes, assessments, and service charges and the making and revising of rules and regulations under the police power.

Source: L. 77: Entire section added, p. 1671, § 10, effective June 9.

37-47-151. Correlative powers of political subdivisions. Any political subdivision of this state has the correlative powers to enable it to participate in cooperation with the district or any subdistrict in either's exercise of powers granted thereto by this article or otherwise granted by law.

Source: L. 77: Entire section added, p. 1671, § 10, effective June 9.

ARTICLE 48

Rio Grande Water Conservation District

Law reviews: For article, "Reviving the Public Ownership, Antispeculation, and Beneficial Use Moorings of Prior Appropriation Water Law", see 84 U. Colo. L. Rev. 97 (2013).

37-48-101. Legislative declaration. In the opinion of the general assembly of the state of Colorado, the conservation of the water of the Rio Grande and its tributaries for beneficial use and the construction of reservoirs, ditches, and works for such purposes are of vital importance to the growth and development of the entire area and the welfare of all its inhabitants and that, to promote the health and general welfare of the state of Colorado, an appropriate agency for the conservation, use, and development of the water resources of the Rio Grande and its tributaries

should be established and given such powers as may be necessary to safeguard for Colorado all waters to which the state of Colorado is equitably entitled.

Source: L. 67: p. 664, § 1. **C.R.S. 1963:** § 150-10-1.

37-48-101.3. Definitions. (1) "District" means the "Rio Grande Water Conservation District". The district is a body corporate and politic and a political subdivision of the state of Colorado.

(2) "Subdistrict" or "subdivision" embraces and includes the kind or character of special improvement districts created under the provisions of this article, including subdistricts organized under the name and style of "Water Users' Association No. .... of the Rio Grande Water Conservation District" and "Special Improvement District No. .... of the Rio Grande Water Conservation District". A subdistrict or subdivision is a body corporate and politic and a political subdivision of the state of Colorado.

Source: L. 77: Entire section added, p. 1672, § 11, effective June 9.

37-48-102. Creation and name of district. There is hereby created a water conservation district to be known and designated as "Rio Grande Water Conservation District" when the governor declares, pursuant to section 37-48-121, that such district is formed. Such district is hereby declared to be a body corporate under the laws of Colorado. Said district shall comprise the counties of Alamosa, Conejos, Rio Grande and those portions of Saguache and Mineral counties which are within the drainage basin of the Rio Grande river and its tributaries, including the closed basin thereof.

Source: L. 67: p. 664, § 1. **C.R.S. 1963:** § 150-10-2.

37-48-103. Board of directors. (1) The district shall be managed and controlled by a board of nine directors. The members of said board shall hold their offices for terms of three years and until their successors are appointed and qualified. Two members of such board shall be appointed from each of the counties of Conejos, Alamosa, Rio Grande, and Saguache, and one such member shall be appointed from Mineral county. At the time of his appointment each director shall be a resident and freeholder of the county from which he is appointed or, if only a part of the county is included within the boundaries of said district, a resident and freeholder of such included part. Each director shall be appointed by the board of county commissioners of the county in which such director resides. He may be a member of the board of county commissioners of such county. The members of said board shall annually select one of their number to act as president and one of their number to act as vice-president, each to hold office for one year or until his successor is duly selected.

(2) The office of a director shall become vacant when any director ceases to reside in the county from which the director was appointed or when declared vacant by a majority vote of all of the members of the board when any director has failed to attend two consecutive regular meetings without having been excused from attendance by the president. In the event a vacancy occurs in said office by reason of death, resignation, removal, or otherwise, it shall be filled for the remainder of the unexpired term by the board of county commissioners of the county from

which said director originally came. Each director shall take an oath or affirmation in accordance with section 24-12-101.

(3) Upon expiration of the terms of the present directors of the district in September, 1970, their successors shall be appointed by the respective boards of county commissioners as provided in this section for the following terms of office: One director from each of the counties of Alamosa, Rio Grande, and Saguache, whose terms of office shall expire on the date of the regular quarterly meeting of said board to be held in April, 1971, or as soon thereafter as their respective successors are appointed and qualified; one director from each of the counties of Conejos, Mineral, and Rio Grande, whose terms of office shall expire on the date of the regular quarterly meeting to be held in April, 1972, or as soon thereafter as their respective successors are appointed and qualified; and one director from each of the counties of Alamosa, Saguache, and Conejos, whose terms of office shall expire on the date of the regular quarterly meeting to be held in April, 1973, or as soon thereafter as their respective successors are appointed and qualified. Thereafter, each director shall be appointed for a term of three years, and his term shall expire on the date of the regular quarterly meeting to be held in April of the year that commences during the third year of his term, or as soon thereafter as his successor is duly appointed and qualified. For the purpose of determining such expiration date, the term of such director shall be taken as having commenced on the date of the first regular April quarterly meeting at which the term of his predecessor would have expired had he then been duly appointed and qualified.

Source: L. 67: p. 664, § 1. **C.R.S. 1963:** § 150-10-3. **L. 69:** p. 1236, § 1. **L. 2018:** (2) amended, (HB 18-1138), ch. 88, p. 702, § 41, effective August 8.

Cross references: For the legislative declaration in HB 18-1138, see section 1 of chapter 88, Session Laws of Colorado 2018.

37-48-104. Employees. The board of directors of said district shall appoint a secretary and a treasurer. The same individual at the election of the board may hold both offices. The board shall likewise hire such other employees, including engineers and attorneys, as may be required to properly transact the business of the district, and said board is authorized to provide for the compensation of the secretary and treasurer and other appointees. The treasurer shall be required by the board to give bond with corporate surety in such amount as the board may fix and which it deems sufficient to protect the funds in the hands of the treasurer or under his control. Such bond is subject to the approval of the board.

Source: L. 67: p. 665, § 1. **C.R.S. 1963:** § 150-10-4.

37-48-105. Powers of district. (1) The district, in its corporate capacity, shall have power to:

(a) Sue and be sued in the name of the Rio Grande water conservation district and otherwise to participate in litigation;

(b) Acquire, operate, and hold in the name of the district such real and personal property as may be necessary to carry out the provisions of this article and to sell and convey such

property or its products as provided in this article or when said property is no longer needed for the purposes of said district;

(c) Borrow money and incur indebtedness and to issue bonds or other evidence of such indebtedness; except that the district may not incur any indebtedness in an aggregate amount exceeding the product of the valuation for assessment of the district multiplied by two mills;

(d) Make surveys and conduct investigations to determine the best manner of utilizing stream flows within the district and the amount of such stream flow or other water supply, and to locate ditches, irrigation works, and reservoirs to store or utilize water for irrigation, mining, manufacturing, or other purposes, and to make filings upon said water and initiate appropriations for the use and benefit of the ultimate appropriators, and to do and perform all acts and things necessary or advisable to secure and insure an adequate supply of water, present and future, for irrigation, mining, manufacturing, and domestic purposes within said district;

(e) Make contracts with respect to the relative rights of said district under its claims and filings and the rights of any other person, association, or organization seeking to divert water from any of the streams within said district;

(f) Contract with any agencies, officers, bureaus, and departments of the state of Colorado and the United States, including the department of corrections, to obtain services or labor for the initiation or construction of irrigation works, canals, reservoirs, power plants, or retaining ponds within said district;

(g) Enter upon any privately-owned land or other real property for the purpose of making surveys or obtaining other information, without obtaining any order so to do, if the same can be done without damage to the lands, crops, or improvements thereon;

(h) Contract with the United States government, the bureau of reclamation, or other agencies of the United States government for the construction of any works;

(i) Have and exercise the power of eminent domain to acquire ditches, reservoirs, or other works or lands or rights-of-way therefor which the district or a subdistrict thereof may need to carry out the plans of said district or subdistrict and in general to exercise any and all rights and powers of eminent domain conferred upon other agencies, as provided in articles 1 to 7 of title 38, C.R.S.;

(j) File upon and hold for the use of the public sufficient water of any natural stream to maintain a constant stream flow in the amount necessary to preserve fish, and to use such water in connection with retaining ponds for the propagation of fish for the benefit of the public;

(k) Exercise such implied powers and perform such other acts as may be necessary to carry out and effect any of the express powers hereby conferred upon such district;

(l) Participate in the formulation and implementation of nonpoint source water pollution control programs related to agricultural practices in order to implement programs required or authorized under federal law and section 25-8-205 (5), C.R.S., enter into contracts and agreements, accept funds from any federal, state, or private sources, receive grants or loans, participate in education and demonstration programs, construct, operate, maintain, or replace facilities, and perform such other activities and adopt such rules and policies as the board deems necessary or desirable in connection with nonpoint source water pollution control programs related to agricultural practices;

(m) Make loans or grants to any public entity, nonprofit corporation, not-for-profit corporation, carrier ditch company, mutual ditch or reservoir company, unincorporated ditch or

reservoir company, or cooperative association within the boundaries of the district to carry out the purposes of the district;

(n) In connection with a plan of water management, assess annual service charges and user fees on the diversion or use of water within the district or a subdistrict. This paragraph (n) shall not allow service charges or user fees to be imposed on surface water diversions in a plan of water management to replace depletions from groundwater withdrawals or to reduce groundwater diversions.

(o) Establish a nonprofit or charitable land trust;

(p) Purchase, rent, lease, and accept donations of, or cooperate in the creation of, conservation easements; and

(q) Cooperate in the creation of conservation reserve programs and other similar programs.

(2) The district, in its own name, may issue revenue bonds to finance, in whole or in part, the construction of works, reservoirs, or other improvements for the beneficial use of water for the purposes for which it has been or may be appropriated, and to finance plans of water management, whether or not the interest on such bonds may be subject to taxation. Such revenue bonds shall be issued in such denominations and with such maximum net effective interest rate as may be fixed by the board of directors of the district and shall bear interest such that the net effective interest rate of the bonds does not exceed the maximum net effective interest rate authorized. The board shall pledge only rental proceeds, service charges, other income, or any combination thereof, from such works, plans of water management, or other improvements, and the district shall not be otherwise obligated for the payment thereof. At the time such revenue bonds are issued, the board of directors of the district shall make and enter in the minutes of the proceeding a resolution that sets out the due dates of such revenue bonds, the rates of interest thereon, the general provisions of the bonds, and a recital that the same are payable only out of rental proceeds, service charges, other income, or any combination thereof. In addition, the board of directors shall require the payment of rental charges, service charges, or other charges by the political subdivisions or persons who are to use or derive benefits from the water or other services furnished by such works, plans of water management, or improvements. Such charges shall be sufficient to pay operation and maintenance expenses thereof, to meet said bond payments, and to accumulate and maintain reserve and replacement accounts pertaining thereto as set forth in such resolution. Such resolution shall be irrepealable during the time that any of the revenue bonds are outstanding and unpaid. The revenue bonds shall be signed "Rio Grande Water Conservation District, By ....., President. Attest ....., Secretary", and they shall be countersigned by the treasurer.

Source: L. 67: p. 665, § 1. **C.R.S. 1963:** § 150-10-5. **L. 75:** (1)(i) amended, p. 1369, § 1, effective July 18. **L. 77:** (2) added, p. 1672, § 12, effective June 9; (1)(f) amended, p. 954, § 31, effective August 1. **L. 88:** (1)(l) added, p. 1024, § 6, effective April 6. **L. 2007:** (1)(m), (1)(n), (1)(o), (1)(p), and (1)(q) added and (2) amended, pp. 1271, 1272, §§ 1, 2, effective May 25.

37-48-106. Principal office - meetings. The board of directors of the district shall designate a place within the district where the principal office is to be maintained and may change such place from time to time. Regular quarterly meetings of said board shall be held within the district during the months of January, April, July, and October, the date and place of

which shall be fixed by the board at its next preceding quarterly meeting and which shall be advertised by notice published once in a newspaper or newspapers which collectively provide general circulation throughout the district at least ten days before such meeting. The board is also empowered to hold such special meetings as may be required for the proper transaction of business. All special meetings of the board shall be held at locations which are within the boundaries of the district or which are within the boundaries of any county in which the district is located, in whole or in part, or in any county so long as the meeting location does not exceed twenty miles from the district boundaries. The provisions of this section governing the location of meetings may be waived only if the proposed change of location of a meeting of the board appears on the agenda of a regular or special meeting of the board and if a resolution is adopted by the board stating the reason for which a meeting of the board is to be held in a location other than under the provisions of this section and further stating the date, time, and place of such meeting. Special meetings may be called by the president of the board or by any three directors. Meetings of the board shall be public, and proper minutes of the proceedings of said board shall be preserved and shall be open to the inspection of any elector of the district during business hours.

Source: L. 67: p. 666, § 1. **C.R.S. 1963:** § 150-10-6. **L. 69:** p. 1237, § 2. **L. 90:** Entire section amended, p. 1506, § 22, effective July 1.

37-48-107. Assessment and levy by board. (1) The board of directors has the power to fix the amount of an assessment upon the property within the district not to exceed two and one-half mills for every dollar of valuation for assessment therein, as a level or general levy to be used for the purpose of paying the expenses of organization, for surveys and plans, to pay the salary of officers, and the per diem allowed to directors and their expenses, for expenses which may be incurred in the administration of the affairs of the district, and for all other lawful purposes of the district including capital construction.

(2) The amount of assessment on each dollar of valuation for assessment shall, in accordance with the schedule prescribed by section 39-5-128, C.R.S., be certified to boards of county commissioners of the various counties in which the district is located and by them included in their next annual levy for state and county purposes. Such amount so certified shall be collected for the use of such district in the same manner as are taxes for county purposes, and the revenue laws of the state for the levy and collection of taxes on real estate for county purposes, except as modified in this article, shall be applicable to the levy and collection of the amount certified by the board of directors of said district as aforesaid, including the enforcement of penalties, forfeiture, and sale for delinquent taxes.

(3) All collections made by the county treasurer pursuant to such levy shall be paid to the treasurer of the conservancy district on or before the tenth day of the next succeeding calendar month. If any items of expense have already been paid in whole or in part from any other sources by said district, they may be repaid from receipts of such levy. Such levy may be made, although the work proposed, or any part thereof, may have been found impracticable, or for other reasons abandoned. The collection of data and the payment of expenses therefor, including salaries of engineers, attorneys, and others, to conserve the water of said district and to enable said district to adopt plans for the orderly development of said district are hereby declared

to be a matter of general benefit to the public welfare, and such that a tax for said purposes may be properly imposed, in the opinion of the general assembly.

(4) If any provision of this section is held unconstitutional or invalid by any court of competent jurisdiction, such decision shall not affect the validity or force of any other part of this section, or any other part of this article, and the general assembly hereby declares it would have enacted the remainder of this article without this section.

Source: L. 67: p. 666, § 1. **C.R.S. 1963:** § 150-10-7. **L. 69:** p. 1237, § 3. **L. 83:** (1) amended, p. 1397, § 1, effective March 22. **L. 87:** (2) amended, p. 1409, § 11, effective April 22.

37-48-108. Creation of subdistricts. (1) Notwithstanding the organization of the district provided for in this article, irrigation and internal improvement districts organized under articles 41, 42, 44, and 45 of this title and any other form of organization designed or intended to acquire, construct, or maintain reservoirs, ditches, and similar works for irrigation or other beneficial purposes under any law of the state of Colorado or of the United States may be organized to cover and include areas within the Rio Grande water conservation district and may likewise embrace territory within that district and partly out of the district. Whenever, in its opinion, such form of organization will help promote the local interests or accomplish improvements for any part of said district, the board of directors may recommend the organization of any such type of organization. The creation of the Rio Grande water conservation district shall not affect the existence of public irrigation districts heretofore created under article 4 of chapter 149, CRS 53, or water conservancy districts heretofore created pursuant to article 45 of this title.

(2) In addition to such forms of organization, whenever in the opinion of the board of directors of said district it is feasible and necessary that water rights, ditches, canals, reservoirs, wells, or other works which benefit only a part of the district should be acquired or constructed or that a plan of augmentation or plan of water management, or any combination of the foregoing, involving only a part of the district should be developed and put into effect, a local improvement district or subdivision or as many of such local improvement districts as may be necessary may be created. Such local improvement district, when organized under the provisions of this article, shall be designated as "Water Users' Association No. .... in the Rio Grande Water Conservation District" or as "Special Improvement District No. .... in the Rio Grande Water Conservation District". Each subdistrict shall be numbered consecutively as created or organized.

(3) Subdistricts shall be created and managed as provided in sections 37-48-123 to 37-48-193. Except as otherwise provided in said sections, the board of directors and the engineers, attorneys, secretary, and other officers, agents, and employees of the district, so far as it may be necessary, may serve in the same capacity for such subdivision or subdistricts. A contract and agreement between the main district and a subdistrict, between subdistricts, between a subdistrict and a municipal water supplier, and between a subdistrict and an agency of the state of Colorado or the United States, may be made in the same manner as contracts and agreements between two districts.

(4) As used in this article, a "plan of water management" means a cooperative plan for the utilization of water and water diversion, storage, and use facilities in any lawful manner, so as to assure the protection of existing water rights and promote the optimum and sustainable

beneficial use of the water resources available for use within the district or a subdistrict, and may include development and implementation of plans of augmentation and exchanges of water and groundwater management plans under section 37-92-501 (4)(c).

Source: L. 67: p. 667, § 1. **C.R.S. 1963:** § 150-10-8. **L. 75:** Entire section R&RE, p. 1369, § 2, effective July 18. **L. 77:** (3) amended, p. 1672, § 13, effective June 9. **L. 2007:** (3) and (4) amended, p. 1272, § 3, effective May 25.

Editor's note: The public irrigation law, article 4 of chapter 149, CRS 53, referred to in subsection (1) of this section, was repealed, but the provisions of said article 4 were preserved as to all districts formed under that article prior to 1963. (See L. 63, p. 1009.)

37-48-109. Compensation of directors. The directors of the district shall receive as compensation a sum not to exceed one hundred dollars per day while actually engaged in the business of said district and, in addition, shall be entitled to their actual traveling and transportation expenses when away from their respective places of residence on district business.

Source: L. 67: p. 667, § 1. **C.R.S. 1963:** § 150-10-9. **L. 2007:** Entire section amended, p. 357, § 3, effective April 2.

37-48-110. Limitations on power to levy and contract. (1) The district has no power of taxation or right to levy or assess taxes, except an annual levy not to exceed two and one-half mills on each dollar of the valuation for assessment of property in said district. The district has no power to contract or incur any obligation or indebtedness except as expressly provided in this article, and then any obligation or indebtedness so contracted or incurred is payable out of the funds derived through said limited tax and not otherwise, but said district, for and in behalf of any subdistrict or improvement district created under this article, shall have the right and authority to approve and incur subdistrict obligations and to issue warrants, notes, bonds, or other evidences of said obligations, as expressly authorized in this article and not otherwise, and such subdistrict obligations shall never be obligations or indebtednesses of the district and shall be payable only as provided in this article.

(2) All assessments under this article shall be collected by the county treasurers of the respective counties in which said real estate is situated at the same time and in the same manner as is provided by law for the collection of taxes for county and state purposes, and, if said assessments are not paid, the real estate shall be sold at regular tax sales for the payment of said assessments, interest, and penalties in the manner provided by the statutes of the state of Colorado for selling property for the payment of general taxes. If there are no bids at said tax sales for the property so offered, said property shall be struck off to the district, and the tax certificates shall be issued in the name of the district; and the board of directors has the same power with reference to the sale of said tax certificates as is now vested in county commissioners and county treasurers when property is struck off to the counties.

(3) Tax deeds may be issued, based upon said certificates of sale, in the same manner that deeds are executed on tax sales on general state and county taxes.

Source: L. 67: p. 668, § 1. **C.R.S. 1963:** § 150-10-10. **L. 73:** p. 1419, § 111. **L. 75:** Entire section amended, p. 1370, § 3, effective July 18. **L. 83:** (1) amended, p. 1397, § 2, effective March 22.

Cross references: For use of the term "warrants", see § 37-48-146.

37-48-111. Investment of surplus funds. The board of directors of said district may invest any surplus funds of the district, including any amounts in the construction fund not needed for immediate use to pay the cost of construction of any project in any one of the subdistricts or to pay bonds or coupons or to meet current expenses, in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S. The board of directors of said district may require any funds of the district, or of any subdistrict, to be deposited with such depository or bank as may be designated by the board and likewise has authority to require the treasurer of the district to take from such depository a bond with corporate surety to insure payment of any such deposit, or to require such depository to insure payment of any such deposit, or to require such depository to pledge securities of the same kind as those in which the district is authorized to invest its funds to insure payment of any such deposit.

Source: L. 67: p. 668, § 1. **C.R.S. 1963:** § 150-10-11. **L. 75:** Entire section amended, p. 1371, § 4, effective July 18. **L. 89:** Entire section amended, p. 1125, § 54, effective July 1.

37-48-112. Rules. (1) The district has the power to make general rules for the conduct of its business, as well as the conduct of the business of any subdistrict therein, and by such rules may provide for the rental of water or other services that are to be furnished by said subdistrict to any municipality, public irrigation district, irrigation district, other quasi-municipal corporation in this state, or any agency of the state of Colorado or the United States, and to make contracts for the payment of the rental to be charged for any such water or services.

(2) Where a board of managers is established to carry out the general supervision and operational management of a plan of water management of a subdistrict, such board of managers shall, before undertaking any water management function, formulate and propose to the board of directors of the district rules and regulations which shall define the scope of the responsibility of the board of managers and the functional relationship between such board and the board of directors of the district in terms consistent with the requirements of this article. If such responsibility and relationship are described in the petition for the creation of the subdistrict, the rules and regulations must incorporate and be consistent therewith. Such rules and regulations shall also include operational rules and regulations for the plan of water management and any other operational function undertaken by the board of managers. Such rules and regulations, and any amendments thereto, may be adopted by the board of managers only after having been approved by the board of directors of the district.

Source: L. 67: p. 668, § 1. **C.R.S. 1963:** § 150-10-11. **L. 75:** Entire section R&RE, p. 1371, § 5, effective July 18. **L. 2007:** (1) amended, p. 1273, § 4, effective May 25.

37-48-113. Court confirmation. (1) (a) In its discretion, the board of directors, on the behalf and in the name of the district or any subdistrict that is a party in interest, may file a petition at any time in the district court in and for the county in which the district's principal office is maintained or, if both the district and one or more subdistricts are parties to the petition, in the district court in and for the county in which any such subdistrict was organized praying for a judicial examination and confirmation of any power conferred or of any taxes, rates, including service charges and user fees, or other charges levied or proposed, or of any act, proceeding, or contract of the district, the subdistrict, or the subdistricts, or any combination thereof, as the case may be, whether or not said contract has been executed, including, without limitation, proposed contracts for the acquisition, improvement, equipment, maintenance, operation, or disposal of any properties or facilities for the benefit of the district, the subdistrict, or the subdistricts, as the case may be, and so including a proposed issue of revenue warrants, revenue bonds, special improvement bonds, or general obligation bonds, issued or to be issued on behalf of any such entity. Such petition shall set forth the facts whereon the validity of such power, tax, assessment, service charge, user fee, act, proceeding, or contract is founded and shall be verified by the president of the board of directors or the board of managers.

(b) Such action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested may be had by publication, mail, and posting, as provided in this article. Notice of the filing of the petition shall be given by the clerk of the court, under the seal thereof, stating in brief outline the contents of the petition and also stating where a full copy of any contract therein mentioned may be examined. The notice shall be served by publication at least once a week for five consecutive weeks in a daily or a weekly newspaper of general circulation published in the county in which the principal office of the district is located and, if said action is filed for a subdistrict organized in another county, in such county, by mailing copies of the notice by registered or certified mail, return receipt requested, to the boards of county commissioners of the several counties in which the parties in interest in such action are located wholly or in part, and by posting the same in the office of the district at least thirty days prior to the date fixed in said notice for the hearing on said petition. Jurisdiction shall be complete after such publication, mailing, and posting.

(c) Any owner of property in the district or any subdistrict filing the petition or any person interested in the contract or proposed contract or in the premises may appear and move to dismiss or answer the petition at any time prior to the date fixed for the hearing or within such further time as may be allowed by the court; and the petition shall be taken as confessed by all persons who fail to appear.

(2) The petition and notice shall be sufficient to give the court jurisdiction; and, upon hearing, the court shall examine into and determine all matters and things affecting the question submitted and shall make such findings with reference thereto and render such judgment and decree thereon as the case warrants. Costs may be divided or apportioned among any contesting parties in the discretion of the trial court. Review of the judgment of the court may be had as in other similar cases; except that such review must be applied for within thirty days after the time of the rendition of such judgment, or within such additional time as may be allowed by the court within thirty days. The Colorado rules of civil procedure shall govern in matters of pleadings and practice where not otherwise specified in this article. The court shall disregard any error, irregularity, or omission which does not affect the substantial rights of the parties.

Source: L. 67: p. 668, § 1. **C.R.S. 1963:** § 150-10-13. **L. 75:** Entire section R&RE, p. 1372, § 6, effective July 18. **L. 77:** Entire section R&RE, p. 1673, § 14, effective June 9. **L. 2007:** (1)(a) amended, p. 1273, § 5, effective May 25.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24; for use of the term "warrants", see § 37-48-146.

37-48-114. Petition. Before the Rio Grande water conservation district is established under this article, a petition shall be filed in the office of the clerk of the district court of the twelfth judicial district in and for Alamosa county, signed by not fewer than four hundred landowners, each of which owns eighty or more acres of land situated within the limits proposed to be organized into said district. The petition shall set forth the name of the proposed district and a general description of the boundaries of the proposed district and shall pray for an election on the question of organization of the proposed district. No petition with the requisite signatures shall be declared void on account of alleged defects, but the court may permit the petition to be amended at any time to conform to the facts by correcting any error. Similar petitions, except for signatures, may be filed and together shall be regarded as one petition. All such petitions filed prior to the hearing on the first petition filed shall be considered by the court the same as though filed with the first petition placed on file. In determining whether the requisite number of landowners have signed the petition, the court shall be governed by the names as they appear upon the tax roll. Duplicate copies of the petition covering the lands in each county shall be prepared and sent to the treasurer of each such county. Each treasurer shall examine the copy of such petition sent to him and shall file a certificate with said district court in and for Alamosa county stating as to each signatory whether such person owns eighty acres of land or more. Such certificate shall be prima facie evidence as to such ownership. For the purposes of this article, any person owning land in joint tenancy or as a tenant in common shall be deemed an owner of all land so held.

Source: L. 67: p. 668, § 1. **C.R.S. 1963:** § 150-10-14.

37-48-115. Notice and hearing on petition. (1) Immediately after the filing of such petition, the court shall fix a time not less than forty-five days nor more than ninety days after the petition is filed for hearing thereon, and the clerk of said court shall cause notice by publication to be made of the pendency of the petition and of the time and place of hearing thereon. Such notice shall be published in a newspaper of general circulation published within the boundaries of the proposed district, such notice to be published once each week for four successive weeks. The clerk shall also notify the county commissioners of each of said counties of the pendency of the petition and the time and place of hearing thereon. No judge of the district court of the twelfth judicial district in and for the county of Alamosa shall be disqualified to perform duties imposed by this article by reason of ownership of property within the proposed district.

(2) Upon the day set for the hearing upon the original petition, if it appears to the court from the certificates of the county treasurers, and from such other evidence as may be adduced by any party in interest, that the petition is signed by the requisite number of owners of land, the court shall thereupon set a day certain for the holding of a meeting by the boards of county

commissioners of the counties, part or all of which lands lie within the boundaries of the proposed Rio Grande water conservation district, and shall set the time and place of meeting.

Source: L. 67: p. 669, § 1. **C.R.S. 1963:** § 150-10-15.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24.

37-48-116. Election resolution. On such day certain or as soon thereafter as is reasonably possible, the board of county commissioners of the counties, part or all of whose lands lie within the boundaries of the proposed Rio Grande water conservation district, shall meet at the time and place specified by such court, or at such other place as the county commissioners of said counties shall designate. The county commissioners of said counties shall call an election by resolution adopted at least thirty days prior to such election. Such resolution shall recite that the object and purpose of the election is to determine whether or not the Rio Grande water conservation district is to be formed. The county commissioners shall provide in the election resolution, or by supplemental resolution, for the appointment of sufficient judges and clerks of the election who shall be taxpaying electors residing within the proposed district and shall set their compensation. The election resolution shall also designate the precincts and polling places. The description of precincts may be made by reference to any order of the governing body of any county, municipality, or other public body in which the proposed district or any part thereof is situated, or by reference to any previous order or by other instrument of such governing body, or by detailed description of such precincts or by other sufficient description. Precincts established by any such governing body may be consolidated in the election resolution by the county commissioners for the election.

Source: L. 67: p. 669, § 1. **C.R.S. 1963:** § 150-10-16.

37-48-117. Conduct of election. (1) Except as provided in this article, an election held pursuant to this article shall be opened and conducted in the manner provided by the laws of the state of Colorado for the conduct of general elections except that only taxpaying electors may vote in such election. Registration pursuant to the general election laws or any other statute is not required.

(2) Any taxpaying elector may vote in any election by absent voter's ballot under the terms and conditions and in substantially the same manner, insofar as is practicable, as prescribed in the "Uniform Election Code of 1992" for general elections.

Source: L. 67: p. 670, § 1. **C.R.S. 1963:** § 150-10-17. **L. 80:** (2) amended, p. 417, § 35, effective January 1, 1981. **L. 92:** (2) amended, p. 924, § 196, effective January 1, 1993.

Cross references: For the "Uniform Election Code of 1992", see articles 1 to 13 of title 1.

37-48-118. Notice of election. Notice of such election shall be given by publication. No other notice of election need be given.

Source: L. 67: p. 670, § 1. **C.R.S. 1963:** § 150-10-18.

37-48-119. Polling places. All polling places designated by the election resolution shall be within the area included within the proposed district.

Source: L. 67: p. 670, § 1. **C.R.S. 1963:** § 150-10-19.

37-48-120. Election supplies. The county commissioners of each county shall have provided at each polling place ballots or ballot labels, or both, ballot boxes or voting machines, or both, instructions, elector's affidavits, and other material and supplies required for a general election by law. The county commissioners, acting as a group, may procure all of the necessary supplies and may agree among themselves as to a division of the costs therefor. Election officials may require the execution of an affidavit by any person desiring to vote at any election of the district showing evidence of his qualifications as a taxpaying elector, which affidavit shall be prima facie evidence of the facts therein stated.

Source: L. 67: p. 670, § 1. **C.R.S. 1963:** § 150-10-20.

37-48-121. Election returns. The election officials shall make their returns directly to the county commissioners of said counties in care of the board of county commissioners of Alamosa county, Alamosa, Colorado. The county commissioners of said counties shall act as the canvassing body. The returns of said election shall be made and canvassed at any time and in the manner provided by law for the canvass of the returns of any general election. It is the duty of such canvassing body to certify promptly and to transmit to the governor of the state of Colorado a statement of the results of the vote upon the proposition submitted. If a majority of the voters voting in said election vote in favor of the formation of the Rio Grande water conservation district, the governor shall declare the same to be formed. If a majority of the voters voting in said election do not vote in favor of formation of said district, the governor shall declare that the district is not formed. If the governor declares said district to be formed, it shall be formed as of the time and date specified in his declaration of formation.

Source: L. 67: p. 670, § 1. **C.R.S. 1963:** § 150-10-21.

37-48-122. Expenses of election - appropriation. The expenses of the election shall be paid by the Colorado water conservation board to the extent of fifteen thousand dollars, and there is hereby appropriated to said board the sum of fifteen thousand dollars to be used for this purpose and no other. Each county is entitled to a fraction of said sum, the numerator of which is the election expense incurred by each such county and the denominator of which is the total election expense of all such counties.

Source: L. 67: p. 670, § 1. **C.R.S. 1963:** § 150-10-22.

37-48-123. Procedure for establishment of subdistricts. (1) Before any subdistrict is established under this article, a petition shall be filed in the office of the clerk of the district court of the county in which the territory to be embraced in said subdistrict or the greater part thereof

is situate, signed by the board of directors of the district or by a majority of the owners representing a majority of the land situate within the limits of the territory proposed to be organized into a subdistrict.

(2) (a) The petition shall set forth the matters specified in this subsection (2).

(b) The proposed name of said subdistrict shall be set forth, whether it is designated "Water Users' Association No. ..... in the Rio Grande Water Conservation District" or "Special Improvement District No. ..... in the Rio Grande Water Conservation District".

(c) The petition shall recite that property within the proposed subdistrict will be benefited by the proposed reservoirs, ditches, canals, works, improvements, or plan of augmentation or plan of water management or combination thereof and shall set forth in a general way the nature and estimated cost thereof, together with a general statement of the nature of the anticipated benefits to be derived therefrom.

(d) A full description of the territory to be included in the proposed subdistrict shall be included in the petition. Said description need not be given by metes and bounds or by legal subdivision, but it shall be sufficient to enable a property owner to ascertain whether his property is within the territory proposed to be organized in a subdistrict. Such territory need not be contiguous if it is so situated that the organization as a single subdistrict of the territory described is such as to promote or tend to promote one or more of the objectives of this article as to all parts of the area proposed to be included.

(e) (I) The petition shall include a general description of the methods proposed to finance the proposed works and plans, including the acquisition, construction, maintenance, and operation thereof, with sufficient detail to enable a property owner within the proposed subdistrict to know whether the proposed methods of financing would result in the imposition of a lien or charge upon the taxable or assessable property within the subdistrict and the amount thereof and to know further that such proposed methods of financing would be authorized without further election by the signing of the petition by the requisite number of petitioners to authorize the creation of the subdistrict. Such methods of financing the acquisition, construction, and improvement of needed property, including planning and development, may include any one or more, or any combination, of the following:

(A) Revenue warrants pledging the income or other revenues from the proposed works, improvements, or plans;

(B) Special improvement bonds to be paid by special assessments on the property benefited and in an amount on each tract of land not in excess of the appraised benefits;

(C) Contracts of water users, mutual ditch or reservoir companies, or water users' associations creating liens upon lands within the subdistrict;

(D) The imposition of reasonable service charges or user fees by the district for the conferring by the subdistrict of any benefits upon or providing any service to any person or property;

(E) Contracts for the purchase of existing water rights or other property providing for payment of the purchase price on a deferred basis by installments or otherwise and which may provide further for pledging general or specific revenues of the subdistrict to the payment thereof or which may create a lien to secure the payment thereof against the real property embraced in the subdistrict in the same manner as general obligation bonds;

(F) Acquisition of the use of water rights or other property by long- or short-term leases with or without a pledge of general or specific revenues of the subdistrict;

(G) General obligation bonds constituting a lien against the real property embraced in the subdistrict;

(H) The imposition of an ad valorem mill levy upon all taxable property within the subdistrict sufficient in amount to raise the funds necessary to pay any amount due on any contract, lease, or general obligation bond installment, including interest and other debt service requirement, which is entered into or issued pursuant to sub-subparagraph (E), (F), or (G) of this subparagraph (I) and the provisions of the petition and order creating the subdistrict, as general obligations of the subdistrict.

(II) None of the methods of financing or borrowing referred to in subparagraph (I) of this paragraph (e), including exercise of the authority to issue general obligation bonds, shall ever constitute or result in the creation of an indebtedness or obligation of the district or a lien or charge upon any property of the district. If general obligations are proposed, the petition shall allege and show that the benefit to the lands in the subdistrict will be not less than the total amount of general obligation bonds to be issued exclusive of interest.

(f) If such a petition is filed by the board of directors of the district, it shall contain a statement to the effect that a majority of the landowners owning a majority of the land of the territory in the proposed subdistrict petitioned the board of directors to organize said subdistrict, and a copy of the petition of said landowners shall be attached as an exhibit to the petition for organization of the subdistrict.

(g) If it is anticipated that a plan of water management, plan of augmentation, or both will be adopted for the subdistrict, the petition shall describe such plan or plans in general terms and may also request establishment of a board of managers of the subdistrict, to be made up of landowners within the subdistrict, which shall have the authority and responsibility of devising and carrying out such plan or plans. Where a board of managers is requested, the petition shall set forth in detail the qualifications, manner of selection, and terms of office of board members and may also define, in terms consistent with the requirements of this article, the scope of the responsibility of the board of managers and the functional relationship between such board and the board of directors of the district. Every such petition, when filed with the court, must be approved by the board of directors of the district, which approval shall be noted on the petition over the signature of the president or some other authorized officer thereof, unless the petition is signed and filed by the board of directors of the district.

(h) Said petition shall pray for the organization of a subdistrict by the name proposed.

(3) To determine whether a majority of landowners in said district have signed the petition, in the event the petition is signed by landowners, or have petitioned the board of directors of the district, in the event the petition is filed by the board of directors, the court may require the county treasurer of each county in which territory proposed to be included in said subdistrict is situated to furnish a certified list of names of landowners within said area, and the court shall be governed by the names as they appear upon said copy of the tax roll, and the same shall be prima facie evidence of ownership. If said tax roll shows a majority of the landowners have signed the main petition or petitioned the district for said organization, the same shall be considered as prima facie evidence that a majority of said landowners are in favor of the organization of said proposed subdistrict.

Source: L. 75: Entire section added, p. 1372, § 7, effective July 18. **L. 2007:** (2)(e)(I)(C), (2)(e)(I)(D), and (2)(g) amended, p. 1273, § 6, effective May 25.

37-48-124. Time and place of hearing on petition. (1) Immediately after the filing of such petition, the court wherein the petition is filed, by order, shall fix a place and time, not less than sixty-three days nor more than ninety-one days after the petition is filed, for hearing thereon, and the clerk of said court shall cause notice by publication, which may be substantially the same as provided in section 37-8-101, to be made of the pendency of the petition and of the time and place of the hearing thereon. The clerk of the court shall also forthwith cause a copy of said notice to be sent by United States first-class mail or by electronic service using the e-filing system of the judicial department to the board of county commissioners of each of the counties having territory within the proposed subdistrict and to the board of directors of the district if the petition is filed by the landowners.

(2) The district court in and for the county in which the petition for the organization of a subdistrict has been filed shall thereafter, for all purposes of this article, except as otherwise provided in this article, maintain and have original and exclusive jurisdiction, coextensive with the boundaries of said subdistrict, of lands and other property proposed to be included in said subdistrict or affected by said subdistrict, without regard to the usual limits of its jurisdiction.

(3) No judge of such court wherein such petition is filed shall be disqualified to perform any duty imposed by this article by reason of ownership of property within any subdistrict or proposed subdistrict or by reason of ownership of any property that may be benefited, taxed, or assessed therein.

Source: L. 75: Entire section added, p. 1375, § 7, effective July 18. **L. 2017:** (1) amended, (HB 17-1142), ch. 66, p. 209, § 4, effective September 1.

37-48-125. Filing of protest - procedure - decree - fee. (1) At any time after the filing of a petition for the organization of a subdistrict, and not less than thirty days prior to the time fixed by the order of the court for the hearing upon said petition, and not thereafter, a protest may be filed in the office of the clerk of the court wherein the proceedings for the organization of such subdistrict is pending, signed by a majority of the owners of the land in said proposed subdistrict protesting the organization or creation of said subdistrict. It is the duty of the clerk of the court forthwith, upon filing of said protest, to make as many certified copies thereof, including the signatures thereto, as there are counties into any part of which said proposed subdistrict extends and forthwith to place in the hands of the county treasurer of each of such counties one of said certified copies.

(2) It is the duty of each of such county treasurers to determine from the last tax rolls of his county and to certify to said district court under his official seal, prior to the day fixed for the hearing, the total number of owners of land situate in such proposed subdistrict within his county and the total number of owners of land situate in such proposed subdistrict within his county who have signed such protest. Such certificate shall constitute prima facie evidence of the facts so stated therein and shall be so received and considered by the court.

(3) Upon the day set for the hearing upon the original petition, if it appears to the court from such certificate and from such other evidence as may be adduced by any party in interest that the said protest is not signed by a majority of the owners of land within the proposed subdistrict, the court shall thereupon dismiss said protest and shall proceed with the hearing on the petition. If it appears to the court at said hearing that the protest is signed by any person or corporation who signed the original petition for the organization of said subdistrict, either to the

court or to the district, then the signature of any such landowner upon the protest shall be disregarded and not counted. The board of county commissioners of any county in which any part of said proposed subdistrict is situate, or any owner of real property in said proposed subdistrict who has not signed the petition for the organization of said subdistrict, on or before the date set for the cause to be heard, may file objections to the organization and incorporation of the district. Such objections shall be limited to a denial of the statements in the petition and shall be heard by the court as an advanced case without unnecessary delay.

(4) Upon said hearing, if it appears that said petition has been signed and presented in accordance with the requirements of this article and that the allegations of the petition are true, the court shall enter a decree and therein adjudicate all questions of jurisdiction and declare the subdistrict organized and designate the name of said subdistrict, by which in all subsequent proceedings it shall thereafter be designated and known; and thereafter said subdistrict shall be deemed a special improvement district.

(5) Such order shall be binding upon the real property within the subdistrict, and no appeal or other remedy lies therefrom, and entry of such order shall finally and conclusively establish the regular organization of said subdistrict against all persons, except the state of Colorado, in an action in the nature of quo warranto to be commenced by the attorney general within three months after said decree is entered, and not otherwise. Within ten days after such subdistrict has been declared duly organized by the court, the clerk of said court shall transmit to the county clerk and recorder, in each of the counties having lands in said subdistrict, copies of the findings and decree of the court establishing said subdistrict. The same shall be filed and recorded in the office of the county clerk and recorder, where they shall become permanent records. The county clerk and recorder in each county shall collect a fee of two dollars for filing and preserving the same.

Source: L. 75: Entire section added, p. 1375, § 7, effective July 18.

37-48-126. Official plan for subdistrict. (1) Upon organization of such subdistrict, the board of directors of said district, acting as the board of directors of said subdistrict, is authorized and required to prepare and adopt as the official plans for said subdistrict a comprehensive detailed plan, setting forth any plan of water management for the subdistrict, any improvements or works, including all canals, reservoirs, and ditches whether within or without the district to be constructed or used for the subdistrict, and the manner of utilization of the same in any plan of augmentation or plan of water management, together with the estimated cost of each principal part of said plan or plans, system, or works and the estimated cost of maintenance and operation thereof.

(2) Where a board of managers for the subdistrict is authorized by the petition and decree establishing the subdistrict, the preparation of the official plans for the subdistrict shall be carried out by the board of managers. Such official plans shall be submitted to and approved by the board of directors of the district before the holding of the public hearing thereon required by subsection (3) of this section. If the official plan approved by the board of directors includes a groundwater management plan within the meaning of section 37-92-501 (4)(c), the board of directors shall obtain the state engineer's approval of the groundwater management plan in accordance with section 37-92-501 (4)(c) before holding the public hearing required by subsection (3) of this section.

(3) (a) Upon the completion of such official plan, the board of directors shall cause notice thereof to be given by publication in each county in which said district may be located, in whole or in part, and shall permit the inspection thereof at the office of the district by all persons interested. Said notice shall fix the time and place for the hearing of all objections to said plan not less than twenty days or more than thirty days after the last publication of said notice. All objections to said plan shall be in writing and filed with the manager or secretary of the district at its office prior to the date established for the hearing. After said hearing before the board of directors, the board shall consult with the board of managers, if any, and shall adopt the plan as the official plan of the said subdistrict; adopt the plan with changes in which the board of managers, if any, concurs; or disapprove the plan, in which case the board of managers, if any, shall proceed as set forth in this section to prepare another plan.

(b) If any person objects to the official plan adopted pursuant to paragraph (a) of this subsection (3), such person may, within ten days after the adoption of said official plan, file in the office of the clerk of the court in the original case establishing the district his or her objections in writing, specifying the features of the plan to which objection is made, and, thereupon, the court shall fix a day for the hearing thereof before the court, at which time the court shall hear said objections and adopt, reject, or refer back the plan to the board of directors. If the official plan includes a groundwater management plan, the court may consolidate the hearing on objections to the official plan with any hearing on the groundwater management plan required by section 37-92-501 (4)(c).

(c) If the official plan includes a plan for augmentation, all issues concerning the adequacy of such plan under the applicable provisions of article 92 of this title shall be adjudicated pursuant to the procedures specified in said article.

(4) If the court should reject the plan, the board or the board of managers, as the case may be, shall proceed as in the first instance under this section to prepare another plan. If the court should refer the plan back to the board for amendment, the court shall continue the hearing to a day certain without publication of notice. If the court approves the plan as the official plan of the district, a certified copy of the order of the court approving the plan shall be filed with the secretary of the district and incorporated into the records of the district. The official plan may be altered in detail as necessary from time to time but may not be altered in substance without notice and hearing as required in subsection (3) of this section, nor may the plan be altered in substance after the sale of bonds or warrants to finance the construction and development of the plan without notice to the holders of the bonds or warrants and opportunity for them to be heard, and in no event shall the plan be altered, except within the objects and purposes of the subdistrict as set forth in the petition to organize the same.

Source: L. 75: Entire section added, p. 1376, § 7, effective July 18. **L. 2007:** Entire section amended, p. 1274, § 7, effective May 25.

37-48-127. Execution of plans. The board of directors has full authority to devise, prepare for, execute, maintain, and operate all works or improvements necessary or desirable to complete, maintain, operate, and protect the works provided for by the official plan and to that end may employ and secure men and equipment under the supervision of the chief engineer or other agents or may in its discretion let contracts for such works, either as a whole or in parts.

Source: L. 75: Entire section added, p. 1377, § 7, effective July 18.

37-48-128. Contracts. When it is determined to let the work by contract, contracts in amounts in excess of ten thousand dollars shall be advertised after notice by publication calling for bids, and the board may reject any or all bids or may let the contract to the lowest responsible bidder who gives a good and approved bond with ample security, conditioned on the carrying out of the contract. Such contract shall be in writing and shall be accompanied by or shall refer to plans and specifications for the work to be done prepared by the chief engineer. Said contract shall be approved by the board of directors and signed by the president of the district and by the contractor and shall be executed in duplicate; but, in case of sudden emergency when it is necessary in order to protect the district, the advertising of contracts may be waived upon the unanimous consent of the board of directors; but the provisions of this section shall not apply if it is determined by the board of directors that the work be done on force account.

Source: L. 75: Entire section added, p. 1378, § 7, effective July 18. **L. 2007:** Entire section amended, p. 1276, § 8, effective May 25.

37-48-129. Surveys and examinations. The board of directors also has the right to establish and maintain stream gauges, rain gauges, and a flood warning service with telephone or telegraph lines or telephone or telegraph service, and it may make such surveys and examinations of rainfall and flood conditions, streamflow, and other scientific and engineering subjects as are necessary and proper for the purposes of the district and may issue reports thereon.

Source: L. 75: Entire section added, p. 1378, § 7, effective July 18.

37-48-130. Cooperation with United States or other agencies. The board of directors also has the authority to enter into contracts or other arrangements with the United States government or any department thereof, with persons, railroads, or other corporations, with public corporations, with the state government of this or other states, and with irrigation, drainage, conservation, conservancy, or other improvement districts in this or other states for cooperation or assistance in constructing, maintaining, using, and operating the works of the district or for making surveys and investigations or reports thereon. It may purchase, lease, or acquire land or other property in adjoining states in order to secure outlets or for other purposes of the subdistrict and may let contracts and spend money for securing such outlets or other works in adjoining states.

Source: L. 75: Entire section added, p. 1378, § 7, effective July 18.

37-48-131. Access to lands - penalty. The board of directors or its employees or agents, including contractors and their employees and appraisers retained by the board and their assistants, may enter upon lands within or without the district in order to make surveys and examinations to accomplish the necessary preliminary purposes of the district or to have access to the work, being liable, however, for actual damage done; but no unnecessary damage shall be

done. Any person or corporation preventing such entry commits a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of not more than fifty dollars.

Source: L. 75: Entire section added, p. 1378, § 7, effective July 18.

37-48-132. Removal of structures. (1) For the accomplishment of the official plan, the board of directors has full power to improve in alignment, section, grade, or location, or in any other manner, any watercourse; and it may remove, widen, lengthen, lower, raise, or otherwise change any public or private road bridge or railroad bridge, any flume, aqueduct, or telephone, telegraph, gas, oil, sewer, water, or other pipeline, or any other construction over, across, in, into, under, or through any such watercourse, or it may require the same to be done. Such provisions shall apply to all such changes specified by the official plan or reasonably necessary for the accomplishment of the same; but if any such change is made necessary in any construction because of the failure of the same to permit the free flow of water in such stream in time of flood or to permit the necessary enlargement or protection of the channel, the owner of such construction shall make such change and all adjustments of grade, roadway, track, approach, or other construction incidental thereto without cost to the subdistrict and without any claim for damages against the subdistrict or district; but the subdistrict shall pay the cost of excavating the earth for the enlargement of any channel or for placing earth for the filling of any channel where such excavation or filling is required as a part of the official plan in making the changes outlined in this section. The subdistrict shall not be required to make such fill or excavation unless the same would be necessary to the official plan if the construction or work so changed did not exist.

(2) Before the removal, change, or modification of any work or construction outlined in this section, the board of directors shall give notice to the owner thereof, requiring that the same be adapted to the official plan. In case such removals, changes, or adjustments are not commenced and completed by the owner within the respective times specified therefor in such notice, which time shall be reasonable under all circumstances, such removals, changes, or adjustments may be made by the district at the expense of the owner.

Source: L. 75: Entire section added, p. 1378, § 7, effective July 18.

37-48-133. Passing equipment through bridge or grade. In case it is necessary to pass any dredge boat or other equipment through a bridge or grade of any railroad company or other corporation, county, city, town, or other municipality, the board of directors shall give notice to the owner of said bridge or grade that the same shall be removed temporarily to allow the passage of such equipment or that an agreement be immediately entered into with regard thereto. The owner of said bridge or grade shall keep an itemized account of the cost of the removal and, if necessary, of the replacing of said bridge or grade; and the necessary and actual cost shall be paid by the subdistrict. In case the owner of said bridge or grade fails to commence or complete provision for the passage of said equipment within the time specified in the notice, the board of directors may remove such bridge or grade at the subdistrict's expense, interrupting traffic in the least degree consistent with good work and without unnecessary damage or delay. In case said board is hindered or prevented from so doing, the owner of said bridge or grade shall be liable for all damage resulting to the subdistrict therefrom.

Source: L. 75: Entire section added, p. 1379, § 7, effective July 18.

37-48-134. Functions and duties of board of managers. If the subdistrict has a board of managers, any of the functions and duties enumerated in sections 37-48-127 to 37-48-133 may be performed by the board of managers to the extent provided in the petition or in the rules and regulations of the subdistrict; except that all contracts shall be subject to approval by the board of directors and, further, except that title to all property acquired, developed, or constructed in the formulation, execution, and operation of the official plan of the subdistrict shall be taken and held in the name of the district, and the district shall hold and own the same for the purposes and objects of the subdistrict.

Source: L. 75: Entire section added, p. 1379, § 7, effective July 18.

37-48-135. Retention of personnel. If the subdistrict has a board of managers and if it is so provided in the petition or in the rules and regulations of the subdistrict, the board of managers may retain engineers, attorneys, and management and other personnel separate and apart from those employed by the district.

Source: L. 75: Entire section added, p. 1379, § 7, effective July 18.

37-48-136. Appointment of appraisers. If the plan of financing set forth in the petition and order creating the subdistrict utilizes special improvement bonds, paid by special assessments upon the property benefited within the subdistrict, as a means of financing the execution of the official plan, then, at the time of making its order organizing the district or at any time thereafter, the court shall appoint a board of three appraisers, referred to in this article as the "board of appraisers" or the "appraisers", whose duty it shall be to appraise the lands or other property within and without the district to be acquired for rights-of-way, reservoirs, and other works of the district and to appraise all benefits and damages accruing to all land within or without the district by reason of the execution of the official plan. Each of the appraisers, before taking up his duties, shall take and subscribe to an oath that he will faithfully and impartially discharge his duties as such appraiser and that he will make a true report of such work done by him. The appraisers at their first meeting shall elect one of their own number chairman, and minutes of their meetings shall be maintained. A majority of the appraisers shall constitute a quorum, and a concurrence of the majority in any matter within their duties shall be sufficient for its determination. The court, by order, may remove any appraiser at any time and shall fill all vacancies in the board of appraisers or may appoint a new board, as occasion may require, which new board, if appointed, shall perform all the duties and exercise all the powers of the board of appraisers of the district.

Source: L. 75: Entire section added, p. 1380, § 7, effective July 18.

37-48-137. Appraisals. (1) During the preparation of an official plan that utilizes special improvement bonds for financing, the board of appraisers shall examine and become acquainted with the nature of the plans for the improvement of the lands and other property

affected thereby in order that they may be better prepared to make appraisals for the special improvement bonds.

(2) When the official plan utilizing special improvement bonds is adopted by the district, the secretary of the district shall at once notify the appraisers, and they shall thereupon proceed to appraise the benefits of every kind to all land and property within the subdistrict that will result from the special improvements to be financed by the special improvement bonds in the official plan. The appraisers shall also appraise the damages sustained and the value of the land and other property necessary to be acquired by the district in carrying out the official plan. In the progress of their work, the appraisers shall have the assistance of the attorney, engineers, secretary, and other agents and employees of the district or subdistrict.

Source: L. 75: Entire section added, p. 1380, § 7, effective July 18. **L. 2007:** Entire section amended, p. 1276, § 9, effective May 25.

37-48-138. Report of appraisers - special improvement bonds. (1) The board of appraisers shall prepare a tabulated report of its findings, which shall be bound in book form and which shall be known as the conservation district appraisal record for special improvement bonds. Such record shall contain the names of the owners of property appraised as they appear on the tax rolls or from the records of the office of the county clerk and recorder, a description of the property appraised, and the amount of benefits appraised. No error in the names of the owners of property or in the descriptions thereof shall invalidate said appraisal or the levy of assessments or taxes based thereon if sufficient description is given to identify such property.

(2) When the report is completed, it shall be signed by at least a majority of the appraisers and deposited with the clerk of the court, who shall file it in the original case. At the same time certified copies of that part of the report giving the appraisal of benefits in any county other than that in which the original case is pending shall be made and filed with the county clerk and recorder of such county.

Source: L. 75: Entire section added, p. 1380, § 7, effective July 18. **L. 2007:** (1) amended, p. 1276, § 10, effective May 25.

37-48-139. Notice of hearing on appraisals. (1) Upon the filing of the report of the appraisers, the clerk of the court in which the original cause is pending shall, upon order of the court, give notice thereof by publication in each county in the subdistrict. It shall not be necessary for said clerk to name the parties interested, but the notice shall specify:

(a) The whole cost of the improvement, work, or acquisition;

(b) The share apportioned to each lot or tract of land;

(c) That complaints or objections may be made thereto, in writing, by the owners of the lands affected and filed in the office of the clerk of the court within ten days after the publication of such notice and that the same shall be heard and determined by the court.

(2) Where lands in different counties are mentioned in said report, it shall not be necessary to publish in each county a description of all the lands in the district, but only of that part of the said lands situate in the county in which publication is made.

Source: L. 75: Entire section added, p. 1381, § 7, effective July 18.

37-48-140. Hearing on appraisals. Any property owner may accept the appraisals of benefits as made by the appraisers and shall be construed to have done so unless, within ten days after the last publication provided for in section 37-48-139, he has filed exceptions to said report or to any appraisal of benefits. All exceptions shall be heard by the court, beginning not less than twenty days nor more than thirty days after the last publication provided for in section 37-48-139, and determined in advance of other business so as to carry out, liberally, the purposes and needs of the subdistrict. The court may, if it deems necessary, return the report to the board of appraisers for its further consideration and amendment and may enter its order to that effect. If, however, the appraisal roll as a whole is referred back to the appraisers, the court shall not resume the hearing thereon without new notice, as for an original hearing thereon; but the court may, without new notice, order the appraisers to revise and amend the roll when the order of the court specifies the changes to be made.

Source: L. 75: Entire section added, p. 1381, § 7, effective July 18.

37-48-141. Decree on appraisals. If it appears to the satisfaction of the court, after having heard and determined all said exceptions, that the estimated cost of constructing the improvements contemplated in the official plan is less than the benefits appraised, the court shall approve and confirm said appraisers' report as so modified and amended, and such findings and appraisals shall be final and incontestable, except as provided in this article. In case the court finds that the benefits appraised are less than the estimated total cost of the execution of the official plan, exclusive of interest on deferred payments, it may at its discretion return said official plan to the directors of the district with an order directing them to prepare new or amended plans, or it may dissolve the subdistrict after having provided for the payment of all expenses theretofore incurred.

Source: L. 75: Entire section added, p. 1381, § 7, effective July 18.

37-48-142. Filing decree. Upon the entry of the order of the court approving the report of the appraisers, the clerk of the said court in which the same is entered shall transmit to the secretary of the district a certified copy of the said decree and of the appraisals as confirmed by the court.

Source: L. 75: Entire section added, p. 1381, § 7, effective July 18.

37-48-143. Validation of irregular proceedings. (1) Minor insubstantial irregularities in any notice or proceeding shall not make any proceeding invalid.

(2) In case it is found upon a hearing that, by reason of some irregularity or defect in the proceedings, the appraisal has not been properly made, the court may, nevertheless, on having proof that expense has been incurred which is a proper charge against the property of the complainant, render a finding as to the amount of benefits to said property and appraise the proper benefits accordingly, and thereupon said land shall be assessed as other land equally benefited.

(3) In the event that at any time, either before or after the issuance of bonds, the appraisal of benefits, either as a whole or in part, is declared by any court of competent

jurisdiction to be invalid by reason of any defect or irregularity in the proceedings therefor, whether jurisdictional or otherwise, the said district court where the original case is pending is authorized, on the application of the board of directors of the said district or on the application of any holder of any bonds which may have been issued pursuant to this article, promptly and without delay to remedy all defects or irregularities, as the case may require, by causing to be made a new appraisal of the amount of benefits against the whole or any part of the lands in the said district, as the case may require.

Source: L. 75: Entire section added, p. 1382, § 7, effective July 18.

37-48-144. Compensation of appraisers. Appraisers, when appointed under the provisions of this article, shall receive such reasonable compensation as shall be fixed by the court in its order of appointment.

Source: L. 75: Entire section added, p. 1382, § 7, effective July 18.

37-48-145. Preliminary fund. (1) As soon as any subdistrict has been organized, the board of directors may fix the amount of assessment upon the property within the subdistrict at a level rate to be used for the purpose of paying the expenses of organization, for surveys and plans, and for other incidental expenses that may have been incurred prior to the time when money is received from the sale of bonds or otherwise. Such assessment shall not exceed five mills for every dollar of valuation for assessment of such property unless the petition for creation of the subdistrict and the order for the district court thereon provides for a higher rate. In accordance with the schedule prescribed by section 39-5-128, C.R.S., the amount of assessment for each dollar of valuation for assessment shall be certified to the boards of county commissioners of the various counties in which the district, or any portion thereof, is located and by them included in their next annual levy for state and county purposes. Said amount shall be collected for the use of such subdistrict in the same manner as are taxes for county purposes, and the revenue laws of the state for the levy and collection of ad valorem taxes on real estate for county purposes, except as modified in this article, shall be applicable for the levy and collection of the amount certified by the directors of such district as aforesaid, including the enforcement of penalties and forfeiture for delinquent taxes.

(2) All collections made by the county treasurer pursuant to such levy shall be paid to the treasurer of the district on or before the tenth day of the next succeeding calendar month. If such items of expense have already been paid in whole or in part from moneys advanced by the district for subdistrict use or from other sources, they may be repaid from the receipts of such levy, and such levy may be made even though the work proposed may have been found impracticable or for other reasons may have been abandoned. The information collected by the necessary surveys, the appraisal of benefits and damages, and other information and data are declared to constitute benefits for which an assessment may be levied. In case a district is dissolved or abandoned for any cause whatsoever before the work is constructed, the data, plans, and estimates which have been secured shall be filed with the clerk of the court in which the district was organized and shall be matters of public record available to any person interested.

Source: L. 75: Entire section added, p. 1382, § 7, effective July 18. **L. 87:** (1) amended, p. 1410, § 12, effective April 22. **L. 2007:** (1) amended, p. 1277, § 11, effective May 25.

37-48-146. Power to borrow money for the preliminary fund. In order to facilitate the preliminary work, the board of directors may borrow money at a net effective interest rate as determined by the board and, as evidence of the debt so contracted, may issue and sell or may issue to contractors or others negotiable evidences of debt, in this article called "warrants", and may pledge, after it has been levied, the preliminary assessment of not exceeding five mills for the repayment thereof, or may pledge the revenue from any service charge or user fee to be levied by the subdistrict. If any warrant so issued by the board of directors is presented for payment and is not paid for want of funds in the treasury, that fact, with the date of presentation, shall be endorsed on the back of such warrant, which shall thereafter draw interest at the rate specified in the endorsement, not exceeding the net effective interest rate as when issued, until such time as there is money on hand sufficient to pay the amount of said warrant with interest.

Source: L. 75: Entire section added, p. 1383, § 7, effective July 18. **L. 2007:** Entire section amended, p. 1277, § 12, effective May 25.

37-48-147. Directors bound by financing plan. (1) The board of directors of the district shall be bound by the plan of financing set forth in the petition for the organization of the subdistrict and approved by the decree of the district court. The appointment of appraisers shall not be necessary if the official plan adopted does not utilize special improvement bonds as a means of financing the subdistrict official plan, but the district or the subdistrict board of managers, as the case may be, may nevertheless retain appraisers as needed to appraise the value of property to be acquired.

(2) If the plan of financing provides for the issuance of general obligation bonds of the subdistrict, such bonds shall be signed "Water Users' Association No. ..... in the Rio Grande Water Conservation District, by ....., President, Attest ....., Secretary", or "Special Improvement District No. ..... in the Rio Grande Water Conservation District, by ....., President, Attest ....., Secretary". They shall be countersigned by the treasurer. General obligation bonds shall recite that they are obligations of the subdistrict, are issued pursuant to the provisions of this article, and are to be payable at the time, in the manner, and with the rate of interest therein specified and that the same were issued under and pursuant to a court decree and a resolution of the board of directors authorizing the issue of said obligations and referring to the date of said resolution. Said bonds shall further recite that they are payable from funds to be derived by special assessments and tax levies against the property in said subdistrict and other revenues derived from the operation of the subdistrict's official plan, as provided by the plan of financing in the petition for organization of the subdistrict, and not otherwise, that the same are not to be deemed to be an obligation of the Rio Grande water conservation district but only an obligation of said subdistrict, and that the district itself is not to be obligated in any manner for the payment of said bonds. If there is a board of managers for the subdistrict, the resolution of the board of directors authorizing said obligations shall be approved by the board of managers before being adopted by the board of directors.

Source: L. 75: Entire section added, p. 1383, § 7, effective July 18. **L. 2007:** Entire section amended, p. 1277, § 13, effective May 25.

37-48-148. Special assessments - procedure in making. (1) If the proceedings for the organization of the subdistrict, including the petition and the decree entered thereon, provide for the financing of the construction or acquisition of the works or other improvements proposed and of the other steps necessary to the development and implementation of the subdistrict's official plan by special assessments to be levied against the appraised benefits to property within said subdistrict, then the board of directors may make special assessments from time to time, as required, and, in making the assessments, the board shall be guided by the procedure for the levy of similar assessments under the conservancy law of the state of Colorado, articles 1 to 8 of this title, and particularly the provisions of said law appearing in sections 37-5-104 to 37-5-106, and the same shall apply to subdistricts created under this article.

(2) From time to time, as the affairs of the subdistrict may demand, the board of directors may levy on all property to which benefits are provided by the subdistrict's official plan a special assessment of such portion of said benefits as may be found necessary by the board to pay the cost of any appraisal, the preparation and execution of the official plan for said subdistrict, and the superintendence of construction and administration during the period of construction, plus ten percent of the total to be added for contingencies, but not to exceed in the total of principal the appraised benefits so adjudicated. The special assessments, to be known as the "construction fund special assessment", shall be apportioned to and levied on each tract of land or other property in the district in proportion to the benefits appraised and not in excess thereof, and in case special improvement bonds are issued, as provided in section 37-48-149, then the amount of interest that will accrue on such bonds as estimated by the board of directors shall be included in and added to the assessment, but the interest to accrue on account of the issuance of the special improvement bonds shall not be construed as a part of the cost of construction in determining whether or not the expenses and cost of making the improvement are or are not equal to or in excess of the benefits appraised.

(3) As soon as the special assessment is levied, the secretary of the subdistrict, at the expense thereof, shall prepare in duplicate an assessment of the subdistrict. It shall be in the form of a well-bound book endorsed and named "Construction Fund Special Assessment Record of Water Users' Association No. ....., or Special Improvement District No. ....., of the Rio Grande Water Conservation District". Said record shall be in the form of similar records for conservancy districts under the laws of this state, particularly as provided in section 37-5-104. The special assessments may be paid in the manner provided in section 37-5-105 relating to conservancy districts under the laws of this state. All proceedings provided in said sections with respect to conservancy districts shall apply to the special assessments, the records thereof, and the manner of payment of special assessments of subdistricts organized under this article.

Source: L. 75: Entire section added, p. 1384, § 7, effective July 18. **L. 2007:** Entire section amended, p. 1278, § 14, effective May 25.

37-48-149. Special improvement bonds. (1) The board of directors of the district may issue as obligations of the subdistrict, not as obligations of the Rio Grande water conservation district, special improvement bonds to be paid out of special improvement assessments made by

the board of directors against all lands in the subdistrict benefited by the improvements financed by the bond proceeds, which special improvement assessments shall not exceed in the aggregate an amount equal to ninety percent of the amount of benefits determined to have accrued to said lands by reason of such improvements and unpaid at the time of issue of said bonds. Such bonds shall contain a recital to the effect that they are issued under and in accordance with the provisions of this article as special improvement bonds and are payable out of special improvement assessments to be levied against the property in said subdistrict and not otherwise.

(2) The special improvement bonds issued pursuant to subsection (1) of this section shall be signed "Water Users' Association No. ....., or Special Improvement District No. ....., of the Rio Grande Water Conservation District, by ....., President", and countersigned "....., Treasurer". Otherwise said bonds shall be in such denominations and become due at such dates, with interest at such rate, payable either annually or semiannually, but not exceeding the rate of ten percent per annum, and contain such other provisions as may be fixed by the board of directors, not inconsistent with the provisions of this article. Except as otherwise expressly modified in this article, the law relating to the form and issuance of special improvement bonds of conservancy districts under the laws of this state, particularly section 37-5-106, shall apply and govern officers of the district in the issuance and sale of said bonds; and other provisions of said law with respect to the levy of assessments for the payment of said bonds with interest, particularly section 37-5-110, shall likewise be applicable to the bonds of a subdistrict organized under this article. If the subdistrict has a board of managers, the board of managers shall annually determine and certify to the board of directors of the district the total amount of the special improvement assessments to be collected; and the board of directors of the district, if it deems the amount so certified to be correct, shall order and levy the total special improvement assessments and otherwise conform to the procedure set forth in section 37-5-110.

Source: L. 75: Entire section added, p. 1384, § 7, effective July 18. **L. 2007:** Entire section amended, p. 1279, § 15, effective May 25.

37-48-150. Manner of collection - tax sale - certificate of purchase - tax deed. (1) Lands sold for delinquent special improvement assessments, special assessments, service charges, or user fees under this article shall be struck off to the district, or bid in for the district, in like manner and effect, including issuance of a deed therefor, as provided by law with respect to lands struck off to, or bid in for, counties, cities, or towns, as the case may be; but, when a certificate of purchase has been issued to the district with respect to any lands, no certificate of purchase for subsequent special improvement assessments, special assessments, service charges, or user fees shall be issued with respect to the same lands, except to the district, until all special improvement assessments, special assessments, service charges, or user fees represented by certificates of purchase held by the district have been redeemed or paid.

(2) No holder of such certificate of purchase, other than the district, shall be entitled to a tax deed thereon, except upon payment of all special improvement assessments, special assessments, service charges, or user fees subsequent to such certificate of purchase that are due and unpaid or unredeemed, at the time of issuance of the tax deed; and the tax deed so issued to such holder shall be subject to future unpaid special improvement assessments, special assessments, service charges, or user fees. Any such holder of a certificate of purchase may, at any time after three years after issuance thereof, present the same to the county treasurer,

together with all subsequent certificates held by him or her, as evidence of subsequent payment of special improvement assessments, special assessments, service charges, or user fees, and request the county treasurer to issue one tax deed thereon; and one tax deed shall be issued accordingly in the same manner as other tax deeds.

(3) The district may, at any time after three years after issuance of any such certificate of purchase held by the district, present the same to the county treasurer, together with all subsequent certificates of purchase held by it, as evidence of unpaid subsequent special improvement assessments, special assessments, service charges, or user fees, and request the county treasurer to issue one tax deed thereon, and one deed shall be issued accordingly in the same manner as other tax deeds; but such tax deeds shall not prejudice the parity of any existing lien for general taxes. Upon the delivery of the tax deed, the conservation district shall have and enjoy all the rights of an owner in fee simple to the lands described therein; but no sale of such land shall be made by the district, except one subject to the lien of special improvement assessments, special assessments, service charges, or user fees due and unpaid subsequent to the issuance of the tax deed to the district as well as to future unpaid special improvement assessments, special assessments, service charges, or user fees, nor shall the district convey such property by deed with covenants of warranty, nor shall any sale of such property be made for less than the principal amount of the original special improvement assessments, special assessments, service charges, or user fees thereon remaining due and unpaid, unless such sale is approved by an order of the district court in which the organization proceedings of the district are filed.

(4) The district, by resolution of its board of directors, may sell, assign, and deliver any such certificates held by the district for such sum as the board of directors may determine and authorize; but no such sale or assignment shall be made that does not include all certificates held by the district with respect to the same land. Upon presentation and surrender of such certificates by the assignee thereof to the county treasurer, such officer shall accept the same in payment of the special improvement assessments, special assessments, service charges, or user fees represented thereby, unless such purchaser requests a tax deed thereon as provided in this section. No such assignment shall be made by the district for less than the principal sum represented by the certificate assigned, except upon order approving the assignment made by the district court wherein the organization proceedings of the district are pending.

Source: L. 75: Entire section added, p. 1385, § 7, effective July 18. **L. 2007:** Entire section amended, p. 1280, § 16, effective May 25.

37-48-151. Collection by civil action. In addition to all other remedies for collection of assessments, including special improvement assessments, special assessments, service charges, or user fees, provided by this article, and cumulative therewith, the district may, at any time after three years after the issuance of any certificate of purchase held by the district, bring civil action to foreclose the lien for special improvement assessments, special assessments, service charges, or user fees, represented by all certificates of purchase held by the district with respect to the same land and for other relief with respect to such land as provided by the Colorado rules of civil procedure then in effect for the foreclosure of liens on real property; but no statute of limitations shall be applicable to the rights of the district arising from any special improvement assessments, special assessments, service charges, or user fees, and no decree, or sale of lands thereunder,

shall be made except one subject to the lien of future unpaid installments of special improvement assessments, special assessments, service charges, or user fees. The county treasurer shall be made a party to any action of the district authorized by this section.

Source: L. 75: Entire section added, p. 1386, § 7, effective July 18. **L. 2007:** Entire section amended, p. 1281, § 17, effective May 25.

37-48-152. Special improvement assessments constitute perpetual lien. All special improvement assessments against appraised benefits and interest thereon and penalties for default of payment thereof, together with the cost of collecting the same, from the date of the filing of the construction fund special assessment record in the office of the treasurer of the county wherein the lands and property are situate shall constitute a perpetual lien in an amount not in excess of the benefits severally appraised upon the land and other property against which said special improvement assessments have been levied and such benefits appraised; and no sale of said property to enforce any general state, county, city, town, or school tax or other lien shall extinguish the perpetual lien of said special improvement assessment. At any time, any landowner may pay the full amount of said special improvement assessment, and thereafter the property of any such landowner shall be clear and free from said lien and shall not be subject to special improvement assessment for and on account of benefits appraised against any other land or default in the payment of special improvement assessments made against any other land.

Source: L. 75: Entire section added, p. 1386, § 7, effective July 18. **L. 2007:** Entire section amended, p. 1281, § 18, effective May 25.

37-48-153. Directors to remedy defects - special improvement assessments - special assessments. If any special improvement assessment, special assessment, service charge, or user fee made under the provisions of this article proves invalid, the board of directors shall, by subsequent or amended acts or proceedings, promptly and without delay remedy all defects or irregularities, as the case may require, by making and providing for the collection of new special improvement assessments, special assessments, service charges, or user fees, or otherwise.

Source: L. 75: Entire section added, p. 1387, § 7, effective July 18. **L. 207:** Entire section amended, p. 1282, § 19, effective May 25.

37-48-154. Records of assessments, service charges, or user fees as evidence. The record of special improvement assessments, special assessments, service charges, or user fees contained in the respective records of the district shall be prima facie evidence in all courts of all matters therein contained.

Source: L. 75: Entire section added, p. 1387, § 7, effective July 18. **L. 2007:** Entire section amended, p. 1282, § 20, effective May 25.

37-48-155. Defects in notice perfected. Whenever notice is provided for in this article, if the court finds that due notice was not given, jurisdiction shall not thereby be lost or the proceedings abated or held void, but the court shall continue the hearing until such time as

proper notice may be given and shall thereupon proceed as though proper notice had been given in the first instance. If any appraisal, special improvement assessment, special assessment, levy, service charge, or user fee or other proceeding relating to said district is held defective, then the board of directors may file a motion in the cause in which said district was organized to perfect any such defect, and the court shall set a time for hearing thereon. If the original notice as a whole is held to be sufficient but faulty only with reference to publication as to certain particular lands or as to service as to certain persons, publication of the defective notice may be ordered as to the particular lands, or service may be made on the persons not properly served, and said notice is thereby corrected without invalidating the original notice as to other lands or persons.

Source: L. 75: Entire section added, p. 1387, § 7, effective July 18. **L. 2007:** Entire section amended, p. 1282, § 21, effective May 25.

37-48-156. Contracts of subdistricts. (1) When the official plan so provides, it shall be lawful for any subdistrict to make contracts as follows:

(a) A water users' association, public entity, nonprofit corporation, not-for-profit corporation, carrier ditch company, mutual ditch or reservoir company, unincorporated ditch or reservoir company, or cooperative association may bind itself to levy an annual assessment for the use of water and to secure the assessment by liens on land and water rights or in such other manner as may be provided by law.

(b) Any person or corporation landowner may create a mortgage lien upon lands or give other security satisfactory to the board or any other contracting agency, and all such contracts shall provide for forfeiture of the use of water for nonpayment of assessments or installments in the same manner and procedure as provided by statute for forfeiture of stock in a mutual ditch or reservoir company.

Source: L. 75: Entire section added, p. 1387, § 7, effective July 18. **L. 2007:** Entire section amended, p. 1282, § 22, effective May 25.

37-48-157. Issuance of general obligation bonds - revenue bonds. (1) (a) In the name of the subdistrict and not otherwise, when authorized by the plan of organization and decree of court organizing said subdistrict to do so, the district may issue general obligations or bonds which shall constitute a lien against the real property in said subdistrict. Said obligations shall bear interest at a rate such that the net effective interest rate of the issue does not exceed the maximum net effective interest rate authorized. Interest shall be payable semiannually, and said obligations may be made payable in series becoming due not less than five years and not more than fifty years after the date of issue. The bonds may be sold in one or more series at par, or below or above par, at public or private sale, in such manner and for such price as the district, in its discretion, shall determine. As an incidental expense of the issuance, the district, in its discretion, may employ financial and legal consultants in regard to the financing of the official plan. The district may exchange all or a part of its bonds for all or an equivalent part of property or services included in the official plan for which the bonds are issued, the exchange to be preceded by determination of the fair value of the property or services exchanged for the bonds. Such determination shall be by resolution of the board of directors and shall be conclusive.

(b) Such bonds are to be paid from assessments levied from time to time, as the bonds and interest thereon become due, against the taxable property in said subdistrict and not otherwise. Such levies shall not be limited as to rate or amount; except that they shall not exceed a rate reasonably required to yield funds needed to pay said bonds and interest as they mature, plus any other amounts required for debt service, less the amount of any other funds available to the subdistrict for payment of said bonds and debt service. The board of directors of said district shall certify, to the boards of county commissioners of the several counties in which said subdistrict or any part thereof is located, the amount of the levy necessary to be made upon the taxable property in the subdistrict to yield the required funds becoming due on all outstanding bonds at the same time that certifications of the district's mill levy assessment for general district purposes are made, and the procedure for the assessment and collection of ad valorem taxes of the county is, except as may be otherwise provided in this article, made applicable and is to be followed in the levy of assessments for payment of taxes and collection of principal and debt service on such general obligations or bonds. If the subdistrict has a board of managers, said board of managers shall certify to the district board the amount of money needed to be raised by such assessment, and the district board shall, if it deems the amount to be correct, thereupon determine the levy necessary to raise such funds and certify the same to the boards of county commissioners as provided in this section.

(2) (a) The subdistrict, in its own name, may issue revenue bonds to finance, in whole or in part, the construction of works, reservoirs, or other improvements provided for in the official plan for the beneficial use of water for the purposes for which it has been or may be appropriated, whether or not the interest on such bonds may be subject to taxation. Such revenue bonds shall be issued in such denominations and with such maximum net effective interest rate as may be fixed by the board of directors of the district and shall bear interest such that the net effective interest rate of the bonds does not exceed the maximum net effective interest rate authorized. The bonds may be sold in one or more series at par, or below or above par, at public or private sale, in such manner and for such price as the district, in its discretion, shall determine. As an incidental expense of the issuance, the subdistrict, in its discretion, may employ financial and legal consultants in regard to the financing of the official plan. The subdistrict may exchange all or a part of its bonds for all or an equivalent part of property or services included in the official plan for which the bonds are issued, the exchange to be preceded by determination of the fair value of the property or services exchanged for the bonds. Such determination shall be by resolution of the board of directors and shall be conclusive.

(b) The board of directors shall pledge only rental proceeds, service charges, user fees, and other income, or any combination thereof, from such works, plans of water management, or other improvements of the subdistrict, and neither the district nor the subdistrict shall be otherwise obligated for the payment thereof. At the time said revenue bonds are issued, the board of directors of the district shall make and enter in the minutes of the proceeding a resolution that sets out the due dates of such revenue bonds, the rates of interest thereon, the general provisions of the bonds, and a recital that the same are payable only out of the rental proceeds, service charges, and other income, or any combination thereof that are pledged for payment of the revenue bonds. In addition, the board of directors shall require the payment of rental charges, service charges, or other charges by the political subdivisions, persons, or land owners that are to use or derive benefits from the water or other services financed by the revenue bonds. Such charges shall be sufficient to pay operation and maintenance expenses of any works or

improvements or any water management plan financed by the revenue bonds, to meet said revenue bond payments, and to accumulate and maintain reserve and replacement accounts pertaining thereto as set forth in such resolution. Such resolution shall be irrepealable during the time that any of the revenue bonds are outstanding and unpaid. The revenue bonds shall be signed "Water Users' Association No. .... in the Rio Grande Water Conservation District, By ....., President. Attest ....., Secretary" or "Special Improvement District No. .... in the Rio Grande Water Conservation District, By ....., President. Attest ....., Secretary", and they shall be countersigned by the treasurer.

Source: L. 75: Entire section added, p. 1387, § 7, effective July 18. **L. 77:** Entire section amended, p. 1674, § 15, effective June 9. **L. 2007:** (2) amended, p. 1283, § 23, effective May 25.

37-48-158. Board to certify tax assessments. To maintain, operate, and preserve ditches, canals, reservoirs, or other improvements made pursuant to this article and to strengthen, repair, and restore the same, when needed, for operation of any plan of water management, and for the purpose of defraying any incidental expenses of the subdistrict, the board of directors may, at the time of certification of the general district mill levy to the boards of county commissioners of the counties in which the district is located, certify also, to the boards of county commissioners of the counties in which said subdistrict or any part thereof is located, an additional assessment upon the taxable property within the subdistrict, not to exceed five mills for every dollar of valuation for assessment within said subdistrict, for the purpose of raising funds to be used for the maintenance and operation of the subdistrict's official plan. If there is a board of managers for the subdistrict, the amount of money needed to be raised by such assessment shall be certified by the board of managers to the district board of directors in time for inclusion of the amount in the district budget for the succeeding calendar year. Assessments so certified shall be levied by the boards of county commissioners of the counties in which said subdistrict is situate on the property of said subdistrict in their respective counties, to be collected by the county treasurers of the several counties and delivered to the treasurer of the district in like manner and with like effect as is provided for the collection and return of other assessments under this article. The whole assessment shall be due and payable as and when taxes for county purposes levied in the same year are due and payable. The said assessments shall be in addition to any special improvement assessment or special assessment that has been levied against benefits appraised for and on account of construction.

Source: L. 75: Entire section added, p. 1388, § 7, effective July 18. **L. 2007:** Entire section amended, p. 1284, § 24, effective May 25.

37-48-159. Sinking fund. Said district may provide for a sinking fund for the ultimate payment of any of the obligations of any subdistrict. Such sinking fund may be invested as provided in section 37-48-111.

Source: L. 75: Entire section added, p. 1388, § 7, effective July 18.

37-48-160. Subdistrict budget. A subdistrict existing pursuant to this article shall be an agency of the district for purposes of compliance with the provisions of the "Local Government

Budget Law of Colorado", part 1 of article 1 of title 29, C.R.S.; and the board of managers thereof, if any, shall prepare and submit to the district the budget estimates of its expenditure requirements and its estimated revenues for the ensuing budget year, as provided in section 29-1-105, C.R.S.

Source: L. 75: Entire section added, p. 1388, § 7, effective July 18. **L. 90:** Entire section amended, p. 1436, § 7, effective January 1, 1991.

37-48-161. Revenue bonds. (Repealed)

Source: L. 75: Entire section added, p. 1389, § 7, effective July 18. **L. 77:** Entire section repealed, p. 1690, § 17, effective June 9.

37-48-162. Bonds to be special obligations. (Repealed)

Source: L. 75: Entire section added, p. 1389, § 7, effective July 18. **L. 77:** Entire section repealed, p. 1690, § 17, effective June 9.

37-48-163. Form and terms of bonds. (Repealed)

Source: L. 75: Entire section added, p. 1389, § 7, effective July 18. **L. 77:** Entire section repealed, p. 1690, § 17, effective June 9.

37-48-164. Bond security. (Repealed)

Source: L. 75: Entire section added, p. 1390, § 7, effective July 18. **L. 77:** Entire section repealed, p. 1690, § 17, effective June 9.

37-48-165. Terms of proceedings and instruments. (Repealed)

Source: L. 75: Entire section added, p. 1390, § 7, effective July 18. **L. 77:** Entire section repealed, p. 1690, § 17, effective June 9.

37-48-166. Investments and bank deposits. (Repealed)

Source: L. 75: Entire section added, p. 1390, § 7, effective July 18. **L. 77:** Entire section repealed, p. 1690, § 17, effective June 9.

37-48-167. Limited obligation. (Repealed)

Source: L. 75: Entire section added, p. 1391, § 7, effective July 18. **L. 77:** Entire section repealed, p. 1690, § 17, effective June 9.

37-48-168. Rights upon default. (Repealed)

Source: L. 75: Entire section added, p. 1391, § 7, effective July 18. **L. 77:** Entire section repealed, p. 1690, § 17, effective June 9.

37-48-169. Determination of revenue. (Repealed)

Source: L. 75: Entire section added, p. 1391, § 7, effective July 18. **L. 77:** Entire section repealed, p. 1690, § 17, effective June 9.

37-48-170. Financing of project. (Repealed)

Source: L. 75: Entire section added, p. 1391, § 7, effective July 18. **L. 77:** Entire section repealed, p. 1690, § 17, effective June 9.

37-48-171. Refunding. (Repealed)

Source: L. 75: Entire section added, p. 1391, § 7, effective July 18. **L. 77:** Entire section repealed, p. 1690, § 17, effective June 9.

37-48-172. Application of proceeds. (Repealed)

Source: L. 75: Entire section added, p. 1392, § 7, effective July 18. **L. 77:** Entire section repealed, p. 1690, § 17, effective June 9.

37-48-173. Limitation of actions. (Repealed)

Source: L. 75: Entire section added, p. 1392, § 7, effective July 18. **L. 77:** Entire section repealed, p. 1690, § 17, effective June 9.

37-48-174. Costs - board of managers to concur. (Repealed)

Source: L. 75: Entire section added, p. 1392, § 7, effective July 18. **L. 77:** Entire section repealed, p. 1690, § 17, effective June 9.

37-48-175. Election to authorize debt. Except for the issuance of refunding bonds or other funding or refunding of obligations which does not increase the net indebtedness of the district or any subdistrict so proceeding, no indebtedness shall be incurred by the issuance of general obligation bonds of any subdistrict or by any contract by which the district or a subdistrict agrees to repay as general obligations or other obligations constituting a "general obligation debt by loan in any form", as such term is used in section 6 of article XI of the state constitution, of the district or subdistrict, respectively, to the federal government, any political subdivision, or any person over a term not limited to the then current fiscal year any project costs advanced thereby under any contract for the acquisition or improvement of the facilities or any interest therein, or for any project, advanced by the issuance of securities of such a political subdivision or person to defray any cost of the project or of the facilities or an interest therein thereby acquired and becoming a part of the facilities of the district or subdistrict, or otherwise

advanced, unless a proposal of issuing the subdistrict's general obligation bonds or of incurring an indebtedness by the district or subdistrict by making such a contract is submitted to the electors of the district or subdistrict, as the case may be, and is approved by a majority of such electors voting on the proposal at an election held for that purpose in accordance with this article and with all laws amendatory thereof and supplemental thereto.

Source: L. 77: Entire section added, p. 1676, § 16, effective June 9.

37-48-176. Definition of elector. (1) An "elector", "elector of the district", or "elector of the subdistrict", or any term of similar import, means a person:

(a) Who, at the time of the election, is qualified to vote in general elections in this state; and

(b) Who either:

(I) Is a resident of the district or subdistrict proposing to incur an indebtedness at the time of the election; or

(II) Owns real property within the district or subdistrict that is subject to special improvement assessments, special assessments, or service charges of the subdistrict.

(2) Registration pursuant to the laws concerning general elections or any other laws shall not be required.

Source: L. 77: Entire section added, p. 1676, § 16, effective June 9. **L. 2007:** (1) amended, p. 1284, § 25, effective May 25.

37-48-177. Elections. Whenever in this article an election of the electors of the district or a subdistrict therein is permitted or required, the election may be held separately at a special election or may be held concurrently with any primary or general election held under the laws of this state; but no election shall be held at the same time as any regular election of any city, town, or school district if any part of the area thereof is located within the boundaries of the district or subdistrict, as the case may be.

Source: L. 77: Entire section added, p. 1677, § 16, effective June 9.

37-48-178. Election resolution. (1) The board of directors shall call any election by resolution adopted at least thirty days prior to the election.

(2) Such resolution shall recite the objects and purposes of the election, the date upon which such election shall be held, and the form of the ballot.

(3) In the case of any election not to be held concurrently with a primary or general election, the board of directors shall provide in the election resolution or by supplemental resolution for the appointment of sufficient judges and clerks of the election, who shall be electors of the district or the subdistrict holding the debt election, and in such event shall set their compensation. The election resolution or a supplemental resolution shall also then designate the precincts and polling places, but a supplemental resolution may modify such a description of precincts and polling places without repeating such description in full. The description of precincts may be made by reference to any order of the governing body of any county, municipality, or other political subdivision in which the district or subdistrict or any part thereof

is situated, or by reference to any previous order or other instrument of such a governing body, or by detailed description of such precincts, or by other sufficient description.

(4) Precincts established by any such governing body may be consolidated in the election resolution by the board of directors in a sufficient number which it deems expedient for the convenience of the electors for any election not to be held concurrently with a primary or general election.

(5) If the election shall be held concurrently with a primary or general election held under the laws of this state, the judges of election for such primary or general election shall be designated as the judges of the election for the election held pursuant to this article, and they shall receive such additional compensation, if any, as the board of directors shall set by the election resolution.

Source: L. 77: Entire section added, p. 1677, § 16, effective June 9.

37-48-179. Conduct of election. (1) Except as otherwise provided in this article, an election held pursuant to this article shall be opened and conducted in the manner then provided by the laws of this state for the conduct of general elections.

(2) If an election is held concurrently with a primary or general election, the county clerk and recorder of each county in which the district or subdistrict holding the debt election is located shall perform for the district or subdistrict election the acts provided by law to be performed by such officials. If an election is not held concurrently with a primary or general election, such acts shall be performed by the secretary of the district with the assistance of such county clerk and recorders. The board of directors and such county clerk and recorders are authorized to agree among themselves upon the division of such acts and the determination of persons to perform them.

(3) An elector of the district may vote in any election by absentee voter's ballot under such terms and conditions, and in substantially the same manner insofar as is practicable, as prescribed in article 13.5 of title 1, C.R.S., except as specifically modified in this article.

(4) All acts required or permitted therein to be performed by a county clerk and recorder shall be performed by each one respectively in the event of a primary or general election and by the secretary or assistant secretary of the board of directors in the event of any other election, unless the services of the county clerk and recorder in each such county are contracted for, but no oath shall be administered by the secretary or assistant secretary unless he is also an officer authorized to administer oaths.

(5) Application may be made for an absentee voter's ballot not more than twenty days and not less than four days before the election.

(6) No consideration shall be given nor distinction made with reference to any person's affiliation or the lack thereof.

(7) The return envelope for the absentee voter's ballot shall have printed on its face an affidavit substantially in the following form:

"State of Colorado, County of ....., I, ..., being first duly sworn according to law, depose and say that my residence and post-office address is .....; that I am a person qualified to vote in general elections in the State of Colorado and am a resident of the Rio Grande Water Conservation District or Water Users' Association No. .... or Special Improvement District No.

.... in the Rio Grande Water Conservation District, as may be appropriate, at the time of this election.

.....

Signature of voter Subscribed and sworn to before me this ... day of....., 20....

.....

(Signature of notary public,
county clerk and recorder,
or other officer authorized
to administer oaths) (SEAL)

.....

Title of office"

(8) In any such election at which voting machines are used, the board of directors shall provide paper ballots for absentee voters containing the same question as is to be submitted to the electors by the voting machines, subject to the provisions of subsection (9) of this section.

(9) The district or subdistrict may provide for mail voters to cast their mail voters' ballots on voting machines expressly provided for that purpose, if each mail voter indicates by affidavit that he or she is qualified to vote at the election and will be a mail voter, pursuant to article 13.5 of title 1, C.R.S., and all laws supplemental thereto.

Source: L. 77: Entire section added, p. 1677, § 16, effective June 9. **L. 80:** (3) and (9) amended, p. 417, § 36, effective January 1, 1981. **L. 92:** (3) and (9) amended, p. 924, § 197, effective January 1, 1993. **L. 96:** (9) amended, p. 1775, § 83, effective July 1. **L. 99:** (6) amended, p. 165, § 27, effective August 4. **L. 2008:** (9) amended, p. 1913, § 126, effective August 5. **L. 2009:** (9) amended, (HB 09-1216), ch. 165, p. 731, § 11, effective August 5. **L. 2013:** (3) amended, (HB 13-1303), ch. 185, p. 752, § 136, effective May 10. **L. 2014:** (3), (5), IP(7), (8), and (9) amended, (HB 14-1164), ch. 2, p. 76, § 50, effective February 18.

Cross references: (1) For the "Uniform Election Code of 1992", see articles 1 to 13 of title 1.

(2) In 2013, subsection (3) was amended by the "Voter Access and Modernized Elections Act". For the short title and the legislative declaration, see sections 1 and 2 of chapter 185, Session Laws of Colorado 2013.

(3) For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

37-48-180. Notice of election. Notice of such election shall be given by publication by three consecutive weekly insertions in at least one newspaper of general circulation in the district or subdistrict holding the election, as determined by the board of directors. No other notice of an election held under this article need be given, unless otherwise provided by the board. A supplemental notice may be given by publication at such times and places as the board may determine to be necessary or convenient for correcting or otherwise modifying the original notice of election or for any other purpose.

Source: L. 77: Entire section added, p. 1679, § 16, effective June 9.

37-48-181. Polling places. (1) All polling places designated by resolution for an election shall be within the territorial limits of the district or subdistrict holding the election; but, if an election of the district or subdistrict is held concurrently with a primary or general election, the polling place for each precinct located wholly or partially within the district or subdistrict shall be the polling place for such precinct for the district or subdistrict election, regardless of whether or not such polling place is within the district or subdistrict.

(2) If the election of the district or subdistrict is not held concurrently with a primary or general election held under the laws of this state, there shall be one polling place in each of the election precincts which are used in the primary and general elections or in each of the consolidated precincts fixed by the board of directors.

Source: L. 77: Entire section added, p. 1679, § 16, effective June 9.

37-48-182. Election supplies. (1) The secretary of the district shall provide at each polling place ballots or ballot labels, or both, ballot boxes or voting machines, or both, instructions, electors' affidavits, and other materials and supplies required for an election by any law; and the secretary may provide ballots and marking devices suitable for voting and for the votes on the ballots to be counted on electronic vote-tabulating devices.

(2) Election officials may require the execution of an affidavit by any person desiring to vote at any election of the district or subdistrict to evidence his qualifications to vote, which affidavit shall be prima facie evidence of the facts stated therein.

Source: L. 77: Entire section added, p. 1679, § 16, effective June 9.

37-48-183. Election returns. (1) In the case of any election held under this article which is not held concurrently with a primary or general election, the election officials shall make their returns directly to the secretary of the district for the board of directors.

(2) In the case of any election held under this article which is consolidated with any primary or general election, the returns thereof shall be made and canvassed at the time and in the manner provided by law for the canvass of the returns of such primary or general election. Such canvassing body shall certify promptly and shall transmit to the secretary of the district for the board of directors a statement of the result of the vote upon any proposition submitted under this article.

(3) Upon receipt by the board of directors of election returns from election officials or upon receipt of such certificate from each such canvassing body, the board shall tabulate and declare the results of the election at any regular or special meeting held not earlier than five days following the date of the election.

(4) The board of directors shall cause the results of the election to be published at least one time in at least one newspaper having general circulation in the district.

Source: L. 77: Entire section added, p. 1679, § 16, effective June 9.

37-48-184. Debt election contests. (1) Any election declared to have carried on an authorization to issue any bonds, by approval of the bond question, or otherwise to incur an indebtedness by approval of the question thereon may be contested by any elector of the district

or subdistrict holding the debt election by suit against it as contestee and defendant in any district court of any county in which the district or subdistrict holding the election is wholly or partially situate:

(a) When illegal votes have been received or legal votes rejected at the polls in sufficient numbers to change the results;

(b) For any error or mistake on the part of any of the judges of election, any county clerk and recorder, the secretary of the district, or their respective officers and employees in counting or declaring the result of the election, if the error or mistake is sufficient to change the result;

(c) For malconduct, fraud, or corruption on the part of any of the judges of election, any county clerk and recorder, the secretary of the district, or their respective officers and employees, if the malconduct, fraud, or corruption is sufficient to change the result;

(d) When the bonds or other indebtedness is authorized to be issued for an invalid purpose; or

(e) For any other cause which shows that the bonds or other indebtedness is not validly authorized at the election.

(2) The style and form of process, the manner of service of process and papers, the fees of officers, and judgment for costs and execution thereon shall be according to the rules and practices of the court.

(3) Before the court shall take jurisdiction of the contest, the contestor shall file with the clerk of the court a bond, with sureties, to be approved by the judge thereof, running to the district or subdistrict holding the debt election as contestee and conditioned to pay all costs in case of failure of the contestor to maintain his contest.

(4) When the validity of any bond or other indebtedness election is contested, the plaintiff or plaintiffs, within thirty days after the returns of the election are canvassed and the results thereof declared and published, or last published, as the case may be, shall file with the clerk of the court a verified written complaint setting forth specifically:

(a) The name of the party contesting the election and a statement that the plaintiff or each plaintiff is an elector of the district or subdistrict holding the election;

(b) The proposition or propositions voted on at the election which are contested, the name of the district or the subdistrict as defendant and contestee, and the date of the election; and

(c) The particular grounds of such contest.

(5) No such contest shall be maintained and no election shall be set aside or held invalid unless such a complaint is filed within the period prescribed in subsection (4) of this section.

(6) Except as otherwise provided in this article, the election laws pertaining to contested election cases of municipal offices as provided in part 13 of article 10 of title 31, C.R.S., of the "Colorado Municipal Election Code of 1965", as from time to time amended, shall be applicable to bond or other indebtedness elections; but any such contest shall be regarded as one contesting the outcome of the vote on the proposition authorizing the issuance of securities or otherwise incurring the indebtedness, rather than election to office, and the district or subdistrict as contestee, rather than a person declared to have been elected to office, shall be regarded as the defendant.

(7) If the board of directors declares the proposition authorizing the issuance of bonds or otherwise incurring the indebtedness to have carried and no contest is duly filed or if such a

contest is filed after it is favorably terminated, the board may issue the bonds or otherwise incur the indebtedness authorized at the election at one time or from time to time.

Source: L. 77: Entire section added, p. 1680, § 16, effective June 9.

37-48-185. Covenants and other provisions in bonds. (1) Any resolution providing for the issuance of any bonds under this article payable from pledged revenues and any indenture or other instrument or proceedings pertaining thereto may at the discretion of the board of directors contain covenants or other provisions, notwithstanding that such covenants and provisions may limit the exercise of powers conferred by this article, in order to secure the payment of such bonds, in agreement with the holders of such bonds, including, without limitation, covenants or other provisions as to any one or more of the following:

(a) The pledged revenues and, in the case of general obligations, the taxes to be fixed, charged, or levied and the collection, use, and disposition thereof, including, without limitation, the foreclosure of liens for delinquencies, the discontinuance of services, facilities, or use of any properties or facilities, prohibition against free service, the collection of penalties and collection costs, and the use and disposition of any moneys of the district or subdistrict issuing bonds, derived or to be derived, from any source designated;

(b) The acquisition, improvement, or equipment of all or any part of properties pertaining to any project or any facilities;

(c) The creation and maintenance of reserves or sinking funds to secure the payment of the principal of and the interest on any bonds or of the operation and maintenance expenses of any facilities, or part thereof, and the source, custody, security, regulation, use, and disposition of any such reserves or funds, including, without limitation, the powers and duties of any trustee with regard thereto;

(d) Limitations on the powers of the district or subdistrict to acquire or operate, or permit the acquisition or operation of, any structures, facilities, or properties which may compete or tend to compete with any facilities;

(e) The vesting in a corporate or other trustee or trustees of such property, rights, powers, and duties in trust as the board of directors may determine, which may include any or all of the rights, powers, and duties of the trustee appointed by the holders of bonds, and limiting or abrogating the rights of such holders to appoint a trustee, or limiting the rights, duties, and powers of such trustee;

(f) Events of default, rights, and liabilities arising therefrom and the rights, liabilities, powers, and duties arising upon the breach by the district or subdistrict of any covenants, conditions, or obligations;

(g) The terms and conditions upon which the holders of the bonds or of a specified portion, percentage, or amount thereof, or any trustee therefor, shall be entitled to the appointment of a receiver, which receiver may enter and take possession of any facilities or service, operate and maintain the same, prescribe fees, rates, and other charges, and collect, receive, and apply all revenues thereafter arising therefrom in the same manner as the district or subdistrict itself might do;

(h) A procedure by which the terms of any resolution authorizing bonds or any other contract with any holders of district or subdistrict bonds, including, without limitation, an indenture of trust or similar instrument, may be amended or abrogated, and as to the proportion,

percentage, or amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(i) The terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived; and

(j) All such acts and things as may be necessary or convenient or desirable in order to secure the bonds or, in the discretion of the board of directors, tend to make the bonds more marketable, notwithstanding that such covenant, act, or thing may not be enumerated in this article, it being the intention of this article to give to the board of directors power to do in the name and on behalf of the district or subdistrict all things in the issuance of district or subdistrict bonds and for their security, except as expressly limited in this article.

Source: L. 77: Entire section added, p. 1681, § 16, effective June 9.

37-48-186. Liens on pledged revenues. (1) Revenues pledged for the payment of any bonds, as received by or otherwise credited to the district or subdistrict issuing bonds under this article, shall immediately be subject to the lien of each such pledge without any physical delivery thereof, any filing, or any further act.

(2) The lien of each such pledge and the obligation to perform the contractual provisions made in the authorizing resolution or other instrument pertaining thereto shall have priority over any or all other obligations or liabilities of the district or subdistrict, except as may be otherwise provided in this article or in the resolution or other instrument, subject to any prior pledges and liens theretofore created.

(3) The lien of each such pledge shall be valid and binding as against all persons having claims of any kind in tort, in contract, or otherwise against the district or subdistrict, irrespective of whether or not such persons have notice thereof.

Source: L. 77: Entire section added, p. 1682, § 16, effective June 9.

37-48-187. Rights - powers of holders of bonds - trustees. (1) Subject to any contractual limitations binding upon the holders of any issue or series of bonds of the district or subdistrict issuing bonds under this article, or the trustee therefor, including, without limitation, the restriction of the exercise of any remedy to a specified proportion, percentage, or number of such holders, and subject to any prior or superior rights of others, any holder of bonds, or the trustee therefor, shall have the right and power, for the equal benefit and protection of all holders of bonds similarly situated:

(a) By mandamus or other suit, action, or proceeding at law or in equity, to enforce his rights against the district, subdistrict, or board of directors or board of managers, or any combination thereof, or any of the officers, agents, and employees of the district or subdistrict to require and compel such district, subdistrict, or board or any of such officers, agents, or employees to perform and carry out their respective duties, obligations, or other commitments under this article and their respective covenants and agreements with the holder of any bond;

(b) By action or suit in equity, to require the district or subdistrict to account as if it were the trustee of an express trust;

(c) By action or suit in equity, to have a receiver appointed, which receiver may enter and take possession of any facilities and any pledged revenues for the payment of the bonds, prescribe sufficient fees, rates, and other charges derived from the facilities, and collect, receive, and apply all pledged revenues or other moneys pledged for the payment of the bonds in the same manner as the district or subdistrict itself might do in accordance with the obligations of the district or subdistrict; and

(d) By action or suit in equity, to enjoin any acts or things which may be unlawful or in violation of the rights of the holder of any bonds and to bring suit thereupon.

Source: L. 77: Entire section added, p. 1682, § 16, effective June 9.

37-48-188. Investments and securities. (1) The board of directors of the district or subdistrict, respectively, issuing bonds under this article, subject to any contractual limitations from time to time imposed upon the district or subdistrict by any resolution authorizing the issuance of the outstanding bonds of the district or subdistrict or by any trust indenture or other proceedings pertaining thereto, may cause to be invested and reinvested any proceeds of taxes, any pledged revenues, and any proceeds of bonds issued under this article in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S., and may cause such proceeds of taxes, revenues, district or subdistrict bonds, and securities to be deposited in any trust bank or trust banks within or without or both within and without this state and secured in such manner and subject to such terms and conditions as the board of directors may determine, with or without the payment of any interest on such deposit, including, without limitation, time deposits evidenced by certificates of deposit.

(2) Any such securities and certificates of deposit thus held may, from time to time, be sold, and the proceeds may be so reinvested or redeposited as provided in this section.

(3) Sales and redemptions of any such securities and certificates of deposit thus held shall, from time to time, be made in season so that the proceeds may be applied to the purposes for which the money with which such securities and certificates of deposit were originally acquired was placed in the district or subdistrict treasury.

(4) Any gain from any such investments or reinvestments may be credited to any fund or account pledged for the payment of any district or subdistrict bonds issued under this article, including any reserve therefor, or any other fund or account pertaining to a project or any facilities, or the district's or subdistrict's general fund, subject to any contractual limitations in any proceedings pertaining to outstanding district or subdistrict bonds.

(5) It is lawful for any commercial bank incorporated under the laws of this state which may act as depository of the proceeds of any bonds issued under this article, any securities owned by the district or subdistrict, any proceeds of taxes, any pledged revenues, and any moneys otherwise pertaining to a project or any facilities, or any combination thereof, to furnish such indemnifying bonds and to pledge such securities as may be required by the board of directors.

Source: L. 77: Entire section added, p. 1683, § 16, effective June 9. **L. 89:** (1) to (3) and (5) amended, p. 1126, § 55, effective July 1.

37-48-189. Rents and charges. (1) (a) The district, any subdistrict, and any political subdivision of the state of Colorado contracting with the district or subdistrict and fixing and collecting annual rentals, service charges, user fees, and other charges, or any combination thereof, are, in supplementation of the powers provided in this article, authorized to fix and collect rents, rates, fees, tolls, and other charges, in this article sometimes referred to as "service charges", for direct or indirect connection with, or the use or services of, a water system, electrical system, joint system, or other facilities, or a plan of water management, including, without limitation, connection charges, minimum charges, water use fees, and charges for the availability of service.

(b) Such service charges may be charged to and collected in advance or otherwise by a district or subdistrict from any political subdivision, person, or owner or occupant of real property that is directly or indirectly connected with, or served or benefited by, any such facilities or plan of water management, and by any political subdivision from any person contracting for such connection or use or services or from the owner or occupant, or any combination thereof, of any real property that directly or indirectly is or has been or will be connected with or served or benefited by any such facilities or plan of water management, and the political subdivision or owner or occupant of any such real property shall be liable for and shall pay such service charges to the district, subdistrict, or political subdivision fixing the service charges at the time when and place where such service charges are due and payable.

(c) Such service charges of the district or subdistrict may accrue from any date on which the board of directors reasonably estimates, in any resolution authorizing the issuance of any securities or other instrument pertaining thereto or in any contract with any political subdivision or person, or in any plan of water management, that any facilities or project being acquired or improved and equipped or services or benefit of such plan will be available for service or use.

(2) (a) Such rents, rates, fees, tolls, and other charges, being in the nature of use or service charges, shall, as nearly as the district, subdistrict, or political subdivision fixing the service charges shall deem practicable and equitable, be reasonable, and such service charges shall be uniform throughout the district, subdistrict, or political subdivision for the same type, class, and amount of use or service of the facilities or plan of water management, and may be based or computed either on:

(I) Measurements of water, flow devices, or electric meters, duly provided and maintained by the district, subdistrict, or political subdivision, or any user as approved by the district, subdistrict, or political subdivision fixing such charges;

(II) The diversion or consumption of water or consumption of electricity in or on or in connection with the political subdivision, or by any person or owner or occupant of real property, making due allowance for commercial use of water and infiltration of groundwater and discharge of surface runoff to the facilities or property;

(III) The number and kind of water or electric outlets on or in connection with the political subdivision, person, or real property;

(IV) The water or electric fixtures or facilities in or on or in connection with the political subdivision, person, or real property;

(V) The number of persons residing or working in or on or otherwise connected or identified with the political subdivision, person, or real property;

(VI) The capacity of the improvements in or on or connected with the political subdivision, person, or real property;

(VII) The availability of service or readiness to serve by the facilities;

(VIII) The amount of surface or groundwater usage by or in connection with or for the benefit of the political subdivision, person, or owner or occupant of real property;

(IX) Any other factors determining the type, class, and amount of use or service of the facilities; or

(X) Any combination of any such factors.

(b) Reasonable penalties may be fixed for any delinquencies, including, without limitation, interest on delinquent service charges from any date due at a rate of not exceeding one percent per month or fraction thereof, reasonable attorney fees, and other costs of collection.

(3) The district, subdistrict, or political subdivision fixing the service charges shall prescribe and, from time to time when necessary, revise a schedule of such service charges, which shall comply with the terms of any contract of the district, subdistrict, or political subdivision fixing the service charges.

(4) The general assembly has determined and declared that the obligations, arising from time to time, of the district, any subdistrict, any political subdivision, or any person to pay service charges fixed in connection with any facilities shall constitute general obligations of the district, subdistrict, political subdivision, or person charged with their payment; but, as such obligations accrue for current services and benefits from, and the use of, any such facilities or plan, the obligations shall not constitute an indebtedness of the district, any subdistrict, or any political subdivision within the meaning of any constitutional, charter, or statutory limitation or any other provision restricting the incurrence of any debt.

(5) No board, agency, bureau, commission, or official, other than the board of directors or the board of managers of the district or subdistrict, respectively, or the governing body of the political subdivision fixing the service charges, has authority to fix, prescribe, levy, modify, supervise, or regulate the making of service charges or to prescribe, supervise, or regulate the performance of services pertaining to the facilities thereof, as authorized by this article; but this subsection (5) shall not be construed to be a limitation on the contracting powers of the board of directors or the board of managers of the district, respectively, or any subdistrict or the governing body of any such political subdivision.

(6) Any service charges payable by the owners or occupants of real property and any penalties for delinquency may be certified to the boards of county commissioners of the respective counties in which the real property is located and shall then be included by them in their next annual levy for state and county purposes. Such amount so certified shall be collected in the same manner as provided in section 37-48-110 (2). The proceeds of such levy shall be paid to the district as provided in section 37-48-107 (3).

Source: L. 77: Entire section added, p. 1684, § 16, effective June 9. **L. 2007:** Entire section amended, p. 1284, § 26, effective May 25.

37-48-190. Miscellaneous powers. (1) The district and any subdistrict thereof shall also have the following powers:

(a) To pay or otherwise defray and to contract to pay or defray, for any term not exceeding seventy-five years, without an election, except as otherwise provided in this article, the principal of, any prior redemption premiums due in connection with, any interest on, and any other charges pertaining to any securities or other obligations of the federal government, any

subdistrict or the district, respectively, any political subdivision, or any person which were incurred in connection with any property thereof subsequently acquired by the district or any subdistrict and relating to either's facilities;

(b) To establish, operate, and maintain facilities within the district or any subdistrict or elsewhere, across or along any public street, highway, bridge, or viaduct or any other public right-of-way or in, upon, under, or over any vacant public lands, which public lands now are, or may become, the property of a political subdivision of this state, without first obtaining a franchise from the political subdivision having jurisdiction over the same; but the district or subdistrict shall cooperate with any political subdivision having such jurisdiction, shall promptly restore any such public street, highway, bridge, or viaduct or any such other public right-of-way to its former state of usefulness as nearly as may be and shall not use the same in such manner as permanently to impair completely or materially the usefulness thereof;

(c) To adopt, amend, repeal, enforce, and otherwise administer such reasonable resolutions, rules, regulations, and orders as the district or subdistrict shall deem necessary or convenient for the operation, maintenance, management, government, and use of the facilities or any plan of water management of the district or subdistrict, as the case may be, and any other facilities under its control, whether situated within or without or both within and without the territorial limits of the district or subdistrict; and

(d) (I) To adopt, amend, repeal, enforce, and otherwise administer under the police power such reasonable resolutions, rules, regulations, and orders pertaining to water or electric services performed by any person through the district's or subdistrict's facilities, plan of water management, or pertaining to such facilities or plans of the district or subdistrict, any political subdivision, or any person, or any combination thereof, reasonably affecting the activities of the district or subdistrict, directly or indirectly, as the board of directors may from time to time deem necessary or convenient.

(II) No such resolution, rule, regulation, or order shall be adopted or amended except by action of the board of directors on the behalf and in the name of the district or subdistrict, respectively, after a public hearing thereon is held by the board of directors, in connection with which any political subdivision owning or authorizing any facilities comparable to facilities of the district or subdistrict, as the case may be, whether therein or thereout, or both therein and thereout, and other persons of interest have an opportunity to be heard, after mailed notice of the hearing is given at least thirty days prior to the hearing by the secretary to each such political subdivision wholly or partly within the district or subdistrict proceeding under this article, and after notice of such hearing is given by publication at least once a week for three consecutive weeks in at least one newspaper of general circulation in the district or such subdistrict by the secretary to persons of interest, both known and unknown, the first publication to be made at least thirty days prior to the hearing.

Source: L. 77: Entire section added, p. 1685, § 16, effective June 9. **L. 2007:** (1)(c) and (1)(d)(I) amended, p. 1287, § 27, effective May 25.

37-48-191. Cooperative powers. (1) The district and any subdistrict have the power to utilize and may utilize private industry, by contract, to carry out the design, construction, operation, management, manufacturing, marketing, planning, and research and development functions of the district or any subdistrict proceeding under this article, unless the district or

subdistrict determines that it is in the public interest to adopt another course of action. The district or subdistrict, or both, may enter into long-term contracts with private persons, not exceeding a term of seventy-five years, without an election, for the performance of any such functions of the district or subdistrict, which, in the opinion of the district or subdistrict, can desirably and conveniently be carried out by a private person under contract; but any such contract shall contain such terms and conditions as shall enable the district or subdistrict to retain reasonable supervision and control of such functions to be carried out or performed by such private persons pursuant to such contract.

(2) Subject to the provisions of section 37-48-175, the district and any subdistrict have the following powers:

(a) To accept contributions, grants, or loans from the state and the federal government for the purpose of financing the planning, acquisition, improvement, equipment, maintenance, and operation of any enterprise in which the district or subdistrict, or both, are authorized to engage, and to enter into contracts and cooperate with, and accept cooperation from, the federal government, the state, the subdistrict or the district, respectively, any political subdivision, any private firm, and any other person, or any combination thereof, in the planning, acquisition, improvement, equipment, maintenance, and operation, and in financing the planning, acquisition, improvement, equipment, maintenance, and operation of any such enterprise in accordance with any legislation which the general assembly, congress, the governing body of any political subdivision, the board of directors or other governing body of any private firm, any other person, or any combination thereof may have adopted prior to the adoption of this article or may thereafter adopt, under which aid, assistance, and cooperation may be furnished by such cooperating entity or entities or other persons in the planning, acquisition, improvement, equipment, maintenance, and operation, or in financing the planning, acquisition, improvement, equipment, maintenance, and operation of any such enterprise, including, without limitation, costs of engineering, architectural, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action preliminary to the acquisition, improvement, or equipment of any facilities, or any part thereof, and to do any and all things necessary in order to avail itself of such aid, assistance, and cooperation under any state, federal, or other legislation;

(b) To enter into, without any election, joint operating or service contracts and agreements; acquisition, improvement, equipment, or disposal contracts; or other arrangements for any term not exceeding seventy-five years, with the federal government, the state, the subdistrict or the district, respectively, any political subdivision, any private firm, or any other person, or any combination thereof, concerning the facilities, and any project or property pertaining thereto, whether acquired or undertaken by the district, by the subdistrict, by the federal government, by this state, by any political subdivision of this state or any other state, or by any person; and to accept contributions, grants, or loans from the cooperating entity or entities or other persons in connection therewith;

(c) To enter into and perform without any election, when determined by the board of directors to be in the public interest, contracts and agreements, for any term not exceeding seventy-five years, with the federal government, the subdistrict or the district, respectively, the state, any political subdivision, or any person, or any combination thereof, for the provision and operation by the subdistrict or the district, respectively, of any facilities pertaining to such facilities of the district or subdistrict, as the case may be, any part thereof, or any project relating

thereto, and the payment periodically thereby to the district or subdistrict of amounts at least sufficient, if any, in the determination of the board, to compensate the district or subdistrict for the cost of providing, operating, and maintaining such facilities serving the federal government, the subdistrict or the district, respectively, the state, any political subdivision, or such other person, or any combination thereof, or otherwise;

(d) To enter into and perform, without any election, contracts and agreements, on a public bid basis, a competitive basis, or a negotiated basis, as the board of directors may determine, with the federal government, the subdistrict or the district, respectively, the state, any political subdivision, any private firm, or any other person, or any combination thereof, for or concerning the planning, construction, lease, other acquisition, improvement, equipment, operation, maintenance, disposal, and financing of any property pertaining to the facilities of the district or subdistrict or to any project of the district or subdistrict, including, without limitation, any contract or agreement for any term not exceeding seventy-five years, pertaining to the joint ownership of the facilities as tenants in common thereamong, providing for the exchange of water or electric power, for backup water or power, pooling of resources, the designation of a manager for any such project or facilities supervised by an engineering and operating committee of co-owners, or otherwise supervised; and otherwise to contract with water or power producers or users, or both;

(e) To cooperate with and act in conjunction with the federal government or any of its engineers, officers, boards, commissions, or departments, or with the state or any of its engineers, officers, boards, commissions, or departments, or with any political subdivision or any person in the acquisition, improvement, and equipment of any facilities or any part thereof authorized for the district or subdistrict or for any other works, acts, or purposes provided for in this article and to adopt and carry out any definite plan or system of work for any such purpose;

(f) To cooperate with the federal government, the subdistrict or district, respectively, the state, any political subdivision, or any person, or any combination thereof, by an agreement therewith by which the district or the subdistrict may:

(I) Acquire and provide, without cost to the cooperating entity or entities, the land, easements, and rights-of-way necessary for the acquisition, improvement, and equipment of any properties;

(II) Hold the cooperating entity or entities free from and save it or them harmless from any claim for damages arising from the acquisition, improvement, equipment, maintenance, and operation of any facilities;

(III) Maintain and operate any facilities in accordance with regulations prescribed by the cooperating entity or entities; and

(IV) Establish and enforce regulations, if any, concerning the facilities which are satisfactory to the cooperating entity or entities;

(g) To provide, by any contract for any term not exceeding seventy-five years, or otherwise, without an election:

(I) For the joint use of personnel, equipment, and facilities of the district, the subdistrict, the state, any political subdivision, or any person, or any combination thereof, including, without limitation, public buildings constructed by or under the supervision of the board of directors, the state, the governing body of the political subdivision, or the board of directors or other governing body of a private firm or other person concerned, upon such terms and agreements and within such areas within the district or subdistrict, or otherwise, as may be determined, for the

promotion and protection of health, comfort, safety, life, welfare, and property of the inhabitants of the district or subdistrict and any such political subdivision and any other persons of interest, and for water or electric services;

(II) For the joint employment of clerks, stenographers, and other employees pertaining to the facilities or any project, now existing or hereafter established, upon such terms and conditions as may be determined for the equitable apportionment of the expenses resulting therefrom;

(h) To provide for comprehensive planning and, where possible, coordinate operations of the district or subdistrict with the subdistrict or district, respectively, any and all such political subdivisions, private firms, and other persons, or any combination thereof, pertaining to water conservation and use and to the generation and use of electricity.

Source: L. 77: Entire section added, p. 1686, § 16, effective June 9.

37-48-192. Joint action entity. (1) The district or subdistrict and any other cooperating entity or entities relating to any project or facilities in which the district or the subdistrict is a party in interest may create a joint action entity, a separate body corporate, for the planning, construction, lease, other acquisition, improvement, equipment, operation, maintenance, disposal, and financing of any enterprise or properties relating to such project or such facilities.

(2) A joint action entity may exercise the powers granted to the district or the subdistrict by this article, other than the levy or fixing and collection of taxes, assessments, and service charges and the making and revising of rules and regulations under the police power.

Source: L. 77: Entire section added, p. 1689, § 16, effective June 9.

37-48-193. Correlative powers of political subdivisions. Any political subdivision of this state has the correlative powers to enable it to participate in cooperation with the district or any subdistrict in either's exercise of powers granted thereto by this article or otherwise granted by law.

Source: L. 77: Entire section added, p. 1689, § 16, effective June 9.

37-48-194. Refunding. (1) Any revenue bonds issued under the provisions of this article and at any time outstanding may, at any time and from time to time, be refunded by the district by the issuance of its refunding bonds in such amount as the board of directors may deem necessary to refund the principal of the bonds to be refunded, any unpaid interest thereon, and any premiums and incidental expenses necessary to be paid in connection therewith.

(2) Any such refunding may be effected, whether the bonds to be refunded have matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof, directly or indirectly, to the payment of the bonds to be refunded thereby or by exchange of the refunding bonds for the bonds to be refunded thereby, but the holders of any bonds to be so refunded shall not be compelled, without their consent, to surrender their bonds for payment or exchange prior to the date on which they are payable by maturity date, option to redeem, or otherwise or if they are called for redemption prior to the date on which they are by their terms subject to redemption by option or otherwise. Except to the extent expressly or by

implication inconsistent with the terms of this article, article 54 of title 11, C.R.S., shall govern the issuance of such refunding bonds and the establishment of any escrow in connection therewith.

(3) All refunding bonds issued under authority of this article shall be payable solely from revenues out of which bonds to be refunded thereby are payable or from revenues out of which bonds of the same character may be made payable under this article or any other law in effect at the time of the refunding.

Source: L. 77: Entire section added, p. 1689, § 16, effective June 9.

37-48-195. Costs - board of managers to concur. (1) To the extent that the costs of the proceedings for the issuance of revenue bonds are not paid by the proceeds of the bonds, they shall be budgeted and paid out of the subdistrict preliminary fund, or from funds derived from subdistrict revenues, or from the separate subdistrict mill levy.

(2) If there is a board of managers for the subdistrict, the district shall not exercise its authority to issue revenue bonds until requested by the board of managers to do so, but the board of directors of the district may, at the request of the board of managers, make the necessary determinations and conduct the necessary proceedings to authorize the issuance of such bonds prior to receipt of the request for the issuance thereof.

Source: L. 77: Entire section added, p. 1690, § 16, effective June 9.

ARTICLE 50

Republican River Water Conservation District

37-50-101. Legislative declaration. The conservation of the water of the Republican river, its tributaries, and that portion of the Ogallala aquifer underlying the district for compliance with the Republican river compact are of vital importance to the growth and development of the entire area and the welfare of all its inhabitants. To promote the health and general welfare of this state, an appropriate agency should be established for the conservation, use, and development of the water resources of the Republican river, its tributaries, and that portion of the Ogallala aquifer underlying the district to cooperate with and assist this state to carry out the state's duty to comply with the limitations and duties imposed upon the state by the Republican river compact and given such powers as may be necessary to safeguard for Colorado all waters to which the state is equitably entitled.

Source: L. 2004: Entire article added, p. 1905, § 1, effective August 4.

37-50-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Board" means the board of directors of the Republican river water conservation district created pursuant to section 37-50-104.

(2) "District" means the Republican river water conservation district created pursuant to this article.

(3) "Person" means a person, firm, partnership, association, or corporation.

(4) "Property", as used in sections 37-50-109 and 37-50-111, includes both real and personal property. In other parts of this article relating to special assessments, unless otherwise specified, "property" means real estate as defined in section 2-4-401 (5), C.R.S., and includes all railroads; tram roads; electric railroads; state and interurban railroads; highways; telephone, telegraph, and transmission lines; water systems, water rights, pipelines, and rights-of-way of public service corporations; and all other real property, whether held for public or private use.

(5) "Republican river basin" means that area shown upon the map titled: "Boundaries of the Republican River Basin and Republican River Water Conservation District". The map shall be kept on file in the office of the state engineer, the Colorado ground water commission, and the district and shall be available for public inspection.

(6) "Republican river compact" means the compact entered into between the states of Colorado, Kansas, and Nebraska and approved by the United States congress as codified in article 67 of this title and as further defined by the final settlement stipulation dated December 15, 2002, and filed in *Kansas v. Colorado and Nebraska,* No. 126 Original.

Source: L. 2004: Entire article added, p. 1905, § 1, effective August 4.

37-50-103. Creation and name of district. (1) There is hereby created a water conservation district to be known and designated as the "Republican river water conservation district". The district is hereby declared to be a body corporate under the laws of Colorado. The district shall comprise the following area and territory of the state of Colorado: Phillips and Yuma counties and those portions of Kit Carson, Lincoln, Logan, Sedgwick, and Washington counties within the Republican river basin.

(2) The creation of the Republican river water conservation district shall not affect the existence or powers of public irrigation districts created pursuant to articles 41 to 43 of this title or ground water management districts created pursuant to article 90 of this title before August 4, 2004.

Source: L. 2004: Entire article added, p. 1906, § 1, effective August 4.

37-50-104. Board of directors. (1) The district shall be managed and controlled by a board of fifteen directors. The members of the board shall hold their offices for terms of three years and until their successors are appointed and qualified. A director may serve one or more terms. The boards of county commissioners of the counties of Yuma, Phillips, Kit Carson, Washington, Sedgwick, Lincoln, and Logan shall each appoint one director, who shall be a resident of the respective county. One member of the board shall be appointed by each of the boards of the Marks Butte, Frenchman, W-Y, Sand Hills, Central Yuma, Arikaree, and Plains ground water management districts. One member of the board shall be appointed by the Colorado ground water commission and shall be a member of the Colorado ground water commission. Each director shall be, at the time of the director's appointment, a resident and owner of real property within the county or ground water management district from which he or she is appointed or, if only a part of the county or ground water management district is included within the boundaries of the district, a resident and owner of real property within such included part. The director appointed by the Colorado ground water commission shall, at the time of appointment, reside within the district. Each director shall be appointed by either the board of

county commissioners of the county in which the director resides or by the ground water management district in which the director resides. The director may be a member of the board of county commissioners of such county or the board of directors of such ground water management district. Such appointments shall be made at the first meeting of the board of county commissioners, ground water management district, or Colorado ground water commission after the establishment of the district. The members of the board shall annually select one of their number to act as president and one of their number to act as vice-president, each to hold office for one year or until a successor is duly selected.

(2) The office of a director shall become vacant when the director ceases to reside in the county or ground water management district from which the director was appointed, or in the case of the director appointed by the Colorado ground water commission when the director ceases to reside in the district or is no longer a member of the Colorado ground water commission, or when declared vacant by a majority vote of all of the members of the board when a director has failed to attend two consecutive regular meetings without having been excused from attendance by the president. If a vacancy occurs in the office by reason of death, resignation, removal, or otherwise, it shall be filled for the remainder of the unexpired term by the board of county commissioners of the county, or the ground water management district from which the director was originally appointed. Each director shall take an oath or affirmation in accordance with section 24-12-101.

(3) (a) Upon creation of the district, the directors shall be appointed by the respective boards of county commissioners or ground water management districts as provided in this section for the following terms of office:

(I) The directors from the counties of Phillips and Kit Carson and from the Marks Butte and Arikaree ground water management districts, whose terms of office shall expire on the date of the regular quarterly meeting of the board to be held in October 2005, or as soon thereafter as their respective successors are appointed and qualified;

(II) The directors from the counties of Washington, Sedgwick, and Lincoln and from the W-Y, Central Yuma, and Plains ground water management districts, whose terms of office shall expire on the date of the regular quarterly meeting to be held in October 2006, or as soon thereafter as their respective successors are appointed and qualified; and

(III) The directors from the counties of Yuma and Logan, the directors from the Frenchman and Sand Hills ground water management districts, and the director appointed by the ground water commission, whose terms of office shall expire on the date of the regular quarterly meeting to be held in October 2007, or as soon thereafter as their respective successors are appointed and qualified.

(b) Thereafter, each director shall be appointed for a term of three years, and the term shall expire on the date of the regular quarterly meeting to be held in October of the year that commences during the third year of the director's term, or as soon thereafter as a successor is duly appointed and qualified. For the purpose of determining such expiration date, the term of the director shall be taken as having begun on the date of the first regular October quarterly meeting at which the term of a predecessor would have expired had the director then been duly appointed and qualified.

Source: L. 2004: Entire article added, p. 1906, § 1, effective August 4. **L. 2018:** (2) amended, (HB 18-1138), ch. 88, p. 703, § 42, effective August 8.

Cross references: For the legislative declaration in HB 18-1138, see section 1 of chapter 88, Session Laws of Colorado 2018.

37-50-105. Compensation of directors. The directors of the district shall receive as compensation a sum not to exceed one hundred dollars per day while actually engaged in the business of the district, and, in addition, the directors shall be entitled to their actual traveling and transportation expenses when away from their respective places of residence on district business.

Source: L. 2004: Entire article added, p. 1908, § 1, effective August 4. **L. 2007:** Entire section amended, p. 358, § 4, effective April 2.

37-50-106. Employees. The board shall appoint a secretary and a treasurer. The same individual may, at the election of the board, hold both offices. The board shall likewise hire such other employees, including engineers and attorneys, as may be required to properly transact the business of the district, and is authorized to provide for the compensation of the secretary and treasurer and other appointees. The treasurer shall be required by the board to give bond with a corporate surety in such amount as the board may fix and that it deems sufficient to protect the funds in the hands of the treasurer or under the treasurer's control. Such bond is subject to the approval of the board.

Source: L. 2004: Entire article added, p. 1908, § 1, effective August 4.

37-50-107. General powers. (1) The district is formed for the purpose of cooperating with and assisting this state to carry out its duty to comply with the limitations and duties imposed upon the state by the Republican river compact, and, in furtherance of that purpose and in its corporate capacity, the district shall have power to:

(a) Sue and be sued in the name of the Republican river water conservation district and otherwise to participate in litigation;

(b) Acquire, operate, and hold in the name of the district such real and personal property as may be necessary to carry out the provisions of this article and sell and convey such property or its products as provided in this article or when the property is no longer needed for the purposes of the district;

(c) Borrow money and incur indebtedness and issue bonds or other evidence of such indebtedness;

(d) Accept gifts, grants, or donations of personal or real property or moneys;

(e) Make surveys and conduct investigations to determine the best manner of utilizing stream flows within the district and the amount of such stream flow or other water supply, including groundwater; locate ditches, irrigation works, wells, pipelines, and reservoirs to store or utilize water for compact compliance purposes; make filings upon such water; initiate appropriations for compact compliance purposes; and do and perform all acts and things necessary or advisable to protect existing beneficial uses of water within the district through compliance with the Republican river compact;

(f) Make contracts with respect to the relative rights of the district under its claims and filings and the rights of any other person seeking to divert water from any of the streams within the district;

(g) Contract with any agencies, officers, bureaus, and departments of this state and the United States, including the department of corrections, to obtain services or labor for the initiation or construction of irrigation works, canals, reservoirs, wells, pipelines, or retaining ponds within the district;

(h) Enter upon privately owned land or other real property for the purpose of making surveys or obtaining other information, without obtaining an order to do so, if the same can be done without damage to the lands, crops, or improvements thereon;

(i) Enter into contracts, agreements, or other arrangements with the United States government or any department thereof; with persons, railroads, or other entities; with public corporations; with the state government or a political subdivision of this or other states; with irrigation, drainage, conservation, conservancy, or other improvement districts in this or other states; with ground water management districts; or with the ground water commission for cooperation or assistance in constructing, maintaining, using, and operating the works of the district, for making surveys and investigations or related reports, or for any other purpose authorized by this article. The district may purchase, lease, or acquire land or other property in adjoining states in order to secure outlets or for other purposes of the district and may enter into contracts and spend money for securing such outlets or other works in adjoining states.

(j) Have and exercise the power of eminent domain to acquire ditches, reservoirs, or other works, lands, or rights-of-way therefor that the district may need to carry out the plans of the district and in general to exercise any and all rights and powers of eminent domain conferred upon other agencies, as provided in articles 1 to 7 of title 38, C.R.S.;

(k) Establish a water enterprise pursuant to article 45.1 of this title;

(l) Make loans or grants to any public entity, nonprofit corporation, not-for-profit corporation, carrier ditch company, mutual ditch or reservoir company, unincorporated ditch or reservoir company, or cooperative association within the boundaries of the district to carry out the purposes of the district;

(m) Impose a use fee on the diversion of water within the district or establish an annual levy for the use of water;

(n) Establish a nonprofit or charitable land trust;

(o) Purchase, rent, lease, and accept donations of, or cooperate in the creation of, conservation easements;

(p) Cooperate in the creation of conservation reserve programs and other similar programs;

(q) Exercise such implied powers and perform such other acts as may be necessary to carry out and effect any of the express powers hereby conferred upon such district as set forth in this article.

(2) The district, in its own name, may issue revenue bonds to finance, in whole or in part, the construction of works, reservoirs, wells, pipelines, or other improvements for the beneficial use of water for the purposes for which it has been or may be appropriated and to further the purposes of the district, whether or not the interest on such bonds may be subject to taxation. Such revenue bonds shall be issued in such denominations and with such maximum net effective interest rate as may be fixed by the board and shall bear interest such that the net

effective interest rate of the bonds does not exceed the maximum net effective interest rate authorized. The board shall pledge only rental proceeds, service charges, and other income, or any combination thereof, from such works or other improvements, and the district shall not be otherwise obligated for the payment thereof. At the time such revenue bonds are issued, the board shall make and enter in the minutes of the proceeding a resolution in which are set forth the due dates of such revenue bonds, the rates of interest thereon, the general provisions of the bonds, and a statement that the same are payable only out of rental proceeds, service charges, and other income, or any combination thereof. In addition, the board shall require the payment of rental charges, service charges, or other charges by the political subdivisions or persons who are to use or derive benefits from the water or other services furnished by such works or improvements. Such charges shall be sufficient to pay operation and maintenance expenses thereof, to meet the bond payments, and to accumulate and maintain reserve and replacement accounts pertaining thereto as set forth in such resolution. Such resolution shall be irrepealable during the time that any of the revenue bonds are outstanding and unpaid. The revenue bonds shall be signed "Republican River Water Conservation District, By ....., president. Attest ....., secretary", and they shall be countersigned by the treasurer.

(3) The district is authorized and required to prepare and adopt as the official plan for the district a comprehensive, detailed plan showing the nature of the improvements or works, including all canals, reservoirs, ditches, wells, and pipelines, whether within or without the district, and the estimated cost of each principal part of such system or works.

(4) The board has full authority to devise, prepare for, execute, maintain, and operate all works or improvements necessary or desirable to complete, maintain, operate, and protect the works provided for by the official plan, and to that end may employ and secure persons and equipment under the supervision of the chief engineer or other agents or may enter into contracts for such works, either as a whole or in parts.

Source: L. 2004: Entire article added, p. 1908, § 1, effective August 4.

37-50-108. Principal office - meetings. The board shall designate a place within the district where the principal office is to be maintained and may change such place from time to time. Regular quarterly meetings of the board shall be held at the office on the second Thursday in the months of January, April, July, and October. The board may hold such special meetings as may be required for the proper transaction of business. All special meetings of the board shall be held at locations that are within the boundaries of the district or that are within the boundaries of any county in which the district is located, in whole or in part, or in any county if the meeting location is within Colorado and does not exceed twenty miles from the district boundaries. The provisions of this section governing the location of meetings may be waived only if the proposed change of location of a meeting of the board appears on the agenda of a regular or special meeting of the board and if a resolution is adopted by the board stating the reason for which a meeting of the board is to be held in a location other than under the provisions of this section and further stating the date, time, and place of such meeting. Special meetings may be called by the president of the board or by any four directors. Meetings of the board shall be public, and proper minutes of the proceedings of the board shall be preserved and shall be open to inspection by any elector of the district during business hours.

Source: L. 2004: Entire article added, p. 1911, § 1, effective August 4.

37-50-109. Authority of the board to levy taxes. (1) In addition to other means of providing revenue for the district, the board has the power to fix the amount of an assessment upon the property within the district, as a level or general levy to be used for the purpose of paying the expenses of organization, for surveys and plans, to pay the salary of officers for, the per diem allowed to directors and their expenses, for expenses that may be incurred in the administration of the affairs of the district, and for all other lawful purposes of the district including capital construction.

(2) The amount of assessment on each dollar of valuation for assessment shall, in accordance with the schedule prescribed by section 39-5-128, C.R.S., be certified to boards of county commissioners of the various counties in which the district is located and by them included in their next annual levy for state and county purposes. Such amount so certified shall be collected for the use of such district in the same manner as are taxes for county purposes, and the revenue laws of the state for the levy and collection of taxes on real estate for county purposes, except as modified in this article, shall be applicable to the levy and collection of the amount certified by the board as provided in this section, including the enforcement of penalties, forfeiture, and sale for delinquent taxes.

(3) All collections made by the county treasurer pursuant to such levy shall be paid to the treasurer of the district on or before the tenth day of the next succeeding calendar month. Items of expense that have already been paid in whole or in part from any other sources by the district may be repaid from receipts of such levy. Such levy may be made regardless of whether the work proposed, or any part thereof, may have been found impracticable or for other reasons abandoned. The collection of data and the payment of expenses therefor, including salaries of engineers, attorneys, and others, to assist this state to carry out its duty to comply with limitations and duties imposed upon the state by the Republican river compact, is hereby declared to be a matter of general benefit to the public welfare, such that a tax for such purposes may be properly imposed.

Source: L. 2004: Entire article added, p. 1911, § 1, effective August 4.

37-50-110. Levy and collection of uniform sales and use tax. (1) (a) In addition to other means of providing revenue for the district, the board, in the name of the district, has the power to levy and collect a uniform sales and use tax throughout the entire geographical area of the district, notwithstanding any provision of article 2 of title 29, C.R.S., to the contrary, and upon the approval of the eligible electors in the district at an election held in accordance with section 20 of article X of the state constitution and articles 1 to 13 of title 1, C.R.S.

(b) Such uniform sales tax rate shall not exceed one percent upon every transaction or other incident with respect to which a sales and use tax is levied by the state pursuant to the provisions of article 26 of title 39, C.R.S.

(c) The sales and use tax imposed pursuant to paragraph (a) of this subsection (1) shall not be levied on:

(I) The sale of tangible personal property delivered by a retailer, by a retailer's agent, or to a common carrier for delivery to a destination outside the district; or

(II) The sale of tangible personal property on which a specific ownership tax has been paid or is payable when such sale meets the following conditions:

(A) The purchaser does not reside in the district or the purchaser's principal place of business is outside the district; and

(B) The personal property is registered or required to be registered outside the geographical boundaries of the district under the laws of this state.

(d) The sales and use tax imposed pursuant to paragraph (a) of this subsection (1) is in addition to any other sales and use tax imposed pursuant to law.

(2) (a) The collection, administration, and enforcement of the sales and use tax shall be performed by the executive director of the department of revenue in the same manner as that for the collection, administration, and enforcement of the state sales and use tax imposed pursuant to article 26 of title 39, C.R.S., including, without limitation, the retention by a vendor of the percentage of the amount remitted to cover the vendor's expense in the collection and remittance of the sales tax as provided in section 39-26-105, C.R.S. The executive director shall make monthly distributions of sales tax collections to the district. The district shall pay the net incremental cost incurred by the department in the administration and collection of the sales and use tax.

(b) (I) A qualified purchaser may provide a direct payment permit number issued pursuant to section 39-26-103.5, C.R.S., to any vendor or retailer that is liable and responsible for collecting and remitting any sales tax levied on any sale made to the qualified purchaser pursuant to the provisions of this section. A vendor or retailer that has received a direct payment permit number in good faith from a qualified purchaser shall not be liable or responsible for collection and remittance of any sales tax imposed on the sale that is paid for directly from the qualified purchaser's funds and not the personal funds of any individual.

(II) A qualified purchaser that provides a direct payment permit number to a vendor or retailer shall be liable and responsible for the amount of sales tax levied on any sale made to the qualified purchaser pursuant to this section in the same manner as liability would be imposed on a qualified purchaser for state sales tax pursuant to section 39-26-105 (3), C.R.S.

(c) (I) The board shall designate a financial officer who shall coordinate with the department of revenue regarding the collection of a sales and use tax. This coordination shall include, but not be limited to, the financial officer identifying those businesses eligible to collect the sales and use tax and any other administrative details identified by the department.

(II) Any sales and use tax authorized pursuant to this article shall become effective on July 1 following the electors' approval of the tax.

(3) The district shall use the revenues generated from the sales and use tax imposed pursuant to this article to assure compliance with the Republican river compact.

Source: L. 2004: Entire article added, p. 1912, § 1, effective August 4. **L. 2008:** (1)(d) amended, p. 992, § 15, effective August 5.

37-50-111. Limitations on power to levy and contract. (1) The district has no power of taxation or right to levy or assess taxes pursuant to section 37-50-109, except an annual levy. The district has no power to contract or incur any obligation or indebtedness except as expressly provided in this article.

(2) All property taxes and assessments under this article shall be collected by the county treasurers of the respective counties in which real estate is situated at the same time and in the same manner as is provided by law for the collection of taxes for county and state purposes, and, if the assessments are not paid, the real estate shall be sold at regular tax sales for the payment of the assessments, interest, and penalties in the manner provided by the laws of this state for selling property for the payment of general taxes. If there are no bids at the tax sales for the property so offered, the tax certificates shall be issued in the name of the district; and the board has the same power with reference to the sale of the tax certificates as is now vested in county commissioners and county treasurers when a tax certificate is issued in the name of a county.

(3) Tax deeds may be issued, based upon the certificates of sale, in the same manner that deeds are executed on tax sales on general state and county taxes.

Source: L. 2004: Entire article added, p. 1914, § 1, effective August 4.

37-50-112. Investment of unexpended revenues. The board may invest any unexpended revenues of the district, including any amounts in the construction fund not needed for immediate use, to pay the cost of construction of any project, or to pay bonds or coupons or to meet current expenses, in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S. The board may require any revenues of the district to be deposited with such depository or bank as may be designated by the board and likewise has authority to require the treasurer of the district to take from such depository a bond with corporate surety to ensure payment of any such deposit, or to require such depository to ensure payment of any such deposit, or to require such depository to pledge securities of the same kind as those in which the district is authorized to invest its funds to ensure payment of any such deposit.

Source: L. 2004: Entire article added, p. 1914, § 1, effective August 4.

37-50-113. Appointment and compensation of appraisers. (1) As soon as the official plan has been prepared and adopted pursuant to section 37-50-107 (3) and is on file in the office of the district, upon petition of the district, the board may, if the official plan includes the utilization of special improvement bonds paid by special assessments upon the property benefitted within the district, appoint a board of appraisers consisting of three members. The qualifications of the appraisers and all proceedings before them shall be in accordance with the provisions of the law pertaining to the duties and qualifications of appraisers under the conservancy law of this state as set forth in article 4 of this title.

(2) Appraisers appointed under this section shall receive compensation set by the board for the performance of their duties.

Source: L. 2004: Entire article added, p. 1914, § 1, effective August 4.

37-50-114. Assessments - procedure in making. (1) If the board provides for the financing of the construction or acquisition of the works or other improvements proposed and of the other steps necessary to the development and implementation of the district's official plan by special assessments to be levied against the appraised benefits to property within the district, then the board may make assessments from time to time, as required, and, in making the

assessments, the board shall be guided by the procedure for the levy of similar assessments under the conservancy law of this state, articles 1 to 8 of this title, and particularly sections 37-5-104 to 37-5-106.

(2) From time to time, as the affairs of the district may demand, the board may levy on all property upon which benefits have been appraised an assessment of such portion of benefits as may be found necessary by the board to pay the cost of the appraisal, the preparation and execution of the official plan for the district, and the superintendence of construction and administration during the period of construction, plus ten percent of the total to be added for contingencies, but not to exceed in the total of principal the appraised benefits so adjudicated. The assessments, to be known as the "construction fund assessment", shall be apportioned to and levied on each tract of land or other property in the district in proportion to the benefits appraised and not in excess thereof, and in case bonds are issued, then the amount of interest that will accrue on such bonds as estimated by the board shall be included in and added to the assessment; except that the interest to accrue on account of the issuance of bonds shall not be construed as a part of the cost of construction in determining whether the expenses and cost of making the improvement are equal to or in excess of the benefits appraised.

(3) As soon as the assessment is levied, the secretary of the district, at the expense thereof, shall prepare in duplicate an assessment of the district. The assessment shall be in the form of a well-bound book endorsed and named "Construction Fund Assessment Record of the Republican River Water Conservation District". The record shall be in the form of similar records for conservancy districts under the laws of this state, particularly section 37-5-104. Assessments may be paid in the manner provided in section 37-5-105 relating to conservancy districts under the laws of this state. All proceedings provided in such sections with respect to conservancy districts shall apply to the assessments, the records thereof, and the manner of payment of assessments of the district.

Source: L. 2004: Entire article added, p. 1915, § 1, effective August 4.

37-50-115. Collection by civil action. In addition to all other remedies for collection of assessments provided by this article, the district may, at any time after three years after the issuance of any certificate of purchase held by the district, bring civil action to foreclose the lien for assessments represented by all certificates of purchase held by the district with respect to the same land and for other relief with respect to such land as provided by the Colorado rules of civil procedure then in effect for the foreclosure of liens on real property. No statute of limitations shall be applicable to the rights of the district arising from any assessment. No decree, or sale of lands thereunder, shall be made except one subject to the lien of future unpaid installments of assessments. The county treasurer shall be made a party to any action of the district authorized by this section.

Source: L. 2004: Entire article added, p. 1915, § 1, effective August 4.

37-50-116. Assessments perpetual lien. All assessments on account of special improvements against appraised benefits and interest thereon and penalties for default of payment thereof, together with the cost of collecting the same, from the date of the filing of the construction fund and the assessment record in the office of the treasurer of the county in which

the lands and property are situated, shall constitute a perpetual lien in an amount not in excess of the benefits severally appraised upon the land and other property against which assessments have been levied and such benefits appraised. No sale of the property to enforce any general state, county, city, town, or school tax or other lien shall extinguish the perpetual lien of the assessment. At any time, a landowner may pay the full amount of the assessment, and thereafter the property of the landowner shall be clear and free from lien and shall not be subject to assessment for and on account of benefits appraised against any other land or default in the payment of assessments made against any other land.

Source: L. 2004: Entire article added, p. 1916, § 1, effective August 4.

37-50-117. Directors to remedy defects in assessments. If any assessment made under the provisions of this article proves invalid, the board, by subsequent or amended acts or proceedings, promptly and without delay, shall remedy all defects or irregularities, as the case may require, by making and providing for the collection of new assessments or otherwise.

Source: L. 2004: Entire article added, p. 1916, § 1, effective August 4.

37-50-118. Assessment record as evidence. The record of assessments contained in the respective assessment records of the district shall be prima facie evidence in all courts of all matters contained in the record.

Source: L. 2004: Entire article added, p. 1916, § 1, effective August 4.

37-50-119. Defects in notice perfected. Whenever in this article notice is provided for, if the court finds that due notice was not given, jurisdiction shall not be lost nor the proceedings abated or held void, but the court shall continue the hearing until proper notice has been given and then shall proceed as though proper notice had been given in the first instance. If any appraisal, assessment, levy, or other proceeding relating to the district is held defective, then the board may file a motion in the cause in which the district was organized to perfect any such defect, and the court shall set a time to hear the motion. If the original notice as a whole is held to be sufficient, but faulty only with reference to publication as to certain particular lands or as to service as to certain persons, publication of the defective notice may be ordered as to the particular lands or service may be made on the persons not properly served, and the notice is thereby corrected without invalidating the original notice as to other lands or persons.

Source: L. 2004: Entire article added, p. 1916, § 1, effective August 4.

37-50-120. Issuance of general obligation bonds. (1) In the name of the district, the district may issue general obligations or bonds that shall constitute a lien against the real property in the district. Obligations shall bear interest at a rate such that the net effective interest rate of the issue does not exceed the maximum net effective interest rate authorized. Interest shall be payable semiannually, and obligations may be made payable in series becoming due not less than five years and not more than fifty years after the date of issue. The bonds may be sold in one or more series at par, or below or above par, at public or private sale, in such manner and

for such price as the district, in its discretion, shall determine. As an incidental expense of the issuance, the district may employ financial and legal consultants in regard to the financing of the official plan. The district may exchange all or a part of its bonds for all or an equivalent part of property or services included in the official plan for which the bonds are issued, if the exchange is preceded by determination of the fair value of the property or services exchanged for the bonds. Such determination shall be by resolution of the board and shall be conclusive.

(2) Such bonds are to be paid from assessments levied from time to time, as the bonds and interest thereon become due, against the taxable property in the district and not otherwise. Such levies shall not be limited as to rate or amount; except that they shall not exceed a rate reasonably required to yield revenues needed to pay bonds and interest as they mature, plus any other amounts required for debt service, less the amount of any other revenues available to the district for payment of bonds and debt service. The board shall certify, to the boards of county commissioners of the several counties in which the district or any part thereof is located, the amount of the levy necessary to be made upon the taxable property in the district to yield the required revenues becoming due on all outstanding bonds at the same time that certifications of the district's mill levy assessment for general district purposes are made. The procedure for the assessment and collection of ad valorem taxes of the county is, except as may be otherwise provided in this article, made applicable and is to be followed in the levy of assessments for payment of taxes and collection of principal and debt service on such general obligations or bonds.

Source: L. 2004: Entire article added, p. 1917, § 1, effective August 4.

37-50-121. Costs - board of directors to concur. To the extent that the costs of the proceedings for the issuance of revenue bonds are not paid by the proceeds of the bonds, they shall be budgeted and paid out from district revenues or from the separate district mill levy.

Source: L. 2004: Entire article added, p. 1917, § 1, effective August 4.

37-50-122. Sinking fund. The district may provide for a sinking fund for the ultimate payment of any of the obligations of the district. The sinking fund may be invested as provided in section 37-50-112.

Source: L. 2004: Entire article added, p. 1917, § 1, effective August 4.

37-50-123. Court confirmation. (1) (a) The board, on behalf and in the name of the district, may file a petition at any time, in the district court in and for the county in which the district's principal office is maintained, for a judicial examination and determination of any power conferred or of any taxes or rates or other charges levied, or of any act, proceeding, or contract of the district, whether or not the contract has been executed, including, without limitation, proposed contracts for the acquisition, improvement, equipment, maintenance, operation, or disposal of any properties or facilities for the benefit of the district, and so including a proposed issue of revenue warrants, revenue bonds, special assessment bonds, or general obligation bonds, issued or to be issued on behalf of any such entity. The petition shall

set forth the facts on which the validity of such power, tax, assessment, charge, act, proceeding, or contract is founded and shall be verified by the president of the board.

(b) An action taken pursuant to paragraph (a) of this subsection (1) shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested may be had by publication, mail, and posting, as provided in this article. Notice of the filing of the petition shall be given by the clerk of the court, under the seal of the court, stating in brief outline the contents of the petition and also stating where a full copy of any contract mentioned in the petition may be examined. The notice shall be served by publication at least once a week for five consecutive weeks in a daily or a weekly newspaper of general circulation published in the county in which the principal office of the district is located by mailing copies of the notice by registered or certified mail, return receipt requested, to the boards of county commissioners of the several counties in which the parties in interest in such action are located, wholly or in part, and by posting the notice in the office of the district at least thirty days before the date fixed in the notice for the hearing on the petition. Jurisdiction shall be complete after such publication, mailing, and posting.

(c) Any owner of property in the district filing a petition pursuant to this subsection (1) or any person interested in the petition, contract, or proposed contract may appear and move to dismiss or answer the petition at any time before the date fixed for the hearing or within such further time as may be allowed by the court. All persons who fail to appear shall be deemed to have consented to the petition.

(2) The petition and notice shall be sufficient to give the court jurisdiction. Upon hearing the petition, the court shall examine and determine all matters and things affecting the question submitted and shall make such findings and render such judgment and decree as the case warrants. Costs may be divided or apportioned among any contesting parties in the discretion of the trial court. Review of the judgment of the court may be had as in other similar cases; except that such review shall be applied for within thirty days after the time of the rendition of such judgment or within such additional time as may be allowed by the court within thirty days. The Colorado rules of civil procedure shall govern in matters of pleading and practice where not otherwise specified in this article. The court shall disregard any error, irregularity, or omission that does not affect the substantial rights of the parties.

Source: L. 2004: Entire article added, p. 1917, § 1, effective August 4.

37-50-124. Election to authorize debt. Except for the issuance of refunding bonds or other funding or refunding of obligations that does not increase the net indebtedness of the district, no indebtedness shall be incurred by the issuance of general obligation bonds of the district or by any contract by which the district agrees to repay as general obligations or other obligations constituting a "general obligation debt by loan in any form", as such term is used in section 6 of article XI of the state constitution, of the district to the federal government, the state, a political subdivision, or a person over a term not limited to the then current fiscal year any project costs advanced thereby under any contract for the acquisition or improvement of the facilities or any interest in the facilities, or for any project, advanced by the issuance of securities of such a political subdivision or person to defray any cost of the project or of the facilities or an interest in the project or facilities acquired and becoming a part of the facilities of the district, or otherwise advanced, unless a proposal for issuing the district's general obligation bonds or of incurring an indebtedness by the district by making such a contract is submitted to the electors of

the district and is approved by a majority of such electors voting on the proposal at an election held for that purpose in accordance with this article.

Source: L. 2004: Entire article added, p. 1918, § 1, effective August 4.

37-50-125. Definition of elector. (1) An "elector" or "elector of the district", or any term of similar import, means a person who:

(a) At the time of the election, is qualified to vote in general elections in this state; and

(b) Either:

(I) Has been a resident of the district for not less than thirty-two days at the time of the election; or

(II) Owns or whose spouse owns taxable real or personal property within the district.

(2) Registration pursuant to the laws concerning general elections or any other laws shall not be required.

Source: L. 2004: Entire article added, p. 1919, § 1, effective August 4.

37-50-126. Elections. Whenever in this article an election of the electors of the district is permitted or required, the election may be held separately at a special election or may be held concurrently with any primary, general, or other election held under the laws of this state.

Source: L. 2004: Entire article added, p. 1919, § 1, effective August 4.

37-50-127. Election resolution. (1) The board shall call any election by resolution adopted at least thirty days before the election.

(2) The resolution shall state the objects and purposes of the election, the date upon which such election shall be held, and the form of the ballot.

(3) In the case of an election not to be held concurrently with a primary or general election, the board shall provide in the election resolution or by supplemental resolution for the appointment of sufficient judges and clerks of the election, who shall be electors of the district holding the debt election, and shall set their compensation. The election resolution or a supplemental resolution shall designate the precincts and polling places, but a supplemental resolution may modify the description of precincts and polling places without repeating the description in full. The description of precincts may be made by reference to any order of the governing body of any county, municipality, or other political subdivision in which the district or any part thereof is situated, by reference to any previous order or other instrument of the governing body, by detailed description of the precincts, or by other sufficient description.

(4) Precincts established by the governing body may be consolidated in the election resolution by the board in a sufficient number that it deems expedient for the convenience of the electors for any election not to be held concurrently with a primary or general election.

(5) If the election is held concurrently with a primary or general election held under the laws of this state, the judges of election for the primary or general election shall be designated as the judges of the election for the election held pursuant to this article, and they shall receive such additional compensation, if any, as the board shall set by the election resolution.

(6) If there is a direct conflict between this section and the provisions governing elections in section 20 of article X of the state constitution, section 20 of article X of the state constitution shall prevail.

Source: L. 2004: Entire article added, p. 1919, § 1, effective August 4.

37-50-128. Conduct of election. (1) Except as otherwise provided in this article, an election held pursuant to this article shall be opened and conducted in the manner then provided by the laws of this state for the conduct of general elections.

(2) If an election is held concurrently with a primary or general election, the county clerk and recorder of each county in which the district holding the election is located shall perform for the district election the acts provided by law to be performed by such officials. If an election is not held concurrently with a primary or general election, such acts shall be performed by the secretary of the district with the assistance of the county clerk and recorders. The board and county clerk and recorders are authorized to agree among themselves upon the division of such acts and the determination of persons to perform them.

(3) An elector of the district may vote in an election by absent voter's ballot under such terms and conditions, and in substantially the same manner insofar as is practicable, as prescribed in article 7.5 of title 1, C.R.S., of the "Uniform Election Code of 1992", for general elections, except as specifically modified in this article.

(4) All acts required or permitted to be performed by a county clerk and recorder shall be performed by each one respectively in the event of a primary or general election and by the secretary or assistant secretary of the board in the event of any other election, unless the services of the county clerk and recorder in each such county are contracted for, but no oath shall be administered by the secretary or assistant secretary unless he or she is also an officer authorized to administer oaths.

(5) Application may be made for an absent voter's ballot not more than twenty days and not less than four days before the election.

(6) No consideration shall be given nor distinction made with reference to any person's affiliation or the lack thereof.

(7) The return envelope for the absent voter's ballot shall have printed on its face an affidavit substantially in the following form:

"State of Colorado, county of ....., I, ..., being first duly sworn according to law, depose and say that the address of my residence is .....; that I am a person qualified to vote in general elections in the state of Colorado and am a resident of the Republican river water conservation district at the time of this election.
.....
Signature of voter
Subscribed and sworn to before me this ... day of ....., 20....
.....
(Signature of notary public,
county clerk and recorder,
or other officer authorized
to administer oaths)

(SEAL)
.....
Title of office"

(8) In any such election at which voting machines are used, the board shall provide paper ballots for absent voters containing the same question as will be submitted to the electors by the voting machines, subject to subsection (9) of this section.

(9) The district may provide for voters to cast their mail ballots on voting machines expressly provided for that purpose, if each mail voter indicates by affidavit that he or she is qualified to vote at the election.

(10) If there is a direct conflict between this section and the provisions governing elections in section 20 of article X of the state constitution, section 20 of article X of the state constitution shall prevail.

Source: L. 2004: Entire article added, p. 1920, § 1, effective August 4. **L. 2008:** (9) amended, p. 1913, § 127, effective August 5. **L. 2009:** (9) amended, (HB 09-1216), ch. 165, p. 731, § 12, effective August 5. **L. 2013:** (3) and (9) amended, (HB 13-1303), ch. 185, p. 752, § 137, effective May 10.

Cross references: (1) For the "Uniform Election Code of 1992", see articles 1 to 13 of title 1.

(2) In 2013, subsections (3) and (9) were amended by the "Voter Access and Modernized Elections Act". For the short title and the legislative declaration, see sections 1 and 2 of chapter 185, Session Laws of Colorado 2013.

37-50-129. Notice of election. Notice of an election held pursuant to this article shall be given by publication by three consecutive weekly insertions in at least one newspaper of general circulation in each county wholly or partially within the district, as determined by the board. No other notice of an election held under this article need be given, unless otherwise provided by the board. A supplemental notice may be given by publication at such times and places as the board may determine to be necessary or convenient for correcting or otherwise modifying the original notice of election or for any other purpose.

Source: L. 2004: Entire article added, p. 1921, § 1, effective August 4.

37-50-130. Polling places. (1) All polling places designated by resolution for an election shall be within the territorial limits of the district; except that, if an election of the district is held concurrently with a primary or general election, the polling place for each precinct located wholly or partially within the district shall be the polling place for such precinct for the district election, regardless of whether such polling place is within the district.

(2) If the election of the district is not held concurrently with a primary or general election held under the laws of this state, there shall be one polling place in each of the election precincts that are used in the primary and general elections or in each of the consolidated precincts fixed by the board, as the case may be.

Source: L. 2004: Entire article added, p. 1922, § 1, effective August 4.

37-50-131. Election supplies. (1) The secretary of the district shall provide at each polling place ballots or ballot labels, or both, ballot boxes or voting machines, or both, instructions, electors' affidavits, and other materials and supplies required for an election by any law; and the secretary may provide ballots and marking devices suitable for voting and for the votes on the ballots to be counted on electronic vote-tabulating devices.

(2) Election officials may require the execution of an affidavit by any person desiring to vote at any election of the district to evidence such person's qualifications to vote. The affidavit shall be prima facie evidence of the facts it states.

Source: L. 2004: Entire article added, p. 1922, § 1, effective August 4.

37-50-132. Election returns. (1) In the case of any election held under this article that is not held concurrently with a primary or general election, the election officials shall make their returns directly to the secretary of the district for the board.

(2) In the case of an election held under this article that is consolidated with any primary or general election, the returns shall be made and canvassed at the time and in the manner provided by law for the canvass of the returns of such primary or general election. The canvassing body shall certify promptly and shall transmit to the secretary of the district for the board a statement of the result of the vote upon any proposition submitted under this article.

(3) Upon receipt by the board of election returns from election officials or upon receipt of such certificate from each such canvassing body, the board shall tabulate and declare the results of the election at any regular or special meeting held not earlier than five days following the date of the election.

(4) The board shall cause the results of the election to be published at least one time in at least one newspaper having general circulation in the district.

Source: L. 2004: Entire article added, p. 1922, § 1, effective August 4.

37-50-133. Debt and tax levy election contests. (1) An election declared to have approved an authorization to levy any tax or issue any bonds, by approval of the tax levy or bond question, or otherwise to incur an indebtedness may be contested by any elector of the district by suit against it as contestee and defendant in any district court of any county in which the district is wholly or partially situate:

(a) When illegal votes have been received or legal votes rejected at the polls in sufficient numbers to change the results;

(b) For any error or mistake on the part of any of the judges of election, any county clerk and recorder, the secretary of the district, or their respective officers and employees in counting or declaring the result of the election, if the error or mistake is sufficient to change the result;

(c) For misconduct, fraud, or corruption on the part of any of the judges of election, any county clerk and recorder, the secretary of the district, or their respective officers and employees, if the misconduct, fraud, or corruption is sufficient to change the result;

(d) When the tax levy or bonds or other indebtedness is authorized to be issued for an invalid purpose; or

(e) For any other cause that shows that the tax levy or bonds or other indebtedness is not validly authorized at the election.

(2) The style and form of process, the manner of service of process and papers, the fees of officers, and judgment for costs and execution of the judgment shall be according to the rules and practices of the court.

(3) Before the court takes jurisdiction of the contest, the contestor shall file with the clerk of the court a bond, with sureties, to be approved by the judge, running to the district as contestee and conditioned to pay all costs in case of failure of the contestor to maintain the contest.

(4) When the validity of any tax levy or bond or other indebtedness election is contested, the plaintiff or plaintiffs, within thirty days after the returns of the election are canvassed and the results declared and published, or last published, as the case may be, shall file with the clerk of the court a verified written complaint setting forth specifically:

(a) The name of the party contesting the election and a statement that the plaintiff or each plaintiff is an elector of the district;

(b) The proposition or propositions voted on at the election that are contested, the name of the district as defendant and contestee, and the date of the election; and

(c) The particular grounds of the contest.

(5) No such contest shall be maintained and no election shall be set aside or held invalid unless such a complaint is filed within the period prescribed in subsection (4) of this section.

(6) Except as otherwise provided in this article, the election laws pertaining to contested election cases of municipal offices as provided in part 13 of article 10 of title 31, C.R.S., of the "Colorado Municipal Election Code of 1965", shall apply to tax levy or bond or other indebtedness elections; except that any such contest shall be regarded as one contesting the outcome of the vote on the proposition authorizing the tax levy or issuance of securities or otherwise incurring the indebtedness, rather than election to office, and the district as contestee, rather than a person declared to have been elected to office, shall be regarded as the defendant.

(7) If the board declares the proposition authorizing the tax levy or issuance of bonds or otherwise incurring the indebtedness to have carried and no contest is duly filed or if such a contest is filed after it is favorably terminated, the board may issue the bonds or otherwise incur the tax levy or indebtedness authorized at the election at one time or from time to time.

Source: L. 2004: Entire article added, p. 1923, § 1, effective August 4.

37-50-134. Covenants and other provisions in bonds. (1) A resolution providing for the issuance of bonds under this article, payable from pledged revenues and an indenture or other related instrument or proceedings, may at the discretion of the board contain covenants or other provisions, notwithstanding that such covenants and provisions may limit the exercise of powers conferred by this article, in order to secure the payment of such bonds, in agreement with the holders of such bonds, including, without limitation, covenants or other provisions as to any one or more of the following:

(a) The pledged revenues and, in the case of general obligations, the taxes to be fixed, charged, or levied and their collection, use, and disposition, including, without limitation, the foreclosure of liens for delinquencies; the discontinuance of services, facilities, or use of any properties or facilities; prohibition against free service; the collection of penalties and collection costs; and the use and disposition of any moneys of the district, derived or to be derived, from any source designated;

(b) The acquisition, improvement, or equipment of all or any part of properties pertaining to any project or any facilities;

(c) The creation and maintenance of reserves or sinking funds to secure the payment of the principal and interest on any bonds or of the operation and maintenance expenses of any facilities, or part thereof, and the source, custody, security, regulation, use, and disposition of any such reserves or funds, including, without limitation, the related powers and duties of any trustee;

(d) Limitations on the powers of the district to acquire or operate, or permit the acquisition or operation of, structures, facilities, or properties that may compete or tend to compete with any facilities;

(e) The vesting in a corporate or other trustee or trustees of such property, rights, powers, and duties in trust as the board may determine, which may include any or all of the rights, powers, and duties of the trustee appointed by the holders of bonds, and limiting or abrogating the rights of such holders to appoint a trustee, or limiting the rights, duties, and powers of such trustee;

(f) Events of default, rights, and liabilities arising from events of default and the rights, liabilities, powers, and duties arising upon the breach by the district of any covenants, conditions, or obligations;

(g) The terms and conditions upon which the holders of the bonds or of a specified portion, percentage, or amount of the bonds, or any trustee for the holders, shall be entitled to the appointment of a receiver, which receiver may enter, take possession of, operate, and maintain any facilities or service; prescribe fees, rates, and other charges; and collect, receive, and apply all resulting revenues in the same manner as the district itself might do;

(h) A procedure by which the terms of any resolution authorizing bonds or any other contract with any holders of district bonds, including, without limitation, an indenture of trust or similar instrument, may be amended or abrogated, and as to the proportion, percentage, or amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(i) The terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived; and

(j) All such acts and things as may be necessary, convenient, or desirable in order to secure the bonds or, in the discretion of the board, tend to make the bonds more marketable, notwithstanding that such covenant, act, or thing may not be enumerated in this article, it being the intention of this article to give to the board power to do in the name and on behalf of the district all things in the issuance of district bonds and for their security, except as expressly limited in this article.

Source: L. 2004: Entire article added, p. 1924, § 1, effective August 4.

37-50-135. Liens on pledged revenues. (1) Revenues pledged for the payment of bonds, as received by or otherwise credited to the district under this article, shall immediately be subject to the lien of each such pledge without any physical delivery, filing, or further act.

(2) The lien of each such pledge and the obligation to perform the contractual provisions made in the authorizing resolution or other related instrument shall have priority over all other

obligations or liabilities of the district, except as may be otherwise provided in this article or in the resolution or other instrument, and subject to any prior pledges and liens previously created.

(3) The lien of each such pledge shall be valid and binding as against all persons having claims of any kind in tort, in contract, or otherwise against the district, irrespective of whether such persons have notice of the lien.

Source: L. 2004: Entire article added, p. 1925, § 1, effective August 4.

37-50-136. Rights - powers of holders of bonds - trustees. (1) Subject to any contractual limitations binding upon the holders of any issue or series of bonds of the district issuing bonds under this article, or the holders' trustee, including, without limitation, the restriction of the exercise of any remedy to a specified proportion, percentage, or number of such holders, and subject to any prior or superior rights of others, a holder of bonds, or the holder's trustee, shall have the right and power, for the equal benefit and protection of all holders of bonds similarly situated:

(a) By mandamus or other suit, action, or proceeding at law or in equity, to enforce the holder's rights against the district, board, or any combination, or the officers, agents, and employees of the district to compel the district, board, or such officers, agents, or employees to perform their respective duties, obligations, or other commitments under this article and their respective covenants and agreements with the holder of a bond;

(b) By action or suit in equity, to require the district to account as if it were the trustee of an express trust;

(c) By action or suit in equity, to have a receiver appointed, which receiver may enter and take possession of facilities and pledged revenues for the payment of the bonds; prescribe sufficient fees, rates, and other charges derived from the facilities; and collect, receive, and apply all pledged revenues or other moneys pledged for the payment of the bonds in the same manner as the district itself might do in accordance with the obligations of the district; and

(d) By action or suit in equity, to enjoin any acts or things that may be unlawful or in violation of the rights of the holder of any bonds.

Source: L. 2004: Entire article added, p. 1926, § 1, effective August 4.

37-50-137. Investments and securities. (1) The board, subject to contractual limitations from time to time imposed upon the district by a resolution authorizing the issuance of the outstanding bonds of the district, a trust indenture, or other related proceedings, may invest and reinvest proceeds of taxes, pledged revenues, and proceeds of bonds issued under this article in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S., and may deposit such proceeds in any trust bank, secured in such manner and subject to such terms and conditions as the board may determine, with or without the payment of any interest on such deposit, including, without limitation, time deposits evidenced by certificates of deposit.

(2) Such securities and certificates of deposit thus held may, from time to time, be sold and the proceeds may be so reinvested or redeposited as provided in this section.

(3) Sales and redemptions of such securities and certificates of deposit thus held shall, from time to time, be made so that the proceeds may be applied to the purposes for which the money with which such securities and certificates of deposit were originally acquired.

(4) Gains from such investments or reinvestments may be credited to any fund or account pledged for the payment of district bonds issued under this article, including any applicable reserve, any other fund or account pertaining to a project or facility, or the district's general fund, subject to contractual limitations in a proceeding pertaining to outstanding district bonds.

(5) It is lawful for a commercial bank incorporated under the laws of this state that may act as depository of the proceeds of bonds issued under this article, securities owned by the district, proceeds of taxes, pledged revenues, and moneys otherwise pertaining to a project, facilities, or any combination, to furnish such indemnifying bonds and to pledge such securities as may be required by the board.

Source: L. 2004: Entire article added, p. 1926, § 1, effective August 4.

37-50-138. Rents and charges. (1) (a) The district and any political subdivision of the state of Colorado contracting with the district and fixing and collecting annual rentals, service charges, other charges, or any combination thereof are authorized to fix and collect rents, rates, fees, tolls, and other charges, in this article sometimes referred to as "service charges", for direct or indirect connection with, or the use or services of, a water system, joint system, or other facilities, including, without limitation, connection charges, minimum charges, and charges for the availability of service.

(b) Such service charges may be charged to and collected in advance or otherwise by a district from a political subdivision or person and by a political subdivision from a person contracting for such connection, use, or services or from the owner, occupant, or any combination, of real property that directly or indirectly is, has been, or will be connected with such facilities. The political subdivision, owner, or occupant of such real property shall be liable for and shall pay such service charges to the district or political subdivision fixing the service charges at the time and place such service charges are due and payable.

(c) Service charges of the district may accrue from a date on which the board reasonably estimates, in a resolution authorizing the issuance of securities, other related instruments, or in a contract with any political subdivision or person, that facilities or projects being acquired or improved and equipped will be available for service or use.

(2) (a) Such rents, rates, fees, tolls, and other charges, being in the nature of use or service charges, shall, as nearly as the district shall deem practicable and equitable, be reasonable, and such service charges shall be uniform throughout the district for the same type, class, and amount of use or service of the facilities and may be based or computed either on:

(I) Measurements of water or flow devices that are duly provided and maintained by the district or any user as approved by the district;

(II) The consumption of water in, on, or in connection with the political subdivision, person, or real property, making due allowance for commercial use of water, infiltration of groundwater, and discharge of surface runoff to the facilities;

(III) The number and kind of water fixtures or facilities on or in connection with the political subdivision, person, or real property;

(IV) The water facilities in, on, or in connection with the political subdivision, person, or real property;

(V) The number of persons residing or working in, on, or otherwise connected or identified with the political subdivision, person, or real property;

(VI) The capacity of the improvements in, on, or connected with the political subdivision, person, or real property;

(VII) The availability of service or readiness to serve by the facilities;

(VIII) Any other factors determining the type, class, and amount of use or service of the facilities; or

(IX) Any combination of any such factors.

(b) Reasonable penalties may be fixed for delinquencies, including, without limitation, interest on delinquent service charges from the due date at a rate not exceeding one percent per month or monthly fraction, reasonable attorney fees, and other costs of collection.

(3) The district shall prescribe and, from time to time when necessary, revise a schedule of such service charges, which shall comply with the terms of any contract of the district or political subdivision fixing the service charges.

(4) The general assembly has determined and declared that the obligations, arising from time to time, of the district, any political subdivision, or any person to pay service charges fixed in connection with any facilities shall constitute general obligations of the district, political subdivision, or person charged with their payment; except that, as such obligations accrue for current services and benefits from, and the use of, such facilities, the obligations shall not constitute an indebtedness of the district or any political subdivision within the meaning of constitutional, charter, or statutory limitation or other provision restricting the incurrence of debt.

(5) No board, agency, bureau, commission, or official, other than the board of directors of the district, has authority to fix, prescribe, levy, modify, supervise, or regulate the making of service charges or to prescribe, supervise, or regulate the performance of services pertaining to the district's facilities, as authorized by this article; except that this subsection (5) shall not be construed to be a limitation on the contracting powers of the board.

Source: L. 2004: Entire article added, p. 1927, § 1, effective August 4.

37-50-139. Miscellaneous powers. (1) The district shall also have the following powers:

(a) To pay or otherwise defray and to contract to pay or defray, for a term not exceeding seventy-five years, without an election, except as otherwise provided in this article, the principal of, prior redemption premiums due in connection with, interest on, and other charges pertaining to securities or other obligations of the federal government, the district, a political subdivision, or a person that were incurred in connection with related property subsequently acquired by the district and relating to the district's facilities;

(b) To establish, operate, and maintain facilities within the district or elsewhere, across or along any public street, highway, bridge, or viaduct or other public right-of-way or in, upon, under, or over any vacant public lands, which public lands now are, or may become, the property of a political subdivision of this state, without first obtaining a franchise from the political subdivision having jurisdiction over the lands; except that the district shall cooperate with any

political subdivision having such jurisdiction; shall promptly restore any such public street, highway, bridge, viaduct, or other public right-of-way to its former state of usefulness as nearly as may be; and shall not permanently impair completely or materially the usefulness of the right-of-way;

(c) To adopt, amend, repeal, enforce, and otherwise administer such reasonable resolutions, rules, regulations, and orders as the district shall deem necessary or convenient for the conduct of its business, including, but not limited to, the operation, maintenance, management, government, and use of the facilities of the district and any other facilities under its control, whether situated within, without, or both within and without the territorial limits of the district.

Source: L. 2004: Entire article added, p. 1929, § 1, effective August 4.

37-50-140. Joint action entity. (1) The district and another cooperating entity or entities relating to a project or facilities in which the district is a party in interest may create a joint action entity, which shall be a separate body corporate, for the planning, construction, lease, other acquisition, improvement, equipment, operation, maintenance, disposal, and financing of any enterprise or properties relating to such project or facilities.

(2) A joint action entity may exercise the powers granted to the district by this article, other than the levy or fixing and collection of taxes, assessments, and service charges and the making and revising of rules and regulations under the police power.

Source: L. 2004: Entire article added, p. 1929, § 1, effective August 4.

37-50-141. Refunding. (1) Any revenue bonds issued under this article and at any time outstanding may, at any time and from time to time, be refunded by the district by the issuance of its refunding bonds in such amount as the board may deem necessary to refund the principal of the bonds to be refunded, unpaid interest, premiums, and necessary incidental expenses.

(2) Any such refunding may be effected, whether the bonds to be refunded have matured or shall mature later, either by sale of the refunding bonds and the application of the proceeds, directly or indirectly, to the payment of the bonds to be refunded or by exchange of the refunding bonds for the bonds to be refunded, but the holders of bonds to be so refunded shall not be compelled, without their consent, to surrender their bonds for payment or exchange before the date on which they are payable by maturity date, option to redeem, or otherwise or if they are called for redemption before the date on which they are, by their terms, subject to redemption by option or otherwise. Except to the extent expressly or by implication inconsistent with the terms of this article, article 54 of title 11, C.R.S., shall govern the issuance of such refunding bonds and the establishment of any related escrow.

(3) Refunding bonds issued under authority of this article shall be payable solely from revenues out of which bonds to be refunded are payable or from revenues out of which bonds of the same character may be made payable under this article or other law in effect at the time of the refunding.

Source: L. 2004: Entire article added, p. 1930, § 1, effective August 4.

37-50-142. Severability. If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the article that can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

Source: L. 2004: Entire article added, p. 1930, § 1, effective August 4.

WATER CONSERVATION BOARD AND COMPACTS

General and Administrative

ARTICLE 60

Colorado Water Conservation Board

Law reviews: For article, "Plans and Studies: The Recent Quest for a Utopia in the Utilization of Colorado's Water Resources", see 55 U. Colo. L. Rev. 391 (1984); for article, "The Constitution, Property Rights and the Future of Water Law", see 61 U. Colo. L. Rev. 257 (1990).

PART 1

GENERAL PROVISIONS

37-60-101. Definitions. As used in this article, unless the context otherwise requires:
(1) "Board" means the Colorado water conservation board.

Source: L. 37: p. 1300, § 2. **CSA:** C. 173B, § 2. **CRS 53:** § 148-1-2. **C.R.S. 1963:** § 149-1-2.

37-60-102. Creation. For the purpose of aiding in the protection and development of the waters of the state, for the benefit of the present and future inhabitants of the state there is created a Colorado water conservation board with the powers and duties set out in this article. Said board is declared to be an agency of the state, and the functions it is to perform, as set out in this article, are declared to be governmental functions for the welfare and benefit of the state and its inhabitants.

Source: L. 37: p. 1300, § 1. **CSA:** C. 173B, § 1. **CRS 53:** § 148-1-1. **C.R.S. 1963:** § 149-1-1.

Cross references: For the Colorado water conservation board as a division of the department of natural resources, see §§ 24-1-124 (3) and 24-33-104.

37-60-103. Organization. The board shall elect from the appointed members a chairman and a vice-chairman to serve at the pleasure of the board. The director of the board shall serve as secretary.

Source: L. 37: p. 1301, § 4. **CSA:** C. 173B, § 4. **CRS 53:** § 148-1-4. **C.R.S. 1963:** § 149-1-4. **L. 67:** p. 293, § 2.

37-60-104. Personnel. (1) The board shall consist of fifteen members. The executive director of the department of natural resources shall be a voting member ex officio. The attorney general, state engineer, director of the division of parks and wildlife, commissioner of agriculture or designee, and director of said board shall be nonvoting members ex officio. The nine remaining members shall be qualified electors of the state, well versed in water matters, and shall be appointed by the governor, by and with the consent of the senate, for terms of three years; except that no appointment shall be made that does not conform to the requirements of subsections (3) and (4) of this section. Members of the board may not vote by proxy. Pursuant to section 1 of article XII of the state constitution, unless removed according to law, members of the board shall exercise the duties of their office until a successor is duly appointed, qualified, and confirmed. Pursuant to section 6 (1) of article IV of the state constitution, no person appointed by the governor pursuant to this section to a vacancy occurring while the senate is in session may take office until confirmed by the senate. The appointments shall be made in such a manner that the terms of three members shall expire on February 12 of each year. In case any vacancy occurs in the appointed membership of the board, the governor shall appoint a successor to serve the unexpired term of any member of the board within thirty days after the creation of such vacancy.

(2) The appointed members of said board shall be chosen geographically as follows: Four from the western slope and five from the eastern slope; but, of the five members to be appointed from the eastern slope, one shall be from the Rio Grande drainage basin, one from the North Platte drainage basin, one from the Arkansas drainage basin, one from the South Platte drainage basin outside of the city and county of Denver, and one from the city and county of Denver and intimately familiar with its water problems; and that of the four members to be appointed from the western slope, one shall be from the Yampa-White drainage basin, one from the main Colorado drainage basin, one from the Gunnison-Uncompahgre drainage basin, and one from the San Miguel-Dolores-San Juan drainage basins. Each appointed member shall take an oath or affirmation in accordance with section 24-12-101.

(3) To the extent possible, appointments to the board shall include persons representing the following areas of experience and expertise: Water resource management; water project financing; engineering, planning, and development of water projects; water law; and irrigated farming or ranching. Members of the board shall be residents of the geographic area they represent.

(4) No more than five appointees to the board shall be members of the same political party.

(5) The requirements set forth in subsections (3) and (4) of this section shall be implemented over a three-year period beginning February 12, 1993, so that upon making the appointments for the vacancies which occur on February 12, 1995, all requirements set forth in this section shall have been met.

Source: L. 37: p. 1301, § 3. **CSA:** C. 173B, §3. **L. 45:** p. 719, § 1. **L. 47:** p. 912, § 1. **CRS 53:** § 148-1-3. **C.R.S. 1963:** § 149-1-3. **L. 67:** p. 293, § 1. **L. 81:** (1) amended, p. 1768, § 1, effective June 16. **L. 84:** (1) amended, p. 957, § 8, effective May 21. **L. 87:** (1) amended, p.

1295, § 1, effective July 13. **L. 92:** Entire section amended, p. 2281, § 1, effective May 27. **L. 99:** (1) amended, p. 231, § 1, effective August 4. **L. 2004:** (1) amended, p. 64, § 1, effective March 8; (1) amended, p. 1067, § 1, effective May 21. **L. 2018:** (2) amended, (HB 18-1138), ch. 88, p. 703, § 43, effective August 8.

Editor's note: Amendments to subsection (1) by House Bill 04-1035 and Senate Bill 04-013 were harmonized.

Cross references: For the legislative declaration in HB 18-1138, see section 1 of chapter 88, Session Laws of Colorado 2018.

37-60-105. Employment of temporary personnel. The Colorado water conservation board is authorized to employ any persons and enter into any cooperative undertakings with agencies of government as it may deem advisable for carrying out the work outlined in section 37-60-115. The employment in this section referred to is of such persons as the Colorado water conservation board finds necessary to meet an emergency by employing temporary personnel to supplement the work of regular state employees, it being the purpose of this law to provide for the utmost speed in accomplishing its purposes. The Colorado water conservation board may grant such authority as it deems necessary or proper to the persons it designates to carry out the provisions of this section and section 37-60-116.

Source: L. 53: p. 645, § 2. **CRS 53:** § 148-1-15. **C.R.S. 1963:** § 149-1-15.

37-60-106. Duties of the board - state water plan - legislative declaration. (1) It is the duty of the board to promote the conservation of the waters of the state of Colorado in order to secure the greatest utilization of such waters and the utmost prevention of floods; and in particular, and without limiting the general character of this section, the board has the power and it is its duty:

(a) To foster and encourage irrigation districts, public irrigation districts, water users' associations, conservancy districts, drainage districts, mutual reservoir companies, mutual irrigation companies, grazing districts, and any other agencies which are formed under the laws of the state of Colorado, or of the United States, for the conservation, development, and utilization of the waters of Colorado;

(b) To assist any such agencies in their financing, but not to lend or pledge the credit or faith of the state of Colorado in aid thereof, or to attempt to make the state responsible for any of the debts, contracts, obligations, or liabilities thereof;

(c) To devise and formulate methods, means, and plans for bringing about the greater utilization of the waters of the state and the prevention of flood damages therefrom, and to designate and approve storm or floodwater runoff channels or basins, and to make such designations available to legislative bodies of cities and incorporated towns, to county planning commissions, and to boards of adjustment of cities, incorporated towns, and counties of this state;

(d) To gather data and information looking toward the greater utilization of the waters of the state and the prevention of floods and for this purpose to make investigations and surveys;

(e) To cooperate with the United States and the agencies thereof, and with other states for the purpose of bringing about the greater utilization of the waters of the state of Colorado and the prevention of flood damages;

(f) To cooperate with the United States, or any of the agencies thereof, in the making of preliminary surveys, and sharing the expense thereof, when necessary, respecting the engineering and economic feasibility of any proposed water conservation or flood control project within the state of Colorado, designed for the purpose of bringing about greater utilization of the waters of this state;

(g) To formulate and prepare drafts of legislation, state and federal, designed to assist in securing greater beneficial use and utilization of the waters of the state and protection from flood damages;

(h) To investigate and assist in formulating a response to the plans, purposes, procedures, requirements, laws, proposed laws, or other activities of the federal government and other states which affect or might affect the use or development of the water resources of this state;

(i) To confer with and appear before the officers, representatives, boards, bureaus, committees, commissions, or other agencies of other states, or of the federal government, for the purpose of protecting and asserting the authority, interests, and rights of the state of Colorado and its citizens with respect to the waters of the interstate streams in this state;

(j) To acquire by grant, purchase, bequest, devise, or lease, any real property or interest therein for the purpose of the prevention or control of floods, or to acquire by eminent domain any real property or interest therein with respect to any project specifically authorized by the United States congress for the prevention or control of floods, including but not limited to easements and rights-of-way for ingress into and egress from such project, with the power in either event to lease such lands or interest therein to agencies of the federal government or to the state or any agency or political subdivision thereof for the construction, operation, or maintenance of flood control and prevention facilities;

(k) In general, to take such action and have such powers as are incidental to the foregoing specific provisions and to the general purposes of this article;

(l) To enter into contracts as provided in sections 37-60-119 to 37-60-122 for the construction of conservation projects which, as authorized by the general assembly under procedures set forth in section 37-60-122, will conserve and utilize for the best advantage of the people of this state the water and power resources of the state, including projects beyond the boundaries of the state of Colorado located on interstate waters when the benefit of such project accrues to the citizens of the state of Colorado, upon application under such rules and regulations as the board shall establish;

(m) To file applications in the name of the department of natural resources for the appropriation of water;

(n) To take all action necessary to acquire or perfect water rights for projects sponsored by the board;

(o) To sell or otherwise dispose of property owned by the board, in the name of the state of Colorado, as a result of expenditures from the Colorado water conservation board construction fund in such manner as to be most advantageous to the state. Proceeds from such sale or disposal shall accrue to the Colorado water conservation board construction fund and shall not revert to the general fund at the close of any fiscal year.

(p) To make grants pursuant to the provisions of section 37-60-122.2 (2) for fish and wildlife resources;

(q) To make a mitigation recommendation pursuant to the provisions of section 37-60-122.2 (1) constituting the official position of the state of Colorado regarding mitigation to maintain a balance between the development of the state's water resources and the protection of the state's fish and wildlife resources;

(r) To foster the conservation of the water of the state of Colorado by the promotion and implementation of sound measures to enhance water use efficiency in order to serve all the water needs of the state, to assure the availability of adequate supplies for future uses, and to assure that necessary water services are provided at a reasonable cost;

(s) Repealed.

(t) To enter into one or more agreements with the Colorado water resources and power development authority and any other entities to assist in the development of the water resources of the state;

(u) (I) To adopt and update, as warranted, a state water plan. In exercising its authority pursuant to this paragraph (u), executive order D2013-005, or any analogous successor order directing the board to adopt or amend a state or Colorado water plan, the board shall comply with all requirements of this paragraph (u).

(II) **Legislative declaration.** Because the constitution vests all legislative power of the state in the general assembly, the general assembly:

(A) Finds that the primary purpose of a state water plan is to determine state policy regarding the optimal conservation and development of Colorado's water resources;

(B) Determines that the general assembly is primarily responsible for guiding the development of state water policy; and

(C) Declares that enactment of this paragraph (u) is necessary to protect the interests of the public in the state's water resources and that in enacting this paragraph (u), the general assembly intends to engage the people of the state in a public dialogue regarding optimum state water policy; affirm its delegation of policy-making authority to the Colorado water conservation board, subject to direction by the general assembly; and not interfere with, but instead to promote the policies, processes, basin roundtable plans, and interbasin compact negotiations conducted pursuant to the "Colorado Water for the 21st Century Act", article 75 of this title, and the interbasin compact charter as approved by the general assembly acting by bill as specified in section 37-75-105 (2).

(III) In exercising its authority pursuant to this paragraph (u), the board shall:

(A) Develop the state water plan with the involvement of the public and the basin roundtables, as created in section 37-75-104 (3)(b), and provide opportunities for public comment before adopting any final or significantly amended plan;

(B) Present the scope, fundamental approach, and basic elements of the plan to the water resources review committee created in section 37-98-102 by August 1, 2014;

(C) In developing the draft plan, consider the feedback from the water resources review committee submitted to the board pursuant to section 37-98-103 (6)(a) by November 1, 2014;

(D) Present the draft plan to the water resources review committee by July 1, 2015;

(E) In developing the final plan, consider the feedback from the water resources review committee submitted pursuant to section 37-98-103 (6)(b) by November 1, 2015; and

(F) Notify the water resources review committee of any proposed significant amendments to the plan, as determined by the board, by June 1 of any year in which the amendment is proposed to be adopted; present the proposed amendment to the committee by August 1 of that year; and consider the committee's feedback submitted pursuant to section 37-98-103 (6)(c) by November 1 of that year.

(IV) By November 1 of each year following the submission to the water resources review committee of a state water plan or amendment pursuant to this paragraph (u), any member of the general assembly may make a request in writing to the chairperson of the water resources review committee that the committee hold one or more hearings to review the plan or amendment as submitted to the water resources review committee. Upon receipt of the request, the chairperson of the committee shall promptly schedule a hearing to conduct the review and provide adequate notice to the public and the board. The committee, after holding a public hearing, may recommend the introduction of a bill or bills based on the results of the review. A bill recommended by the committee for consideration under this subparagraph (IV) does not count against the number of bills to which either the committee or the members of the general assembly are limited by law or joint rule of the senate and the house of representatives, and a hearing held by the committee pursuant to this subparagraph (IV) does not count against the number of meetings allowed by section 37-98-102 (1)(a).

(V) A state water plan, whether or not the subject of a bill introduced pursuant to subparagraph (IV) of this paragraph (u), is only a policy, is not a rule, and does not have the force or effect of law.

(2) The board may coordinate with the United States secretary of the interior and the United States secretary of agriculture to develop plans that conserve and develop water resources consistent with this article for federal lands pursuant to 16 U.S.C. sec. 530, 16 U.S.C. sec. 1604, and 43 U.S.C. sec. 1712.

Source: L. 37: p. 1304, § 11. **CSA:** C. 173B, § 11. **CRS 53:** § 148-1-11. **C.R.S. 1963:** § 149-1-11. **L. 66:** p. 44, § 8. **L. 67:** p. 294, § 5. **L. 71:** p. 1343, § 1. **L. 77:** (1)(o) amended, p. 1692, § 1, effective March 4; (1)(h) R&RE, p. 1691, § 1, effective March 26. **L. 80:** (1)(o) amended, p. 698, § 1, effective May 2; (1)(o) amended, p. 695, § 1, effective June 5. **L. 87:** (1)(p) and (1)(q) added, p. 1295, § 2, effective July 13. **L. 91:** (1)(r) added, p. 2023, § 3, effective June 4. **L. 2003:** (2) added, p. 1035, § 5, effective April 17; (1)(s) and (1)(t) added, p. 2410, § 2, effective June 5. **L. 2014:** (1)(u) added, (SB 14-115), ch. 187, p. 697, § 1, effective May 15.

Editor's note: Subsection (1)(s)(II) provided for the repeal of subsection (1)(s), effective upon the rejection by the registered electors of the state voting on the ballot question submitted pursuant to § 37-60-203. (See L. 2003, p. 2410.) The vote count on the measure at the general election held November 4, 2003, was as follows:

FOR:	307,412
AGAINST:	627,716

Cross references: (1) For duties of the board with respect to groundwater, see § 37-90-117; for eminent domain proceedings, see articles 1 to 7 of title 38.

(2) In 1991, subsection (1)(r) was added by the "Water Conservation Act of 1991". For the short title and the legislative declaration, see sections 1 and 2 of chapter 328, Session Laws of Colorado 1991.

(3) For the legislative declaration contained in the 2003 act enacting subsection (2), see section 1 of chapter 145, Session Laws of Colorado 2003.

37-60-106.5. Study of water salvage. (Repealed)

Source: L. 91: Entire section added, p. 2023, § 4, effective June 4. **L. 96:** Entire section repealed, p. 1223, § 23, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act repealing this section, see section 1 of chapter 237, Session Laws of Colorado 1996.

37-60-107. Meetings - notice. The board may provide for the holding of regular meetings and may hold a special meeting at any time and place in the state upon the call of the chairman or vice-chairman or of any two voting members. Notice of all special meetings shall be given by telegram at least forty-eight hours, or by registered mail at least four days, before any special meeting. Six voting members shall constitute a quorum, and the affirmative or negative vote of at least six voting members is necessary to bind the board. Any business may be transacted at a special meeting which could be transacted at a regular meeting.

Source: L. 37: p. 1301, § 5. **CSA:** C. 173B, § 5. **CRS 53:** § 148-1-5. **C.R.S. 1963:** § 149-1-5. **L. 83:** Entire section amended, p. 1399, § 1, effective April 29.

37-60-108. Seal - rules and regulations. The board shall adopt a seal, and all documents to be executed by the board shall be under such seal, signed by the chairman or vice-chairman and attested by the secretary. From time to time, the board may adopt suitable rules and regulations as are necessary or expedient for the conduct of its business and the administration of this article.

Source: L. 37: p. 1302, § 6. **CSA:** C. 173B, § 6. **CRS 53:** § 148-1-6. **C.R.S. 1963:** § 149-1-6.

Cross references: For rule-making procedures, see article 4 of title 24.

37-60-109. Commissioner. (1) The governor from time to time, with the approval of the board, shall appoint a commissioner, who shall represent the state of Colorado upon joint commissions to be composed of commissioners representing the state of Colorado and another state or other states for the purpose of negotiating and entering into compacts or agreements between said states, with the consent of the congress when necessary, ascertaining and declaring the authority, interest, or right of the several signatory states, or any of them, over, in, and to interstate waters, all to the end that such waters may be used and disposed of by the several states and their respective citizens in accordance with an equitable apportionment or division thereof made between the signatory states by the terms of the compact or agreement; except that

any compact or agreement so entered into on behalf of said states shall not be binding or obligatory upon any of said states or the citizens thereof until the same has been ratified and approved by the legislatures of all of said signatory states and by the congress of the United States when necessary.

(2) The board shall furnish such commissioners with such legal, engineering, clerical, and other assistants as the board may deem advisable and necessary, all legal assistants to be employed with the consent of the attorney general. Such commissioners shall serve at the pleasure of the governor at a compensation to be fixed by him. The compensation of the legal, engineering, and other assistants of said commissioners shall be fixed by the board, and all such compensation and necessary traveling expenses of such commissioners and their assistants shall be paid out of the funds appropriated for carrying out the purposes of this article.

Source: L. 37: p. 1303, § 9. **CSA:** C. 173B, § 9. **CRS 53:** § 148-1-9. **C.R.S. 1963:** § 149-1-9.

37-60-110. Authority of commissioners under prior laws. All acts or parts of acts in conflict herewith, relating to the appointment of commissioners for negotiating compacts respecting the waters of interstate streams are hereby repealed; but such repeal shall neither affect the authority of any commissioners now engaged in the process of negotiating any interstate compact respecting the waters of any interstate stream of this state nor affect the validity of any such compact when so negotiated.

Source: L. 37: p. 1308, § 15. **CSA:** C. 173B, § 14. **CRS 53:** § 148-1-13. **C.R.S. 1963:** § 149-1-13.

37-60-111. Compensation of members - director - employees. (1) Each appointed member of the board not otherwise in full-time employment of the state shall receive a per diem allowance of fifty dollars for each day actually and necessarily spent in the discharge of official duties, and all members shall receive traveling and other necessary expenses actually incurred in the performance of official duties. Per diem and other expenses paid under this section shall be from moneys appropriated from the Colorado water conservation board construction fund.

(2) The office of director of the water conservation board is hereby created. The board shall appoint a person who is well versed in water matters and qualified by experience, knowledge, and personality to represent the board and carry out its functions. The director shall be the chief administrative head of the board under the direction and supervision of the board and shall have general supervision and control of all its activities, functions, and employees. The appointment or removal of such director shall be subject to section 13 of article XII of the state constitution and statutes enacted pursuant thereto relating to the state personnel system. He shall be reimbursed for all actual and necessary traveling and other expenses incurred by him in the discharge of his official duties.

(3) Pursuant to section 13 of article XII of the state constitution, the board may employ such technical, clerical, and other personnel necessary to enable it to perform its duties and carry out the purposes of this article. Such personnel shall be reimbursed for all actual and necessary traveling and other expenses incurred by them in the discharge of their official duties.

Source: L. 37: p. 1303, § 8. **CSA:** C. 173B, § 8. **CRS 53:** § 148-1-8. **C.R.S. 1963:** § 149-1-8. **L. 67:** p. 294, § 4. **L. 2002:** (1) amended, p. 988, § 1, effective August 7.

Cross references: For the state personnel system, see § 13 of art. XII, Colo. Const., and article 50 of title 24.

37-60-112. Warrants for salaries and expenses. The controller is authorized to draw warrants monthly in payment of the lawful salaries and expenses of the board or commissioners and their legal, engineering, and other assistants and employees on vouchers signed by the secretary of the board and approved by the governor.

Source: L. 37: p. 1307, § 12. **CSA:** C. 173B, § 12. **CRS 53:** § 148-1-12. **C.R.S. 1963:** § 149-1-12.

37-60-113. Board to cooperate with attorney general. The board shall cooperate with the attorney general in all matters relating to interstate suits concerning the waters of the rivers of the state and shall arrange for the gathering and compilation of all information, factual, engineering, or other data requisite or desirable for the use of the attorney general in the conduct of such suits.

Source: L. 37: p. 1304, § 10. **CSA:** C. 173B, § 10. **CRS 53:** § 148-1-10. **C.R.S. 1963:** § 149-1-10.

37-60-114. Attorney general as legal advisor. The attorney general is the legal advisor for the board, and with his or her consent the board may employ additional legal counsel.

Source: L. 37: p. 1302, § 7. **CSA:** C. 173B, § 7. **CRS 53:** § 148-1-7. **C.R.S. 1963:** § 149-1-7. **L. 67:** p. 294, § 3. **L. 2016:** Entire section amended, (HB 16-1094), ch. 94, p. 269, § 20, effective August 10.

37-60-115. Water studies - rules - repeal. (1) (a) The Colorado water conservation board is authorized to forthwith make, or cause to be made, a continuous study of the water resources of the state of Colorado, and a continuous study of the present and potential uses thereof to the full extent necessary to a unified and harmonious development of all waters for beneficial use in Colorado to the fullest extent possible under the law, including the law created by compacts affecting the use of said water. The studies to be made shall include analyses of the extent to which water may be transferred from one watershed to another within the state without injury to the potential economic development of the natural watershed from which water might be diverted for the development of another watershed.

(b) In order to assure that the state of Colorado protects its allocation of interstate waters for current and future beneficial purposes, to achieve optimum development of such waters under significant constraints imposed by federal law and policy, and to achieve efficient and effective management of river systems for recognized beneficial purposes, the board is authorized to expend such moneys as may be allocated, appropriated, or otherwise credited to the Colorado water conservation board construction fund for such projects and programs as may

be specifically authorized by the general assembly, including but not limited to development of river basin models within and without the state, policy formulation, interstate negotiations, and water management within the state.

(2) (Deleted by amendment, L. 96, p. 1223, § 24, effective August 7, 1996.)

(3) The Colorado water conservation board is further authorized and directed, after consultation with the agriculture, livestock, and natural resources committee of the house of representatives and the agriculture, natural resources, and energy committee of the senate and consistent with its duties set forth in section 37-90-117 and the provisions of subsections (1) and (2) of this section, to study the state's groundwater resource, particularly that water that may prove to be nontributary, both within the Denver basin and throughout the state, including nontributary groundwater quality.

(4) (a) The Colorado water conservation board shall compile an inventory of potential dam and reservoir sites within the state of Colorado.

(b) The inventory shall be based upon a review of the state engineer's water rights tabulation and a review of all publicly available published information. Original engineering work or field investigations shall not be performed by the board for the inventory. The inventory shall be compiled and maintained on a computerized information retrieval system which is either a part of or otherwise compatible with the water data bank maintained by the state engineer.

(c) The following information concerning potential dam and reservoir sites within the state of Colorado having a capacity of twenty thousand acre-feet or more, or concerning such other sites as the board deems important, shall be included in the inventory:

(I) The location of a dam site, by river, county, and reference to surveyed section corners;

(II) The name of a dam and reservoir site if one is commonly ascribed to it;

(III) Basic data about a potential dam to the extent such is readily available;

(IV) The conditional water rights decreed to a site, if any, and their dates of adjudication and basin ranks;

(V) If available, an estimate of a reservoir's total active capacity;

(VI) The potential uses of the water supply which would be developed; and

(VII) Citations to reference materials and sources for the information specified in this paragraph (c).

(d) Utilizing the inventory, the board shall identify potential dam and reservoir sites, the development of which may be stopped because of ongoing land uses which are encroaching upon needed lands or because of other circumstances.

(e) The board is authorized to pay for the expenses of periodically updating and maintaining the inventory of potential dam and reservoir sites for which this section calls using moneys appropriated, allocated, or otherwise credited to the Colorado water conservation board construction fund.

(5) Repealed.

(6) **Precipitation harvesting pilot projects.** (a) The board shall, in consultation with the state engineer, select the sponsors of up to ten new residential or mixed-use developments that will conduct individual pilot projects to collect precipitation from rooftops and impermeable surfaces for nonpotable uses. The purpose of the pilot projects shall be to:

(I) Evaluate the technical ability to reasonably quantify the site-specific amount of precipitation that, under preexisting, natural vegetation conditions, accrues to the natural stream system via surface and groundwater return flows;

(II) Create a baseline set of data and sound, transferable methodologies for measuring local weather and precipitation patterns that account for variations in hydrology and precipitation event intensity, frequency, and duration, quantifying preexisting, natural vegetation consumption, measuring precipitation return flow amounts, identifying surface versus groundwater return flow splits, and identifying delayed groundwater return flow timing to receiving streams;

(III) Evaluate a variety of precipitation harvesting system designs;

(IV) Measure precipitation capture efficiencies;

(V) Quantify the amount of precipitation that must be augmented to prevent injury to decreed water rights;

(VI) Compile and analyze the data collected; and

(VII) Provide data to allow sponsors to adjudicate permanent augmentation plans as specified in paragraph (c) of this subsection (6).

(b) An applicant for a development permit, as that term is defined in section 29-20-103, C.R.S., for a new planned unit development or new subdivision of residential housing or mixed uses may submit an application to the board to become a sponsor of one or more of the ten pilot projects authorized by this section. The board shall establish criteria and guidelines, and update the criteria and guidelines by January 1, 2016, with the goal of incentivizing the submission of applications and applying lessons learned from previously approved pilot projects, for applications and the selection of pilot projects, including the following:

(I) An application fee and, for pilot projects that are selected, an annual review fee;

(II) The information to be included in the application, including a description of the proposed development and the proposed precipitation harvesting system;

(III) Selection of pilot projects to represent a range of project sizes and geographic and hydrologic areas in the state, with no more than three pilot projects being located within any single water division established in section 37-92-201;

(IV) The requirement that the proposed development meet any applicable local government water supply requirement through sources other than precipitation harvesting;

(V) Giving priority to pilot projects that:

(A) Are located in areas that face renewable water supply challenges; and

(B) Promote water conservation.

(VI) Regionally applicable factors that sponsors can use for substitute water supply plans that specify the amount of precipitation consumed through evapotranspiration of preexisting natural vegetative cover. If an applicant uses the factors, the state engineer shall give the factors presumptive effect, subject to rebuttal. The board need not establish factors for a region until the sponsor of a project located within that region has submitted a minimum of two years of data pursuant to sub-subparagraph (B) of subparagraph (II) of paragraph (c) of this subsection (6). A sponsor that makes such a submission shall also submit the data to the board.

(c) Notwithstanding any limitations regarding phreatophytes or impermeable surfaces that would otherwise apply pursuant to section 37-92-103 (9) or 37-92-501 (4)(b)(III), each of the ten pilot projects shall:

(I) During the term of the pilot project, operate according to a substitute water supply plan, if approved annually by the state engineer pursuant to section 37-92-308 (4) or (5). The pilot project shall be required to replace an amount of water equal to the amount of precipitation captured out of priority from rooftops and impermeable surfaces for nonpotable uses; except that, in determining the quantity of water required for the substitute water supply plan to replace out-of-priority stream depletions, there is no requirement to replace the amount of historic natural depletion to the waters of the state, if any, caused by the preexisting natural vegetative cover evapotranspiration for the surface areas made impermeable and associated with the pilot project. The applicant bears the burden of proving the historic natural depletion; except that the applicant may use applicable regional factors established pursuant to subparagraph (VI) of paragraph (b) of this subsection (6).

(II) (A) Apply to the appropriate water court for a permanent augmentation plan prior to completion of the pilot project or file a plan with the state engineer to permanently retire the rainwater collection system, which plan shall be reviewed and approved prior to the cessation of augmentation. As a condition of approving the retirement of a pilot project, the state engineer shall have the authority to require the project sponsor to replace any ongoing delayed depletions caused by the pilot project after the project has ceased. Any such permanent augmentation plan shall entitle the sponsor to consume without replacement only that portion of the precipitation that the sponsor proves by a preponderance of the evidence would not have accrued to a natural stream under preexisting, natural vegetation conditions. The sponsor shall be required to fully augment any precipitation captured out of priority that would otherwise have accrued to a natural stream.

(B) After a minimum of two years of data collection and upon application to the appropriate water court for a permanent augmentation plan, the pilot project sponsor shall file an application for approval of a substitute water supply plan pursuant to section 37-92-308 (4). For any substitute supply plan application filed under section 37-92-308 (4), the sponsor shall fully augment any precipitation captured out of priority; except that, in determining the quantity of water required for the substitute water supply plan to replace out-of-priority stream depletions, there is no requirement to replace the amount of historic natural depletion to the waters of the state, if any, caused by preexisting natural vegetative cover evapotranspiration for the surface areas made impermeable and associated with the pilot project. The applicant may use applicable regional factors established pursuant to subparagraph (VI) of paragraph (b) of this subsection (6).

(d) Each sponsor shall submit an annual preliminary report to the board and the state engineer summarizing the information set forth in paragraph (a) of this subsection (6). The board and the state engineer shall brief the water resources review committee created in section 37-98-102 on the reported results of the pilot projects by July 1, 2014. Each sponsor shall submit a final report to the board and the state engineer by January 15, 2025. The board and the state engineer shall provide a final briefing to the water resources review committee by July 1, 2025.

(e) This subsection (6) is repealed, effective July 1, 2026.

(7) Repealed.

(8) **Fallowing and leasing pilot projects.** (a) After a period of notice and comment, the board may, in consultation with the state engineer and upon consideration of any comments submitted, select the sponsors of up to fifteen pilot projects pursuant to the approval process set forth in subsection (8)(f) of this section. The board shall not itself sponsor a pilot project, but the

board may provide financial, technical, or other assistance to a pilot project pursuant to the board's other activities and programs. No more than five pilot projects may be located in any one of the major river basins, namely: The South Platte river basin; the Arkansas river basin; the Rio Grande river basin; and the Colorado river basin. Each project may last up to ten years in duration and must demonstrate the practice of:

(I) Fallowing agricultural irrigation land; and

(II) Leasing the associated water rights for temporary municipal, agricultural, environmental, industrial, or recreational use.

(b) The purpose of the pilot program is to:

(I) In fallowing irrigated agricultural land for leasing water for temporary municipal, agricultural, environmental, industrial, or recreational use, demonstrate cooperation among different types of water users, including cooperation among shareholders, ditch companies, water user associations, irrigation districts, water conservancy districts, water conservation districts, and municipalities;

(II) Evaluate the feasibility of delivering leased water to the temporary municipal, agricultural, environmental, industrial, or recreational users;

(III) Provide sufficient data from which the board, in consultation with the state engineer, can evaluate the efficacy of using a streamlined approach, such as an accounting and administrative tool, for determining:

(A) Historical consumptive use;

(B) Return flows;

(C) The potential for material injury to other water rights; and

(D) Conditions to prevent material injury; and

(IV) Demonstrate how to operate, administer, and account for the practice of fallowing irrigated agricultural land for leasing water for temporary municipal, agricultural, environmental, industrial, or recreational use without causing material injury to other vested water rights, decreed conditional water rights, or contract rights to water.

(c) The board shall not select a pilot project that involves:

(I) The fallowing of the same land for more than three years in a ten-year period;

(II) The fallowing of more than thirty percent of a single irrigated farm for more than ten consecutive years;

(III) The transfer or facilitation of the transfer of water across the continental divide by direct diversion, exchange, or otherwise; or

(IV) The transfer or facilitation of the transfer of water out of the Rio Grande basin by direct diversion, exchange, or otherwise.

(d) After providing a reasonable opportunity for public comment and consideration of any comments received, the board, in consultation with the state engineer, shall establish criteria and guidelines including at least the following:

(I) An application fee and, for selected pilot projects, an annual review fee;

(II) The information to be included in the application, including a description of the proposed pilot project;

(III) The maximum quantity of transferable consumptive water use per year for any single pilot project;

(IV) Notwithstanding paragraph (a) of this subsection (8), any geographic areas that are not eligible for pilot projects;

(V) A time period of sixty days within which the board receives comments on the application after providing notice pursuant to the process set forth in paragraphs (e) and (f) of this subsection (8). The comments may include:

(A) Any claim of injury;

(B) Any terms and conditions that the person filing a comment believes should be imposed on the pilot project in order to prevent injury to other water rights, decreed conditional water rights, or contract rights to water; and

(C) Other information that the person filing the comment believes the board should consider in reviewing the application.

(VI) Criteria for a conference between a pilot project applicant, the state engineer, and owners of water rights or a contract rights to water that file comments on the application, including the following requirements:

(A) The conference participants must meet within thirty days after final comments on the application have been submitted;

(B) At the conference, the conference participants must discuss how the pilot project could be structured to prevent material injury to other water rights and contract rights to water; and

(C) Within fifteen days after the conference, the pilot project applicant and the owners of water rights or contract rights to water must file a joint report with the board and with the state engineer outlining any agreed-upon terms and conditions for the proposed pilot project and explaining the reasons for failing to agree on any terms and conditions for the proposed pilot project if the applicant and the owners fail to reach a full agreement at the conference;

(VII) Guidelines for the operation and administration of the pilot projects to assure that a pilot project:

(A) Will effect only a temporary change in the historical consumptive use of the water right in a manner that will not cause injury to other water rights, decreed conditional water rights, or contract rights to water; and

(B) Will not impair compliance with any interstate compact;

(VIII) Criteria for selecting pilot projects that range in size and complexity;

(IX) Criteria for selecting pilot projects over a period ending on December 31, 2023, to provide a window for potential pilot project sponsors to apply;

(X) A requirement that a proposed pilot project:

(A) Meet applicable local government land use requirements;

(B) Prevent erosion and blowing soils; and

(C) Comply with local county noxious weed regulations;

(XI) A requirement that, during the term of the pilot project, land and water included in a pilot project is not also included in a substitute water supply plan pursuant to section 37-92-308 (5) or (7), an interruptible water supply agreement pursuant to section 37-92-309, or another pilot project;

(XII) A requirement for periodic reports to the board on the operation of the pilot project; and

(XIII) A requirement that priority is given to pilot projects that can be implemented using existing infrastructure.

(e) (I) For approval of a pilot project, the applicant must provide written notice of the application, including, at a minimum:

(A) A description of the proposed pilot project;

(B) An analysis of the historical use, the historical consumptive use, and the historical return flows of the water rights or contract rights to water proposed to be used for temporary municipal, agricultural, environmental, industrial, or recreational use; and

(C) A description of the source of water to be used to replace historical return flows during the pilot project and after completion of the pilot project; and

(II) The applicant must provide the written notice by first-class mail or electronic mail to all parties that have subscribed to the substitute water supply plan notification list, as described in section 37-92-308 (6) for the division or divisions in which the water right is located and in which it will be used. The applicant must file proof of the written notice with the board.

(f) After consideration of the comments and any conference reports submitted pursuant to subparagraph (VI) of paragraph (d) of this subsection (8), the board may approve the pilot project application if:

(I) Within fifteen days after receiving a conference report submitted under subparagraph (VI) of paragraph (d) of this subsection (8) or, if the board does not receive any comments on the application, within thirty days after the period of time for comments has expired, the state engineer has made a written determination that the operation and administration of the pilot project:

(A) Will effect only a temporary change in the historical consumptive use of the water right in a manner that will not cause injury to other water rights, decreed conditional water rights, or contract rights to water; and

(B) Will not impair compliance with any interstate compact; and

(II) The board adopts all terms and conditions recommended by the state engineer.

(g) When the board approves or denies a pilot project application, it shall serve a copy of the decision, along with a copy of the state engineer's written determination and any conference reports submitted under subparagraph (VI) of paragraph (d) of this subsection (8), upon all parties to the application by first-class mail or, if elected by the parties, by electronic mail. The board shall mail a copy of the decision, the state engineer's written determination, and any conference reports to the appropriate water clerk.

(h) (I) Neither the board's approval nor the denial of a pilot project creates any presumptions, shifts the burden of proof, or serves as a defense in any legal action that may arise concerning the pilot project. The board's approval or denial of a pilot project application and the state engineer's written determination on the application are final agency actions that may be appealed. An appeal pursuant to this subsection (8) must be filed with the appropriate water judge and be made within thirty-five days after the board's decision has been mailed to the appropriate water clerk.

(II) The water judge shall expedite the appeal, which shall be de novo, and use the procedures and standards set forth in sections 37-92-304 and 37-92-305 for determination of matters rereferred to the water judge by the referee; except that the water judge shall not deem a party's failure either to appeal all or any part of the board's decision or the state engineer's written determination or to state any grounds for the appeal to preclude the party from raising a claim of injury in a future proceeding before the water judge. The pilot project applicant is deemed to be the applicant for purposes of the procedures and standards that the water judge applies to the appeal.

(i) The board, in consultation with the state engineer, shall annually report to the water resources review committee, created in section 37-98-102, or its successor committee, on the reported results of the pilot projects. The board, in consultation with the state engineer, shall provide a final report to the water resources review committee, or its successor committee, by July 1, 2034, or the year in which the final pilot project is completed, if before 2034.

(j) This subsection (8) is repealed, effective September 1, 2035.

(9) Repealed.

(10) **High groundwater administration and management pilot projects - report - repeal.** (a) The board, in consultation with the state engineer, shall select two pilot projects for the purpose of providing the board and the state engineer with sufficient data to evaluate two alternative methods of lowering the water table in areas along the South Platte river that are experiencing damaging high groundwater levels.

(b) (I) One pilot project must be located in district 2 of division 1, within or near the town of Gilcrest, Colorado, or the town of LaSalle, Colorado. The other pilot project must be located in district 64 of division 1, within or near the city of Sterling, Colorado. Each project must be four years in duration and must be designed to demonstrate a proposed method for effectively lowering the water table. The board, in consultation with the state engineer, shall determine that a proposed method of lowering the water table is locally appropriate for the geographic area in which the pilot project will be implemented before approving it.

(II) An approved pilot project must:

(A) Be accurately monitored in real time in accordance with tracking and testing methods determined by the board in consultation with the state engineer to determine the immediate impacts that the pilot project has on the water table; and

(B) During the term of the pilot project, operate according to a substitute water supply plan approved annually by the state engineer under section 37-92-308 (4) or (5).

(c) After providing at least forty-five days' notice of proposed criteria and guidelines and an opportunity for public comment on them, the board, in consultation with the state engineer, shall establish criteria and guidelines for the pilot program, including at least the following:

(I) An application fee and, for the approved pilot projects, an annual review fee;

(II) The information to be included in the application;

(III) A period of at least seventy-five days within which the state engineer receives comments on an application after providing notice pursuant to the process set forth in paragraph (d) of this subsection (10). The comments may include:

(A) Any claim of injury;

(B) Any terms and conditions that the person filing a comment believes should be imposed on the pilot project in order to prevent injury to other water rights, decreed conditional water rights, contract rights to water, or compliance with any interstate compact; and

(C) Other information that the person filing the comment believes the board and the state engineer should consider in reviewing the application.

(IV) Criteria for selecting pilot projects; and

(V) Guidelines for the operation and administration of the pilot projects to assure that the pilot projects will not cause injury to other water rights, decreed conditional water rights, contract rights to water, or compliance with any interstate compact.

(d) For approval of a pilot project, an applicant must provide written notice of the application, including the location of the proposed pilot project, by either electronic mail or first-

class mail, to all parties that have subscribed to the substitute water supply plan notification list, as described in section 37-92-308 (6), for water division 1. The applicant must file proof of the written notice with the board.

(e) (I) When the board, in consultation with the state engineer, approves or denies a pilot project application, the board shall serve a copy of the decision on all parties to the application by electronic mail or, if elected by the parties, by first-class mail.

(II) The board's approval or denial of a pilot project application is a final agency action that may be appealed. An appeal must be filed with the appropriate water judge and be made within thirty-five days after the board's decision has been served in accordance with subparagraph (I) of this paragraph (e).

(III) The water judge shall use the procedures and standards set forth in sections 37-92-304 and 37-92-305 to determine matters rereferred to the water judge by the referee; except that the water judge shall not deem a party's failure either to appeal all or any part of the board's decision or to state any grounds for the appeal to preclude the party from raising a claim of injury in a future proceeding before the water judge. The pilot project applicant is deemed to be the applicant for purposes of the procedures and standards that the water judge applies to the appeal.

(f) The board, in consultation with the state engineer, shall annually report to the water resources review committee, created in section 37-98-102, or its successor committee, on the reported results of the pilot projects. The board, in consultation with the state engineer, shall provide a final report to the water resources review committee or its successor committee by September 1, 2020.

(g) This subsection (10) is repealed, effective July 1, 2021.

(11) Repealed.

Source: L. 53: p. 645, § 1. **CRS 53:** § 148-1-14. **C.R.S. 1963:** § 149-1-14. **L. 67:** p. 294, § 6. **L. 85:** Entire section amended, p. 1191, § 3, effective June 13; (3) added, p. 1168, § 9, effective July 1. **L. 86:** (4) added, p. 1079, § 1, effective July 1. **L. 88:** (4)(e) amended, p. 1236, § 6, effective May 23. **L. 92:** (1) amended, p. 2282, § 2, effective May 27. **L. 96:** (2), (4)(a), (4)(d), and (4)(e) amended, p. 1223, § 24, effective August 7. **L. 2006:** (5) added, p. 1236, § 1, effective May 26. **L. 2009:** (6) added, (HB 09-1129), ch. 389, p. 2102, § 1, effective June 2. **L. 2012:** (7) added, (HB 12-1278), ch. 239, p. 1062, § 2, effective May 30. **L. 2013:** (8) added, (HB 13-1248), ch. 210, p. 879, § 2, effective May 13. **L. 2014:** (9) added, (SB 14-195), ch. 355, p. 1653, § 1, effective June 6. **L. 2015:** IP(6)(b), (6)(c)(I), (6)(c)(II)(B), (6)(d), and (6)(e) amended and (6)(b)(VI) added, (HB 15-1016), ch. 236, p. 874, § 1, effective August 5; (8)(a)(II), (8)(b)(I), (8)(b)(II), (8)(b)(IV), IP(8)(d)(V), (8)(e)(I)(B), IP(8)(f), (IP)(8)(f)(I), and (8)(g) amended, (SB 15-198), ch. 145, p. 439, § 1, effective August 5; (10) added, (HB 15-1013), ch. 235, p. 870, § 1, effective August 5. **L. 2016:** (10)(g) amended, (SB 16-189), ch. 210, p. 791, § 99, effective June 6; (11) added, (HB 16-1256), ch. 268, p. 1108, § 1, effective June 9. **L. 2017:** IP(8)(a), (8)(d)(IX), (8)(i), and (8)(j) amended, (HB 17-1219), ch. 188, p. 685, § 1, effective August 9. **L. 2018:** (7) repealed, (HB 18-1375), ch. 274, p. 1719, § 77, effective May 29.

Editor's note: (1) Subsection (5)(d) provided for the repeal of subsection (5), effective July 1, 2008. (See L. 2006, p. 1236.)

(2) Subsection (9)(e) provided for the repeal of subsection (9), effective July 1, 2017. (See L. 2014, p. 1653.)

(3) Subsection (11)(h) provided for the repeal of subsection (11), effective July 1, 2018. (See L. 2016, p. 1108.)

Cross references: For the legislative declaration contained in the 1996 act amending subsections (2), (4)(a), (4)(d), and (4)(e), see section 1 of chapter 237, Session Laws of Colorado 1996. For the legislative declaration in the 2012 act adding subsection (7), see section 1 of chapter 239, Session Laws of Colorado 2012. For the legislative declaration in the 2013 act adding subsection (8), see section 1 of chapter 210, Session Laws of Colorado 2013.

37-60-116. Reports. The Colorado water conservation board shall cause the results of the studies to be embodied in written reports, copies of which shall be held in the offices of said board as a public record available for the use of any interested person, and a copy of each of said reports shall be sent to the senate agriculture, natural resources, and energy committee and the house of representatives agriculture, livestock, and natural resources committee.

Source: L. 53: p. 646, § 3. **CRS 53:** § 148-1-16. **C.R.S. 1963:** § 149-1-16. **L. 67:** p. 295, § 7. **L. 2002:** Entire section amended, p. 880, § 14, effective August 7. **L. 2003:** Entire section amended, p. 2014, § 112, effective May 22.

37-60-117. Reports and publications. (1) The board shall report to the executive director of the department of natural resources at such time and on such matters as the executive director requires.

(2) Publication of studies conducted by the board and other publications circulated in quantity outside the division shall be subject to the approval and control of the executive director of the department of natural resources.

Source: L. 58: pp. 325, 326, §§ 1-4. **CRS 53:** § 148-1-19. **C.R.S. 1963:** § 149-1-17. **L. 64:** p. 179, § 159.

37-60-118. Assent to water resources planning act. (1) The state of Colorado, by and through the Colorado water conservation board, hereby assents to the provisions of the act of congress entitled "Water Resources Planning Act", approved July 22, 1965. The Colorado water conservation board is authorized, empowered, and directed to perform such acts as may be necessary to the conduct and establishment of a comprehensive water planning program as defined in title III of said act and in conformity with such rules and regulations as may be promulgated by the water resources council pursuant to said act.

(2) There is hereby created a fund designated as "federal aid water planning fund" to which shall be deposited all sums contributed to the state of Colorado by the federal government pursuant to title III of the water resources planning act. All moneys deposited under the provisions of this section are hereby specifically appropriated to the Colorado water conservation board for the purposes specified in said act of congress and no such moneys shall be expended for any other purpose.

Source: L. 67: p. 295, § 8. **C.R.S. 1963:** § 149-1-18. **L. 85:** (1) amended, p. 1366, § 37, effective June 28.

Cross references: For the "Water Resources Planning Act", see 79 Stat. 244, codified at 42 U.S.C. § 1962 et seq.

37-60-119. Construction of water and power facilities - contracts with and charges against users. (1) (a) In order to promote the general welfare and safety of the citizens of this state and to protect the allocation of interstate waters to the state, the board may, subject to the provisions in section 37-60-122, construct, rehabilitate, enlarge, or improve, or loan money to enable the construction, rehabilitation, enlargement, or improvement of, such flood control, water supply, and hydroelectric energy facilities, excluding water treatment facilities, together with related recreational facilities, in whole or in part, as will, in the opinion of the board, abate floods or conserve, effect more efficient use of, develop, or protect the water and hydroelectric energy resources and supplies of the state of Colorado.

(b) In carrying out this subsection (1), the board shall place special emphasis upon the adoption and incorporation of measures 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 section 37-60-122, enter into contracts for the use of, or to loan money to enable the construction, rehabilitation, enlargement, or improvement of, flood control, water, power, and any related recreational facilities, excluding water treatment facilities, with any agency or political subdivision of this state or the federal government, individuals, corporations, or organizations composed of citizens of this state. The 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, are continuously appropriated to the Colorado water conservation board for supplemental operational expenditures.

(3) (Deleted by amendment, L. 2002, p. 456, § 29, effective May 23, 2002.)

Source: L. 71: p. 1343, § 2. **C.R.S. 1963:** § 149-1-19. **L. 78:** Entire section R&RE, p. 465, § 1, effective May 4. **L. 79:** Entire section amended, p. 1361, § 1, effective July 1. **L. 81:** (2) amended, p. 1768, § 2, effective June 16. **L. 84:** Entire section amended, p. 958, § 9, effective May 21. **L. 86:** Entire section amended, p. 1085, § 6, effective April 24. **L. 92:** Entire section amended, p. 2283, § 3, effective May 27. **L. 96:** (3) amended, p. 1223, § 25, effective August 7. **L. 2002:** (2) and (3) amended, p. 456, § 29, effective May 23. **L. 2004:** (1)(b) and (2) amended, p. 888, § 21, effective May 21. **L. 2016:** (1)(a) amended, (SB 16-174), ch. 163, p. 518, § 14, effective May 16. **L. 2018:** (2) amended, (SB 18-218), ch. 336, p. 2018, § 24, effective May 30.

Editor's note: Subsection (1) was amended and subdivided into subsections (1)(a) and (1)(b) in HB 04-1221. A second reading house floor amendment to HB 04-1221 struck subsection (1)(a), leaving only that portion contained in subsection (1)(b). The language remaining in the original subsection (1) no longer included in the bill was relettered on revision to follow standard C.R.S. format. (See HB 04-1221, chapter 253, page 888, and the 2004 House Journal for April 2, 2004, p. 1192.)

Cross references: For the legislative declaration contained in the 1996 act amending subsection (3), see section 1 of chapter 237, Session Laws of Colorado 1996.

37-60-120. Control of projects - contractual powers of board. (1) The state of Colorado shall have the ownership and control of such portions of said projects, or shall take a sufficient security interest in property or take such bonds, notes, or other securities evidencing an obligation, as will assure repayment of funds made available by section 37-60-119. Any security interest in property taken under this subsection (1) may be perfected and enforced in the same manner as security interests under article 9 of title 4, C.R.S. The board is empowered to enter into contracts that are, in its opinion, necessary for the maintenance and continued operation of such projects.

(2) If a sponsor fails to comply with the board's procedures and requirements, the board may, at its discretion, withhold or terminate all or a portion of the board's financial contribution to or loan for a project, notwithstanding the authorization of the same by the general assembly, or the board may require such assurances from the project sponsor as the board deems necessary in order to adequately protect the board's investment in a project.

(3) The board may adjust the authorized interest rate, extend the authorized repayment period for any project, or defer one or more annual payments if, in the board's opinion, the entity requesting such adjustment, extension, and deferment demonstrates that it has encountered significant and unexpected financial difficulties and that it has been duly diligent in its efforts to comply with the repayment provisions of its contract with the board.

Source: L. 71: p. 1344, § 2. **C.R.S. 1963:** § 149-1-20. **L. 84:** Entire section amended, p. 958, § 10, effective May 21. **L. 85:** Entire section amended, p. 1153, § 3, effective June 2. **L. 96:** (1) and (3) amended, p. 991, § 11, effective May 23. **L. 2001:** (1) amended, p. 1446, § 41, effective July 1. **L. 2002:** (2) and (3) amended, p. 456, § 30, effective May 23.

37-60-120.1. Chatfield reservoir reallocation project - authority - repeal. (1) In order to promote the general welfare and safety of the citizens of this state and utilize reallocated storage space available in the federal flood control project known as Chatfield reservoir, the board has undertaken the Chatfield reservoir reallocation project, referred to in this section as the "project", in coordination and cooperation with a local coalition and with participants who have executed letters of commitment with the board. The implementation of the project will result in benefits to South Platte river water users and the downstream environment without adversely impacting other river basins. The implementation of the project will require the board to contract with the United States Army corps of engineers, referred to in this section as the "corps", to hold and allocate storage space in the reservoir and to undertake substantial activities related to the

mitigation of environmental and recreation impacts caused by the increase in reservoir water levels.

(2) The board is hereby authorized to act as an agent of the project parties to implement this section. Through an agency fund the board may collect and disburse money from any entity to implement the project and to meet the obligations contained in an intergovernmental agreement, project partnership agreement, or other contract, referred to in this section as an "agreement", with the corps or other entity that is required to implement the project. Notwithstanding any other law, including section 24-30-1303, C.R.S., the board and the department of natural resources acting through its agencies shall have the authority to enter into any agreement with the corps or other entities, including consultants and contractors, that in the board's discretion is necessary to implement the project; however, sufficient funds shall have been made available to the board for such purposes. The authority granted by this subsection (2) includes: The ability to hold storage space in the reservoir; to contract with, and allocate storage to, local entities who will utilize the reservoir storage space; to undertake mitigation and long-term operation and maintenance of the project; to receive and expend proceeds received from the sale or lease of reservoir storage space and from any other activities that effectuate the purpose of the acquired project storage space; to pay the costs of storage or other necessary expenses; and to otherwise implement the project. The board has the express authority, in equitable partnership with the participants, to undertake such action as is necessary, including the award of contracts to public and private entities, to undertake mitigation construction and long-term operation and maintenance and related activities; to lease, sublease, or assign storage space rights; and to otherwise effectuate the storage of water in the reservoir. The state treasurer shall credit all proceeds received under this section and the interest earned from investments of those proceeds to the Colorado water conservation board construction fund created in section 37-60-121 (1)(a), and all such moneys are continuously appropriated and remain available for the designated purposes until they are fully expended. In the event of a conflict between the application of state or federal law or rules, including chapter 3 of the state fiscal rules in existence as of May 29, 2008, federal laws and rules shall apply.

(3) This section is repealed, effective at the end of the project. Such repeal shall not affect the validity of any action taken pursuant to this section. The director of the board shall, in writing, promptly notify the state treasurer and the revisor of statutes when the project is completed.

Source: L. 2008: Entire section added, p. 1572, § 25, effective May 29. **L. 2014:** (2) amended, (HB 14-1333), ch. 356, p. 1661, § 17, effective June 6.

Editor's note: Subsection (3) provides for the repeal of this section, effective at the end of the Chatfield reservoir reallocation project, and requires the director of the Colorado water conservation board to promptly notify, in writing, the revisor of statutes when the project is completed. As of publication date, no such notice had been received.

37-60-120.2. Animas-La Plata project - authority - repeal. (1) Notwithstanding any other law, including section 24-30-1303, C.R.S., and given that thirty-six million dollars have been authorized and appropriated and a purchase agreement has been executed with the United States bureau of reclamation to acquire all of the state's water allocation in the Animas-La Plata

project and that the state is a participating member of the Animas-La Plata operation, maintenance, and replacement association, and in order to support and provide long-term water supplies for the local area and to fully utilize the state's water allocation in the Animas-La Plata project, in coordination with the United States bureau of reclamation and the other participating project beneficiaries, the department of natural resources, acting by and through the board, may:

(a) Contract with and allocate Animas-La Plata project water to local entities and water providers in Colorado;

(b) Receive and expend proceeds from the sale or lease of Animas-La Plata project water and land, and any other activities that effectuate the purpose of the acquired project water;

(c) Undertake Animas-La Plata project operations, maintenance, and replacement costs;

(d) Pay the costs of Animas-La Plata project storage or other necessary expenses, otherwise implement the purposes of this subsection (1), and fully utilize the water and storage acquired; and

(e) Undertake such action as necessary to lease, sublease, exchange, sell, assign, or otherwise effectuate the use of the acquired project water in the local area within Colorado.

(2) The state treasurer shall credit all proceeds received under this section and the interest earned from investments of those proceeds to the Colorado water conservation board construction fund created in section 37-60-121 (1)(a), and all such money is continuously appropriated to the board and remains available for the designated purposes until it is fully expended.

(3) (a) In the event of a conflict between the application of state or federal law or rules, including chapter 3 of the state fiscal rules in existence as of June 7, 2010, regarding the money subject to this section, federal law and rules apply.

(b) Nothing in this section precludes the use of water acquired pursuant to this section as part of a joint operational pool for the mutual benefit of all Animas-La Plata project participants.

(4) This section is repealed, effective when the state has no water allocation in the Animas-La Plata project, is not a member of the Animas-La Plata operation, maintenance, and replacement association, and all existing purchases, leases, subleases, or any other of the contractual arrangements that have been executed on behalf of the state's water allocation, have been fully repaid or fulfilled. The director of the board shall file a written notification to the revisor of statutes when the final condition of this subsection (4) has been fulfilled.

Source: L. 2016: Entire section added, (SB 16-174), ch. 163, p. 519, § 15, effective May 16.

Editor's note: As of publication date, the revisor of statutes has not received the notice referred to in subsection (4).

37-60-121. Colorado water conservation board construction fund - creation - nature of fund - funds for investigations - contributions - use for augmenting the general fund - funds created. (1) (a) There is hereby created a fund to be known as the Colorado water conservation board construction fund, which shall consist of all moneys which may be appropriated thereto by the general assembly or which may be otherwise made available to it by the general assembly and such charges that may become a part thereof under the terms of section 37-60-119. All interest earned from the investment of moneys in the fund shall be credited to the

fund and become a part thereof. Such fund shall be a continuing fund to be expended in the manner specified in section 37-60-122 and shall not revert to the general fund of the state at the end of any fiscal year.

(b) In the consideration of making expenditures from the fund, the board shall be guided by the following criteria:

(I) The first priority of the moneys available to the fund shall be devoted to projects which will increase the beneficial consumptive use of Colorado's undeveloped compact entitled waters;

(II) The balance of the moneys available to the fund shall be devoted to projects for the repair and rehabilitation of existing water storage and delivery networks, controlled maintenance of the satellite monitoring network authorized pursuant to section 37-80-102 (10), construction and maintenance of the South Platte river alluvial aquifer groundwater monitoring network authorized pursuant to section 37-80-122, and for investment in water management activities and studies;

(III) The board's participation in the construction cost of a project shall be repaid and the board's costs or its participation in any feasibility studies shall be repaid to the board when construction on a project commences;

(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.

(V) (Deleted by amendment, L. 2002, p. 457, § 31, effective May 23, 2002.)

(VI) After July 1, 1981, domestic water treatment and distribution systems shall not be recommended by the board to the general assembly;

(VII) The board may recommend to loan funds on floodplain projects;

(VIII) For all feasibility studies, the board shall ensure that the scope of the study is confined as nearly as possible to a single integrated project; and

(IX) Any feasibility study of a proposed project shall include, to the extent deemed necessary by the board, an evaluation of:

(A) The water rights available to a proposed project and the yield thereof;

(B) The engineering and economic feasibility of a proposed project; and

(C) The anticipated economic, social, and environmental effects of a proposed project.

(c) and (d) Repealed.

(2) The board, in addition to the amount allocated to a project to cover the actual cost of construction, may allocate to the project constructed by it, under contract or otherwise, such amounts as may be determined by it for investigating, engineering, inspection, and other expenses and may provide for the repayment of the same out of the first moneys repayable from the project under the contract for its construction, and such moneys so repaid shall be accounted for within the purpose of making investigations for the development of the water resources of the state.

(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 the balance of the litigation fund, which is hereby created, for the purpose of engaging in litigation:

(I) 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 that may be imposed, including but not limited to by-pass flows, by any agency of the United States on permits for existing or reconstructed water facilities located on federally owned lands;

(II) To oppose an application of a federal agency for an instream flow right that is not in compliance with Colorado law for establishing instream flow rights;

(III) To defend and protect Colorado's allocations of water in interstate streams and rivers; and

(IV) To ensure the maximum beneficial use of water for present and future generations by addressing important questions of federal law.

(b) Pursuant to the spending authority set forth in paragraph (a) of this subsection (2.5), moneys may be expended from the litigation fund at the discretion of the board if:

(I) With respect to litigation, the Colorado attorney general requests that the board authorize the expenditure of moneys in a specified amount not to exceed the balance of the fund for the costs of litigation associated with one or more specifically identified lawsuits meeting the criteria set forth in paragraph (a) of this subsection (2.5).

(II) (Deleted by amendment, L. 2003, p. 1769, § 19, effective May 19, 2003.)

(c) Any interest earned on the moneys in the litigation fund shall be credited on an annual basis to the litigation fund created in paragraph (a) of this subsection (2.5).

(d) Notwithstanding section 24-1-136 (11)(a)(I), the board, in conjunction with the attorney general, shall report annually to the senate agriculture, natural resources, and energy committee and the house of representatives agriculture, livestock, and natural resources committee on any litigation that involves the use of any money from the litigation fund created in subsection (2.5)(a) of this section.

(e) Any moneys remaining in the litigation fund at such time as the general assembly acts to close the fund shall be credited to the Colorado water conservation board construction fund created in subsection (1) of this section.

(f) (Deleted by amendment, L. 2001, p. 690, 27, effective May 30, 2001.)

(3) (a) The board may receive and expend contributions of money, property, or equipment from any source for use in making investigations, contracting projects, or otherwise carrying out the purposes of sections 37-60-119 to 37-60-122.

(b) The board may accept, allocate, expend, and otherwise use contributions and donations of money, property, or equipment from any source to carry out the purposes of this article, article 20 of title 36, C.R.S., and section 37-92-102 (3). Such contributions are hereby continuously appropriated to the board for the purposes established by this section.

(4) (a) The personal services, operating, travel and subsistence, and capital expenses of administering and managing the feasibility studies, engineering and design work, and construction activities associated with projects which are funded using moneys appropriated, allocated, or otherwise credited to the Colorado water conservation board construction fund may be paid from such moneys.

(b) Repealed.

(c) The legal services expenses, including the expenses of legal counsel employed by the board with the consent of the attorney general pursuant to section 37-60-114, of negotiating and preparing contracts for the disbursement of moneys from the construction fund for the study, design, and construction of projects which are funded using moneys appropriated, allocated, or

otherwise credited to the Colorado water conservation board construction fund may be paid from such moneys.

(d) Repealed.

(5) Repealed.

(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 fund, which fund is hereby created, 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 fund and to the 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 that shall accrue pursuant to this subsection (6) shall be as follows:

(a) On July 1, 1988, five million dollars;

(b) and (c) (Deleted by amendment, L. 2001, p. 690, § 27, effective May 30, 2001.)

(d) On July 1, 1994, 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) (A) (Deleted by amendment, L. 2001, p. 690, § 27, effective May 30, 2001.)

(B) (Deleted by amendment, L. 2003, p. 1769, § 19, effective May 19, 2003.)

(III) One million five hundred thousand dollars to the Colorado water resources and power development authority;

(IV) (Deleted by amendment, L. 2001, p. 1277, § 49, effective June 5, 2001.)

(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.

(VII) (Deleted by amendment, L. 2001, p. 690, § 27, effective May 30, 2001.)

(e) and (f) (Deleted by amendment, L. 94, p. 1371, § 1, effective May 25, 1994.)

(6.1) Repealed.

(7) As of July 1, 1988, the state treasurer and the controller shall transfer the five million dollars specified in paragraph (a) of subsection (6) of this section to the water rights final settlement fund, which fund is hereby created. The moneys transferred to the water rights final settlement fund are hereby continuously appropriated to the board solely for the purpose of providing moneys for the tribal development funds for the Southern Ute Indian tribe and the Ute Mountain Ute Indian tribe as provided for in the Colorado Ute Indian water rights final settlement agreement of December 10, 1986. Interest earned from the investment of the moneys in such fund prior to its deposit in the tribal development funds shall be credited to the Colorado water conservation board construction fund and to the Colorado water resources and power development authority at the end of each fiscal year. Of such interest, fifty percent shall be credited to the Colorado water conservation board construction fund and fifty percent shall be

transferred to the Colorado water resources and power development authority. The board shall deposit the moneys from the water rights final settlement fund in the tribal development funds, as provided for in the settlement agreement, no later than thirty days after the deposit of federal moneys in such funds as required by the settlement agreement; except that no such moneys shall be available for disbursement from the tribal development funds until such time as the final consent decree contemplated by the settlement agreement is entered; and, except that if such final consent decree is not entered by December 31, 1991, then the moneys so deposited shall be returned, together with the interest earned thereon, to the water rights final settlement fund. If the first installment of federal moneys is not deposited in the tribal development funds before June 1, 1990, or if the state's moneys have been returned from the tribal development funds to the water rights final settlement fund because the final consent decree is not entered by December 31, 1991, then the board shall transfer fifty percent of the moneys in the water rights final settlement fund to the Colorado water resources and power development authority and fifty percent of the moneys in the water rights final settlement fund to the Colorado water conservation board construction fund.

(8) Notwithstanding any provision in this section or section 37-60-122 to the contrary, the state treasurer shall deduct five hundred thousand dollars from the Colorado water conservation board construction fund and transfer such sum to the capital account of the species conservation trust fund created in section 24-33-111 (2), C.R.S.

(9) Notwithstanding any provision of this section or of section 37-60-122 to the contrary, on April 20, 2009, the state treasurer shall deduct ten million two hundred fifty thousand dollars from the Colorado water conservation board construction fund and transfer such sum to the general fund.

(10) Repealed.

Source: L. 71: p. 1344, § 2. **C.R.S. 1963:** § 149-1-21. **L. 77:** Entire section amended, p. 1692, § 2, effective March 4. **L. 80:** (1) amended and (4) added, p. 698, § 2, effective May 2; (1) amended, p. 695, § 2, effective June 5. **L. 81:** (1) and (4) amended, p. 1769, § 3, effective June 16. **L. 83:** (5) added, p. 1522, § 7, effective March 22. **L. 85:** (4)(b) repealed, p. 1154, § 5, effective June 2. **L. 86:** (1)(b)(III) and (1)(b)(IV) amended, p. 1086, § 7, effective April 24; (6) added, p. 1119, § 19, effective July 1. **L. 87:** (6) amended and (7) added, p. 1296, §§ 3, 4, effective July 13. **L. 88:** (4)(c) added, p. 1237, § 8, effective May 23; IP(6) amended, p. 1433, § 19, effective June 11. **L. 89:** IP(6) and (6)(b) to (6)(d) amended and (6)(e) and (6.1) added, pp. 1417, 1418, §§ 1, 2, effective April 11. **L. 90:** IP(6) and (6)(c) to (6)(e) amended and (6)(f) added, p. 1619, § 1, effective April 3. **L. 91:** IP(6) and (6)(d) to (6)(f) amended, p. 2014, § 1, effective April 1. **L. 91, 2nd Ex. Sess.:** (1)(d) added, p. 103, § 1, effective October 11. **L. 92:** IP(6) and (6)(d) to (6)(f) amended, p. 2302, § 1, effective February 25; (1)(b)(I) and (1)(b)(II) amended, p. 2284, § 4, effective May 27. **L. 93:** (1)(b)(II) amended, p. 3, § 1, effective February 16; (1)(d) amended, p. 11, § 1, effective February 16; IP(6) and (6)(d) to (6)(f) amended, p. 1, § 1, effective February 16. **L. 94:** (2.5) added and (6)(d) to (6)(f) amended, p. 1371, § 1, effective May 25; (1)(b)(VII) amended, p. 1532, § 11, effective May 31. **L. 95:** (2.5)(a) and (6)(d)(II) amended, p. 383, § 11, effective May 4. **L. 96:** (1)(c) repealed, p. 1224, § 26, effective August 7. **L. 98:** (3) amended, p. 540, § 14, effective April 30; (8) added, p. 1003, § 3, effective May 27. **L. 99:** (2.5)(f) added, p. 846, § 15, effective May 24. **L. 2001:** (1)(b)(VII), IP(2.5)(a), IP(2.5)(b), (2.5)(c), (2.5)(d), (2.5)(e), (2.5)(f), IP(6), (6)(b), (6)(c), (6)(d)(II)(A), and (6)(d)(VII) amended,

p. 690, § 27, effective May 30; (2.5)(c), (2.5)(e), and (6)(d)(IV) amended, p. 1277, § 49, effective June 5. **L. 2002:** (1)(b)(II), (1)(b)(IV), (1)(b)(V), and (3) amended and (6.1) repealed, pp. 457, 449, §§ 31, 5, effective May 23; (2.5)(d) amended, p. 880, § 15, effective August 7; (5) repealed, p. 1006, § 2, effective August 7. **L. 2003:** (2.5), (3)(b), and (6)(d)(II)(B) amended, p. 1769, § 19, effective May 19; (2.5)(d) amended, p. 2015, § 113, effective May 22. **L. 2006:** (3)(b) amended, p. 954, § 6, effective July 1. **L. 2009:** (9) added, (SB 09-208), ch. 149, p. 627, § 33, effective April 20; (1)(b)(IV) amended, (SB 09-125), ch. 328, p. 1751, § 20, effective June 1. **L. 2012, 1st Ex. Sess.:** (4)(d) added, (SB 12S-002), ch. 1, p. 2419, § 16, effective May 19. **L. 2015:** (1)(b)(II) amended, (HB 15-1166), ch. 302, p. 1245, § 2, effective June 5; (10) added, (HB 15-1178), ch. 310, p. 1269, § 1, effective June 5. **L. 2016:** (1)(b)(II) amended, (SB 16-189), ch. 210, p. 791, § 100, effective June 6. **L. 2017:** (2.5)(d) amended, (HB 17-1257), ch. 254, p. 1066, § 11, effective August 9.

Editor's note: (1) Subsection (1)(d)(II) provided for the repeal of subsection (1)(d), effective July 1, 1994. (See L. 93, p. 11.)

(2) Amendments to subsections (2.5)(c) and (2.5)(e) by Senate Bill 01-138 and Senate Bill 01-157 were harmonized.

(3) Amendments to subsection (2.5)(d) by Senate Bill 03-110 and House Bill 03-1344 were harmonized.

(4) Subsection (4)(d)(II) provided for the repeal of subsection (4)(d), effective June 30, 2013. (See L. 2012, 1st Ex. Sess., p. 2419.)

(5) Subsection (10)(d) provided for the repeal of subsection (10), effective July 1, 2018. (See L. 2015, p. 1269.)

Cross references: (1) For the legislative acknowledgment contained in the 1991 act amending this section, see section 2 of chapter 325, Session Laws of Colorado 1991.

(2) For the legislative declaration contained in the 1996 act repealing subsection (1)(c), see section 1 of chapter 237, Session Laws of Colorado 1996.

37-60-121.1. Reserved rights litigation fund. (1) The general assembly hereby recognizes that the claims of various agencies and organizations of the federal government to waters of the state of Colorado represent a claim to waters heretofore claimed by appropriators of the state of Colorado who have relied on the doctrine of prior appropriation to protect their property rights in and to those waters lawfully appropriated or acquired. The general assembly recognizes the need to take all actions necessary to protect such valuable property rights of its citizens, including the establishment of the fund as set forth in this section.

(2) (a) There is hereby established a reserved rights litigation fund in the office of the state treasurer to be utilized by the department of law for resolution of reserved rights claims. Moneys credited to said fund shall be expended by the attorney general only upon authorization by the general assembly and consistent with the provisions of this section. The controller, upon presentation of vouchers properly drawn and signed by the attorney general or an authorized employee of the department of law, shall issue warrants drawn on said fund. All moneys so deposited in the reserved rights litigation fund shall remain in said fund to be used for the purposes set forth in this section and shall not revert to the Colorado water conservation board construction fund, the general fund, or any other fund at the end of the year, except as directed

by the general assembly. All interest earned from the investment of moneys in the reserved rights litigation fund shall be credited to and become a part of the Colorado water conservation board construction fund created by section 37-60-121.

(b) Repealed.

Source: L. 82: Entire section added, p. 538, § 1, effective April 9. **L. 98:** (2) amended, p. 1003, § 4, effective May 27. **L. 99:** (2)(b) repealed, p. 846, § 14, effective May 24.

37-60-121.3. Severance tax trust fund statewide water planning account - creation. (Repealed)

Source: L. 2000: Entire section added, p. 1750, § 16, effective June 1. **L. 2001:** Entire section repealed, p. 690, § 25, effective May 30.

37-60-121.5. Loan guarantee fund - creation. The loan guarantee fund is hereby created in the state treasury and is referred to in this section as the "fund". The fund consists of money that the general assembly may appropriate or transfer to the fund. All interest and income derived from the deposit and investment of money in the fund shall be transferred to the severance tax perpetual base fund created in section 39-29-109 (2)(a). Money in the fund is continuously appropriated to the board for the purpose of guaranteeing the repayment of loans made for water projects with multiple participants.

Source: L. 2017: Entire section added, (HB 17-1248), ch. 229, p. 891, § 21, effective May 23.

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

(a) Repealed.

(b) The general assembly may authorize projects as it deems to be to the advantage of the people of the state of Colorado and shall direct the board to proceed with the projects in the priorities established by the general assembly under terms approved by the general assembly. The board is authorized to make loans without general assembly approval in amounts not to exceed ten million dollars. The unappropriated balance of money in the Colorado water conservation board construction fund and the state severance tax perpetual base fund shall be available and continuously appropriated for this purpose. Notwithstanding section 24-1-136 (11)(a)(I), the board shall submit a written determination of the basis for the project loans to the general assembly by January 15 of the year following the year in which the loan was made.

(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 loan, grant, or otherwise expend on a continuing basis the moneys appropriated to the construction fund authorized by section 37-60-121, in accordance with policies adopted by the board.

(2) When a feasibility report prepared pursuant to paragraph (c) of subsection (1) of this section is funded in part by an entity or agency other than the board, then the board may, at its discretion and subject to such procedures as it deems appropriate, have such entity or agency select an engineer to provide the professional services needed to prepare such report, notwithstanding the provisions of part 14 of article 30 of title 24, C.R.S.

(3) When design and construction of a project authorized pursuant to paragraph (b) of subsection (1) of this section is funded in part by an entity or agency other than the board, then the board may, at its discretion and subject to such procedures as it deems appropriate, have such entity or agency select an engineer to provide the professional services needed for the construction management of the project, notwithstanding the provisions of part 14 of article 30 of title 24, C.R.S.

Source: L. 71: p. 1344, § 2. **C.R.S. 1963:** § 149-1-22. **L. 74:** (1)(b) amended, p. 443, § 1, effective March 21; (1)(d) added, p. 444, § 1, effective March 21. **L. 79:** (1)(a) to (1)(c) amended, p. 1362, § 2, effective July 1. **L. 80:** (1)(c) amended, p. 699, § 3, effective May 2. **L. 81:** (1)(c) amended, p. 1770, § 4, effective June 16. **L. 85:** (2) and (3) added, p. 1153, § 4, effective June 2. **L. 92:** (1)(a) amended, p. 2284, § 5, effective May 27. **L. 93:** (1)(a) and (1)(b) amended, p. 3, § 2, effective February 16. **L. 96:** (1)(a) repealed, p. 671, § 27, effective August 7. **L. 2002:** IP(1) and (1)(b) amended, p. 453, § 20, effective May 23. **L. 2003:** (1)(b) amended, p. 1770, § 20, effective May 19. **L. 2004:** (1)(c) amended, p. 888, § 22, effective May 21. **L. 2007:** (1)(b) amended, p. 1519, § 22, effective May 31. **L. 2013:** (1)(b) amended, (SB 13-181), ch. 209, p. 871, § 17, effective May 13. **L. 2017:** IP(1) and (1)(b) amended, (HB 17-1257), ch. 254, p. 1066, § 12, effective August 9.

Cross references: For the legislative declaration contained in the 1996 act repealing subsection (1)(a), see section 1 of chapter 141, Session Laws of Colorado 1996.

37-60-122.2. Fish and wildlife resources - legislative declaration - fund - authorization. (1) (a) The general assembly hereby recognizes the responsibility of the state for fish and wildlife resources found in and around state waters which are affected by the construction, operation, or maintenance of water diversion, delivery, or storage facilities. The general assembly hereby declares that such fish and wildlife resources are a matter of statewide concern and that impacts on such resources should be mitigated by the project applicants in a reasonable manner. It is the intent of the general assembly that fish and wildlife resources that are affected by the construction, operation, or maintenance of water diversion, delivery, or storage facilities should be mitigated to the extent, and in a manner, that is economically reasonable and maintains a balance between the development of the state's water resources and the protection of the state's fish and wildlife resources.

(b) Except as provided in this paragraph (b), the applicant for any water diversion, delivery, or storage facility which requires an application for a permit, license, or other approval

from the United States shall inform the Colorado water conservation board, parks and wildlife commission, and division of parks and wildlife of its application and submit a mitigation proposal pursuant to this section. Exempted from such requirement are the Animas-La Plata project, the Two Forks dam and reservoir project, and the Homestake water project for which definite plan reports and final environmental impact statements have been approved or which are awaiting approval of the same, applicants for site specific dredge and fill permits for operations not requiring construction of a reservoir, and applicants for section 404 federal nationwide permits. If an applicant that is subject to the provisions of this section and the commission agree upon a mitigation plan for the facility, the commission shall forward such agreement to the Colorado water conservation board, and the board shall adopt such agreement at its next meeting as the official state position on the mitigation actions required of the applicant. In all cases the commission shall proceed expeditiously and, no later than sixty days from the applicant's notice, unless extended in writing by the applicant, make its evaluation regarding the probable impact of the proposed facility on fish and wildlife resources and their habitat and to make its recommendation regarding such reasonable mitigation actions as may be needed.

(c) The commission's evaluation and proposed mitigation recommendation shall be transmitted to the Colorado water conservation board. The board within sixty days, unless extended in writing by the applicant, shall either affirm the mitigation recommendation of the commission as the official state position or shall make modifications or additions thereto supported by a memorandum that sets out the basis for any changes made. Whenever modifications or additions are made by the board in the commission's mitigation recommendation, the governor, within sixty days, shall affirm or modify the mitigation recommendation which shall then be the official state position with respect to mitigation. The official state position, established pursuant to this subsection (1) shall be communicated to each federal, state, or other governmental agency from which the applicant must obtain a permit, license, or other approval.

(2) (a) Moneys transferred to the fish and wildlife resources fund pursuant to the provisions of section 37-60-121 (6) are hereby continuously appropriated to the Colorado water conservation board for the purpose of making grants pursuant to this subsection (2) and for offsetting the direct and indirect costs of the board for administering the grants. The interest earned from the investment of the moneys in the fund shall be credited to the fund.

(b) To the extent that the cost of implementing the mitigation recommendation made pursuant to subsection (1) of this section exceeds five percent of the costs of a water diversion, delivery, or storage facility, the board shall, upon the application of the applicant, make a mitigation grant to the applicant. The amount of the grant shall be sufficient to pay for the mitigation recommendation as determined by this section to the extent required above the applicant's five percent share. Any additional enhancement shall be at the discretion and within the means of the board. Under no circumstance shall the total amount of the grant exceed five percent of the construction costs of the project, or be disbursed in installments that exceed seventy percent of the amount of the grant during any fiscal year. Any mitigation cost in excess of ten percent of the construction costs of a project shall be borne by the applicant.

(c) An applicant may apply for an enhancement grant by submitting to the commission and the board an enhancement proposal for enhancing fish and wildlife resources over and above the levels existing without such facilities. The commission shall submit its recommendations on the proposal to the board for its consideration. The board, with the concurrence of the

commission, may award a grant for fish and wildlife enhancement. Any such enhancement grant will be shared equally by the Colorado water conservation board's fish and wildlife resources fund and the division of parks and wildlife's wildlife cash funds and other funds available to the division.

(d) For the purpose of this subsection (2), construction costs means the best estimate of the physical construction costs as fixed by the Colorado water conservation board as of the date of the grant application. Costs should be limited to design, engineering and physical construction and will not include the costs of planning, financing, and environmental documentation, mitigation costs, legal expenses, site acquisition or water rights.

(e) Species recovery grants from the fish and wildlife resources fund may be made for the purpose of responding to needs of declining native species and to those species protected under the federal "Endangered Species Act of 1973", 16 U.S.C. sec. 1531, et seq., as amended, in a manner that will carry out the state water policy.

(f) (Deleted by amendment, L. 2001, p. 692, § 28, effective May 30, 2001.)

(3) Decisions relating to the official state mitigation position made pursuant to paragraph (c) of subsection (1) of this section shall not be subject to judicial review.

(4) The board shall distribute mitigation and enhancement grants reasonably and equitably among water basins toward the end that those projects sponsored by beneficiaries east of the continental divide receive fifty percent of the money granted and those projects sponsored by beneficiaries west of the continental divide receive fifty percent of the money granted under this section.

(5) The general assembly hereby recognizes the role instream flows and river restoration projects play in mitigating the effects of the construction, operation, and maintenance of water diversion, delivery, and storage facilities. Therefore, the Colorado water conservation board and the operators of existing water diversion, delivery, or storage facilities projects are hereby authorized to apply directly to the board for moneys for projects to carry out the purposes of this section. The board is authorized to grant such moneys if it finds that such projects will further the purposes of this section.

Source: L. 87: Entire section added, p. 1297, § 5, effective July 13. **L. 97:** (1)(a) and (2)(a) amended and (2)(e) added, p. 1600, § 1, effective June 4. **L. 98:** (2)(f) added, p. 1004, § 5, effective May 27. **L. 99:** (2)(a) amended, p. 628, § 36, effective August 4. **L. 2001:** (2)(a), (2)(c), (2)(e), and (2)(f) amended, p. 692, § 28, effective May 30. **L. 2002:** (5) added, p. 456, § 28, effective May 23. **L. 2012:** (1)(b) amended, (HB 12-1317), ch. 248, p. 1238, § 103, effective June 4.

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.

Source: L. 2009: Entire section added, (SB 09-125), ch. 328, p. 1751, § 21, effective June 1.

37-60-122.4. Horse Creek basin account - creation. (Repealed)

Source: L. 97: Entire section added, p. 829, § 14, effective May 21. **L. 2002:** Entire section repealed, p. 457, § 32, effective May 23.

37-60-122.5. Emergency dam repair cash fund. There is hereby created in the state treasury the emergency dam repair cash fund. The state treasurer is hereby authorized and directed to transfer money from the Colorado water conservation board construction fund to the emergency dam repair cash fund in such amounts and at such times as determined by the Colorado water conservation board. Such transfers must not exceed five hundred thousand dollars. The money in the emergency dam repair cash fund is continuously appropriated to the Colorado water conservation board and the division of water resources for the emergency repair of dams pursuant to section 37-87-108.5. All money collected by the state engineer pursuant to section 37-87-108.5 shall be transmitted to the state treasurer, who shall credit the money to the Colorado water conservation board construction fund. All interest derived from the investment of money in the emergency dam repair cash fund shall be credited to the Colorado water conservation board construction fund. Any balance remaining in the emergency dam repair cash fund at the end of any fiscal year remains in the fund.

Source: L. 92: Entire section added, p. 2307, § 10, effective June 3. **L. 2001:** Entire section amended, p. 693, § 29, effective May 30. **L. 2018:** Entire section amended, (SB 18-218), ch. 336, p. 2019, § 25, effective May 30.

37-60-122.6. Emergency infrastructure repair cash fund - authorization. (Repealed)

Source: L. 93: Entire section added, p. 1335, § 10, effective June 6. **L. 94:** Entire section amended, p. 1532, § 12, effective May 31. **L. 2001:** (1) amended, p. 693, § 30, effective May 30. **L. 2002:** (1) amended, p. 454, § 22, effective May 23. **L. 2004:** Entire section repealed, p. 883, § 14, effective May 21.

37-60-122.7. Feasibility study small grant fund - creation.

(1) to (4) Repealed.

(5) (a) There is hereby created in the state treasury the feasibility study small grant fund for the purpose of making small grants to help pay the costs of preparing water project feasibility

studies. The Colorado water conservation board shall approve small feasibility study grants based solely on criteria adopted by the board.

(b) The state treasurer is hereby authorized and directed to transfer two hundred thousand dollars from the Colorado water conservation board construction fund to the feasibility study small grant fund. The moneys in the feasibility study small grant fund are hereby continuously appropriated to the board for grants in compliance with this subsection (5). All interest derived from the investment of moneys in the feasibility study small grant fund shall be credited to the Colorado water conservation board construction fund. Any balance remaining in the feasibility study small grant fund at the end of any fiscal year shall remain in the fund and shall not revert to the Colorado water conservation board construction fund.

Source: L. 95: Entire section added, p. 384, § 12, effective May 4. **L. 99:** (4) amended and (5) added, p. 845, § 13, effective May 24. **L. 2001:** Entire section amended, p. 694, § 31, effective May 30. **L. 2002:** (1) to (4) repealed, p. 453, § 18, effective May 23.

37-60-122.8. Publications fund. (1) There is hereby created in the state treasury the publications fund. The fund shall consist of moneys paid to the board from persons outside the board for copies of public records or publications provided by the board. The moneys in the fund may be expended by the board to pay for the cost of providing copies of public records or publications to persons outside the board. The moneys in the fund are hereby continuously appropriated to the board for the purposes established in this section.

(2) The publications fund shall have no more than ten thousand dollars in it and any amount in excess shall be credited to the Colorado water conservation board construction fund. All interest derived from the investment of moneys in the publications fund shall be credited to the publications fund.

(3) The state treasurer is hereby authorized and directed to transfer five thousand dollars from the Colorado water conservation board construction fund to the publications fund.

Source: L. 94: Entire section added, p. 1532, § 13, effective May 31. **L. 2001:** Entire section amended, p. 694, § 32, effective May 30.

37-60-122.9. Colorado river recovery program loan fund - creation. (1) There is hereby created in the state treasury the Colorado river recovery program loan fund for the purpose of making loans to the Colorado river and San Juan river recovery programs for the construction or improvement of certain water related projects in Colorado, under agreements with power users of the federal Colorado river storage project, required to recover the four endangered fish species of the upper Colorado river, including the San Juan river.

(2) The Colorado water conservation board shall recommend loans from the Colorado river recovery program loan fund to the general assembly pursuant to section 37-60-122 (1)(b). The loans shall be subject to an interest rate and repayment provisions to be determined by the Colorado water conservation board.

(3) The state treasurer is hereby authorized and directed to transfer to the Colorado river recovery program loan fund, created in subsection (1) of this section, out of any moneys in the Colorado water conservation board construction fund not otherwise appropriated, the sum of two million dollars. Interest earned on the funds in the Colorado river recovery program loan fund

shall be credited to the Colorado water conservation board construction fund, created in section 37-60-121 (1).

Source: L. 98: Entire section added, p. 538, § 11, effective April 30. **L. 2001:** Entire section amended, p. 695, § 33, effective May 30.

37-60-123. Conformity with state water plan. (Repealed)

Source: L. 71: p. 1345, § 2. **C.R.S. 1963:** § 149-1-23. **L. 83:** Entire section repealed, p. 1404, § 7, effective June 15.

37-60-123.1. Loan foreclosure fund - created. There is hereby created in the state treasury the loan foreclosure fund, referred to in this section as the "foreclosure fund". The state treasurer is hereby authorized and directed to transfer one hundred thousand dollars from the Colorado water conservation board construction fund to the foreclosure fund. The Colorado water conservation board is authorized to provide funding to cover the direct costs associated with completing foreclosure proceedings against a delinquent borrower from either the Colorado water conservation board construction fund or the severance tax perpetual base fund. The moneys in the foreclosure fund are hereby continuously appropriated to the board for loan foreclosure proceedings, including property management costs, appraisals, assessments, taxes, local government fees, insurance costs, court costs, and legal fees. All interest derived from the investment of moneys in the foreclosure fund shall be credited to the Colorado water conservation board construction fund. Any balance remaining in the foreclosure fund at the end of any fiscal year remains in the fund.

Source: L. 2001: Entire section added, p. 689, § 24, effective May 30. **L. 2013:** Entire section amended, (SB 13-181), ch. 209, p. 872, § 22, effective May 13.

37-60-123.2. Flood and drought response fund - stream restoration grant account - created. (1) There is hereby created in the state treasury the flood and drought response fund, referred to in this section as 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 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. The state treasurer shall credit all interest derived from the investment of moneys in the response fund to the Colorado water conservation board construction fund. Any balance remaining in the response fund at the end of any fiscal year remains in the fund.

(2) Repealed.

Source: L. 2001: Entire section added, p. 689, § 24, effective May 30. **L. 2007:** Entire section amended, p. 1519, § 24, effective May 31. **L. 2012, 1st Ex. Sess.:** Entire section

amended, (SB 12S-002), ch. 1, p. 2416, § 6, effective May 19. **L. 2014:** Entire section amended, (SB 14-179), ch. 227, p. 845, § 1, effective May 17; entire section amended, (HB 14-1333), ch. 356, p. 1661, § 18, effective June 6. **L. 2015:** (2)(e) amended, (SB 15-253), ch. 192, p. 638, § 15, effective May 14.

Editor's note: (1) Amendments to this section by HB 14-1333 and SB 14-179 were harmonized.

(2) Subsection (2)(e) provided for the repeal of subsection (2), effective July 1, 2017. (See L. 2015, p. 638.)

37-60-123.5. Agricultural emergency drought response. (1) If, pursuant to federal or state law, any portion of Colorado has received emergency drought designation or a disaster emergency has been proclaimed due to drought, notwithstanding the provisions of section 39-29-109 (1), C.R.S., in addition to any other moneys appropriated from the severance tax perpetual base fund, created by section 39-29-109 (2)(a), C.R.S., up to one million dollars in the severance tax perpetual base fund are continuously appropriated annually to the director of the Colorado water conservation board and the state engineer for use, in connection with the designation or proclamation, to make loans and grants to agricultural organizations for emergency drought-related water augmentation purposes.

(2) The director of the Colorado water conservation board and the state engineer shall consult with the commissioner of agriculture and the executive director of the department of natural resources before making any loans or grants pursuant to this section. Within three months after the end of any fiscal year during which the spending authority created pursuant to this section is exercised, the director and the state engineer shall report to the general assembly regarding how such spending authority was exercised.

Source: L. 2002, 3rd Ex. Sess.: Entire section added, p. 54, § 1, effective August 1. **L. 2007:** (1) amended, p. 1519, § 23, effective May 31. **L. 2008:** (1) amended, p. 1873, § 13, effective June 2. **L. 2013:** (1) amended, (SB 13-181), ch. 209, p. 873, § 23, effective May 13.

37-60-123.7. Acquisitions of water for instream flows. (1) In addition to any other moneys appropriated from the Colorado water conservation board construction fund, up to one million dollars in the fund are continuously appropriated to the board annually to pay for the costs of acquiring water, water rights, and interests in water for instream flow use. The total amount of the continuous appropriation that is unencumbered in any fiscal year must not exceed one million dollars. The primary priority for expenditures of these revenues is the costs of water acquisitions for existing or new instream flow water rights to preserve and improve the natural environment to a reasonable degree. These revenues also may be used, in limited circumstances, for the costs of water acquisitions to:

(a) Preserve and improve the natural environment of species that have been listed as threatened or endangered under state or federal law, are candidate species, or are likely to become candidate species;

(b) Support wild and scenic alternative management plans; or

(c) Provide federal regulatory certainty.

(1.5) Repealed.

(2) Prior to any expenditure of funds under this section, the board shall adopt criteria and guidelines regarding its implementation of this spending authority. The board shall approve any expenditure of funds pursuant to this section. Within three months after the end of any fiscal year during which the spending authority created pursuant to this section is exercised, the board shall report to the general assembly regarding how such spending authority was exercised.

Source: L. 2008: Entire section added, p. 1574, § 28, effective May 29. **L. 2009:** (1.5) added, (SB 09-235), ch. 388, p. 2101, § 9, effective July 1, 2010. **L. 2012:** (1.5) amended, (HB 12-1317), ch. 248, p. 1239, § 104, effective June 4. **L. 2013:** (1) amended, (SB 13-181), ch. 209, p. 868, § 15, effective May 13; (1.5) repealed, (SB 13-175), ch. 243, p. 1176, § 4, effective May 18.

37-60-124. Office of water conservation and drought planning - creation - powers and duties. (1) There is hereby created as an office under the Colorado water conservation board the office of water conservation and drought planning. The office shall have such staff as are necessary and appropriate to carry out the duties established for the office.

(2) The office of water conservation and drought planning shall promote water conservation and drought mitigation planning by performing, to the degree feasible, duties including, but not limited to, the following:

(a) Participating as a member or chairperson of any state water availability task forces established to monitor, forecast, mitigate, or prepare for drought;

(b) Acting as a repository for water conservation and drought mitigation planning information;

(c) Disseminating water conservation, drought mitigation planning, and related information to water providers and the general public;

(d) Providing technical assistance to and working with municipal, industrial, agricultural, and other water providers and state agencies as they plan for, evaluate, and implement water conservation plans and programs, drought mitigation plans, or both;

(e) Coordination of the planning for and assistance in the implementation of water conservation plans by state agencies pursuant to section 37-96-103 (4);

(f) Administration of financial assistance for water conservation and drought mitigation planning and implementation measures and programs; and

(g) Evaluating water conservation and drought mitigation plans related to the use of such plans by water providers to address water needs and to prepare for water-related emergencies based upon policies and guidelines adopted by the board pursuant to section 37-60-126.

(3) The personal services, operating, travel and subsistence, capital, and legal services expenses of administering the office of water conservation and drought planning and the programs and activities authorized by subsection (2) of this section may be paid from such moneys as are appropriated, allocated, or otherwise credited to the Colorado water conservation board construction fund.

(4) Repealed.

Source: L. 91: Entire section added, p. 2023, § 4, effective June 4. **L. 99:** (4) repealed, p. 25, § 1, effective March 5. **L. 2004:** Entire section amended, p. 1778, § 2, effective August 4.

Cross references: (1) In 1991, this entire section was added by the "Water Conservation Act of 1991". For the short title and the legislative declaration, see sections 1 and 2 of chapter 328, Session Laws of Colorado 1991.

(2) For the legislative declaration contained in the 2004 act amending this section, see section 1 of chapter 373, Session Laws of Colorado 2004.

37-60-124.4. Stream gauge fund - created. There is hereby created in the state treasury the stream gauge fund, referred to in this section as the "gauge fund". The state treasurer is hereby authorized and directed to transfer two hundred fifty thousand dollars from the Colorado water conservation board construction fund to the gauge fund. The moneys in the gauge fund are hereby continuously appropriated to the board for stream gaging and data collection efforts related to instream flow monitoring, compact protection, decision support systems, and flood forecasting and analysis. In addition to any remaining balance in the gauge fund at the end of any fiscal year, the board is hereby authorized, from the water conservation board construction fund, to annually provide up to two hundred fifty thousand dollars in order to restore the unencumbered balance in the gauge fund to two hundred fifty thousand dollars. All interest derived from the investment of moneys in the gauge fund shall be credited to the Colorado water conservation board construction fund. The board shall review the purposes of the gauge 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 gauge fund was established have ceased. The board may set terms and conditions as it deems appropriate concerning the annual expenditures of moneys from the gauge fund.

Source: L. 2007: Entire section added, p. 1513, § 4, effective May 31.

37-60-125. Authorizations for expenditures from Colorado water conservation board construction fund for demonstration of benefits of water efficiency. (1) The Colorado water conservation board is hereby authorized to expend five hundred thousand dollars from the Colorado water conservation board construction fund, notwithstanding the requirements of sections 37-60-119 to 37-60-122, for the purpose of a pilot program demonstrating the benefits of water efficiency measures by providing incentive grants, not to exceed fifty thousand dollars to any public agency, established under Colorado law, that requests assistance in the design and implementation of pilot water efficiency and conservation measures.

(2) The board is further authorized to expend eighty thousand dollars and 1.5 FTE for the fiscal year beginning July 1, 1991, for personal services, operating, travel and subsistence, capital, and legal services expenses of administering the pilot program authorized in subsection (1) of this section from the Colorado water conservation board construction fund.

(3) The board shall develop guidelines for the range of potentially eligible projects for the pilot program authorized in subsection (1) of this section by October 1, 1991, and shall establish such criteria and feasibility measures as will assure that a range of potentially beneficial projects are demonstrated as part of the pilot program.

(4) and (5) Repealed.

Source: L. 91: Entire section added, p. 2023, § 4, effective June 4. **L. 96:** (4) repealed, p. 1224, § 28, effective August 7. **L. 99:** (5) repealed, p. 25, § 2, effective March 5.

Cross references: (1) In 1991, this entire section was added by the "Water Conservation Act of 1991". For the short title and the legislative declaration, see sections 1 and 2 of chapter 328, Session Laws of Colorado 1991.

(2) For the legislative declaration contained in the 1996 act repealing subsection (4), see section 1 of chapter 237, Session Laws of Colorado 1996.

37-60-126. Water conservation and drought mitigation planning - programs - relationship to state assistance for water facilities - guidelines - water efficiency grant program - definitions - repeal. (1) As used in this section and section 37-60-126.5, unless the context otherwise requires:

(a) "Agency" means a public or private entity whose primary purpose includes the promotion of water resource conservation.

(b) "Covered entity" means each municipality, agency, utility, including any privately owned utility, or other publicly owned entity with a legal obligation to supply, distribute, or otherwise provide water at retail to domestic, commercial, industrial, or public facility customers, and that has a total demand for such customers of two thousand acre-feet or more.

(c) "Grant program" means the water efficiency grant program established pursuant to subsection (12) of this section.

(d) "Office" means the office of water conservation and drought planning created in section 37-60-124.

(e) "Plan elements" means those components of water conservation plans that address water-saving measures and programs, implementation review, water-saving goals, and the actions a covered entity shall take to develop, implement, monitor, review, and revise its water conservation plan.

(f) "Public facility" means any facility operated by an instrument of government for the benefit of the public, including, but not limited to, a government building; park or other recreational facility; school, college, university, or other educational institution; highway; hospital; or stadium.

(g) "Water conservation" means water use efficiency, wise water use, water transmission and distribution system efficiency, and supply substitution. The objective of water conservation is a long-term increase in the productive use of water supply in order to satisfy water supply needs without compromising desired water services.

(h) "Water conservation plan", "water use efficiency plan", or "plan" means a plan adopted in accordance with this section.

(i) "Water-saving measures and programs" includes a device, a practice, hardware, or equipment that reduces water demands and a program that uses a combination of measures and incentives that allow for an increase in the productive use of a local water supply.

(2) (a) Each covered entity shall, subject to section 37-60-127, develop, adopt, make publicly available, and implement a plan pursuant to which such covered entity shall encourage its domestic, commercial, industrial, and public facility customers to use water more efficiently. Any state or local governmental entity that is not a covered entity may develop, adopt, make publicly available, and implement such a plan.

(b) The office shall review previously submitted conservation plans to evaluate their consistency with the provisions of this section and the guidelines established pursuant to paragraph (a) of subsection (7) of this section.

(c) On and after July 1, 2006, a covered entity that seeks financial assistance from either the board or the Colorado water resources and power development authority shall submit to the board a new or revised plan to meet water conservation goals adopted by the covered entity, in accordance with this section, for the board's approval prior to the release of new loan proceeds.

(3) The manner in which the covered entity develops, adopts, makes publicly available, and implements a plan established pursuant to subsection (2) of this section shall be determined by the covered entity in accordance with this section. The plan shall be accompanied by a schedule for its implementation. The plans and schedules shall be provided to the office within ninety days after their adoption. For those entities seeking financial assistance, the office shall then notify the covered entity and the appropriate financing authority that the plan has been reviewed and whether the plan has been approved in accordance with this section.

(4) A plan developed by a covered entity pursuant to subsection (2) of this section must, at a minimum, include a full evaluation of the following plan elements:

(a) The water-saving measures and programs to be used by the covered entity for water conservation. In developing these measures and programs, each covered entity shall, at a minimum, consider the following:

(I) Water-efficient fixtures and appliances, including toilets, urinals, clothes washers, showerheads, and faucet aerators;

(II) Low water use landscapes, drought-resistant vegetation, removal of phreatophytes, and efficient irrigation;

(III) Water-efficient industrial and commercial water-using processes;

(IV) Water reuse systems;

(V) Distribution system leak identification and repair;

(VI) Dissemination of information regarding water use efficiency measures, including by public education, customer water use audits, and water-saving demonstrations;

(VII) (A) Water rate structures and billing systems designed to encourage water use efficiency in a fiscally responsible manner.

(B) The department of local affairs may provide technical assistance to covered entities that are local governments to implement water billing systems that show customer water usage and that implement tiered billing systems.

(VIII) Regulatory measures designed to encourage water conservation;

(IX) Incentives to implement water conservation techniques, including rebates to customers to encourage the installation of water conservation measures;

(b) A section stating the covered entity's best judgment of the role of water conservation plans in the covered entity's water supply planning;

(c) The steps the covered entity used to develop, and will use to implement, monitor, review, and revise, its water conservation plan;

(d) The time period, not to exceed seven years, after which the covered entity will review and update its adopted plan;

(e) Either as a percentage or in acre-foot increments, an estimate of the amount of water that has been saved through a previously implemented conservation plan and an estimate of the amount of water that will be saved through conservation when the plan is implemented; and

(f) (I) Best management practices for water demand management, water efficiency, and water conservation that may be implemented through land use planning efforts.

(II) In order to assist covered entities in meeting the requirements of subparagraph (I) of this paragraph (f), the board, in consultation with the division of local government in the department of local affairs, shall:

(A) Develop training programs, including introductory programs, refresher programs, and advanced programs, for local government water use, water demand, water consumption, and land use planners regarding best management practices for water demand management, water efficiency, and water conservation;

(B) Provide the training, on a recurring basis, free of charge to local water use, water demand, and land use planners; and

(C) Make recommendations regarding how to better integrate water demand management and conservation planning into land use planning, including, as appropriate, legislative, regulatory, and guidance or policy recommendations.

(4.5) (a) On an annual basis starting no later than June 30, 2014, covered entities shall report water use and conservation data, to be used for statewide water supply planning, following board guidelines pursuant to paragraph (b) of this subsection (4.5), to the board by the end of the second quarter of each year for the previous calendar year.

(b) No later than February 1, 2012, the board shall adopt guidelines regarding the reporting of water use and conservation data by covered entities and shall provide a report to the senate agriculture and natural resources committee and the house of representatives agriculture, livestock, and natural resources committee, or their successor committees, regarding the guidelines. These guidelines shall:

(I) Be adopted pursuant to the board's public participation process and shall include outreach to stakeholders from water providers with geographic and demographic diversity, nongovernmental organizations, and water conservation professionals; and

(II) Include clear descriptions of: Categories of customers, uses, and measurements; how guidelines will be implemented; and how data will be reported to the board.

(c) (I) No later than February 1, 2019, the board shall report to the senate agriculture and natural resources committee and the house of representatives agriculture, livestock, and natural resources committee, or their successor committees, on the guidelines and data collected by the board under the guidelines.

(II) This paragraph (c) is repealed, effective July 1, 2020.

(5) Each covered entity and other state or local governmental entity that adopts a plan shall follow the entity's rules, codes, or ordinances to make the draft plan available for public review and comment. If there are no rules, codes, or ordinances governing the entity's public planning process, then each entity shall publish a draft plan, give public notice of the plan, make such plan publicly available, and solicit comments from the public for a period of not less than sixty days after the date on which the draft plan is made publicly available. Reference shall be made in the public notice to the elements of a plan that have already been implemented.

(6) The board is hereby authorized to recommend the appropriation and expenditure of revenues as are necessary from the unobligated balance of the five percent share of the severance tax operational fund designated for use by the board for the purpose of the office providing assistance to covered entities to develop water conservation plans that meet the provisions of this section.

(7) (a) The board shall adopt guidelines for the office to review water conservation plans submitted by covered entities and other state or local governmental entities. The guidelines shall

define the method for submitting plans to the office, the methods for office review and approval of the plans, and the interest rate surcharge provided for in paragraph (a) of subsection (9) of this section.

(b) If no other applicable guidelines exist as of June 1, 2007, the board shall adopt guidelines by July 31, 2007, for the office to use in reviewing applications submitted by covered entities, other state or local governmental entities, and agencies for grants from the grant program and from the grant program established in section 37-60-126.5 (3). The guidelines shall establish deadlines and procedures for covered entities, other state or local governmental entities, and agencies to follow in applying for grants and the criteria to be used by the office and the board in prioritizing and awarding grants.

(8) A covered entity may at any time adopt changes to an approved plan in accordance with this section after notifying and receiving concurrence from the office. If the proposed changes are major, the covered entity shall give public notice of the changes, make the changes available in draft form, and provide the public an opportunity to comment on such changes before adopting them in accordance with subsection (5) of this section.

(9) (a) Neither the board nor the Colorado water resources and power development authority shall release grant or loan proceeds to a covered entity unless the covered entity provides a copy of the water conservation plan adopted pursuant to this section; except that the board or the authority may release the grant or loan proceeds notwithstanding a covered entity's failure to comply with the reporting requirements of subsection (4.5) of this section or if the board or the authority, as applicable, determines that an unforseen emergency exists in relation to the covered entity's loan application, in which case the board or the authority, as applicable, may impose a grant or loan surcharge upon the covered entity that may be rebated or reduced if the covered entity submits and adopts a plan in compliance with this section in a timely manner as determined by the board or the authority, as applicable.

(b) The board and the Colorado water resources and power development authority, to which any covered entity has applied for financial assistance for the construction of a water diversion, storage, conveyance, water treatment, or wastewater treatment facility, shall consider any water conservation plan filed pursuant to this section in determining whether to render financial assistance to such entity. Such consideration shall be carried out within the discretion accorded the board and the Colorado water resources and power development authority pursuant to which such board and authority render such financial assistance to such covered entity.

(c) The board and the Colorado water resources and power development authority may enter into a memorandum of understanding with each other for the purposes of avoiding delay in the processing of applications for financial assistance covered by this section and avoiding duplication in the consideration required by this subsection (9).

(10) Repealed.

(11) (a) Any section of a restrictive covenant or of the declaration, bylaws, or rules and regulations of a common interest community, all as defined in section 38-33.3-103, C.R.S., that prohibits or limits xeriscape, prohibits or limits the installation or use of drought-tolerant vegetative landscapes, or requires cultivated vegetation to consist wholly or partially of turf grass is hereby declared contrary to public policy and, on that basis, is unenforceable. This paragraph (a) does not prohibit common interest communities from adopting and enforcing design or aesthetic guidelines or rules that require drought-tolerant vegetative landscapes or

regulate the type, number, and placement of drought-tolerant plantings and hardscapes that may be installed on the unit owner's property or property for which the unit owner is responsible.

(b) As used in this subsection (11):

(I) "Executive board policy or practice" includes any additional procedural step or burden, financial or otherwise, placed on a unit owner who seeks approval for a landscaping change by the executive board of a unit owners' association, as defined in section 38-33.3-103, C.R.S., and not included in the existing declaration or bylaws of the association. An "executive board policy or practice" includes, without limitation, the requirement of:

(A) An architect's stamp;

(B) Preapproval by an architect or landscape architect retained by the executive board;

(C) An analysis of water usage under the proposed new landscape plan or a history of water usage under the unit owner's existing landscape plan; and

(D) The adoption of a landscaping change fee.

(II) "Restrictive covenant" means any covenant, restriction, bylaw, executive board policy or practice, or condition applicable to real property for the purpose of controlling land use, but does not include any covenant, restriction, or condition imposed on such real property by any governmental entity.

(II.5) "Turf" means a covering of mowed vegetation, usually turf grass, growing intimately with an upper soil stratum of intermingled roots and stems.

(III) "Turf grass" means continuous plant coverage consisting of nonnative grasses or grasses that have not been hybridized for arid conditions which, when regularly mowed, form a dense growth of leaf blades and roots.

(IV) "Xeriscape" means the application of the principles of landscape planning and design, soil analysis and improvement, appropriate plant selection, limitation of turf area, use of mulches, irrigation efficiency, and appropriate maintenance that results in water use efficiency and water-saving practices.

(c) Nothing in this subsection (11) precludes the executive board of a common interest community from taking enforcement action against a unit owner who allows his or her existing landscaping to die or go dormant; except that:

(I) No enforcement action shall require that a unit owner water in violation of water use restrictions declared by the jurisdiction in which the common interest community is located, in which case the unit owner shall water his or her landscaping appropriately but not in excess of any watering restrictions imposed by the water provider for the common interest community;

(II) Enforcement shall be consistent within the community and not arbitrary or capricious; and

(III) In any enforcement action in which the existing turf grass is dead or dormant due to insufficient watering, the unit owner shall be allowed a reasonable and practical opportunity, as defined by the association's executive board, with consideration of applicable local growing seasons or practical limitations, to reseed and revive turf grass before being required to replace it with new sod.

(d) This subsection (11) does not supersede any subdivision regulation of a county, city and county, or other municipality.

(12) (a) (I) There is hereby created the water efficiency grant program for purposes of providing state funding to aid in the planning and implementation of water conservation plans developed in accordance with the requirements of this section and to promote the benefits of

water efficiency. The board is authorized to distribute grants to covered entities, other state or local governmental entities, and agencies in accordance with its guidelines from the moneys transferred to and appropriated from the water efficiency grant program cash fund, which is hereby created in the state treasury.

(II) Moneys in the water efficiency grant program cash fund are hereby continuously appropriated to the board for the purposes of this subsection (12) and shall be available for use until the programs and projects financed using the grants have been completed.

(III) For each fiscal year beginning on or after July 1, 2010, the general assembly shall appropriate from the fund to the board up to five hundred thousand dollars annually for the purpose of providing grants to covered entities, other state and local governmental entities, and agencies in accordance with this subsection (12). Commencing July 1, 2008, the general assembly shall also appropriate from the fund to the board fifty thousand dollars each fiscal year to cover the costs associated with the administration of the grant program and the requirements of section 37-60-124. Moneys appropriated pursuant to this subparagraph (III) shall remain available until expended or until June 30, 2020, whichever occurs first.

(IV) Any moneys remaining in the fund on June 30, 2020, shall be transferred to the severance tax operational fund described in section 39-29-109 (2)(b), C.R.S.

(b) Any covered entity or state or local governmental entity that has adopted a water conservation plan and that supplies, distributes, or otherwise provides water at retail to customers may apply for a grant to aid in the implementation of the water efficiency goals of the plan. Any agency may apply for a grant to fund outreach or education programs aimed at demonstrating the benefits of water efficiency. The office shall review the applications and make recommendations to the board regarding the awarding and distribution of grants to applicants who satisfy the criteria outlined in this subsection (12) and the guidelines developed pursuant to subsection (7) of this section.

(b.5) Repealed.

(c) This subsection (12) is repealed, effective July 1, 2020.

Source: L. 91: Entire section added, p. 2023, § 4, effective June 4. **L. 99:** (10) repealed, p. 25, § 3, effective March 5. **L. 2003:** (4)(g) amended and (11) added, p. 1368, § 4, effective April 25. **L. 2004:** Entire section amended, p. 1779, § 3, effective August 4. **L. 2005:** (11) amended, p. 1372, § 1, effective June 6; (1), (2)(b), and (7) amended and (12) added, p. 1481, § 1, effective June 7. **L. 2007:** (1)(a), (2)(a), (5), (7), and (12) amended, p. 1890, § 1, effective June 1. **L. 2008:** IP(4) amended, p. 1575, § 30, effective May 29; (12)(a) amended, p. 1873, § 14, effective June 2. **L. 2009:** (12)(a) amended, (HB 09-1017), ch. 297, p. 1593, § 1, effective May 21; (9)(a) amended, (SB 09-106), ch. 386, p. 2091, § 3, effective July 1. **L. 2010:** (4)(a)(I) and (9)(a) amended and (4.5) added, (HB 10-1051), ch. 378, p. 1772, § 1, effective June 7; (12)(a)(III), (12)(a)(IV), and (12)(c) amended, (SB 10-025), ch. 379, p. 1774, § 1, effective June 7. **L. 2013:** (11)(a), (11)(b)(III), IP(11)(c), (11)(c)(I), and (11)(c)(III) amended and (11)(b)(II.5) and (11)(d) added, (SB 13-183), ch. 187, p. 756, § 1, effective May 10; (6) and (12)(a)(IV) amended, (SB 13-181), ch. 209, p. 873, § 24, effective May 13. **L. 2015:** IP(4), (4)(d), and (4)(e) amended and (4)(f) added, (SB 15-008), ch. 144, p. 437, § 1, effective August 5. **L. 2018:** (12)(b.5) added, (HB 18-1338), ch. 201, p. 1310, § 11, effective May 4.

Editor's note: (1) Subsection (12) was originally enacted as subsection (13) in House Bill 05-1254 but was renumbered on revision for ease of location.

(2) (a) For the text of subsection (12)(b.5), enacted by HB 18-1338, in effect from May 4, 2018, to July 1, 2018, see chapter 201, Session Laws of Colorado 2018. (L. 2018, p. 1310.)

(b) Subsection (12)(b.5)(II) provided for the repeal of subsection (12)(b.5), effective July 1, 2018. (See L. 2018, p. 1310.)

Cross references: (1) In 1991, this entire section was added by the "Water Conservation Act of 1991". For the short title and the legislative declaration, see sections 1 and 2 of chapter 328, Session Laws of Colorado 1991.

(2) For the legislative declaration contained in the 2004 act amending this section, see section 1 of chapter 373, Session Laws of Colorado 2004.

37-60-126.5. Drought mitigation planning - programs - relationship to state assistance. (1) As used in this section, unless the context otherwise requires, "drought mitigation" means the planning and implementation of actions and programs used in periods of unusual water scarcity, with a combination of actions and programs taken before a drought to reduce the occurrence and severity of water supply shortages, and actions and programs taken during a drought to manage water supplies and water demand appropriately.

(2) The office shall develop programs to provide technical assistance to covered entities and other state or local governmental entities in the development of drought mitigation plans.

(3) The board is hereby authorized to expend revenues from the water efficiency grant program cash fund and to recommend the appropriation and expenditure of the revenues as is necessary from the unobligated balance of the five-percent share of the severance tax operational fund designated for use by the board for the purpose of assisting covered entities and other state or local governmental entities to develop drought mitigation plans that the office identifies as sufficient.

(4) The board shall adopt guidelines for the office to use in reviewing, evaluating, and approving drought mitigation plans submitted by covered entities or other state or local governmental entities in accordance with this section.

Source: L. 2004: Entire section added, p. 1783, § 4, effective August 4. **L. 2007:** (3) and (4) amended, p. 1892, § 2, effective June 1. **L. 2013:** (3) amended, (SB 13-181), ch. 209, p. 873, § 25, effective May 13.

Cross references: For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 373, Session Laws of Colorado 2004.

37-60-127. Applicability of provisions requiring funding by political subdivisions of the state. No provision of section 37-60-124, 37-60-125, 37-60-126, or 37-96-103 (4) to (6) that requires funding by any political subdivision of the state that is a covered entity as defined in section 37-60-126 (1)(b) applies to any such political subdivision if the entity submits the applicable provision and its requirements, including all costs to the inhabitants of the respective jurisdiction, to the qualified electors of any such political subdivision, and a majority of the qualified electors do not approve the applicable provision and its requirements.

Source: L. 91: Entire section added, p. 2023, § 4, effective June 4. **L. 2005:** Entire section amended, p. 1484, § 3, effective June 7. **L. 2014:** Entire section amended, (SB 14-103), ch. 384, p. 1878, § 4, effective September 1, 2016.

Cross references: In 1991, this entire section was added by the "Water Conservation Act of 1991". For the short title and the legislative declaration, see sections 1 and 2 of chapter 328, Session Laws of Colorado 1991.

37-60-128. Sunset of water conservation provisions - review by general assembly. (Repealed)

Source: L. 91: Entire section added, p. 2023, § 4, effective June 4. **L. 99:** Entire section repealed, p. 25, § 4, effective March 5.

37-60-129. Availability of funds. Moneys appropriated or authorized to the board from the Colorado water conservation board construction fund and from the Colorado river recovery program loan fund shall remain available to the board for the original purposes, unless deauthorized by the legislature, until any project for which the moneys were appropriated or authorized is completed.

Source: L. 95: Entire section added, p. 384, § 12, effective May 4. **L. 2001:** Entire section amended, p. 696, § 36, effective May 30.

37-60-130. Well augmentation loans.

(1) (Deleted by amendment, L. 2004, p. 884, § 16, effective May 21, 2004.)

(2) The board is hereby authorized to 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 stateline flows that might result in violation of compacts or interstate decrees.

(3) The board shall approve or deny applications for loans 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 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 withdrawals and the use of such groundwater.

(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 a well augmentation loan 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 well augmentation loan 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.

Source: L. 95: Entire section added, p. 385, § 12, effective May 4. **L. 97:** (1) and (2) amended, p. 830, § 17, effective May 21. **L. 2001:** (1), (2), (4)(a), and (4)(b) amended, p. 695, § 34, effective May 30. **L. 2004:** Entire section amended, p. 884, § 16, effective May 21.

37-60-131. Natural hazard mapping - fund - repeal. (1) (a) There is hereby created in the state treasury the natural hazard mapping fund, referred to in this section as the "mapping fund", which consists of the following revenues:

(I) Gifts, grants, and donations from private or public sources for the purposes of this section; except that the board shall not accept a gift, grant, or donation that is subject to a condition that is inconsistent with this section or any other law of the state;

(II) Interest derived from the investment of revenues in the mapping fund; and

(III) The following revenues, which the state treasurer shall transfer from the general fund to the mapping fund:

(A) On July 1, 2015, three million eight hundred thousand dollars;

(B) On July 1, 2016, two million four hundred thousand dollars; and

(C) On July 1, 2017, six hundred seventy thousand dollars.

(b) The revenues in the mapping fund are continuously appropriated to the board for the purposes of this section.

(2) The board is authorized to seek, accept, and expend gifts, grants, and donations for the purposes of this section and may use the revenues in the mapping fund only for the following purposes:

(a) Floodplain mapping, including to update floodplain mapping for flood-impacted areas and to digitize and update floodplain maps in those counties that do not currently have them;

(b) Erosion zone mapping, including by:

(I) Convening an interagency technical panel to develop erosion zone mapping methodology;

(II) Updating the board's storm water criteria manual;

(III) Developing model land use codes in partnership with the department of local affairs; and

(IV) Developing new maps in prioritized areas in partnership with local communities;

(c) Debris flow mapping, including by:

(I) Convening an interagency panel chaired by the Colorado geological survey to develop debris flow mapping methodology;

(II) Conducting pilot projects to develop debris flow hazard maps for prioritized areas based on geology, population, and assets at risk, including preliminarily El Paso, Jefferson, and Douglas counties; and

(III) Developing a five-year implementation and funding plan to map the remainder of the at-risk areas in Colorado; or

(d) The collection of data from light detection and ranging for flood mapping, erosion zones, and debris flows.

(3) This section is repealed, effective July 1, 2019. The state treasurer shall transfer all unencumbered revenues in the mapping fund on July 1, 2019, to the general fund.

Source: L. 2015: Entire section added, (SB 15-245), ch. 133, p. 410, § 1, effective May 1. **L. 2018:** (3) amended, (SB 18-218), ch. 336, p. 2019, § 26, effective May 30.

37-60-132. Invasive phreatophyte control program - creation - fund - repeal. (Repealed)

Source: L. 2015: Entire section added, (HB 15-1006), ch. 185, p. 604, § 1, effective August 5.

Editor's note: Subsection (6) provided for the repeal of this section, effective September 1, 2018. (See L. 2015, p. 604.)

37-60-133. Minimum criteria and guidelines for agricultural water protection programs. (1) (a) The board shall develop minimum criteria and guidelines for the establishment of an agricultural water protection program in water division 1 or 2 pursuant to section 37-92-305 (19)(b)(IV)(B) to assure sufficient protection and monitoring of agricultural water protection water rights pursuant to section 37-92-305 (19)(b)(III).

(b) The board may promulgate separate minimum criteria and guidelines for each water division.

(c) (I) Until finalization of the criteria and guidelines, the board shall post and periodically update draft criteria and guidelines on its website.

(II) The board shall consider any comments it receives on the draft criteria and guidelines and, upon the request of an eligible entity, as defined in section 37-92-305 (19)(c), the board shall hold a meeting with the eligible entity to receive the eligible entity's comments.

(III) The board shall hold at least one public meeting in each water division to present the draft criteria and guidelines and receive comments on them.

(2) The board shall finalize the criteria and guidelines within one year after initiating the process to develop criteria and guidelines.

(3) As used in this section, "agricultural water protection water right" has the same meaning as in section 37-92-305 (19)(a).

Source: L. 2016: Entire section added, (HB 16-1228), ch. 175, p. 598, § 1, effective August 10.

PART 2

37-60-201 to 37-60-210. (Repealed)

Editor's note: (1) This part 2 was added in 2003 and was not amended prior to its repeal on November 4, 2003. For the text of this part 2 prior to November 4, 2003, consult the 2003 Colorado Revised Statutes.

(2) Section 37-60-210 provided for the repeal of this part 2, effective upon the rejection by the registered electors of the state voting on the ballot question regarding issuance of water infrastructure revenue bonds submitted pursuant to § 37-60-203 (1)(a). (See L. 2003, p. 2410.) The vote count on the measure at the general election held November 4, 2003, was as follows:

FOR:	307,412
AGAINST:	627,716

Interstate Compacts

Editor's note: The numbering system within the compacts in articles 61 to 69 of this title, inclusive, are those of the original compacts and are not to be confused with the numbering system of C.R.S. 1973.

Cross references: For interbasin compacts, see article 75 of this title; for other compacts not related to water, see article 60 of title 24.

ARTICLE 61

Colorado River Compact

Law reviews: For article, "Interstate Water Allocation Compacts: When the Virtue of Permanence Becomes the Vice of Inflexibility", see 74 U. Colo. L. Rev. 105 (2003); for article, "The Colorado River Revisited", see 88 U. Colo. L. Rev. 475 (2017).

37-61-101. Colorado River compact. The General Assembly hereby approves the compact, designated as the "Colorado River Compact", signed at the City of Santa Fe, State of New Mexico, on the 24th day of November, A.D. 1922, by Delph E. Carpenter, as the Commissioner for the State of Colorado, under authority of and in conformity with the provisions of an act of the General Assembly of the State of Colorado, approved April 2, 1921, entitled "An Act providing for the appointment of a Commissioner on behalf of the State of Colorado to negotiate a compact and agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming and between said States and the United States respecting the use and distribution of the waters of the Colorado River and the rights of said States and the United States thereto, and making an appropriation therefor.", the same being Chapter 246 of the Session Laws of Colorado, 1921, and signed by the Commissioners for the States of Arizona, California, Nevada, New Mexico, Utah, and Wyoming, under legislative authority, and signed by the Commissioners for said seven States and approved by the

Representative of the United States of America under authority and in conformity with the provisions of an Act of the Congress of the United States, approved August 19, 1921, entitled "An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes.", which said compact is as follows:

Colorado River Compact

The States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, having resolved to enter into a compact, under the Act of the Congress of the United States of America approved August 19, 1921, (42 Statutes at Large, page 171), and the Acts of the legislatures of the said states, have through their Governors appointed as their commissioners:

W. S. Norviel, for the State of Arizona;
W. F. McClure, for the State of California;
Delph E. Carpenter, for the State of Colorado;
J. G. Scrugham, for the State of Nevada;
Stephen B. Davis, Jr., for the State of New Mexico;
R. E. Caldwell, for the State of Utah;
Frank C. Emerson, for the State of Wyoming;

who, after negotiations participated in by Herbert Hoover appointed by the President as the representative of the United States of America, have agreed upon the following articles:

Article I

The major purposes of this compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River System; to establish the relative importance of different beneficial uses of water; to promote interstate comity; to remove causes of present and future controversies; and to secure the expeditious agricultural and industrial development of the Colorado River Basin, the storage of its waters and the protection of life and property from floods. To these ends the Colorado River Basin is divided into two Basins, and an apportionment of the use of part of the water of the Colorado River System is made to each of them with the provision that further equitable apportionments may be made.

Article II

As used in this Compact: -

(a) The term "Colorado River System" means that portion of the Colorado River and its tributaries within the United States of America.

(b) The term "Colorado River Basin" means all of the drainage area of the Colorado River System and all other territory within the United States of America to which the waters of the Colorado River System shall be beneficially applied.

(c) The term "States of the Upper Division" means the States of Colorado, New Mexico, Utah and Wyoming.

(d) The term "States of the Lower Division" means the States of Arizona, California and Nevada.

(e) The "Lee Ferry" means a point in the main stream of the Colorado River one mile below the mouth of the Paria River.

(f) The term "Upper Basin" means those parts of the States of Arizona, Colorado, New Mexico, Utah and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System above Lee Ferry.

(g) The term "Lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System below Lee Ferry.

(h) The term "domestic use" shall include the use of water for household, stock, municipal, mining, milling, industrial and other like purposes, but shall exclude the generation of electrical power.

Article III

(a) There is hereby apportioned from the Colorado River System in perpetuity to the Upper Basin and to the Lower Basin respectively the exclusive beneficial consumptive use of 7,500,000 acre feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.

(b) In addition to the apportionment in paragraph (a) the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre per annum.

(c) If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any waters of the Colorado River System, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then, the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin, and whenever necessary the States of the Upper Division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d).

(d) The states of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification of this compact.

(e) The States of the Upper Division shall not withhold water, and the States of the Lower Division shall not require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses.

(f) Further equitable apportionment of the beneficial uses of the waters of the Colorado River System unapportioned by paragraphs (a), (b) and (c) may be made in the manner provided in paragraph (g) at any time after October first, 1963, if and when either basin shall have reached its total beneficial consumptive use as set out in paragraphs (a) and (b).

(g) In the event of a desire for a further apportionment as provided in paragraph (f) any two signatory States, acting through their Governors, may give joint notice of such desire to the Governors of the other signatory States and to the President of the United States of America, and it shall be the duty of the Governor of the signatory states and of the President of the United States of America forthwith to appoint representatives, whose duty it shall be to divide and apportion equitably between the Upper Basin and Lower Basin the beneficial use of the

unapportioned water of the Colorado River System as mentioned in paragraph (f), subject to the Legislative ratification of the signatory States and the Congress of the United States of America.

Article IV

(a) Inasmuch as the Colorado River has ceased to be navigable for commerce and the reservation of its waters for navigation would seriously limit the development of its Basin, the use of its waters for purpose of navigation shall be subservient to the uses of such waters for domestic, agricultural and power purposes. If the Congress shall not consent to this paragraph, the other provisions of this compact shall nevertheless remain binding.

(b) Subject to the provisions of this compact, water of the Colorado River System may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes.

(c) The provisions of this article shall not apply to or interfere with the regulation and control by any state within its boundaries of the appropriation, use and distribution of water.

Article V

The Chief Official of each signatory State charged with the administration of water rights, together with the Director of the United States Reclamation Service and the Director of the United States Geological Survey shall co-operate, ex officio:

(a) To promote the systematic determination and coordination of the facts as to flow, appropriation, consumption and use of water in the Colorado River Basin, and the interchange of available information in such matters.

(b) To secure the ascertainment and publication of the annual flow of the Colorado River at Lee Ferry.

(c) To perform such other duties as may be assigned by mutual consent of the signatories from time to time.

Article VI

Should any claim or controversy arise between any two or more of the signatory States: (a) with respect to the waters of the Colorado River System not covered by the terms of this compact; (b) over the meaning or performance of any of the terms of this compact; (c) as to the allocation of the burdens incident to the performance of any article of this compact or the delivery of waters as herein provided; (d) as to the construction or operation of works within the Colorado River Basin to be situated in two or more States, or to be constructed in one State for the benefit of another State; or (e) as to the diversion of water in one State for the benefit of another State; the Governors of the States affected, upon the request of one of them, shall forthwith appoint Commissioners with power to consider and adjust such claim or controversy, subject to ratification by the Legislatures of the States so affected.

Nothing herein contained shall prevent the adjustment of any such claim or controversy by any present method or by direct future legislative action of the interested States.

Article VII

Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes.

Article VIII

Present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact. Whenever storage capacity of 5,000,000 acre feet shall have been provided on the main Colorado River within or for the benefit of the Lower Basin, then claims of such rights, if any, by appropriators or users of waters in the Lower Basin, against appropriators or users of water in the Upper Basin shall attach to and be satisfied from water that may be stored not in conflict with Article III.

All other rights to beneficial use of waters of the Colorado River System shall be satisfied solely from the water apportioned to that Basin in which they are situate.

Article IX

Nothing in this compact shall be construed to limit or prevent any State from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under this compact or the enforcement of any of its provisions.

Article X

This compact may be terminated at any time by the unanimous agreement of the signatory States. In the event of such termination all rights established under it shall continue unimpaired.

Article XI

This compact shall become binding and obligatory when it shall have been approved by the Legislatures of each of the signatory States and by the Congress of the United States. Notice of approval by the Legislatures shall be given by the Governor of each signatory State to the Governors of the other signatory States and to the President of the United States, and the President of the United States is requested to give notice to the Governors of the signatory States of approval by the Congress of the United States.

In Witness Whereof, The Commissioners have signed this compact in a single original, which shall be deposited in the archives of the Department of State of the United States of America and of which a duly certified copy shall be forwarded to the Governor of each of the signatory States.

Done at the City of Santa Fe, New Mexico, this Twenty-fourth day of November, A.D. One Thousand Nine Hundred and Twenty-Two.

W. S. Norviel,
W. F. McClure,
Delph E. Carpenter,
J. G. Scrugham,
Stephen B. Davis, Jr.,
R. E. Caldwell,
Frank E. Emerson.
Approved:
Herbert Hoover.

Source: L. 23: p. 684, § 1. **CSA:** omitted. **CRS 53:** § 148-2-1. **C.R.S. 1963:** § 149-2-1.

37-61-102. Compact effective on approval. That said compact shall not be binding and obligatory on any of the parties thereto unless and until the same has been approved by the legislature of each of the said states and by the congress of the United States, and the governor of the state of Colorado shall give notice of the approval of said compact by the general assembly of the state of Colorado to the governors of each of the remaining signatory states and to the president of the United States, in conformity with article XI of said compact.

Source: L. 23: p. 693, § 2. **CSA:** omitted. **CRS 53:** § 148-2-2. **C.R.S. 1963:** § 149-2-2.

37-61-103. Approval waived. That the provisions of the first paragraph of article XI of the Colorado River Compact, making said compact effective when it has been approved by the legislature of each of the signatory states, are hereby waived and said compact shall become binding and obligatory upon the state of Colorado and upon the other signatory states, which have ratified or may hereafter ratify it, whenever at least six of the signatory states have consented thereto and the congress of the United States has given its consent and approval, but this article shall be of no force or effect until a similar act or resolution has been passed or adopted by the legislatures of the states of California, Nevada, New Mexico, Utah, and Wyoming.

Source: L. 25: p. 525, § 1. **CSA:** omitted. **CRS 53:** § 148-2-3. **C.R.S. 1963:** § 149-2-3.

37-61-104. Certified copies of compact. That certified copies of this article be forwarded by the governor of the state of Colorado to the president of the United States, the secretary of state of the United States, and the governors of the states of Arizona, California, Nevada, New Mexico, Utah, and Wyoming.

Source: L. 25: p. 526, § 2. **CSA:** omitted. **CRS 53:** § 148-2-4. **C.R.S. 1963:** § 149-2-4.

ARTICLE 62

Upper Colorado River Compact

37-62-101. Upper Colorado River compact. The general assembly hereby ratifies the compact among the states of Colorado, New Mexico, Utah, Wyoming, and Arizona, designated as the "Upper Colorado river basin compact" and signed in the city of Santa Fe, state of New Mexico, on the 11th day of October, A. D. 1948, by Clifford H. Stone, commissioner for the state of Colorado, Fred E. Wilson, commissioner for the state of New Mexico, Edward H. Watson, commissioner for the state of Utah, L. C. Bishop, commissioner for the state of Wyoming, Charles A. Carson, commissioner for the state of Arizona, and approved by Harry W. Bashore, representative of the United States of America. Said compact is as follows:

Article I

(a) The major purposes of this compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado river system, the use of which was apportioned in perpetuity to the upper basin by the Colorado river compact; to establish the obligations of each state of the upper division with respect to the deliveries of water required to

be made at Lee ferry by the Colorado river compact; to promote interstate comity; to remove causes of present and future controversies; to secure the expeditious agricultural and industrial development of the upper basin, the storage of water and to protect life and property from floods.

(b) It is recognized that the Colorado river compact is in full force and effect and all of the provisions hereof are subject thereto.

Article II

As used in this compact:

(a) The term "Colorado river system" means that portion of the Colorado river and its tributaries within the United States of America.

(b) The term "Colorado river basin" means all of the drainage area of the Colorado river system and all other territory within the United States of America to which the waters of the Colorado river system shall be beneficially applied.

(c) The term "states of the upper division" means the states of Colorado, New Mexico, Utah and Wyoming.

(d) The term "states of the lower division" means the states of Arizona, California and Nevada.

(e) The term "Lee ferry" means a point in the main stream of the Colorado river one mile below the mouth of the Paria river.

(f) The term "upper basin" means those parts of the states of Arizona, Colorado, New Mexico, Utah and Wyoming within and from which waters naturally drain into the Colorado river system above Lee ferry, and also all parts of said states located without the drainage area of the Colorado river system which are now or shall hereafter be beneficially served by waters diverted from the Colorado river system above Lee ferry.

(g) The term "lower basin" means those parts of the states of Arizona, California, Nevada, New Mexico and Utah within and from which waters naturally drain into the Colorado river system below Lee ferry, and also all parts of said states located without the drainage area of the Colorado river system which are now or shall hereafter be beneficially served by waters diverted from the Colorado river system below Lee ferry.

(h) The term "Colorado river compact" means the agreement concerning the apportionment of the use of the waters of the Colorado river system dated November 24, 1922, executed by commissioners for the states of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, approved by Herbert Hoover, representative of the United States of America, and proclaimed effective by the President of the United States of America, June 25, 1929.

(i) The term "Upper Colorado river system" means that portion of the Colorado river system above Lee ferry.

(j) The term "Commission" means the administrative agency created by article VIII of this compact.

(k) The term "water year" means that period of twelve months ending September 30 of each year.

(l) The term "acre-foot" means the quantity of water required to cover an acre to the depth of one foot and is equivalent to 43,560 cubic feet.

(m) The term "domestic use" shall include the use of water for household, stock, municipal, mining, milling, industrial and other like purposes, but shall exclude the generation of electrical power.

(n) The term "virgin flow" means the flow of any stream undepleted by the activities of man.

Article III

(a) Subject to the provisions and limitations contained in the Colorado river compact and in this compact, there is hereby apportioned from the upper Colorado river system in perpetuity to the states of Arizona, Colorado, New Mexico, Utah and Wyoming, respectively, the consumptive use of water as follows:

(1) To the state of Arizona the consumptive use of 50,000 acre-feet of water per annum.

(2) To the states of Colorado, New Mexico, Utah and Wyoming, respectively, the consumptive use per annum of the quantities resulting from the application of the following percentages to the total quantity of consumptive use per annum appropriated in perpetuity to and available for use each year by upper basin under the Colorado river compact and remaining after the deduction of the use, not to exceed 50,000 acre-feet per annum, made in the state of Arizona.

State of Colorado51.75 per cent,
State of New Mexico11.25 per cent,
State of Utah23.00 per cent,
State of Wyoming14.00 per cent.

(b) The apportionment made to the respective states by paragraph (a) of this article is based upon, and shall be applied in conformity with, the following principles and each of them:

(1) The apportionment is of any and all man-made depletions;

(2) Beneficial use is the basis, the measure and the limit of the right to use;

(3) No state shall exceed the apportioned use in any water year when the effect of such excess use, as determined by the commission, is to deprive another signatory state of its apportioned use during the water year; provided, that this subparagraph (b)(3) shall not be construed as:

(i) Altering the apportionment of use, or obligations to make deliveries as provided in article XI, XII, XIII or XIV of this compact;

(ii) Purporting to apportion among the signatory states of such uses of water as the upper basin may be entitled to under paragraphs (f) and (g) of article III of the Colorado river compact; or

(iii) Countenancing average uses by any signatory state in excess of its apportionment.

(4) The apportionment to each state includes all water necessary for the supply of any rights which now exist.

(c) No apportionment is hereby made, or intended to be made of such use of water as the upper basin may be entitled to under paragraphs (f) and (g) of article III of the Colorado river compact.

(d) The apportionment made by this article shall not be taken as any basis for the allocation among the signatory states of any benefits resulting from the generation of power.

Article IV

In the event curtailment of use of water by the states of the upper division at any time shall become necessary in order that the flow at Lee ferry shall not be depleted below that

required by article III of the Colorado river compact, the extent of curtailment by each state of the consumptive use of water apportioned to it by article III of this compact shall be in such quantities and at such times as shall be determined by the commission upon the application of the following principles:

(a) The extent and times of curtailment shall be such as to assure full compliance with article III of the Colorado river compact;

(b) If any state or states of the upper division, in the ten years immediately preceding the water year in which curtailment is necessary, shall have consumptively used more water than it was or they were, as the case may be, entitled to use under the apportionment made by article III of this compact, such state or states shall be required to supply at Lee ferry a quantity of water equal to its, or the aggregate of their, overdraft or the proportionate part of such overdraft, as may be necessary to assure compliance with article III of the Colorado river compact, before demand is made on any other state of the upper division;

(c) Except as provided in subparagraph (b) of this article, the extent of curtailment by each state of the upper division of the consumptive use of water apportioned to it by article III of this compact shall be such as to result in the delivery at Lee ferry of a quantity of water which bears the same relation to the total required curtailment of use by the states of the upper division as the consumptive use of the upper Colorado river system water which was made by each such state during the water year immediately preceding the year in which the curtailment becomes necessary bears to the total consumptive use of such water in the states of the upper division during the same water year; provided, that in determining such relation the uses of water under rights perfected prior to November 24, 1922, shall be excluded.

Article V

(a) All losses of water occurring from or as the result of the storage of water in reservoirs constructed prior to the signing of this compact shall be charged to the state in which such reservoir or reservoirs are located. Water stored in reservoirs covered by this paragraph (a) shall be for the exclusive use of and shall be charged to the state in which the reservoir or reservoirs are located.

(b) All losses of water occurring from or as a result of the storage of water in reservoirs constructed after the signing of this compact shall be charged as follows:

(1) If the commission finds that the reservoir is used, in whole or in part, to assist the states of the upper division in meeting their obligations to deliver water at Lee ferry imposed by article III of the Colorado river compact, the commission shall make findings, which in no event shall be contrary to the laws of the United States of America under which any reservoir is constructed, as to the reservoir capacity allocated for that purpose. The whole or that proportion, as the case may be, of reservoir losses as found by the commission to be reasonably and properly chargeable to the reservoir or reservoir capacity utilized to assure deliveries at Lee ferry shall be charged to the states of the upper division in the proportion which the consumptive use of water in each state of the upper division during the water year in which the charge is made bears to the total consumptive use of water in all states of the upper division during the same water year. Water stored in reservoirs or in reservoir capacity covered by this subparagraph (b)(1) shall be for the common benefit of all of the states of the upper division.

(2) If the commission finds that the reservoir is used, in whole or in part, to supply water for use in a state of the upper division, the commission shall make findings, which in no event shall be contrary to the laws of the United States of America under which any reservoir is

constructed, as to the reservoir or reservoir capacity utilized to supply water for use and the state in which such water will be used. The whole or that proportion, as the case may be, of reservoir losses as found by the commission to be reasonably and properly chargeable to the state in which such water will be used shall be borne by that state. As determined by the commission, water stored in reservoirs covered by this subparagraph (b)(2) shall be earmarked for and charged to the state in which the water will be used.

(c) In the event the commission finds that a reservoir site is available both to assure deliveries at Lee ferry and to store water for consumptive use in a state of the upper division, the storage of water for consumptive use shall be given preference. Any reservoir or reservoir capacity hereafter used to assure deliveries at Lee ferry shall by order of the commission be used to store water for consumptive use in a state, provided the commission finds that such storage is reasonably necessary to permit such state to make the use of the water apportioned to it by this compact.

Article VI

The commission shall determine the quantity of the consumptive use of water, which use is apportioned by article III hereof, for the upper basin and for each state of the upper basin by the inflow-outflow method in terms of man-made depletions of the virgin flow at Lee ferry, unless the commission, by unanimous action, shall adopt a different method of determination.

Article VII

The consumptive use of water by the United States of America or any of its agencies, instrumentalities or wards shall be charged as a use by the state in which the use is made; provided, that such consumptive use incident to the diversion, impounding, or conveyance of water in one state for use in another shall be charged to such latter state.

Article VIII

(a) There is hereby created an interstate administrative agency to be known as the "Upper Colorado river commission." The commission shall be composed of one commissioner representing each of the states of the upper division, namely, the states of Colorado, New Mexico, Utah and Wyoming, designated or appointed in accordance with the laws of each such state and, if designated by the President, one commissioner representing the United States of America. The President is hereby requested to designate a commissioner. If so designated the commissioner representing the United States of America shall be the presiding officer of the commission and shall be entitled to the same powers and rights as the commissioner of any state. Any four members of the commission shall constitute a quorum.

(b) The salaries and personal expenses of each commissioner shall be paid by the government which he represents. All other expenses which are incurred by the commission incident to the administration of this compact, and which are not paid by the United States of America, shall be borne by the four states according to the percentage of consumptive use apportioned to each. On or before December 1 of each year, the commission shall adopt and transmit to the governors of the four states and to the President a budget covering an estimate of its expenses for the following year, and of the amount payable by each state. Each state shall pay the amount due by it to the commission on or before April 1 of the year following. The payment of the expenses of the commission and of its employees shall not be subject to the audit and accounting procedures of any of the four states; however, all receipts and disbursements of funds

handled by the commission shall be audited yearly by a qualified independent public accountant and the report of the audit shall be included in and become a part of the annual report of the commission.

(c) The commission shall appoint a secretary, who shall not be a member of the commission, or an employee of any signatory state or of the United States of America while so acting. He shall serve for such term and receive such salary and perform such duties as the commission may direct. The commission may employ such engineering, legal, clerical and other personnel as, in its judgment, may be necessary for the performance of its functions under this compact. In the hiring of employees, the commission shall not be bound by the civil service laws of any state.

(d) The commission, so far as consistent with this compact, shall have the power to:

(1) Adopt rules and regulations;

(2) Locate, establish, construct, abandon, operate and maintain water gauging stations;

(3) Make estimates to forecast water run-off on the Colorado river and any of its tributaries;

(4) Engage in co-operative studies of water supplies of the Colorado river and its tributaries;

(5) Collect, analyze, correlate, preserve and report on data as to the stream flows, storage, diversions and use of the waters of the Colorado river, and any of its tributaries;

(6) Make findings as to the quantity of water of the upper Colorado river system used each year in the upper Colorado river basin and in each state thereof;

(7) Make findings as to the quantity of water deliveries at Lee ferry during each water year;

(8) Make findings as to the necessity for and the extent of the curtailment of use, required, if any, pursuant to article IV hereof;

(9) Make findings as to the quantity of reservoir losses and as to the share thereof chargeable under article V hereof to each of the states;

(10) Make findings of fact in the event of the occurrence of extraordinary drought or serious accident to the irrigation system in the upper basin, whereby deliveries by the upper basin of water which it may be required to deliver in order to aid in fulfilling obligations of the United States of America to the United Mexican States arising under the treaty between the United States of America and the United Mexican States, dated February 3, 1944 (Treaty Series 994) become difficult, and report such findings to the governors of the upper basin states, the President of the United States of America, the United States section of the international boundary and water commission, and such other federal officials and agencies as it may deem appropriate to the end that the water allotted to Mexico under division III of such treaty may be reduced in accordance with the terms of such treaty;

(11) Acquire and hold such personal and real property as may be necessary for the performance of its duties hereunder and to dispose of the same when no longer required;

(12) Perform all functions required of it by this compact and do all things necessary, proper or convenient in the performance of its duties hereunder, either independently or in co-operation with any state or federal agency;

(13) Make and transmit annually to the governors of the signatory states and the President of the United States of America, with the estimated budget, a report covering the activities of the commission for the preceding water year.

(e) Except as otherwise provided in this compact the concurrence of four members of the commission shall be required in any action taken by it.

(f) The commission and its secretary shall make available to the governor of each of the signatory states any information within its possession at any time, and shall always provide free access to its records by the governors of each of the states, or their representatives or authorized representatives of the United States of America.

(g) Findings of fact made by the commission shall not be conclusive in any court, or before any agency or tribunal, but shall constitute prima facie evidence of the facts found.

(h) The organization meeting of the commission shall be held within four months from the effective date of this compact.

Article IX

(a) No state shall deny the right of the United States of America and, subject to the conditions hereinafter contained, no state shall deny the right of another signatory state, any person, or entity of any signatory state to acquire rights to the use of water, or to construct or participate in the construction and use of diversion works and storage reservoirs with appurtenant works, canals and conduits in one state for the purpose of diverting, conveying, storing, regulating and releasing water to satisfy the provisions of the Colorado river compact relating to the obligation of the states of the upper division to make deliveries of water at Lee ferry, or for the purpose of diverting, conveying, storing or regulating water in an upper signatory state for consumptive use in a lower signatory state, when such use is within the apportionment to such lower state made by this compact. Such rights shall be subject to the rights of water users, in a state in which such reservoir or works are located, to receive and use water, the use of which is within the apportionment to such state by this compact.

(b) Any signatory state, any person or any entity of any signatory state shall have the right to acquire such property rights as are necessary to the use of water in conformity with this compact in any other signatory state by donation, purchase or through the exercise of the power of eminent domain. Any signatory state, upon the written request of the governor of any other signatory state, for the benefit of whose water users property is to be acquired in the state to which such written request is made, shall proceed expeditiously to acquire the desired property either by purchase at a price satisfactory to the requesting state, or, if such purchase cannot be made, then through the exercise of its power of eminent domain and shall convey such property to the requesting state or such entity as may be designated by the requesting state; provided, that all costs of acquisition and expenses of every kind and nature whatsoever incurred in obtaining the requested property shall be paid by the requesting state at the time and in the manner prescribed by the state requested to acquire the property.

(c) Should any facility be constructed in a signatory state by and for the benefit of another signatory state or states or the water users thereof, as above provided, the construction, repair, replacement, maintenance and operation of such facility shall be subject to the laws of the state in which the facility is located, except that, in the case of a reservoir constructed in one state for the benefit of another state or states, the water administration officials of the state in which the facility is located shall permit the storage and release of any water which, as determined by findings of the commission, falls within the apportionment of the state or states for whose benefit the facility is constructed. In the case of a regulating reservoir for the joint benefit of all states in making Lee ferry deliveries, the water administration officials of the state

in which the facility is located, in permitting the storage and release of water, shall comply with the findings and orders of the commission.

(d) In the event property is acquired by a signatory state in another signatory state for the use and benefit of the former, the users of water made available by such facilities, as a condition precedent to the use thereof, shall pay to the political subdivisions of the state in which such works are located, each and every year during which such rights are enjoyed for such purposes, a sum of money equivalent to the average annual amount of taxes levied and assessed against the land and improvements thereon during the ten years preceding the acquisition of such land. Said payments shall be in full reimbursement for the loss of taxes in such political subdivisions of the state, and in lieu of any and all taxes on said property, improvements and rights. The signatory states recommend to the President and the congress that, in the event the United States of America shall acquire property in one of the signatory states for the benefit of another signatory state, or its water users, provision be made for like payment in reimbursement of loss of taxes.

Article X

(a) The signatory states recognize La Plata river compact entered into between the states of Colorado and New Mexico, dated November 27, 1922, approved by the congress on January 29, 1925 (43 Stat. 796), and this compact shall not affect the apportionment therein made.

(b) All consumptive use of water of La Plata river and its tributaries shall be charged under the apportionment of article III hereof to the state in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one state for use in the other shall be charged to the latter state.

Article XI

Subject to the provisions of this compact, the consumptive use of the water of the Little Snake river and its tributaries is hereby apportioned between the states of Colorado and Wyoming in such quantities as shall result from the application of the following principles and procedures:

(a) Water used under rights existing prior to the signing of this compact.

(1) Water diverted from any tributary of the Little Snake river or from the main stem of the Little Snake river above a point one hundred feet above the confluence of Savery creek and the Little Snake river shall be administered without regard to rights covering the diversion of water from any down-stream points.

(2) Water diverted from the main stem of the Little Snake river below a point one hundred feet below the confluence of Savery creek and the Little Snake river shall be administered on the basis of an interstate priority schedule prepared by the commission in conformity with priority dates established by the laws of the respective states.

(b) Water used under rights initiated subsequent to the signing of this compact.

(1) Direct flow diversions shall be so administered that, in time of shortage, the curtailment of use on each acre of land irrigated thereunder shall be as nearly equal as may be possible in both of the states.

(2) The storage of water by projects located in either state, whether of supplemental supply or of water used to irrigate land not irrigated at the date of the signing of this compact, shall be so administered that in times of water shortage the curtailment of storage of water available for each acre of land irrigated thereunder shall be as nearly equal as may be possible in both states.

(c) Water users under the apportionment made by this article shall be in accordance with the principle that beneficial use shall be the basis, measure and limit of the right to use.

(d) The states of Colorado and Wyoming each assent to diversions and storage of water in one state for use in the other state, subject to compliance with article IX of this compact.

(e) In the event of the importation of water to the Little Snake river basin from any other river basin, the state making the importation shall have the exclusive use of such imported water unless by written agreement, made by the representatives of the states of Colorado and Wyoming on the commission, it is otherwise provided.

(f) Water use projects initiated after the signing of this compact, to the greatest extent possible, shall permit the full use within the basin in the most feasible manner of the waters of the Little Snake river and its tributaries, without regard to the state line; and, so far as is practicable, shall result in an equal division between the states of the use of water not used under rights existing prior to the signing of this compact.

(g) All consumptive use of the waters of the Little Snake river and its tributaries shall be charged under the apportionment of article III hereof to the state in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one state for use in the other shall be charged to the latter state.

Article XII

Subject to the provisions of this compact, the consumptive use of the waters of Henry's fork, a tributary of Green river originating in the state of Utah and flowing into the state of Wyoming and thence into the Green river in the state of Utah; Beaver creek, originating in the state of Utah and flowing into Henry's fork in the state of Wyoming; Burnt fork, a tributary of Henry's fork, originating in the state of Utah and flowing into Henry's fork in the state of Wyoming; Birch creek, a tributary of Henry's fork originating in the state of Utah and flowing into Henry's fork in the state of Wyoming; and Sheep creek, a tributary of Green river in the state of Utah and their tributaries, are hereby apportioned between the states of Utah and Wyoming in such quantities as will result from the application of the following principles and procedures:

(a) Waters used under rights existing prior to the signing of this compact.

Waters diverted from Henry's fork, Beaver creek, Burnt fork, Birch creek and their tributaries, shall be administered without regard to the state line on the basis of an interstate priority schedule to be prepared by the states affected and approved by the commission in conformity with the actual priority of right of use, the water requirements of the land irrigated and the acreage irrigated in connection therewith.

(b) Waters used under rights from Henry's fork, Beaver creek, Burnt fork, Birch creek and their tributaries, initiated after the signing of this compact shall be divided fifty per cent to the state of Wyoming and fifty per cent to the state of Utah and each state may use said waters as and where it deems advisable.

(c) The state of Wyoming assents to the exclusive use by the state of Utah of the water of Sheep creek, except that the lands, if any, presently irrigated in the state of Wyoming from the water of Sheep creek shall be supplied with water from Sheep creek in order of priority and in such quantities as are in conformity with the laws of the state of Utah.

(d) In the event of the importation of water to Henry's fork, or any of its tributaries, from any other river basin, the state making the importation shall have the exclusive use of such

imported water unless by written agreement made by the representatives of the states of Utah and Wyoming on the commission, it is otherwise provided.

(e) All consumptive use of waters of Henry's fork, Beaver creek, Burnt fork, Birch creek, Sheep creek, and their tributaries shall be charged under the apportionment of article III hereof to the state in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one state for use in the other shall be charged to the latter state.

(f) The states of Utah and Wyoming each assent to the diversion and storage of water in one state for use in the other state, subject to compliance with article IX of this compact. It shall be the duty of the water administrative officials of the state where the water is stored to release said stored water to the other state upon demand. If either the state of Utah or the state of Wyoming shall construct a reservoir in the other state for use in its own state, the water users of the state in which said facilities are constructed may purchase at cost a portion of the capacity of said reservoir sufficient for the irrigation of their lands thereunder.

(g) In order to measure the flow of water diverted, each state shall cause suitable measuring devices to be constructed, maintained and operated at or near the point of diversion into each ditch.

(h) The state engineers of the two states jointly shall appoint a special water commissioner who shall have authority to administer the water in both states in accordance with the terms of this article. The salary and expenses of such special water commissioner shall be paid, thirty per cent by the state of Utah and seventy per cent by the state of Wyoming.

Article XIII

Subject to the provisions of this compact, the rights to the consumptive use of the water of the Yampa river, a tributary entering the Green river in the state of Colorado, are hereby apportioned between the states of Colorado and Utah in accordance with the following principles:

(a) The state of Colorado will not cause the flow of the Yampa river at the Maybell gauging station to be depleted below an aggregate of 5,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification and approval of this compact. In the event any diversion is made from the Yampa river or from tributaries entering the Yampa river above the Maybell gauging station for the benefit of any water use project in the state of Utah, then the gross amount of all such diversions for use in the state of Utah, less any returns from such diversions to the river above Maybell, shall be added to the actual flow at the Maybell gauging station to determine the total flow at the Maybell gauging station.

(b) All consumptive use of the waters of the Yampa river and its tributaries shall be charged under the apportionment of article III hereof to the state in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one state for use in the other shall be charged to the latter state.

Article XIV

Subject to the provisions of this compact, the consumptive use of the waters of the San Juan river and its tributaries is hereby apportioned between the states of Colorado and New Mexico as follows:

The state of Colorado agrees to deliver to the state of New Mexico from the San Juan river and its tributaries which rise in the state of Colorado a quantity of water which shall be sufficient, together with water originating in the San Juan basin in the state of New Mexico, to enable the state of New Mexico to make full use of the water apportioned to the state of New Mexico by article III of this compact, subject, however, to the following:

(a) A first and prior right shall be recognized as to:

(1) All uses of water made in either state at the time of the signing of this compact; and

(2) All uses of water contemplated by projects authorized, at the time of the signing of this compact under the laws of the United States of America whether or not such projects are eventually constructed by the United States of America or by some other entity.

(b) The state of Colorado assents to diversions and storage of water in the state of Colorado for use in the state of New Mexico, subject to compliance with article IX of this compact.

(c) The uses of the waters of the San Juan river and any of its tributaries within either state which are dependent upon a common source of water and which are not covered by (a) hereof, shall in times of water shortages be reduced in such quantity that the resulting consumptive use in each state will bear the same proportionate relation to the consumptive use made in each state during times of average water supply as determined by the commission; provided, that any preferential uses of water to which Indians are entitled under article XIX shall be excluded in determining the amount of curtailment to be made under this paragraph.

(d) The curtailment of water use by either state in order to make deliveries at Lee ferry as required by article IV of this compact shall be independent of any and all conditions imposed by this article and shall be made by each state, as and when required, without regard to any provision of this article.

(e) All consumptive use of the waters of the San Juan river and its tributaries shall be charged under the apportionment of article III hereof to the state in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one state for use in the other shall be charged to the latter state.

Article XV

(a) Subject to the provisions of the Colorado river compact and of this compact, water of the upper Colorado river system may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes.

(b) The provisions of this compact shall not apply to or interfere with the right or power of any signatory state to regulate within its boundaries the appropriation, use and control of water, the consumptive use of which is apportioned and available to such state by this compact.

Article XVI

The failure of any state to use the water, or any part thereof, the use of which is apportioned to it under the terms of this compact, shall not constitute a relinquishment of the right to such use to the lower basin or to any other state, nor shall it constitute a forfeiture or abandonment of the right to such use.

Article XVII

The use of any water now or hereafter imported into the natural drainage basin of the upper Colorado river system shall not be charged to any state under the apportionment of consumptive use made by this compact.

Article XVIII

(a) The state of Arizona reserves its rights and interest under the Colorado river compact as a state of the lower division and as a state of the lower basin.

(b) The state of New Mexico and the state of Utah reserve their respective rights and interests under the Colorado river compact as states of the lower basin.

Article XIX

Nothing in this compact shall be construed as:

(a) Affecting the obligations of the United States of America to Indian tribes;

(b) Affecting the obligations of the United States of America under the treaty with the United Mexican States (Treaty Series 994);

(c) Affecting any rights or powers of the United States of America, its agencies or instrumentalities, in or to the waters of the upper Colorado river system, or its capacity to acquire rights in and to the use of said water;

(d) Subjecting any property of the United States of America, its agencies or instrumentalities, to taxation by any state or subdivision thereof, or creating any obligation on the part of the United States of America, its agencies or instrumentalities, by reason of the acquisition, construction or operation of any property or works of whatever kind, to make any payment to any state or political subdivision thereof, state agency, municipality or entity whatsoever, in reimbursement for the loss of taxes;

(e) Subjecting any property of the United States of America, its agencies or instrumentalities, to the laws of any state to an extent other than the extent to which such laws would apply without regard to this compact.

Article XX

This compact may be terminated at any time by the unanimous agreement of the signatory states. In the event of such termination, all rights established under it shall continue unimpaired.

Article XXI

This compact shall become binding and obligatory when it shall have been ratified by the legislatures of each of the signatory states and approved by the congress of the United States of America. Notice of ratification by the legislatures of the signatory states shall be given by the governor of each signatory state to the governor of each of the other signatory states and to the President of the United States of America, and the President is hereby requested to give notice to the governor of each of the signatory states of approval by the congress of the United States of America.

IN WITNESS WHEREOF, the commissioners have executed six counterparts hereof each of which shall be and constitute an original, one of which shall be deposited in the archives of the department of state of the United States of America, and one of which shall be forwarded to the governor of each of the signatory states.

Done at the city of Santa Fe, state of New Mexico, this 11th day of October, 1948.

Charles A. Carlson,
Commissioner for the
State of Arizona.
Clifford H. Stone,
Commissioner for the
State of Colorado.
Fred E. Wilson,
Commissioner for the
State of New Mexico.
Edward H. Watson,
Commissioner for the
State of Utah.
L. C. Bishop,
Commissioner for the
State of Wyoming.
Grover A. Giles,
Secretary.
Approved:
Harry W. Bashore,
Representative of the
United States of America.

Source: L. 49: p. 498, § 1. **CSA:** C. 90, § 64(1). **CRS 53:** § 148-8-1. **C.R.S. 1963:** § 149-8-1.

37-62-102. When compact operative. Said compact shall not become operative unless and until the same has been ratified by the legislatures of each of the signatory states and consented to by the congress of the United States. The governor of the state of Colorado shall give notice of the ratification of said compact to the governors of the states of New Mexico, Utah, Wyoming, and Arizona, and to the president of the United States.

Source: L. 49: p. 515, § 2. **CSA:** C. 90, § 64(2). **CRS 53:** § 148-8-2. **C.R.S. 1963:** § 149-8-2.

37-62-103. Interstate agency created by compact. It is hereby recognized, found, determined, and declared that the compact creates an interstate agency which is known as the upper Colorado river commission and which is an independent entity whose members and employees are not officers and employees of any of the states signatory to the compact.

Source: L. 49: p. 516, § 3. **CSA:** C. 90, § 64(3). **CRS 53:** § 148-8-3. **C.R.S. 1963:** § 149-8-3.

37-62-104. Appointment of Colorado member of commission. After the said compact becomes effective, the Colorado member of the upper Colorado river commission shall be appointed by the governor, and shall serve until revocation of his appointment by the governor,

and, on behalf of the upper Colorado river commission, the state of Colorado shall pay his necessary expenses and also compensation in an amount which shall be fixed by the governor, and when so fixed shall be changed only by the governor.

Source: L. 49: p. 516, § 4. **CSA:** C. 90, § 64(4). **CRS 53:** § 148-8-4. **C.R.S. 1963:** § 149-8-4.

37-62-105. Payment of expenses of commission. The Colorado share of the expenses of the upper Colorado river commission and the expenses and the compensation of the Colorado member of that commission shall be paid out of funds appropriated by the general assembly to the Colorado water conservation board and warrants shall be drawn against such appropriations upon vouchers signed by the governor and the director of the Colorado water conservation board.

Source: L. 49: p. 516, § 5. **CSA:** C. 90, § 64(5). **CRS 53:** § 148-8-5. **C.R.S. 1963:** § 149-8-5.

37-62-106. Administrative code inapplicable. The provisions of articles 2, 3, 31, 35, and 36 of title 24, C.R.S., shall be inapplicable to any acts or proceedings taken to carry out the purpose of said compact.

Source: L. 49: p. 516, § 6. **CSA:** C. 90, § 64(6). **CRS 53:** § 148-8-6. **C.R.S. 1963:** § 149-8-6.

ARTICLE 63

La Plata River Compact

37-63-101. The La Plata River compact. The General Assembly hereby approves the compact, designated as the "La Plata River Compact", signed at the City of Santa Fe, State of New Mexico, on the 27th day of November, A. D. 1922, by Delph E. Carpenter as the Commissioner for the State of Colorado, under authority of and in conformity with the provisions of an Act of the General Assembly of the State of Colorado, approved April 2, 1921, entitled "An Act providing for the appointment of a commissioner on behalf of the State of Colorado to negotiate a compact or agreement between the States of Colorado and New Mexico respecting the use and distribution of the waters of the La Plata River and the rights of said States thereto, and making an appropriation therefor.", the same being Chapter 244 of the Session Laws of Colorado, 1921, and signed by Stephen B. Davis, Jr., as the Commissioner for the State of New Mexico, under legislative authority, which said compact is as follows:

La Plata River Compact

The State of Colorado and the State of New Mexico, desiring to provide for the equitable distribution of the waters of the La Plata River and to remove all causes of present and future controversy between them with respect thereto, and being moved by considerations of interstate

comity, pursuant to Acts of their respective Legislatures, have resolved to conclude a compact for these purposes and have named as their commissioners:

Delph E. Carpenter, for the State of Colorado; and Stephen B. Davis, Jr., for the State of New Mexico; who have agreed upon the following Articles:

Article I

The State of Colorado, at its own expense, shall establish and maintain two permanent stream-gauging stations upon the La Plata River for the purpose of measuring and recording its flow, which shall be known as the Hesperus Station and the Interstate Station, respectively.

The Hesperus Station shall be located at some convenient place near the village of Hesperus, Colorado. Suitable devices for ascertaining and recording the volume of all diversions from the river above Hesperus Station, shall be established and maintained (without expense to the State of New Mexico), and whenever in this compact reference is made to the flow of the river at Hesperus Station, it shall be construed to include the amount of the concurrent diversions above said station.

The Interstate Station shall be located at some convenient place within one mile of, and above or below, the interstate line. Suitable devices for ascertaining and recording the volume of water diverted by the Enterprise and Pioneer Canals, now serving approximately equal areas in both States, shall be established and maintained (without expense to the State of New Mexico), and whenever in this compact reference is made to the flow of the river at the Interstate Station, it shall be construed to include one-half the volume of the concurrent diversions by such canals, and also the volume of any other water which may hereafter be diverted from said river in Colorado for use in New Mexico.

Each of said stations shall be equipped with suitable devices for recording the flow of water in said river at all times between the 15th day of February and the 1st day of December of each year. The State Engineers of the signatory States shall make provision for co-operating gauging at the two stations, for the details of the operation, exchange of records and data, and publication of the facts.

Article II

The waters of the La Plata River are hereby equitably apportioned between the signatory States, including the citizens thereof, as follows:

1. At all times between the first day of December and the fifteenth day of the succeeding February, each State shall have the unrestricted right to use of all water which may flow within its boundaries.

2. By reason of the usual annual rise and fall, the flow of said river between the fifteenth day of February and the first day of December of each year, shall be apportioned between the States in the following manner:

(a) Each State shall have the unrestricted right to use all the waters within its boundaries on each day when the mean daily flow at the Interstate Station is one hundred cubic feet per second, or more.

(b) On all other days the State of Colorado shall deliver at the Interstate Station a quantity of water equivalent to one-half of the mean flow at the Hesperus Station for the preceding day, but not to exceed one hundred cubic feet per second.

3. Whenever the flow of the river is so low that in the judgment of the State Engineers of the States, the greatest beneficial use of its waters may be secured by distributing all of its waters successively to the land in each State in alternating periods, in lieu of delivery of water as provided in the second paragraph of this article the use of the waters may be so rotated between the two States in such manner for such periods, and to continue for such time as the State Engineers may jointly determine.

4. The State of New Mexico shall not at any time be entitled to receive nor shall the State of Colorado be required to deliver any water not then necessary for beneficial use in the State of New Mexico.

5. A substantial delivery of water under the terms of this Article shall be deemed a compliance with its provisions and minor and compensating irregularities in flow or delivery shall be disregarded.

Article III

The State Engineers of the States by agreement, from time to time, may formulate rules and regulations for carrying out the provisions of this compact, which, when signed and promulgated by them, shall be binding until amended by agreement between them or until terminated by written notice from one to the other.

Article IV

Whenever any official of either State is designated to perform any duty under this compact, such designation shall be interpreted to include the State official or officials upon whom the duties now performed by such official may hereafter devolve.

Article V

The physical and other conditions peculiar to the La Plata River and the territory drained and served thereby constitute the basis for this compact, and neither of the signatory States concedes the establishment of any general principle or precedent by the concluding of this compact.

Article VI

This compact may be modified or terminated at any time by mutual consent of the signatory States and upon such termination all rights then established hereunder shall continue unimpaired.

Article VII

This compact shall become operative when approved by the Legislature of each of the signatory States and by the Congress of the United States. Notice of approval by the Legislatures shall be given by the Governor of each State to the Governor of the other State, and the President of the United States is requested to give notice to the Governors of the signatory States of approval by the Congress of the United States.

IN WITNESS WHEREOF, The commissioners have signed this compact in duplicate originals, one of which shall be deposited with the Secretary of State of each of the signatory States.

Done at the city of Santa Fe, in the State of New Mexico, this 27th day of November, in the year of our Lord One Thousand Nine Hundred and Twenty-Two.
Delph E. Carpenter,
Stephen B. Davis, Jr.

Source: L. 23: p. 696, § 1. **CSA:** omitted. **CRS 53:** § 148-3-1. **C.R.S. 1963:** § 149-3-1.

37-63-102. Approval of compact. Said compact shall not become binding or operative unless and until the same has been approved by the legislature of each of the signatory states and by the congress of the United States, and the governor of the state of Colorado shall give notice of the approval of said compact to the governor of the state of New Mexico and to the president of the United States.

Source: L. 23: p. 701, § 2. **CSA:** omitted. **CRS 53:** § 148-3-2. **C.R.S. 1963:** § 149-3-2.

ARTICLE 64

Animas-La Plata Project Compact

37-64-101. Animas-La Plata project compact. The general assembly hereby ratifies the compact designated as the "Animas-La Plata Project Compact" to which the consent of congress was given by Public Law 90-537, section 501 (c), approved September 30, 1968, by the senate and house of representatives of the United States of America. Said compact is as follows:

ANIMAS-LA PLATA PROJECT COMPACT

The State of Colorado and the State of New Mexico, in order to implement the operation of the Animas-La Plata Federal Reclamation Project, Colorado-New Mexico, a proposed participating project under the Colorado River Storage Project Act (70 Stat. 105; 43 U.S.C. 620) and being moved by considerations of interstate comity, have resolved to conclude a compact for these purposes and have agreed upon the following articles:

ARTICLE I

A. The right to store and divert water in Colorado and New Mexico from the La Plata and Animas River systems, including return flow to the La Plata River from Animas River diversions, for uses in New Mexico under the Animas-La Plata Federal Reclamation Project shall be valid and of equal priority with those rights granted by decree of the Colorado state courts for the uses of water in Colorado for that project providing such uses in New Mexico are within the allocation of water made to that state by articles III and XIV of the Upper Colorado River Basin Compact (63 Stat. 31).

B. The restrictions of the last sentence of Section (a) of Article IX of the Upper Colorado River Basin Compact shall not be construed to vitiate paragraph A of this article.

ARTICLE II

This Compact shall become binding and obligatory when it shall have been ratified by the legislatures of each of the signatory States.

Source: L. 69: p. 1231, § 1. **C.R.S. 1963:** § 149-13-1.

ARTICLE 65

South Platte River Compact

37-65-101. South Platte River compact. The General Assembly hereby approves the compact, designated as the "South Platte River Compact", between the states of Colorado and Nebraska, signed at the City of Lincoln, State of Nebraska, on the 27th day of April, A.D. 1923, by Delph E. Carpenter as the Commissioner for the State of Colorado, under authority of Chapter 243, Session Laws of Colorado, 1921, and Chapter 190, Session Laws of Colorado, 1923, and by Robert H. Willis as the Commissioner for the State of Nebraska, thereunto duly authorized, which said compact is as follows:

South Platte River Compact Between

The States Of

Colorado And Nebraska

The State of Colorado and the State of Nebraska, desiring to remove all causes of present and future controversy between said States, and between citizens of one against citizens of the other, with respect to the waters of the South Platte River, and being moved by considerations of interstate comity, have resolved to conclude a compact for these purposes and, through their respective Governors, have named as their commissioners:

Delph E. Carpenter, for the State of Colorado; and Robert H. Willis, for the State of Nebraska; who have agreed upon the following articles:

Article I

In this compact:

1. The State of Colorado and the State of Nebraska are designated, respectively, as "Colorado" and "Nebraska".

2. The provisions hereof respecting each signatory State, shall include and bind its citizens and corporations and all others engaged or interested in the diversion and use of the waters of the South Platte River in that State.

3. The term "Upper Section" means that part of the South Platte River in the State of Colorado above and westerly from the west boundary of Washington County, Colorado.

4. The term "Lower Section" means that part of the South Platte River in the State of Colorado between the west boundary of Washington County and the intersection of said river with the boundary line common to the signatory States.

5. The term "Interstate Station" means that streams gauging station described in Article II.

6. The term "flow of the river" at the Interstate Station means the measured flow of the river at said station plus all increment to said flow entering the river between the Interstate Station and the diversion works of the Western Irrigation District in Nebraska.

Article II

1. Colorado and Nebraska, at their joint expense, shall maintain a stream gauging station upon the South Platte River at the river bridge near the town of Julesburg, Colorado, or at a convenient point between said bridge and the diversion works of the canal of the Western Irrigation District in Nebraska, for the purpose of ascertaining and recording the amount of water flowing in said river from Colorado into Nebraska and to said diversion works at all times between the first day of April and the fifteenth day of October of each year. The location of said station may be changed from year to year as the river channels and water flow conditions of the river may require.

2. The State Engineer of Colorado and the Secretary of the Department of Public Works of Nebraska shall make provision for the co-operative gauging at and the details of operation of said station and for the exchange and publication of records and data. Said state officials shall ascertain the rate of flow of the South Platte River through the Lower Section in Colorado and the time required for increases or decreases of flow, at points within said Lower Section, to reach the Interstate Station. In carrying out the provisions of Article IV of this compact, Colorado shall always be allowed sufficient time for any increase in flow (less permissible diversions) to pass down the river and be recorded at the Interstate Station.

Article III

The waters of Lodgepole Creek, a tributary of the South Platte River flowing through Nebraska and entering said river within Colorado, hereafter shall be divided and apportioned between the signatory States as follows:

1. The point of division of the waters of Lodgepole Creek shall be located on said creek two miles north of the boundary line common to the signatory states.

2. Nebraska shall have the full and unmolested use and benefit of all waters flowing in Lodgepole Creek above the point of diversion and Colorado waives all present and future claims to the use of said waters. Colorado shall have the exclusive use and benefit of all waters flowing at or below the point of division.

3. Nebraska may use the channel of Lodgepole Creek below the point of division and the channel of the South Platte River between the mouth of Lodgepole Creek and the Interstate Station, for the carriage of any waters of Lodgepole Creek which may be stored in Nebraska above the point of division and which Nebraska may desire to deliver to ditches from the South Platte River in Nebraska, and any such waters so carried shall be free from interference by diversions in Colorado and shall not be included as a part of the flow of the South Platte River to be delivered by Colorado at the Interstate Station in compliance with Article IV of this compact, provided, however, that such runs of stored water shall be made in amounts of not less than ten cubic feet per second of time and for periods of not less than twenty-four hours.

Article IV

The waters of the South Platte River hereafter shall be divided and apportioned between the signatory States as follows:

1. At all times between the fifteenth day of October of any year and the first day of April of the next succeeding year, Colorado shall have the full and uninterrupted use and benefit of the waters of the river flowing within the boundaries of the State, except as otherwise provided by Article VI.

2. Between the first day of April and the fifteenth day of October of each year, Colorado shall not permit diversions from the Lower Section of the river, to supply Colorado appropriations having adjudicated dates of priority subsequent to the fourteenth day of June, 1897, to an extent that will diminish the flow of the river at the Interstate Station, on any day, below a mean flow of 120 cubic feet of water per second of time, except as limited in paragraph three (3) of this Article.

3. Nebraska shall not be entitled to receive and Colorado shall not be required to deliver, on any day, any part of the flow of the river to pass the Interstate Station, as provided by paragraph two (2) of this Article, not then necessary for beneficial use by those entitled to divert water from said river within Nebraska.

4. The flow of the river at the Interstate Station shall be used by Nebraska to supply the needs of present perfected rights to the use of water from the river within said State before permitting diversions from the river by other claimants.

5. It is recognized that variable climatic conditions, the regulation and administration of the stream in Colorado, and other causes, will produce diurnal and other unavoidable variations and fluctuations in the flow of the river at the Interstate Station, and it is agreed that, in the performance of the provisions of said paragraph two (2), minor or compensating irregularities and fluctuations in the flow at the Interstate Station shall be permitted; but where any deficiency of the mean daily flow at the Interstate Station may have been occasioned by neglect, error or failure in the performance of duty by the Colorado water officials having charge of the administration of diversions from the Lower Section of the river in that state, each such deficiency shall be made up, within the next succeeding period of seventy-two hours, by delivery of additional flow at the Interstate Station, over and above the amount specified in paragraph two (2) of this Article, sufficient to compensate for such deficiency.

6. Reductions in diversions from the Lower Section of the river, necessary to the performance of paragraph two (2) of this Article by Colorado, shall not impair the rights of appropriators in Colorado (not to include the proposed Nebraska canal described in Article VI), whose supply has been so reduced, to demand and receive equivalent amounts of water from other parts of the stream in that State according to its Constitution, laws, and the decisions of its courts.

7. Subject to compliance with the provisions of this Article, Colorado shall have and enjoy the otherwise full and uninterrupted use and benefit of the waters of the river which hereafter may flow within the boundaries of that State from the first day of April to the fifteenth day of October in each year, but Nebraska shall be permitted to divert, under and subject to the provisions and conditions of Article VI, any surplus waters which otherwise would flow past the Interstate Station.

Article V

1. Colorado shall have the right to maintain, operate, and extend, within Nebraska, the Peterson Canal and other canals of the Julesburg Irrigation District which now are or may hereafter be used for the carriage of water from the South Platte River for the irrigation of lands in both states, and Colorado shall continue to exercise control and jurisdiction of said canals and the carriage and delivery of water thereby. This Article shall not excuse Nebraska water users from making reports to Nebraska officials in compliance with the Nebraska laws.

2. Colorado waives any objection to the delivery of water for irrigation of lands in Nebraska by the canals mentioned in paragraph one (1) of this Article, and agrees that all interests in said canals and the use of waters carried thereby, now or hereafter acquired by owners of lands in Nebraska, shall be afforded the same recognition and protection as are the interests of similar land owners served by said canals within Colorado; provided, however, that Colorado reserves to those in control of said canals the right to enforce the collection of charges or assessments, hereafter levied or made against such interest of owners of the lands in Nebraska, by withholding the delivery of water until the payment of such charges or assessments; provided, however, such charges or assessments shall be the same as those levied against similar interests of owners of lands in Colorado.

3. Nebraska grants to Colorado the right to acquire by purchase, prescription, or the exercise of eminent domain, such rights-of-way, easements or lands as may be necessary for the construction, maintenance, operation, and protection of those parts of the above mentioned canals which now or hereafter may extend into Nebraska.

Article VI

It is the desire of Nebraska to permit its citizens to cause a canal to be constructed and operated for the diversion of water from the South Platte River within Colorado for irrigation of lands in Nebraska; that said canal may commence on the south bank of said river at a point southwesterly from the town of Ovid, Colorado, and may run thence easterly through Colorado along or near the line of survey of the formerly proposed "Perkins County Canal" (sometimes known as the "South Divide Canal") and into Nebraska, and that said project shall be permitted to divert waters of the river as hereinafter provided. With respect to such proposed canal it is agreed:

1. Colorado consents that Nebraska and its citizens may hereafter construct, maintain, and operate such a canal and thereby may divert water from the South Platte River within Colorado for use in Nebraska, in the manner and at the time in this Article provided, and grants to Nebraska and its citizens the right to acquire by purchase, prescription, or the exercise of eminent domain such rights-of-way, easements or lands as may be necessary for the construction, maintenance, and operation of said canal; subject, however, to the reservations and limitations and upon the conditions expressed in this Article which are and shall be limitations upon and reservations and conditions running with the rights and privileges hereby granted, and which shall be expressed in all permits issued by Nebraska with respect to said canal.

2. The net future flow of the Lower Section of the South Platte River, which may remain after supplying all present and future appropriations from the Upper Section, and after supplying all appropriations from the Lower Section perfected prior to the seventeenth day of December, 1921, and after supplying the additional future appropriations in the Lower Section for the benefit of which a prior and preferred use of thirty-five thousand acre-feet of water is reserved by subparagraph (a) of this Article, may be diverted by said canal between the fifteenth day of October of any year and the first day of April of the next succeeding year subject to the following reservations, limitations and conditions:

(a) In addition to the water now diverted from the Lower Section of the river by present perfected appropriations, Colorado hereby reserves the prior, preferred and superior right to store, use and to have in storage in readiness for use on and after the first day of April in each year, an aggregate of thirty-five thousand acre-feet of water to be diverted from the flow of the

river in the Lower Section between the fifteenth day of October of each year and the first day of April of the next succeeding year, without regard to the manner or time of making such future uses, and diversions of water by said Nebraska canal shall in no manner impair or interfere with the exercise by Colorado of the right of future use of the water hereby reserved.

(b) Subject at all times to the reservation made by subparagraph (a) and to the other provisions of this Article, said proposed canal shall be entitled to divert five hundred cubic feet of water per second of time from the flow of the river in the Lower Sections, as of priority of appropriation of date December 17, 1921, only between the fifteenth day of October of any year and the first day of April of the next succeeding year upon the express condition that the right to so divert water is and shall be limited exclusively to said annual period and shall not constitute the basis for any claim to water necessary to supply all present and future appropriations in the Upper Section or present appropriations in the Lower Section and those hereafter to be made therein as provided in subparagraph (a).

3. Neither this compact nor the construction and operation of such a canal nor the diversion, carriage and application of water thereby shall vest in Nebraska, or in those in charge or control of said canal or in the users of water therefrom, any prior, preferred or superior servitude upon or claim or right to the use of any water of the South Platte River in Colorado from the first day of April to the fifteenth day of October of any year or against any present or future appropriator or use of water from said river in Colorado during said period of every year, and Nebraska specifically waives any such claims and agrees that the same shall never be made or asserted. Any surplus waters of the river, which otherwise would flow past the Interstate Station during such period of any year after supplying all present and future diversions by Colorado, may be diverted by such a canal, subject to the other provisions and conditions of this Article.

4. Diversion of water by said canal shall not diminish the flow necessary to pass the Interstate Station to satisfy superior claims of users of water from the river in Nebraska.

5. No appropriations of water from the South Platte River by any other canal within Colorado shall be transferred to said canal or be claimed or asserted for diversion and carriage for use on lands in Nebraska.

6. Nebraska shall have the right to regulate diversions of water by said canal for the purposes of protecting other diversions from the South Platte River within Nebraska and of avoiding violations of the provisions of Article IV; but Colorado reserves the right at all times to regulate and control the diversions by said canal to the extent necessary for the protection of all appropriations and diversions within Colorado or necessary to maintain the flow at the Interstate Stations as provided by Article IV of this compact.

Article VII

Nebraska agrees that compliance by Colorado with the provisions of this compact and the delivery of water in accordance with its terms shall relieve Colorado from any further or additional demand or claim by Nebraska upon the waters of the South Platte River within Colorado.

Article VIII

Whenever any official of either State is designated herein to perform any duty under this compact, such designation shall be interpreted to include the state official or officials upon

whom the duties now performed by such official may hereafter devolve, and it shall be the duty of the officials of the State of Colorado charged with the duty of the distribution of the waters of the South Platte River for irrigation purposes, to make deliveries of water at the Interstate Station in compliance with this compact without necessity of enactment of special statutes for such purposes by the General Assembly of the State of Colorado.

Article IX

The physical and other conditions peculiar to the South Platte River and to the territory drained and served thereby constitute the basis for this compact and neither of the signatory States hereby concedes the establishment of any general principle or precedent with respect to other interstate streams.

Article X

This compact may be modified or terminated at any time by mutual consent of the signatory States, but, if so terminated and Nebraska or its citizens shall seek to enforce any claims of vested rights in the waters of the South Platte River, the statutes of limitation shall not run in favor of Colorado or its citizens with reference to claims of the Western Irrigation District to the water of the South Platte River from the sixteenth day of April, 1916, and as to all other present claims from the date of the approval of this compact to the date of such termination, and the State of Colorado and its citizens who may be made defendants in any action brought for such purpose shall not be permitted to plead the statutes of limitation for such period of time.

Article XI

This compact shall become operative when approved by the Legislature of each of the signatory States and by the Congress of the United States. Notice of approval by the Legislature shall be given by the Governor of each State to the Governor of the other State and to the President of the United States, and the President of the United States is requested to give notice to the Governors of the signatory States of the approval by the Congress of the United States.

IN WITNESS WHEREOF, the Commissioners have signed this compact in duplicate originals, one of which shall be deposited with the Secretary of State of each of the Signatory States.

Done at Lincoln, in the State of Nebraska, this 27th day of April, in the year of our Lord One Thousand Nine Hundred and Twenty-three.

Delph E. Carpenter,
Robert H. Willis.

Source: L. 25: p. 529, § 1. **CSA:** omitted. **CRS 53:** § 148-4-1. **C.R.S. 1963:** § 149-4-1.

ARTICLE 66

Rio Grande River Compact

37-66-101. Rio Grande River compact. The general assembly hereby approves the compact between the states of Colorado, New Mexico, and Texas, designated as the "Rio Grande compact", signed at the city of Santa Fe, state of New Mexico, on the 18th day of March, A. D.

1938, by M. C. Hinderlider, commissioner for the state of Colorado; Thomas M. McClure, commissioner for the state of New Mexico; Frank B. Clayton, commissioner for the state of Texas, and approved by S. O. Harper, representative of the President of the United States, which said compact is as follows:

Rio Grande Compact

The state of Colorado, the state of New Mexico, and the state of Texas, desiring to remove all causes of present and future controversy among these states and between citizens of one of these states and citizens of another state with respect to the use of the waters of the Rio Grande above Fort Quitman, Texas, and being moved by considerations of interstate comity, and for the purpose of effecting an equitable apportionment of such waters, have resolved to conclude a compact for the attainment of these purposes, and to that end, through their respective governors, have named as their respective commissioners:

For the state of Colorado--M. C. Hinderlider

For the state of New Mexico--Thomas M. McClure

For the state of Texas--Frank B. Clayton

who, after negotiations participated in by S. O. Harper, appointed by the President as the representative of the United States of America, have agreed upon the following articles, to-wit:

Article I

(a) The state of Colorado, the state of New Mexico, the state of Texas, and the United States of America, are hereinafter designated "Colorado," "New Mexico," "Texas," and the "United States," respectively.

(b) "The commission" means the agency created by this compact for the administration thereof.

(c) The term "Rio Grande basin" means all of the territory drained by the Rio Grande and its tributaries in Colorado, in New Mexico, and in Texas above Fort Quitman, including the closed basin in Colorado.

(d) The "closed basin" means that part of the Rio Grande basin in Colorado where the streams drain into the San Luis lakes and adjacent territory, and do not normally contribute to the flow of the Rio Grande.

(e) The term "tributary" means any stream which naturally contributes to the flow of the Rio Grande.

(f) "Transmountain diversion" is water imported into the drainage basin of the Rio Grande from any stream system outside of the Rio Grande basin, exclusive of the closed basin.

(g) "Annual debits" are the amounts by which actual deliveries in any calendar year fall below scheduled deliveries.

(h) "Annual credits" are the amounts by which actual deliveries in any calendar year exceed scheduled deliveries.

(i) "Accrued debits" are the amounts by which the sum of all annual debits exceeds the sum of all annual credits over any common period of time.

(j) "Accrued credits" are the amounts by which the sum of all annual credits exceeds the sum of all annual debits over any common period of time.

(k) "Project storage" is the combined capacity of Elephant Butte reservoir and all other reservoirs actually available for the storage of usable water below Elephant Butte and above the first diversion to lands of the Rio Grande project, but not more than a total of 2,638,860 acre-feet

(l) "Usable water" is all water, exclusive of credit water, which is in project storage and which is available for release in accordance with irrigation demands, including deliveries to Mexico.

(m) "Credit water" is that amount of water in project storage which is equal to the accrued credit of Colorado, or New Mexico, or both.

(n) "Unfilled capacity" is the difference between the total physical capacity of project storage and the amount of usable water then in storage.

(o) "Actual release" is the amount of usable water released in any calendar year from the lowest reservoir comprising project storage.

(p) "Actual spill" is all water which is actually spilled from Elephant Butte reservoir, or is released therefrom for flood control, in excess of the current demand on project storage and which does not become usable water by storage in another reservoir; provided, that actual spill of usable water cannot occur until all credit water shall have been spilled.

(q) "Hypothetical spill" is the time in any year at which usable water would have spilled from project storage if 790,000 acre-feet had been released therefrom at rates proportional to the actual release in every year from the starting date to the end of the year in which hypothetical spill occurs, in computing hypothetical spill the initial condition shall be the amount of usable water in project storage at the beginning of the calendar year following the effective date of this compact, and thereafter the initial condition shall be the amount of usable water in project storage at the beginning of the calendar year following each actual spill.

Article II

The commission shall cause to be maintained and operated a stream gauging station equipped with an automatic water stage recorder at each of the following points, to-wit:

(a) On the Rio Grande near Del Norte above the principal points of diversion to the San Luis valley;

(b) On the Conejos river near Mogote;

(c) On the Los Pinos river near Ortiz;

(d) On the San Antonio river at Ortiz;

(e) On the Conejos river at its mouths near Los Sauces;

(f) On the Rio Grande near Lobatos;

(g) On the Rio Chama below El Vado reservoir;

(h) On the Rio Grande at Otowi bridge near San Ildefonso;

(i) On the Rio Grande near San Acacia;

(j) On the Rio Grande at San Marcial;

(k) On the Rio Grande below Elephant Butte reservoir;

(l) On the Rio Grande below Caballo reservoir.

Similar gauging stations shall be maintained and operated below any other reservoir constructed after 1929, and at such other points as may be necessary for the securing of records required for the carrying out of the compact; and automatic water stage recorders shall be maintained and operated on each of the reservoirs mentioned, and on all others constructed after 1929.

Such gauging stations shall be equipped, maintained and operated by the commission directly or in co-operation with an appropriate federal or state agency, and the equipment,

method and frequency of measurement at such stations shall be such as to produce reliable records at all times.

Article III

The obligation of Colorado to deliver water in the Rio Grande at the Colorado-New Mexico state line, measured at or near Lobatos, in each calendar year, shall be ten thousand acre-feet less than the sum of those quantities set forth in the two following tabulations of relationship, which correspond to the quantities at the upper index stations:

Discharge of Conejos River
Quantities in thousands of acre-feet

Conejos Index Supply (1)	Conejos River at Mouths (2)
100	0
150	20
200	45
250	75
300	109
350	147
400	188
450	232
500	278
550	326
600	376
650	426
700	476

Intermediate quantities shall be computed by proportional parts.

(1) Conejos index supply is the natural flow Conejos river at the U. S. G. S. gauging station near Mogote during the calendar year, plus the natural flow of Los Pinos river at the U. S. G. S. gauging station near Ortiz and the natural flow of San Antonio river at the U. S. G. S. gauging station at Ortiz, both during the months of April to October, inclusive.

(2) Conejos river at mouths is the combined discharge of branches of this river at the U. S. G. S. gauging stations near Los Sauces during the calendar year.

Discharge of Rio Grande Exclusive of Conejos River
Quantities in thousands of acre-feet

Rio Grande at Del Norte (3)	Rio Grande at Lobatos less Conejos at Mouths (4)
200	60
250	65
300	75
350	86
400	98
450	112
500	127

550	144
600	162
650	182
700	204
750	229
800	257
850	292
900	335
950	380
1,000	430
1,100	540
1,200	640
1,300	740
1,400	840

Intermediate quantities shall be computed by proportional parts.

(3) Rio Grande at Del Norte is the recorded flow of the Rio Grande at the U. S. G. S. gauging station near Del Norte during the calendar year (measured above all principal points of diversion to San Luis Valley) corrected for the operation of reservoirs constructed after 1937.

(4) Rio Grande at Lobatos less Conejos at mouths is the total flow of the Rio Grande at the U. S. G. S. gauging station near Lobatos, less the discharge of Conejos river at its mouths, during the calendar year.

The application of these schedules shall be subject to the provisions hereinafter set forth and appropriate adjustments shall be made for (a) any change in location of gauging stations; (b) any new or increased depletion of the runoff above inflow index gauging stations; and (c) any transmountain diversions into the drainage basin of the Rio Grande above Lobatos.

In event any works are constructed after 1937 for the purpose of delivering water into the Rio Grande from the closed basin, Colorado shall not be credited with the amount of such water delivered, unless the proportion of sodium ions shall be less than forty-five per cent of the total positive ions in that water when the total dissolved solids in such water exceeds three hundred fifty parts per million.

Article IV

The obligation of New Mexico to deliver water in the Rio Grande at San Marcial, during each calendar year, exclusive of the months of July, August and September, shall be that quantity set forth in the following tabulation of relationship, which corresponds to the quantity at the upper index station:

Discharge of Rio Grande at Otowi Bridge
And at San Marcial Exclusive of July,
August and September
Quantities in thousands of acre-feet

Otowi Index Supply (5)	San Marcial Index Supply (6)
100	0
200	65

300	141
400	219
500	300
600	383
700	469
800	557
900	648
1000	742
1100	839
1200	939
1300	1042
1400	1148
1500	1257
1600	1370
1700	1489
1800	1608
1900	1730
2000	1856
2100	1985
2200	2117
2300	2253

Intermediate quantities shall be computed by proportional parts.

(5) The Otowi index supply is the recorded flow of the Rio Grande at the U. S. G. S. gauging station at Otowi Bridge near San Ildefonso (formerly station near Buckman) during the calendar year, exclusive of the flow during the months of July, August and September, corrected for the operation of reservoirs constructed after 1929 in the drainage basin of the Rio Grande between Lobatos and Otowi Bridge.

(6) San Marcial index supply is the recorded flow of the Rio Grande at the gauging station at San Marcial during the calendar year exclusive of the flow during the months of July, August and September.

The application of this schedule shall be subject to the provisions hereinafter set forth and appropriate adjustments shall be made for (a) any change in location of gauging stations; (b) depletion after 1929 in New Mexico at any time of the year of the natural runoff at Otowi Bridge; (c) depletion of the runoff during July, August and September of tributaries between Otowi Bridge and San Marcial, by works constructed after 1937; and (d) any transmountain diversions into the Rio Grande between Lobatos and San Marcial.

Concurrent records shall be kept of the flow of the Rio Grande at San Marcial, near San Acacia, and of the release from Elephant Butte reservoir, to the end that the records at these three stations may be correlated.

Article V

If at any time it should be the unanimous finding and determination of the commission that because of changed physical conditions, or for any other reason, reliable records are not obtainable, or cannot be obtained, at any of the stream gauging stations herein referred to, such

stations may, with the unanimous approval of the Commission, be abandoned, and with such approval another station, or other stations, shall be established and new measurements shall be substituted which, in the unanimous opinion of the commission, will result in substantially the same results, so far as the rights and obligations to deliver water are concerned, as would have existed if such substitution of stations and measurements had not been so made.

Article VI

Commencing with the year following the effective date of this compact, all credits and debits of Colorado and New Mexico shall be computed for each calendar year; provided, that in a year of actual spill no annual credits nor annual debits shall be computed for that year.

In the case of Colorado, no annual debit nor accrued debit shall exceed 100,000 acre-feet, except as either or both may be caused by holdover storage of water in reservoirs constructed after 1937 in the drainage basin of the Rio Grande above Lobatos. Within the physical limitations of storage capacity in such reservoirs, Colorado shall retain water in storage at all times to the extent of its accrued debit.

In the case of New Mexico, the accrued debit shall not exceed 200,000 acre-feet at any time, except as such debit may be caused by holdover storage of water in reservoirs constructed after 1929 in the drainage basin of the Rio Grande between Lobatos and San Marcial. Within the physical limitations of storage capacity in such reservoirs, New Mexico shall retain water in storage at all times to the extent of its accrued debit. In computing the magnitude of accrued credits or debits, New Mexico shall not be charged with any greater debt in any one year than the sum of 150,000 acre-feet and all gains in the quantity of water in storage in such year.

The commission by unanimous action may authorize the release from storage of any amount of water which is then being held in storage by reason of accrued debits of Colorado or New Mexico; provided, that such water shall be replaced at the first opportunity thereafter.

In computing the amount of accrued credits and accrued debits of Colorado or New Mexico, any annual credits in excess of 150,000 acre-feet shall be taken as equal to that amount.

In any year in which actual spill occurs, the accrued credits of Colorado, or New Mexico, or both, at the beginning of the year shall be reduced in proportion to their respective credits by the amount of such actual spill; provided, that the amount of actual spill shall be deemed to be increased by the aggregate gain in the amount of water in storage, prior to the time of spill, in reservoirs above San Marcial constructed after 1929; provided, further, that if the commissioners for the states having accrued credits authorized the release of part, or all, of such credits in advance of spill, the amount so released shall be deemed to constitute actual spill.

In any year in which there is actual spill of usable water, or at the time of hypothetical spill thereof, all accrued debits of Colorado, or New Mexico, or both, at the beginning of the year shall be cancelled.

In any year in which the aggregate of accrued debits of Colorado and New Mexico exceeds the minimum unfilled capacity of project storage, such debits shall be reduced proportionally to an aggregate amount equal to such minimum unfilled capacity.

To the extent that accrued credits are impounded in reservoirs between San Marcial and Courchesne, and to the extent that accrued debits are impounded in reservoirs above San Marcial, such credits and debits shall be reduced annually to compensate for evaporation losses in the proportion that such credits or debits bore to the total amount of water in such reservoirs during the year.

Article VII

Neither Colorado nor New Mexico shall increase the amount of water in storage in reservoirs constructed after 1929 whenever there is less than 400,000 acre-feet of usable water in project storage; provided, that if the actual releases of usable water from the beginning of the calendar year following the effective date of this compact, or from the beginning of the calendar year following actual spill, have aggregated more than an average of 790,000 acre-feet per annum, the time at which such minimum stage is reached shall be adjusted to compensate for the difference between the total actual release and releases at such average rate; provided, further, that Colorado or New Mexico, or both, may relinquish accrued credits at any time, and Texas may accept such relinquished water, and in such event the state, or states, so relinquishing shall be entitled to store water in the amount of the water so relinquished.

Article VIII

During the month of January of any year the commissioner for Texas may demand of Colorado and New Mexico, and the commissioner for New Mexico may demand of Colorado, the release of water from storage reservoirs constructed after 1929 to the amount of the accrued debits of Colorado and New Mexico, respectively, and such releases shall be made by each at the greatest rate practicable under the conditions then prevailing, and in proportion to the total debit of each, and in amounts, limited by their accrued debits, sufficient to bring the quantity of usable water in project storage to 600,000 acre-feet by March first and to maintain this quantity in storage until April thirtieth, to the end that a normal release of 790,000 acre-feet may be made from project storage in that year.

Article IX

Colorado agrees with New Mexico that in event the United States or the state of New Mexico decides to construct the necessary works for diverting the waters of the San Juan river, or any of its tributaries, into the Rio Grande, Colorado hereby consents to the construction of said works and the diversion of waters from the San Juan river, or the tributaries thereof, into the Rio Grande in New Mexico, provided the present and prospective uses of water in Colorado by other diversions from the San Juan river, or its tributaries are protected.

Article X

In the event water from another drainage basin shall be imported into the Rio Grande basin by the United States or Colorado or New Mexico, or any of them jointly, the state having the right to the use of such water shall be given proper credit therefor in the application of the schedules.

Article XI

New Mexico and Texas agree that upon the effective date of this compact all controversies between said states relative to the quantity or quality of the water of the Rio Grande are composed and settled; however, nothing herein shall be interpreted to prevent recourse by a signatory state to the supreme court of the United States for redress should the character or quality of the water, at the point of delivery, be changed hereafter by one signatory state to the injury of another. Nothing herein shall be construed as an admission by any signatory

state that the use of water for irrigation causes increase of salinity for which the user is responsible in law.

Article XII

To administer the provisions of this compact there shall be constituted a commission composed of one representative from each state, to be known as the Rio Grande compact commission. The state engineer of Colorado shall be ex officio the Rio Grande compact commissioner for Colorado. The state engineer of New Mexico shall be ex officio the Rio Grande compact commissioner for New Mexico. The Rio Grande compact commissioner for Texas shall be appointed by the governor of Texas. The President of the United States shall be requested to designate a representative of the United States to sit with such commission, and such representative of the United States, if so designated by the President, shall act as chairman of the commission without vote.

The salaries and personal expenses of the Rio Grande compact commissioners for the three states shall be paid by their respective states, and all other expenses incident to the administration of this compact, not borne by the United States, shall be borne equally by the three states.

In addition to the powers and duties hereinbefore specifically conferred upon such commission, and the members thereof, the jurisdiction of such commission shall extend only to the collection, correlation and presentation of factual data and the maintenance of records having a bearing upon the administration of this compact, and, by unanimous action, to the making of recommendations to the respective states upon matters connected with the administration of this compact. In connection therewith, the commission may employ such engineering and clerical aid as may be reasonably necessary within the limit of funds provided for that purpose by the respective states. Annual reports compiled for each calendar year shall be made by the commission and transmitted to the governors of the signatory states on or before March first following the year covered by the report. The commission may, by unanimous action, adopt rules and regulations consistent with the provisions of this compact to govern their proceedings.

The findings of the Commission shall not be conclusive in any court or tribunal which may be called upon to interpret or enforce this compact.

Article XIII

At the expiration of every five year period after the effective date of this compact, the commission may, by unanimous consent, review any provisions hereof which are not substantive in character and which do not affect the basic principles upon which the compact is founded, and shall meet for the consideration of such questions on the request of any member of the commission; provided, however, that the provisions hereof shall remain in full force and effect until changed and amended within the intent of the compact by unanimous action of the commissioners, and until any changes in this compact are ratified by the legislatures of the respective states and consented to by the congress, in the same manner as this compact is required to be ratified to become effective.

Article XIV

The schedules herein contained and the quantities of water herein allocated shall never be increased nor diminished by reason of any increase or diminution in the delivery or loss of water to Mexico.

Article XV

The physical and other conditions characteristic of the Rio Grande and peculiar to the territory drained and served thereby, and to the development thereof, have actuated this compact and none of the signatory states admits that any provisions herein contained establishes any general principle or precedent applicable to other interstate streams.

Article XVI

Nothing in this compact shall be construed as affecting the obligations of the United States of America to Mexico under existing treaties, or to the Indian tribes, or as impairing the rights of the Indian tribes.

Article XVII

This compact shall become effective when ratified by the legislatures of each of the signatory states and consented to by the congress of the United States. Notice of ratification shall be given by the governor of each state to the governors of the other states and to the President of the United States, and the President of the United States is requested to give notice to the governors of each of the signatory states of the consent of the congress of the United States.

IN WITNESS WHEREOF, the commissioners have signed this compact in quadruplicate original, one of which shall be deposited in the archives of the Department of State of the United States of America and shall be deemed the authoritative original, and of which a duly certified copy shall be forwarded to the governor of each of the signatory states.

Done at the city of Santa Fe, in the state of New Mexico, on the 18th day of March, in the year of our Lord, One Thousand Nine Hundred and Thirty-eight.

(Sgd.) M. C. Hinderlider
(Sgd.) Thomas M. McClure
(Sgd.) Frank B. Clayton
APPROVED:
(Sgd.) S. O. Harper.

Source: L. 39: p. 489, § 1. **CSA:** omitted. **CRS 53:** § 148-5-1. **C.R.S. 1963:** § 149-5-1.

37-66-102. Compact to be ratified. Said compact shall not become binding or operative unless and until the same has been ratified by the legislature of each of the signatory states and consented to by the congress of the United States, and the governor of the state of Colorado shall give notice of the approval of said compact to the governor of the state of New Mexico, to the governor of the state of Texas, and to the president of the United States, in conformity with article XVII of said compact.

Source: L. 39: p. 500, § 2. **CSA:** omitted. **CRS 53:** § 148-5-2. **C.R.S. 1963:** § 149-5-2.

ARTICLE 67

Republican River Compact

37-67-101. Ratification, purpose, and articles of compact. The general assembly hereby ratifies the compact between the states of Colorado, Kansas, and Nebraska, designated as the "Republican River Compact", signed in the city of Lincoln, state of Nebraska, on the 31st day of December, A. D. 1942, by M. C. Hinderlider, commissioner for the state of Colorado; George S. Knapp, commissioner for the state of Kansas; Wardner G. Scott, commissioner for the state of Nebraska, which said compact is as follows:

Republican River Compact

The states of Colorado, Kansas, and Nebraska, parties signatory to this compact (hereinafter referred to as Colorado, Kansas, and Nebraska, respectively, or individually as a state, or collectively as the states), having resolved to conclude a compact with respect to the waters of the Republican River Basin, and being duly authorized therefor by the Act of the Congress of the United States of America, approved August 4, 1942, (Public No. 696, 77th Congress, chapter 545, 2nd Session) and pursuant to acts of their respective legislatures have, through their respective governors, appointed as their commissioners:

M. C. Hinderlider, for Colorado
George S. Knapp, for Kansas
Wardner G. Scott, for Nebraska

who, after negotiations participated in by Glenn L. Parker, appointed by the President as the representative of the United States of America, have agreed upon the following articles:

Article I

The major purposes of this compact are to provide for the most efficient use of the waters of the Republican River Basin (hereinafter referred to as the "Basin") for multiple purposes; to provide for an equitable division of such waters; to remove all causes, present and future, which might lead to controversies; to promote interstate comity; to recognize that the most efficient utilization of the waters within the Basin is for beneficial consumptive use; and to promote joint action by the states and the United States in the efficient use of water and the control of destructive floods.

The physical and other conditions peculiar to the Basin constitute the basis for this compact, and none of the states hereby, nor the Congress of the United States by its consent, concedes that this compact establishes any general principle or precedent with respect to any other interstate stream.

Article II

The Basin is all the area in Colorado, Kansas, and Nebraska, which is naturally drained by the Republican River, and its tributaries, to its junction with the Smoky Hill River in Kansas. The main stem of the Republican River extends from the junction near Haigler, Nebraska, of its North Fork and the Arikaree River, to its junction with Smoky Hill River near Junction City, Kansas. Frenchman Creek (River) in Nebraska is a continuation of Frenchman Creek (River) in Colorado. Red Willow Creek in Colorado is not identical with the stream having the same name

in Nebraska. A map of the Basin approved by the commissioners is attached and made a part hereof.

The term "Acre-foot," as herein used, is the quantity of water required to cover an acre to the depth of one foot and is equivalent to forty-three thousand, five hundred sixty (43,560) cubic feet.

The term "Virgin Water Supply," as herein used, is defined to be the water supply within the Basin undepleted by the activities of man.

The term "Beneficial Consumptive Use" is herein defined to be that use by which the water supply of the Basin is consumed through the activities of man, and shall include water consumed by evaporation from any reservoir, canal, ditch, or irrigated area.

Beneficial consumptive use is the basis and principle upon which the allocations of water hereinafter made are predicated.

Article III

The specific allocations in acre-feet hereinafter made to each state are derived from the computed average annual virgin water supply originating in the following designated drainage basins, or parts thereof, in the amounts shown:

North Fork of the Republican River drainage basin in Colorado, 44,700 acre-feet;

Arikaree River drainage basin, 19,610 acre-feet;

Buffalo Creek drainage basin, 7,890 acre-feet;

Rock Creek drainage basin, 11,000 acre-feet;

South Fork of the Republican River drainage basin, 57,200 acre-feet;

Frenchman Creek (River) drainage basin in Nebraska, 98,500 acre-feet;

Blackwood Creek drainage basin, 6,800 acre-feet;

Driftwood Creek drainage basin, 7,300 acre-feet;

Red Willow Creek drainage basin in Nebraska, 21,900 acre-feet;

Medicine Creek drainage basin, 50,800 acre-feet;

Beaver Creek drainage basin, 16,500 acre-feet;

Sappa Creek drainage basin, 21,400 acre-feet;

Prairie Dog Creek drainage basin, 27,600 acre-feet;

The North Fork of the Republican River in Nebraska and the main stem of the Republican River between the junction of the North Fork and Arikaree River and the lowest crossing of the river at the Nebraska-Kansas state line and the small tributaries thereof, 87,700 acre-feet.

Should the future computed virgin water supply of any source vary more than ten (10) per cent from the virgin water supply as hereinabove set forth, the allocations hereinafter made from such source shall be increased or decreased in the relative proportions that the future computed virgin water supply of such source bears to the computed virgin water supply used herein.

Article IV

There is hereby allocated for beneficial consumptive use in Colorado, annually, a total of fifty-four thousand, one hundred (54,100) acre-feet of water. This total is to be derived from the sources and in the amounts hereinafter specified and is subject to such quantities being physically available from those sources:

North Fork of the Republican River drainage basin, 10,000 acre-feet;

Arikaree River drainage basin, 15,400 acre-feet;

South Fork of the Republican River drainage basin, 25,400 acre-feet;

Beaver Creek drainage basin, 3,300 acre-feet; and

In addition, for beneficial consumptive use in Colorado annually, the entire water supply of the Frenchman Creek (River) drainage basin in Colorado and the Red Willow Creek drainage basin in Colorado.

There is hereby allocated for beneficial consumptive use in Kansas, annually, a total of one hundred ninety thousand, three hundred (190,300) acre-feet of water. This total is to be derived from the sources and in the amounts hereinafter specified and is subject to such quantities being physically available from those sources:

Arikaree River drainage basin, 1,000 acre-feet;

South Fork of the Republican River drainage basin, 23,000 acre-feet;

Driftwood Creek drainage basin, 500 acre-feet;

Beaver Creek drainage basin, 6,400 acre-feet;

Sappa Creek drainage basin, 8,800 acre-feet;

Prairie Dog Creek drainage basin, 12,600 acre-feet;

From the main stem of the Republican River upstream from the lowest crossing of the river at the Nebraska-Kansas state line and from water supplies of upstream basins otherwise unallocated herein, 138,000 acre-feet; provided, that Kansas shall have the right to divert all or any portion thereof at or near Guide Rock, Nebraska; and

In addition there is hereby allocated for beneficial consumptive use in Kansas, annually, the entire water supply originating in the Basin downstream from the lowest crossing of the river at the Nebraska-Kansas state line.

There is hereby allocated for beneficial consumptive use in Nebraska, annually, a total of two hundred thirty-four thousand, five hundred (234,500) acre-feet of water. This total is to be derived from the sources and in the amounts hereinafter specified and is subject to such quantities being physically available from those sources:

North Fork of the Republican River drainage basin in Colorado, 11,000 acre-feet;

Frenchman Creek (River) drainage basin in Nebraska, 52,800 acre-feet;

Rock Creek drainage basin, 4,400 acre-feet;

Arikaree River drainage basin, 3,300 acre-feet;

Buffalo Creek drainage basin, 2,600 acre-feet;

South Fork of the Republican River drainage basin, 800 acre-feet;

Driftwood Creek drainage basin, 1,200 acre-feet;

Red Willow Creek drainage basin in Nebraska, 4,200 acre-feet;

Medicine Creek drainage basin, 4,600 acre-feet;

Beaver Creek drainage basin, 6,700 acre-feet;

Sappa Creek drainage basin, 8,800 acre-feet;

Prairie Dog Creek drainage basin, 2,100 acre-feet;

From the North Fork of the Republican River in Nebraska, the main stem of the Republican River between the junction of the North Fork and Arikaree River and the lowest crossing of the river at the Nebraska-Kansas state line, from the small tributaries thereof, and from water supplies of upstream basins otherwise unallocated herein, 132,000 acre-feet.

The use of the waters hereinabove allocated shall be subject to the laws of the state, for use in which the allocations are made.

Article V

The judgment and all provisions thereof in the case of Adelbert A. Weiland, as state engineer of Colorado, et al. v. The Pioneer Irrigation Company, decided June 5, 1922, and reported in 259 U. S. 498, affecting the Pioneer irrigation ditch or canal, are hereby recognized as binding upon the states; and Colorado, through its duly authorized officials, shall have the perpetual and exclusive right to control and regulate diversions of water at all times by said canal in conformity with said judgment.

The water heretofore adjudicated to said Pioneer Canal by the district court of Colorado, in the amount of fifty (50) cubic feet per second of time is included in and is a part of the total amounts of water hereinbefore allocated for beneficial consumptive use in Colorado and Nebraska.

Article VI

The right of any person, entity, or lower state to construct, or participate in the future construction and use of any storage reservoir or diversion works in an upper state for the purpose of regulating water herein allocated for beneficial consumptive use in such lower state, shall never be denied by an upper state; provided, that such right is subject to the rights of the upper state.

Article VII

Any person, entity, or lower state shall have the right to acquire necessary property rights in an upper state by purchase, or through the exercise of the power of eminent domain, for the construction, operation and maintenance of storage reservoirs, and of appurtenant works, canals and conduits, required for the enjoyment of the privileges granted by Article VI; provided, however, that the grantees of such rights shall pay to the political subdivisions of the state in which such works are located, each and every year during which such rights are enjoyed for such purposes, a sum of money equivalent to the average annual amount of taxes assessed against the lands and improvements during the ten years preceding the use of such lands, in reimbursement for the loss of taxes to said political subdivisions of the state.

Article VIII

Should any facility be constructed in an upper state under the provisions of Article VI, such construction and the operation of such facility shall be subject to the laws of such upper state.

Any repairs to or replacements of such facility shall also be made in accordance with the laws of such upper state.

Article IX

It shall be the duty of the three states to administer this compact through the official in each state who is now or may hereafter be charged with the duty of administering the public water supplies, and to collect and correlate through such officials the data necessary for the

proper administration of the provisions of this compact. Such officials may, by unanimous action, adopt rules and regulations consistent with the provisions of this compact.

The United States geological survey, or whatever federal agency may succeed to the functions and duties of that agency, in so far as this compact is concerned, shall collaborate with the officials of the states charged with the administration of this compact in the execution of the duty of such officials in the collection, correlation, and publication of water facts necessary for the proper administration of this compact.

Article X

Nothing in this compact shall be deemed:

(a) To impair or affect any rights, powers or jurisdiction of the United States, or those acting by or under its authority, in, over, and to the waters of the Basin; nor to impair or affect the capacity of the United States, or those acting by or under its authority, to acquire rights in and to the use of waters of the Basin;

(b) To subject any property of the United States, its agencies or instrumentalities, to taxation by any state, or subdivision thereof, nor to create an obligation on the part of the United States, its agencies or instrumentalities, by reason of the acquisition, construction, or operation of any property or works of whatsoever kind, to make any payments to any state or political subdivision thereof, state agency, municipality, or entity whatsoever in reimbursement for the loss of taxes;

(c) To subject any property of the United States, its agencies or instrumentalities, to the laws of any state to any extent other than the extent these laws would apply without regard to this compact.

Article XI

This compact shall become operative when ratified by the legislature of each of the states, and when consented to by the Congress of the United States by legislation providing, among other things, that:

(a) Any beneficial consumptive uses by the United States, or those acting by or under its authority, within a state, of the waters allocated by this compact, shall be made within the allocations hereinabove made for use in that state and shall be taken into account in determining the extent of use within that state.

(b) The United States, or those acting by or under its authority, in the exercise of rights or powers arising from whatever jurisdiction the United States has in, over and to the waters of the Basin shall recognize, to the extent consistent with the best utilization of the waters for multiple purposes, that beneficial consumptive use of the waters within the Basin is of paramount importance to the development of the Basin; and no exercise of such power or right thereby that would interfere with the full beneficial consumptive use of the waters within the Basin shall be made except upon a determination, giving due consideration to the objectives of this compact and after consultation with all interested federal agencies and the state officials charged with the administration of this compact, that such exercise is in the interest of the best utilization of such waters for multiple purposes.

(c) The United States, or those acting by or under its authority, will recognize any established use, for domestic and irrigation purposes, of the waters allocated by this compact which may be impaired by the exercise of federal jurisdiction in, over, and to such waters;

provided, that such use is being exercised beneficially, is valid under the laws of the appropriate state and in conformity with this compact at the time of the impairment thereof, and was validly initiated under state law prior to the initiation or authorization of the federal program or project which causes such impairment.

IN WITNESS WHEREOF, the commissioners have signed this compact in quadruplicate original, one of which shall be deposited in the archives of the department of state of the United States of America and shall be deemed the authoritative original, and of which a duly certified copy shall be forwarded to the governor of each of the states.

Done in the city of Lincoln, in the state of Nebraska, on the 31st day of December, in the year of our Lord, one thousand nine hundred forty-two.

M. C. Hinderlider
Commissioner for Colorado
George S. Knapp
Commissioner for Kansas
Wardner G. Scott
Commissioner for Nebraska

I have participated in the negotiations leading to this proposed compact and propose to report to the Congress of the United States favorably thereon.

Glenn L. Parker
Representative of the United States

Source: L. 43: p. 362, § 1. **CSA:** C. 90, § 74(3). **CRS 53:** § 148-6-1. **C.R.S. 1963:** § 149-6-1.

Editor's note: The map of the Republican river basin is shown in L. 43, p. 371.

37-67-102. When compact binding. Said compact shall not become operative unless and until the same has been ratified by the legislature of each of the signatory states and consented to by the congress of the United States, in the manner provided by, and in conformity with, said compact, and the governor of the state of Colorado shall give notice of the approval of said compact to the governor of the state of Kansas, to the governor of the state of Nebraska, and to the president of the United States.

Source: L. 43: p. 372, § 2. **CSA:** C. 90, § 74(4). **CRS 53:** § 148-6-2. **C.R.S. 1963:** § 149-6-2.

ARTICLE 68

Amended Costilla Creek Compact

Cross references: For Costilla Creek Compact prior to 1963 amendment, see article 7 of chapter 148, CRS 53.

37-68-101. Amended Costilla Creek compact. The general assembly hereby ratifies the amended compact between the state of Colorado and the state of New Mexico, designated as

the "Amended Costilla Creek Compact", signed in the city of Santa Fe, state of New Mexico, on the seventh day of February, A. D. 1963, by J. E. Whitten, commissioner for the state of Colorado, and S. E. Reynolds, commissioner for the state of New Mexico, which said amended compact is as follows:

Amended Costilla Creek Compact

The state of Colorado and the state of New Mexico, parties signatory to this compact (hereinafter referred to as "Colorado" and "New Mexico," respectively, or individually as a "state," or collectively as the "states"), having on September 30, 1944 concluded, through their duly authorized commissioners, to-wit: Clifford H. Stone for Colorado and Thomas M. McClure for New Mexico, a compact with respect to the water of Costilla Creek, an interstate stream, which compact was ratified by the states in 1945 and was approved by the congress of the United States in 1946; and

The states, having resolved to conclude an amended compact with respect to the waters of Costilla Creek, have designated, pursuant to the acts of their respective legislatures and through their appropriate executive agencies, as their commissioners:

J. E. Whitten, for Colorado

S. E. Reynolds, for New Mexico

who, after negotiations, have agreed upon these articles:

Article I

The major purposes of this compact are to provide for the equitable division and apportionment of the use of the waters of Costilla Creek; to promote interstate comity; to remove causes of present and future interstate controversies; to assure the most efficient utilization of the waters of Costilla Creek; to provide for the integrated operation of existing and prospective irrigation facilities on the stream in the two states; to adjust the conflicting jurisdictions of the two states over irrigation works and facilities diverting and storing waters in one state for use in both states; to equalize the benefits of water from Costilla Creek, used for the irrigation of contiguous lands lying on either side of the Boundary, between the citizens and water users of one state and those of the other; and to place the beneficial application of water diverted from Costilla Creek for irrigation by the water users of the two states on a common basis.

The physical and other conditions peculiar to the Costilla Creek and its basin, and the nature and location of the irrigation development and the facilities in connection therewith, constitute the basis for this compact; and neither of the States hereby, nor the Congress of the United States by its consent, concedes that this compact establishes any general principle or precedent with respect to any other interstate stream.

Article II

As used in this compact, the following names, terms and expressions are described, defined, applied and taken to mean as in this article set forth:

(a) "Costilla Creek" is a tributary of the Rio Grande which rises on the west slope of the Sangre de Cristo range in the extreme southeastern corner of Costilla County in Colorado and flows in a general westerly direction crossing the boundary three times above its confluence with the Rio Grande in New Mexico.

(b) The "Canyon Mouth" is that point on Costilla Creek in New Mexico where the stream leaves the mountains and emerges into the San Luis Valley.

(c) The "Amalia Area" is that irrigated area in New Mexico above the Canyon Mouth and below the Costilla Reservoir which is served by decreed direct flow water rights.

(d) The "Costilla-Garcia Area" is that area extending from the Canyon Mouth in New Mexico to a point in Colorado about four miles downstream from the boundary, being a compact body of irrigated land on either side of Costilla Creek served by decreed direct flow water rights.

(e) The "Eastdale Reservoir No. 1" is that off-channel reservoir located in Colorado in sections 7, 8 and 18, township 1 north, range 73 west, and sections 12 and 13, township 1 north, range 74 west, of the Costilla Estates survey, with a nominal capacity of three thousand four hundred sixty-eight (3,468) acre-feet and a present usable capacity of two thousand (2,000) acre-feet.

(f) The "Eastdale Reservoir No. 2" is that off-channel reservoir located in Colorado in sections 3, 4, 9 and 10, township 1 north, range 73 west, of the Costilla Estates survey, with nominal capacity of three thousand forty-one (3,041) acre-feet.

(g) The "Costilla Reservoir" is that channel reservoir, having a nominal capacity of fifteen thousand seven hundred (15,700) acre-feet, located in New Mexico near the headwaters of Costilla Creek. The present usable capacity of the reservoir is eleven thousand (11,000) acre-feet, subject to future adjustment by the state engineer of New Mexico. The condition of Costilla Dam may be such that the state engineer of New Mexico will not permit storage above a determined stage except for short periods of time.

(h) The "Cerro Canal" is that irrigation canal which diverts water from the left bank of Costilla Creek in New Mexico near the southwest corner of section 12, township 1 south, range 73 west, of the Costilla Estates survey, and runs in a northwesterly direction to the boundary near Boundary Monument No. 140.

(i) The "boundary" is the term used herein to describe the common boundary line between Colorado and New Mexico.

(j) The term "Costilla Reservoir System" means and includes the Costilla Reservoir and the Cerro Canal, the permits for the storage of water in Costilla Reservoir, the twenty-four and fifty-two hundredths (24.52) cubic feet per second of time of direct flow water rights transferred to the Cerro Canal, and the permits for the diversion of direct flow water by the Cerro Canal as adjusted herein to seventy-five and forty-eight hundredths (75.48) cubic feet per second of time.

(k) The term "Costilla Reservoir System Safe Yield" means that quantity of usable water made available each year by the Costilla Reservoir System. The safe yield represents the most beneficial operation of the Costilla Reservoir System through the use, first, of the total usable portion of the yield of the twenty-four and fifty-two hundredths (24.52) cubic feet per second of time of direct flow rights transferred to the Cerro Canal, second, of the total usable portion of the yield of the direct flow Cerro Canal permits, and third, of that portion of the water stored in Costilla Reservoir required to complete such safe yield.

(l) The term "usable capacity" is defined and means that capacity of Costilla Reservoir at the stage above which the state engineer of New Mexico will not permit storage except for short periods of time.

(m) The term "temporary storage" is defined and means the water permitted by the state engineer of New Mexico to be stored in Costilla Reservoir for short periods of time above the usable capacity of that reservoir.

(n) The term "additional storage facilities" is defined and means storage capacity which may be provided in either state to impound waters of Costilla Creek and its tributaries in addition to the nominal capacity of Costilla Reservoir and the Costilla Creek complement of the Eastdale Reservoir No. 1 capacity.

(o) The term "duty of water" is defined as the rate in cubic feet per second of time at which water may be diverted at the headgate to irrigate a specified acreage of land during the period of maximum requirement.

(p) The term "surplus water" is defined and means water which cannot be stored in operating reservoirs during the storage season or water during the irrigation season which cannot be stored in operating reservoirs and which is in excess of the aggregate direct flow rights and permits recognized by this compact.

(q) The term "irrigation season" is defined and means that period of each calendar year from May 16 to September 30, inclusive.

(r) The term "storage season" is defined and means that period of time extending from October 1 of one year to May 15 of the succeeding year, inclusive.

(s) The term "points of interstate delivery" means and includes (1) the Acequia Madre where it crosses the boundary; (2) the Costilla Creek where it crosses the boundary; (3) the Cerro Canal where it reaches the boundary; and (4) any other interstate canals which might be constructed with the approval of the commission at the point or points where they cross the boundary.

(t) The term "water company" means The San Luis Power and Water Company, a Colorado corporation, or its successor.

(u) The word "commission" means the Costilla Creek Compact commission created by Article VIII of this compact for the administration thereof.

Article III

1. To accomplish the purposes of this compact, as set forth in Article I, the following adjustments in the operation of irrigation facilities on Costilla Creek, and in the use of water diverted, stored and regulated thereby, are made:

(a) The quantity of water delivered for use in the two states by direct flow ditches in the Costilla-Garcia Area and by the Cerro Canal is based on a duty of water of one cubic foot per second of time for each eighty (80) acres, to be applied in the order of priority; provided, however, that this adjustment in each instance is based on the acreage as determined by the court in decreeing the water rights for the Costilla-Garcia Area, and in the case of the Cerro Canal such basis shall apply to eight thousand (8,000) acres of land. In order to better maintain a usable head for the diversion of water for beneficial consumptive use the adjusted maximum diversion rate under the water right of each of the ditches supplying water for the Costilla-Garcia Area in Colorado is not less than one cubic foot per second of time.

(b) There is transferred from certain ditches in the Costilla-Garcia Area twenty-four and fifty-two hundredths (24.52) cubic feet per second of time of direct flow water rights, which rights of use are held by the water company or its successors in title, to the headgate of the Cerro Canal. The twenty-four and fifty-two hundredths (24.52) cubic feet of water per second of time hereby transferred represents an evaluation of these rights after adjustment in the duty of water, pursuant to subsection (a) of this Article, and includes a reduction thereof to compensate for

increased use of direct flow water which otherwise would have been possible under these rights by this transfer.

(c) Except for the rights to store water from Costilla Creek in Eastdale Reservoir No. 1 as hereinafter provided, all diversion and storage rights from Costilla Creek for Eastdale Reservoirs No. 1 and No. 2 are relinquished and the water decreed thereunder is returned to the creek for use in accordance with the plan of integrated operation effectuated by this compact.

(d) The Cerro Canal direct flow permit shall be seventy-five and forty-eight hundredths (75.48) cubic feet per second of time.

(e) There is transferred to and made available for the irrigation of lands in Colorado a portion of the Costilla Reservoir complement of the Costilla Reservoir System Safe Yield in order that the storage of water in that reservoir may be made for the benefit of water users in both Colorado and New Mexico under the provisions of this compact for the allocations of water and the operation of facilities.

2. Each state grants for the benefit of the other and its water users the rights to change the points of diversion of water from Costilla Creek, to divert water from the stream in one state for use in the other and to store water in one state for the irrigation of lands in the other, insofar as the exercise of such rights may be necessary to effectuate the provisions of this Article and to comply with the terms of this compact.

3. The water company has consented to and approved the adjustments contained in this Article; and such consent and approval shall be evidenced in writing and filed with the commission.

Article IV

The apportionment and allocation of the use of Costilla Creek water shall be as follows:

(a) There is allocated for diversion from the natural flow of Costilla Creek and its tributaries sufficient water for beneficial use on meadow and pasture lands above Costilla Reservoir in New Mexico to the extent and in the manner now prevailing in that area.

(b) There is allocated for diversion from the natural flow of Costilla Creek and its tributaries thirteen and forty-two hundredths (13.42) cubic feet of water per second of time for beneficial use on lands in the Amalia Area in New Mexico.

(c) In addition to allocations made in subsections (e), (f) and (g) of this Article, there is allocated for diversion from the natural flow of Costilla Creek fifty and sixty-two hundredths (50.62) cubic feet of water per second of time for Colorado and eighty-nine and eight hundredths (89.08) cubic feet of water per second of time for New Mexico, subject to adjustment as provided in Article V (e), and such water shall be delivered for beneficial use in the two states in accordance with the schedules and under the conditions set forth in Article V.

(d) There is allocated for diversion from the natural flow of Costilla Creek sufficient water to provide each year one thousand (1,000) acre-feet of stored water in Eastdale Reservoir No. 1, such water to be delivered as provided in Article V.

(e) There is allocated for diversion to Colorado thirty-six and five-tenths per cent (36.5%) and to New Mexico sixty-three and five-tenths per cent (63.5%) of the water stored by Costilla Reservoir for release therefrom for irrigation purposes each year, subject to adjustment as provided in Article V (e) and such water shall be delivered for beneficial use in the two states on a parity basis in accordance with the provisions of Article V. By "parity basis" is meant that neither state shall enjoy a priority of right of use.

(f) There is allocated for beneficial use in each of the states of Colorado and New Mexico one-half of the surplus water, as defined in Article II (p), to be delivered as provided in Article V.

(g) There is allocated for beneficial use in each of the states of Colorado and New Mexico one-half of any water made available and usable by additional storage facilities which may be constructed in the future.

Article V

The operation of the facilities of Costilla Creek and the delivery of water for the irrigation of land in Colorado and New Mexico, in accordance with the allocations made in Article IV, shall be as follows:

(a) Diversions of water for use on lands in the Amalia Area shall be made as set forth in Article IV (b) in the order of decreed priorities in New Mexico and of relative priority dates in the two states, subject to the right of New Mexico to change the points of diversion and places of use of any of such water to other points of diversion and places of use; provided, however, that the rights so transferred shall be limited in each instance to the quantity of water actually consumed on the lands from which the right is transferred.

(b) Deliveries to Colorado of direct flow water below the Canyon Mouth shall be made by New Mexico in accordance with the following schedule:

Deliveries of Direct Flow Water to Colorado During Irrigation Season

Usable Discharge of Creek at Canyon Mouth Gaging Station (C.F.S.)	Incremental Allocations to Colorado (C.F.S.)	Points of Interstate Delivery	Cumulative Allocations to Colorado (C.F.S.)	Remarks
(1)	(2A) (2B)	(3)	(4)	(5)
25.00	1.05	Acequia Madre		Incremental allocation is 4.2% of the usable discharge when usable discharge is less than 25.00 C.F.S.
	2.53	Cerro Canal		Incremental allocation is 10.13% of the usable discharge when usable discharge is less than 25.00 C.F.S.
	4.70	Cerro Canal	8.28	This 4.70 C.F.S. is not a part

				of the Colorado allocation of the direct flow water of the Costilla Reservoir System and is not subject to adjustment in the event of a change in the usable capacity of Costilla Reservoir.
				Incremental allocation is 18.8% of the usable discharge when usable discharge is less than 25.00 C.F.S. This 4.70 C.F.S. allocated to Colorado for delivery through the Cerro Canal is 5.50 C.F.S. of the original 6.55 C.F.S. allocated to Colorado for delivery through the Acequia Madre less 0.8 C.F.S. correction for losses.
36.88	.38	Cerro Canal		This 0.38 C.F.S. is not a part of the Colorado allocation of the direct flow water of the Costilla Reservoir System and is not subject to adjustment in the event of a change in the usable capacity of Costilla Reservoir. Incremental allocation is 3.26% of the usable discharge in excess of 25.38 C.F.S. and less than 36.88 C.F.S.
	4.04	Cerro Canal	12.70	Incremental allocation is 35.11% of the usable discharge in excess of 25.38 C.F.S. and less than 36.88 C.F.S.
38.62	1.00	Creek	13.70	Incremental allocation is

				100% of the usable discharge in excess of 37.62 C.F.S. and less than 38.62 C.F.S.
44.76	2.24	Cerro Canal	15.94	Incremental allocation is 36.5% of the usable discharge in excess of 38.62 C.F.S. and less than 44.76 C.F.S.
50.91	6.00	Creek	21.94	Incremental allocation is 100% of the usable discharge in excess of 44.91 C.F.S. and less than 50.91 C.F.S.
56.48	.13	Cerro Canal	22.07	Incremental allocation is 11.18% of the usable discharge in excess of 55.35 C.F.S. and less than 56.48 C.F.S.
61.48	1.00	Creek	23.07	Incremental allocation is 100% of the usable discharge in excess of 60.48 C.F.S. and less than 61.48 C.F.S.
64.22				At usable creek discharge of 64.22 C.F.S. the Cerro Canal direct flow permit becomes operative after 1,000 acre-feet has been stored in Eastdale Reservoir No. 1.
139.70	27.55	Cerro Canal	50.62	Incremental allocation is 36.5% of the usable discharge in excess of 64.22 C.F.S. and less than 139.70 C.F.S.

The actual discharges of Costilla Creek at the Canyon Mouth Gaging Station at which the various blocks of direct flow water become effective shall equal the flows set forth in column (1) increased by the transmission losses necessary to deliver those flows to the headgates of the respective direct flow ditches diverting in New Mexico.

The delivery of ditch water at the boundary shall equal the allocation set forth in columns (2a) and (2b) reduced by the transmission losses between the headgate of the ditch and the point where the ditch crosses the boundary. The allocations to be delivered to Colorado through the Cerro Canal represent, except as otherwise indicated in column (5) of the table above, 36.5 percent of those blocks of direct flow water of the Costilla Reservoir System which are subject to adjustment as provided in subsection (e) of this article.

The provisions of article III (1)(a) shall not be applicable to the Colorado allocation of 5.08 C.F.S. which is transferred from the Acequia Madre to the Cerro Canal by this amendment to the Costilla Creek compact and shall not be applicable to the 0.8 C.F.S. which is transferred from Colorado to New Mexico by this amendment to the Costilla Creek compact.

The above table is compiled on the basis of the delivery to Colorado at the boundary of thirty-six and five-tenths percent (36.5%) of all direct flow water of the Costilla Reservoir System diverted by the Cerro Canal and the delivery at the boundary of all other direct flow water allocated to Colorado, in the order of priority, all such deliveries to be adjusted for transmission losses. In the event of change in the usable capacity of the Costilla Reservoir, Colorado's share of all direct flow water of the Costilla Reservoir System diverted by the Cerro Canal, to be delivered at the boundary and adjusted for transmission losses, shall be determined by the percentages set forth in column (4) of the table which appears in subsection (e) of this article.

(c) During the storage season, no water shall be diverted under direct flow rights unless there is water in excess of the demand of all operating reservoirs for water from Costilla Creek for storage.

(d) In order to assure the most efficient utilization of the available water supply, the filling of Eastdale Reservoir No. 1 from Costilla Creek shall be commenced as early in the spring as possible and shall be completed as soon thereafter as possible. The Cerro Canal or any other ditch which may be provided for that purpose shall be used, insofar as practicable, to convey the water from the Canyon Mouth to Eastdale Reservoir No. 1. During any season when the commission determines that there will be no surplus water, any diversions, waste or spill from any canal or canals supplying Eastdale Reservoir No. 1 will be charged to the quantity of water diverted for delivery to said reservoir.

(e) The commission shall estimate each year the safe yield of Costilla Reservoir System and its component parts as far in advance of the irrigation season as possible, and shall review and revise such estimates from time to time as may be necessary.

In the event the usable capacity of the Costilla Reservoir changes, the average safe yield and the equitable division thereof between the states shall be determined in accordance with the following table:

Usable Capacity of Costilla Reservoir	Average Annual Safe Yield	Division of Safe Yield Colorado		New Mexico	
	(acre-feet)	(acre-feet)	(percent)	(acre-feet)	(percent)
(1)	(2)	(3)	(4)	(5)	(6)
0	1,800	1,510	83.9	290	16.1
1,000	3,400	2,000	58.8	1,400	41.2

2,000	4,900	2,450	50.0	2,450	50.0
3,000	6,400	2,910	45.5	3,490	54.5
4,000	7,900	3,370	42.7	4,530	57.3
5,000	9,300	3,800	40.9	5,500	59.1
6,000	10,700	4,220	39.4	6,480	60 . 6
7,000	12,000	4,620	38.5	7,380	61 . 5
8,000	13,200	4,990	37.8	8,210	62 . 2
9,000	14,300	5,320	37.2	8,980	62 . 8
10,000	15,200	5,600	36.8	9,600	63.2
11,000	16,000	5,840	36.5	10,160	63.5
12,000	16,600	6,020	36.3	10,580	63.7
13,000	17,000	6,140	36.1	10,860	63.9
14,000	17,400	6,270	36.0	11,130	64.0
15,000	17,700	6,360	35.9	11,340	64.1
15,700	17,900	6,420	35.9	11,480	64.1

Intermediate quantities shall be computed by proportionate parts.

In the event of change in the usable capacity of the Costilla Reservoir, the Costilla Reservoir complement of the Costilla Reservoir System Safe Yield shall be divided between Colorado and New Mexico in accordance with the percentages given in columns 4 and 6, respectively, of the above table.

Each state may draw from the reservoir in accordance with the allocations made herein, up to its proportion of the Costilla Reservoir complement of the Costilla Reservoir System Safe Yield and its proportion of temporary storage and no more. Colorado may call for the delivery of its share thereof at any of the specified points of interstate delivery.

Deliveries of water from Costilla Reservoir to the Canyon Mouth shall be adjusted for transmission losses, if any, between the two points. Deliveries to Colorado at the boundary shall be further adjusted for transmission losses from the Canyon Mouth to the respective points of interstate delivery.

Water stored in Costilla Reservoir and not released during the current season shall not be held over to the credit of either state but shall be apportioned when the safe yield is subsequently determined.

(f) The Colorado apportionment of surplus water, as allocated in Article IV (f), shall be delivered by New Mexico at such points of interstate delivery and in the respective quantities, subject to transmission losses, requested by the Colorado member of the commission.

(g) In the event that additional water becomes usable by the construction of additional storage facilities, such water shall be made available to each state in accordance with rules and regulations to be prescribed by the commission.

(h) When it appears to the commission that any part of the water allocated to one state for use in a particular year will not be used by that state, the commission may permit its use by the other state during that year, provided that a permanent right to the use of such water shall not thereby be established.

Article VI

The desirability of consolidating various of the direct flow ditches serving the Costilla-Garcia Area, which are now or which would become interstate in character by consolidation, and diverting the water available to such ditches through a common headgate is recognized. Should the owners of any of such ditches, or a combination of them, desire to effectuate a consolidation and provide for a common headgate diversion, application therefor shall be made to the commission which, after review of the plans submitted, may grant permission to make such consolidation.

Article VII

The commission shall cause to be maintained and operated a streamgaging-station, equipped with an automatic water-stage recorder, at each of the following points, to-wit:

(a) On Costilla Creek immediately below Costilla Reservoir.

(b) On Costilla Creek at or near the Canyon Mouth above the headgate of Cerro Canal and below the Amalia Area.

(c) On Costilla Creek at or near the boundary.

(d) On the Cerro Canal immediately below its headgate.

(e) On the Cerro Canal at or near the boundary.

(f) On the intake from Costilla Creek to the Eastdale Reservoir No. 1, immediately above the point where the intake discharges into the reservoir.

(g) On the Acequia Madre immediately below its headgate.

(h) On the Acequia Madre at the boundary.

(i) Similar gaging stations shall be maintained and operated at such other points as may be necessary in the discretion of the commission for the securing of records required for the carrying out of the provisions of the compact.

Such gaging stations shall be equipped, maintained, and operated by the commission directly or in cooperation with an appropriate federal or state agency, and the equipment, method, and frequency of measurement at such stations shall be such as to produce reliable records at all times.

Article VIII

The two states shall administer this compact through the official in each state who is now or may hereafter be charged with the duty of administering the public water supplies, and such officials shall constitute the Costilla Creek Compact Commission. In addition to the powers and duties hereinbefore specifically conferred upon such commission, the commission shall collect and correlate factual data and maintain records having a bearing upon the administration of this compact. In connection therewith, the commission may employ such engineering and other assistance as may be reasonably necessary within the limits of funds provided for that purpose by the states. The commission may, by unanimous action, adopt rules and regulations consistent with the provisions of this compact to govern its proceedings. The salaries and expenses of the members of the commission shall be paid by their respective states. Other expenses incident to the administration of the compact, including the employment of engineering or other assistance and the establishment and maintenance of compact gaging stations, not borne by the United States shall be assumed equally by the two states and paid directly to the commission upon vouchers submitted for that purpose.

The United States geological survey, or whatever federal agency may succeed to the functions and duties of that agency, shall collaborate with the commission in the correlation and publication of water facts necessary for the proper administration of this compact.

Article IX

This amended compact shall become operative when ratified by the legislatures of the signatory states and consented to by the Congress of the United States; provided, that, except as changed herein, the provisions, terms, conditions and obligations of the Costilla Creek Compact executed on September 30, 1944, continue in full force and effect.

IN WITNESS WHEREOF, the commissioners have signed this compact in triplicate original, one copy of which shall be deposited in the archives of the department of state of the United States of America, and one copy of which shall be forwarded to the governor of each of the signatory states.

Done in the city of Santa Fe, New Mexico, on the 7th day of February, in the year of our Lord, one thousand nine hundred and sixty-three.

(Signed) J. E. Whitten,
Commissioner for Colorado.
(Signed) S. E. Reynolds,
Commissioner for New Mexico.

Source: L. 45: p. 278, § 1. **CSA:** C. 90, § 51(1). **CRS 53:** § 148-7-1. **L. 63:** p. 982, § 1. **C.R.S. 1963:** § 149-7-1.

37-68-102. When compact operative. (1) Said compact shall not become operative unless and until the same has been ratified by the legislature of each of the signatory states and consented to by the congress of the United States, in the manner provided by, and in conformity with, said compact, and the governor of the state of Colorado shall give notice of the approval of said compact, by this act, to the governor of the state of New Mexico and to the president of the United States.

(2) The amendments to said compact shall not become operative unless and until the same shall have been ratified by the legislature of each of the signatory states and consented to by the congress of the United States, in the manner provided by, and in conformity with, said compact, and the governor of the state of Colorado shall give notice of the approval of said compact, by this article, to the governor of the state of New Mexico and to the president of the United States.

Source: L. 45: p. 292, § 2. **CSA:** C. 90, § 51(2). **CRS 53:** § 148-7-2. **L. 63:** p. 999, § 2. **C.R.S. 1963:** § 149-7-2.

ARTICLE 69

Arkansas River Compact

37-69-101. Arkansas River compact. The general assembly hereby ratifies the compact between the state of Colorado and the state of Kansas designated as the "Arkansas river

compact" signed in the city of Denver, state of Colorado, on the 14th day of December, A. D. 1948, by Henry C. Vidal, Gail L. Ireland, and Harry B. Mendenhall, commissioners for the state of Colorado, and George S. Knapp, Edward F. Arn, William E. Leavitt, and Roland H. Tate, commissioners for the state of Kansas, and approved by Hans Kramer, representative of the United States of America. Said compact is as follows:

Arkansas River Compact

The state of Colorado and the state of Kansas, parties signatory to this compact (hereinafter referred to as "Colorado" and "Kansas," respectively, or individually as a "state," or collectively as the "states") having resolved to conclude a compact with respect to the waters of the Arkansas river, and being moved by considerations of interstate comity, having appointed commissioners as follows:

Henry C. Vidal, Gail L. Ireland, and Harry B. Mendenhall, for Colorado; and George S. Knapp, Edward F. Arn, William E. Leavitt, and Roland H. Tate, for Kansas; and the consent of the congress of the United States to negotiate and enter into an interstate compact not later than January 1, 1950, having been granted by Public Law 34, 79th Congress, 1st Session, and pursuant thereto the President having designated Hans Kramer as the representative of the United States, the said commissioners for Colorado and Kansas, after negotiations participated in by the representative of the United States, have agreed as follows:

Article I

The major purposes of this compact are to:

A. Settle existing disputes and remove causes of future controversy between the states of Colorado and Kansas, and between citizens of one and citizens of the other state, concerning the waters of the Arkansas river and their control, conservation and utilization for irrigation and other beneficial purposes.

B. Equitably divide and apportion between the states of Colorado and Kansas the waters of the Arkansas river and their utilization as well as the benefits arising from the construction, operation and maintenance by the United States of John Martin reservoir project for water conservation purposes.

Article II

The provisions of this compact are based on (1) the physical and other conditions peculiar to the Arkansas river and its natural drainage basin, and the nature and location of irrigation and other developments and facilities in connection therewith; (2) the opinion of the United States supreme court entered December 6, 1943, in the case of Colorado v. Kansas (320 U. S. 383) concerning the relative rights of the respective states in and to the use of waters of the Arkansas river; and (3) the experience derived under various interim executive agreements between the two states apportioning the waters released from the John Martin reservoir as operated by the corps of engineers.

Article III

As used in this compact:

A. The word "stateline" means the geographical boundary line between Colorado and Kansas.

B. The term "waters of the Arkansas river" means the waters originating in the natural drainage basin of the Arkansas river, including its tributaries, upstream from the stateline, and excluding waters brought into the Arkansas river basin from other river basins.

C. The term "stateline flow" means the flow of waters of the Arkansas river as determined by gauging stations located at or near the stateline. The flow as determined by such stations, whether located in Colorado or Kansas, shall be deemed to be the actual stateline flow.

D. "John Martin reservoir project" is the official name of the facility formerly known as Caddoa reservoir project, authorized by the Flood Control Act of 1936, as amended, for construction, operation and maintenance by the war department, corps of engineers, later designated as the corps of engineers, department of the army, and herein referred to as the "corps of engineers." "John Martin reservoir" is the water storage space created by "John Martin dam".

E. The "flood control storage" is that portion of the total storage space in John Martin reservoir allocated to flood control purposes.

F. The "conservation pool" is that portion of the total storage space in John Martin reservoir lying below the flood control storage.

G. The "ditches of Colorado water district 67" are those ditches and canals which divert water from the Arkansas river or its tributaries downstream from John Martin dam for irrigation use in Colorado.

H. The term "river flow" means the sum of the flows of the Arkansas and the Purgatoire rivers into John Martin reservoir as determined by gauging stations appropriately located above said reservoir.

I. The term "the administration" means the Arkansas river compact administration established under article VIII.

Article IV

Both states recognize that:

A. This compact deals only with the waters of the Arkansas river as defined in article III.

B. This compact is not concerned with the rights, if any, of the state of New Mexico or its citizens in and to the use in New Mexico of waters of Trinchera creek or other tributaries of the Purgatoire river, a tributary of the Arkansas river.

C. (1) John Martin dam will be operated by the corps of engineers to store and release the waters of the Arkansas river in and from John Martin reservoir for its authorized purposes.

(2) The bottom of the flood control storage is presently fixed by the chief of engineers, U. S. Army, at elevation 3,851 feet above mean sea level. The flood control storage will be operated for flood control purposes and to those ends will impound or regulate the streamflow volumes that are in excess of the then available storage capacity of the conservation pool. Releases from the flood control storage may be made at times and rates determined by the corps of engineers to be necessary or advisable without regard to ditch diversion capacities or requirements in either or both states.

(3) The conservation pool will be operated for the benefit of water users in Colorado and Kansas, both upstream and downstream from John Martin dam, as provided in this compact. The maintenance of John Martin dam and appurtenance works may at times require the corps of engineers to release waters then impounded in the conservation pool or to prohibit the storage of water therein until such maintenance work is completed. Flood control operation may also involve temporary utilization of conservation storage.

D. This compact is not intended to impede or prevent future beneficial development of the Arkansas river basin in Colorado and Kansas by federal or state agencies, by private enterprise, or by combinations thereof, which may involve construction of dams, reservoirs and other works for the purposes of water utilization and control, as well as the improved or prolonged functioning of existing works: Provided, that the waters of the Arkansas river, as defined in article III, shall not be materially depleted in usable quantity or availability for use to the water users in Colorado and Kansas under this compact by such future development or construction.

Article V

Colorado and Kansas hereby agree upon the following basis of apportionment of the waters of the Arkansas river:

A. Winter storage in John Martin reservoir shall commence on November 1st of each year and continue to and include the next succeeding March 31st. During said period all water entering said reservoir up to the limit of the then available conservation capacity shall be stored: Provided, that Colorado may demand releases of water equivalent to the river flow, but such releases shall not exceed 100 c.f.s. (cubic feet per second) and water so released shall be used without avoidable waste.

B. Summer storage in John Martin reservoir shall commence on April 1st of each year and continue to and include the next succeeding October 31st. During said period, except when Colorado water users are operating under decreed priorities as provided in paragraphs F and G of this article, all water entering said reservoir up to the limit of the then available conservation capacity shall be stored: Provided, that Colorado may demand releases of water equivalent to the river flow up to 500 c.f.s., and Kansas may demand releases of water equivalent to that portion of the river flow between 500 c.f.s. and 750 c.f.s., irrespective of releases demanded by Colorado.

C. Releases of water stored pursuant to the provisions of paragraphs A and B of this article shall be made upon demands by Colorado and Kansas concurrently or separately at any time during the summer storage period. Unless increases to meet extraordinary conditions are authorized by the administration, separate releases of stored water to Colorado shall not exceed 750 c.f.s., separate releases of stored water to Kansas shall not exceed 500 c.f.s., and concurrent releases of stored water shall not exceed a total of 1250 c.f.s.: Provided, that when water stored in the conservation pool is reduced to a quantity less than 20,000 acre-feet, separate releases of stored water to Colorado shall not exceed 600 c.f.s., and separate releases of stored water to Kansas shall not exceed 400 c.f.s., and concurrent releases of stored water shall not exceed 1,000 c.f.s.

D. Releases authorized by paragraphs A, B, and C of this article, except when all Colorado water users are operating under decree priorities as provided in paragraphs F and G of this article, shall not impose any call on Colorado water users that divert waters of the Arkansas river upstream from John Martin dam.

E. (1) Releases of stored water and releases of river flow may be made simultaneously upon the demands of either or both states.

(2) Water released upon concurrent or separate demands shall be applied promptly to beneficial use unless storage thereof downstream is authorized by the administration.

(3) Releases of river flow and of stored water to Colorado shall be measured by gauging stations located at or near John Martin dam and the releases to which Kansas is entitled shall be satisfied by an equivalent in state line flow.

(4) When water is released from John Martin reservoir appropriate allowances as determined by the administration shall be made for the intervals of time required for such water to arrive at the points of diversion in Colorado and at the state line.

(5) There shall be no allowance or accumulation of credits or debits for or against either state.

(6) Storage, releases from storage and releases of river flow authorized in this article shall be accomplished pursuant to procedures prescribed by the administration under the provisions of article VIII.

F. In the event the administration finds that within a period of fourteen days the water in the conservation pool will be or is liable to be exhausted, the administration shall forthwith notify the state engineer of Colorado, or his duly authorized representative, that commencing upon a day certain within said fourteen day period, unless a change of conditions justifies cancellation or modification of such notice, Colorado shall administer the decreed rights of water users in Colorado water district 67 as against each other and as against all rights now or hereafter decreed to water users diverting upstream from John Martin dam on the basis of relative priorities in the same manner in which their respective priority rights were administered by Colorado before John Martin reservoir began to operate and as though John Martin dam had not been constructed. Such priority administration by Colorado shall be continued until the administration finds that water is again available in the conservation pool for release as provided in this compact, and timely notice of such finding shall be given by the administration to the state engineer of Colorado or his duly authorized representative; provided, that except as controlled by the operation of the preceding provisions of this paragraph and other applicable provisions of this compact, when there is water in the conservation pool the water users upstream from John Martin reservoir shall not be affected by the decrees to the ditches in Colorado water district 67. Except when administration in Colorado is on a priority basis the water diversions in Colorado water district 67 shall be administered by Colorado in accordance with distribution agreements made from time to time between the water users in such district and filed with the administration and with the state engineer of Colorado or, in the absence of such agreement, upon the basis of the respective priority decrees, as against each other, in said district.

G. During periods when Colorado reverts to administration of decree priorities, Kansas shall not be entitled to any portion of the river flow entering John Martin reservoir. Waters of the Arkansas river originating in Colorado which may flow across the state line during such periods are hereby apportioned to Kansas.

H. If the usable quantity and availability for use of the waters of the Arkansas river to water users in Colorado water district 67 and Kansas will be thereby materially depleted or adversely affected, (1) priority rights now decreed to the ditches of Colorado water district 67 shall not hereafter be transferred to other water districts in Colorado or to points of diversion or places of use upstream from John Martin dam; and (2) the ditch diversion rights from the Arkansas river in Colorado water district 67 and of Kansas ditches between the state line and Garden City shall not hereafter be increased beyond the total present rights of said ditches, without the administration, in either case (1) or (2), making findings of fact that no such

depletion or adverse effect will result from such proposed transfer or increase. Notice of legal proceedings for any such proposed transfer or increase shall be given to the administration in the manner and within the time provided by the laws of Colorado or Kansas in such cases.

Article VI

A. (1) Nothing in this compact shall be construed as impairing the jurisdiction of Kansas over the waters of the Arkansas river that originate in Kansas and over the waters that flow from Colorado across the state line into Kansas.

(2) Except as otherwise provided, nothing in this compact shall be construed as supplanting the administration by Colorado of the rights of appropriators of waters of the Arkansas river in said state as decreed to said appropriators by the courts of Colorado, nor as interfering with the distribution among said appropriators by Colorado, nor as curtailing the diversion and use for irrigation and other beneficial purposes in Colorado of the waters of the Arkansas river.

B. Inasmuch as the Frontier canal diverts waters of the Arkansas river in Colorado west of the state line for irrigation uses in Kansas only, Colorado concedes to Kansas and Kansas hereby assumes exclusive administrative control over the operation of the Frontier canal and its headworks for such purposes, to the same extent as though said works were located entirely within the state of Kansas. Water carried across the state line in Frontier canal or any other similarly situated canal shall be considered to be part of the state line flow.

Article VII

A. Each state shall be subject to the terms of this compact. Where the name of the state or the term "state" is used in this compact these shall be construed to include any person or entity of any nature whatsoever using, claiming or in any manner asserting any right to the use of the waters of the Arkansas river under the authority of that state.

B. This compact establishes no general principle or precedent with respect to any other interstate stream.

C. Wherever any state or federal official agency is referred to in this compact such reference shall apply to the comparable official or agency succeeding to their duties and functions.

Article VIII

A. To administer the provisions of this compact there is hereby created an interstate agency to be known as the Arkansas river compact administration herein designated as "the administration".

B. The administration shall have power to:

(1) Adopt, amend and revoke by-laws, rules and regulations consistent with the provisions of this compact;

(2) Prescribe procedures for the administration of this compact: Provided, that where such procedures involve the operation of John Martin reservoir project they shall be subject to the approval of the district engineer in charge of said project;

(3) Perform all functions required to implement this compact and to do all things necessary, proper or convenient in the performance of its duties.

C. The membership of the administration shall consist of three representatives from each state who shall be appointed by the respective governors for a term not to exceed four years. One Colorado representative shall be a resident of and water right owner in water districts 14 or 17, one Colorado representative shall be a resident of and water right owner in water district 67, and one Colorado representative shall be the director of the Colorado water conservation board. Two Kansas representatives shall be residents of and water right owners in the counties of Finney, Kearny or Hamilton, and one Kansas representative shall be the chief state official charged with the administration of water rights in Kansas. The President of the United States is hereby requested to designate a representative of the United States, and if a representative is so designated he shall be an ex officio member and act as chairman of the administration without vote.

D. The state representatives shall be appointed by the respective governors within thirty days after the effective date of this compact. The administration shall meet and organize within sixty days after such effective date. A quorum for any meeting shall consist of four members of the administration: Provided, that at least two members are present from each state. Each state shall have but one vote in the administration and every decision, authorization or other action shall require unanimous vote. In case of a divided vote on any matter within the purview of the administration, the administration may, by subsequent unanimous vote, refer the matter for arbitration to the representative of the United States or other arbitrator or arbitrators, in which event the decision made by such arbitrator or arbitrators shall be binding upon the administration.

E. (1) The salaries, if any, and the personal expenses of each member shall be paid by the government which he represents. All other expenses incident to the administration of this compact which are not paid by the United States shall be borne by the states on the basis of 60 per cent by Colorado and 40 per cent by Kansas.

(2) In each even numbered year the administration shall adopt and transmit to the governor of each state its budget covering anticipated expenses for the forthcoming biennium and the amount thereof payable by each state. Each state shall appropriate and pay the amount due by it to the administration.

(3) The administration shall keep accurate accounts of all receipts and disbursements and shall include a statement thereof, together with a certificate of audit by a certified public accountant, in its annual report. Each state shall have the right to make an examination and audit of the accounts of the administration at any time.

F. Each state shall provide such available facilities, equipment and other assistance as the administration may need to carry out its duties. To supplement such available assistance the administration may employ engineering, legal, clerical and other aid as in its judgment may be necessary for the performance of its functions. Such employees shall be paid by and be responsible to the administration, and shall not be considered to be employees of either state.

G. (1) The administration shall co-operate with the chief official of each state charged with the administration of water rights and with federal agencies in the systematic determination and correlation of the facts as to the flow and diversion of the waters of the Arkansas river and as to the operation and siltation of John Martin reservoir and other related structures. The administration shall co-operate in the procurement, interchange, compilation and publication of all factual data bearing upon the administration of this compact without, in general, duplicating measurements, observations or publications made by state or federal agencies. State officials

shall furnish pertinent factual data to the administration upon its request. The administration shall, with the collaboration of the appropriate federal and state agencies, determine as may be necessary from time to time, the location of gauging stations required for the proper administration of this compact and shall designate the official records of such stations for its official use.

(2) The director, U. S. geological survey, the commissioner of reclamation and the chief of engineers, U. S. Army, are hereby requested to collaborate with the administration and with appropriate state officials in the systematic determination and correlation of data referred to in paragraph G (1) of this article and in the execution of other duties of such officials which may be necessary for the proper administration of this compact.

(3) If deemed necessary for the administration of this compact, the administration may require the installation and maintenance, at the expense of water users, of measuring devices of approved type in any ditch or group of ditches diverting water from the Arkansas river in Colorado or Kansas. The chief official of each state charged with the administration of water rights shall supervise the execution of the administration's requirements for such installations.

H. Violation of any of the provisions of this compact or other actions prejudicial thereto which come to the attention of the administration shall be promptly investigated by it. When deemed advisable as the result of such investigation, the administration may report its findings and recommendations to the state official who is charged with the administration of water rights for appropriate action, it being the intent of this compact that enforcement of its terms shall be accomplished in general through the state agencies and officials charged with the administration of water rights.

I. Findings of fact made by the administration shall not be conclusive in any court or before any agency or tribunal but shall constitute prima facie evidence of the facts found.

J. The administration shall report annually to the governors of the states and to the President of the United States as to matters within its purview.

Article IX

A. This compact shall become effective when ratified by the legislature of each state and when consented to by the congress of the United States by legislation providing substantially, among other things, as follows:

Nothing contained in this act or in the compact herein consented to shall be construed as impairing or affecting the sovereignty of the United States or any of its rights or jurisdiction in and over the area or waters which are the subject of such compact: Provided, that the chief of engineers is hereby authorized to operate the conservation features of the John Martin reservoir project in a manner conforming to such compact with such exceptions as he and the administration created pursuant to the compact may jointly approve.

B. This compact shall remain in effect until modified or terminated by unanimous action of the states and in the event of modification or termination all rights then established or recognized by this compact shall continue unimpaired.

IN WITNESS WHEREOF, the commissioners have signed this compact in triplicate original, one of which shall be forwarded to the secretary of state of the United States of America and one of which shall be forwarded to the governor of each signatory state.

Done in the city and county of Denver, in the state of Colorado, on the fourteenth day of December, in the year of our Lord one thousand nine hundred and forty-eight.

Henry C. Vidal,
Gail L. Ireland,
Harry B. Mendenhall,
Commissioners for Colorado.
Attest:
Warden L. Noe, Secretary.
George S. Knapp,
Edward F. Arn,
William E. Leavitt,
Roland H. Tate,
Commissioners for Kansas.
Approved:
Hans Kramer,
Representative of the
United States.

Source: L. 49: p. 485, § 1. **CSA:** C. 90, § 39(1). **CRS 53:** § 148-9-1. **C.R.S. 1963:** § 149-9-1.

37-69-102. When compact effective. Said compact shall not become effective unless and until the same has been ratified by the legislature of each of the signatory states and consented to by the congress of the United States. The governor of the state of Colorado shall give notice of the ratification of the said compact to the governor of the state of Kansas and to the president of the United States.

Source: L. 49: p. 496, § 2. **CSA:** C. 90, § 39(2). **CRS 53:** § 148-9-2. **C.R.S. 1963:** § 149-9-2.

37-69-103. Interstate agency created by compact. It is hereby recognized, found, determined, and declared that the compact creates an interstate agency which is known as the Arkansas river compact administration and which is an independent entity whose members and employees are not officers and employees of either of the states signatory to the compact.

Source: L. 49: p. 496, § 3. **CSA:** C. 90, § 39(3). **CRS 53:** § 148-9-3. **C.R.S. 1963:** § 149-9-3.

37-69-104. Appointment of members of compact administration. After the said compact becomes effective the Colorado members of the Arkansas river compact administration shall be appointed by the governor, shall serve until revocation of their appointment by the governor, and, on behalf of the Arkansas river compact administration, the state of Colorado shall pay the necessary expenses and also compensation of said members in an amount which shall be fixed by the governor and when so fixed shall be changed only by action of the governor.

Source: L. 49: p. 496, § 4. **CSA:** C. 90, § 39(4). **CRS 53:** § 148-9-4. **C.R.S. 1963:** § 149-9-4.

37-69-105. Payment of expenses of compact administration. The Colorado share of the expenses of the Arkansas river compact administration and the expenses and compensation of the Colorado members of that administration shall be paid out of funds appropriated by the general assembly to the Colorado water conservation board and warrants shall be drawn against such appropriation upon vouchers signed by the governor and the director of the Colorado water conservation board.

Source: L. 49: p. 496, § 5. **CSA:** C. 90, § 39(5). **CRS 53:** § 148-9-5. **C.R.S. 1963:** § 149-9-5.

37-69-106. Administrative code inapplicable. The provisions of articles 2, 3, 31, 35, and 36 of title 24, C.R.S., shall be inapplicable to any acts or proceedings taken to carry out the purposes of said compact.

Source: L. 49: p. 496, § 6. **CSA:** C. 90, § 39(6). **CRS 53:** § 148-9-6. **C.R.S. 1963:** § 149-9-6.

Interbasin Compacts

ARTICLE 75

Interbasin Compacts

37-75-101. Short title. This article shall be known and may be cited as the "Colorado Water for the 21st Century Act".

Source: L. 2005: Entire article added, p. 1472, § 1, effective June 7.

37-75-102. Water rights - protections. (1) It is the policy of the general assembly that the current system of allocating water within Colorado shall not be superseded, abrogated, or otherwise impaired by this article. Nothing in this article shall be interpreted to repeal or in any manner amend the existing water rights adjudication system. The general assembly affirms the state constitution's recognition of water rights as a private usufructuary property right, and this article is not intended to restrict the ability of the holder of a water right to use or to dispose of that water right in any manner permitted under Colorado law.

(2) The general assembly affirms the protections for contractual and property rights recognized by the contract and takings protections under the state constitution and related statutes. This article shall not be implemented in any way that would diminish, impair, or cause injury to any property or contractual right created by intergovernmental agreements, contracts, stipulations among parties to water cases, terms and conditions in water decrees, or any other similar document related to the allocation or use of water. This article shall not be construed to supersede, abrogate, or cause injury to vested water rights or decreed conditional water rights.

The general assembly affirms that this article does not impair, limit, or otherwise affect the rights of persons or entities to enter into agreements, contracts, or memoranda of understanding with other persons or entities relating to the appropriation, movement, or use of water under other provisions of law.

Source: L. 2005: Entire article added, p. 1472, § 1, effective June 7.

37-75-103. Director of compact negotiations. (1) Within thirty days after June 7, 2005, the governor shall appoint a director of compact negotiations, which office is hereby created in the office of the governor. The director of compact negotiations shall act as the overseer and caretaker of the compact negotiations process established in this article.

(2) The director of compact negotiations shall have the following responsibilities:

(a) Provide support and assistance to applicable local stakeholders in the formation of permanent basin roundtables established pursuant to section 37-75-104;

(b) Oversee and direct the expenditure of moneys appropriated pursuant to this article; and

(c) Serve as the chairperson of the interbasin compact committee and oversee implementation of the interbasin compact committee's responsibilities consistent with section 37-75-105, including the timely completion and referral of the interbasin compact charter.

Source: L. 2005: Entire article added, p. 1473, § 1, effective June 7. **L. 2006:** (1) amended, p. 1283, § 4, effective May 26.

37-75-104. Basin roundtables. (1) (a) To facilitate continued discussions within and between basins on water management issues, and to encourage locally driven collaborative solutions to water supply challenges, permanent basin roundtables are hereby created in Colorado's eight water basins and in a demographically unique subregion within water division 1 as specified in subsection (3) of this section.

(b) The executive director of the department of natural resources shall take such actions as may be necessary to ensure proper integration and nonduplication of activities occurring pursuant to the statewide water supply initiative and this article.

(2) Each basin roundtable shall have the following powers and responsibilities:

(a) (I) As soon as practicable following June 7, 2005, each basin roundtable shall establish bylaws, operating procedures, goals, and objectives to govern the actions and decisions of the applicable roundtable. Basin roundtables and their representatives on the interbasin compact committee may opt out of the procedures established in this article at any time.

(II) As deemed appropriate by the executive director, the roundtables established pursuant to this section may take on the duties and functions of the roundtables created pursuant to the statewide water supply initiative.

(b) Select two basin representatives to represent the views and interests of the basin on the interbasin compact committee established pursuant to section 37-75-105. Basin representatives need not be members of the basin roundtable.

(c) Using data and information from the statewide water supply initiative and other appropriate sources and in cooperation with the on-going statewide water supply initiative, develop a basin-wide consumptive and nonconsumptive water supply needs assessment, conduct

an analysis of available unappropriated waters within the basin, and propose projects or methods, both structural and nonstructural, for meeting those needs and utilizing those unappropriated waters where appropriate. Basin roundtables shall actively seek the input and advice of affected local governments, water providers, and other interested stakeholders and persons in establishing its needs assessment, and shall propose projects or methods for meeting those needs. Recommendations from this assessment shall be forwarded to the interbasin compact committee and other basin roundtables for analysis and consideration after the general assembly has approved the interbasin compact charter.

(d) Serve as a forum for education and debate regarding methods for meeting water supply needs; and

(e) As needed, establish roundtable subcommittees or other mechanisms to facilitate dialogue and resolution of issues and conflicts within the basin.

(3) (a) As used in this subsection (3), unless the context otherwise requires:

(I) "Water division" has the same meaning as set forth in section 37-92-201.

(II) "Water management district" means those districts established by the division of water resources and depicted on maps published by the division.

(b) The following basin roundtables are hereby created:

(I) The South Platte basin roundtable, consisting of water division 1 excepting those portions of water division 1 listed in subparagraphs (VIII) and (IX) of this paragraph (b);

(II) The Arkansas basin roundtable, consisting of water division 2;

(III) The Rio Grande basin roundtable, consisting of water division 3;

(IV) The Gunnison basin roundtable, consisting of water division 4 excepting water management districts 60, 61, and 63;

(V) The Colorado basin roundtable, consisting of water division 5;

(VI) The Yampa-White roundtable, consisting of water division 6 excepting water management district 47;

(VII) The Dolores, San Miguel, and San Juan basins roundtable, consisting of water division 7 and water management districts 60, 61, and 63;

(VIII) The metro roundtable, consisting of the following areas in water division 1: Those portions of water management districts 7 to 9 that lie east of the boundary between ranges 71 and 72 west and that portion of water management district 2 that lies south of the boundary between township 1 north and township 1 south; and

(IX) The North Platte roundtable, consisting of water management districts 47, 48, and 76.

(4) (a) Each basin roundtable shall consist of the following members, each of whom shall reside within the borders of the roundtable, except as otherwise provided in this paragraph (a):

(I) One member appointed by the governing body of each county or city and county within the borders of the basin roundtable. A county or city and county shall be entitled to a member on each basin roundtable that overlaps its boundaries.

(II) One municipal member for each county located in whole or in part within the basin roundtable, who shall be appointed jointly by the governing bodies of all municipalities within that portion of the county that is located within the roundtable;

(III) One member appointed by the board of directors of each water conservancy and water conservation district within the borders of the roundtable. A water conservancy or water

conservation district shall be entitled to one member on each basin roundtable that overlaps its jurisdiction.

(IV) One member appointed by mutual agreement of the chairperson of the house agriculture, livestock, and natural resources committee and the chairperson of the senate agriculture, natural resources, and energy committee;

(V) Ten at large members appointed by the roundtable members appointed pursuant to subparagraphs (I) to (IV) of this paragraph (a) in consultation with the director of compact negotiations, one of whom shall represent environmental interests and who shall be selected from nominees submitted by one or more regionally, statewide, or nationally recognized environmental conservation organizations that have operated in Colorado for at least five years, one of whom shall represent agricultural interests, one of whom shall represent recreation interests, one of whom shall represent local domestic water provider interests, one of whom shall represent industrial interests, and at least five of whom shall own adjudicated water rights, including owners of shares in a ditch or reservoir company or their agents, or shall have a contract for water with the federal bureau of reclamation or their agents. Any such agent shall be appointed by the member the agent represents and shall reside within the borders of the member's roundtable.

(VI) (A) Three nonvoting members shall be selected by the roundtable members appointed pursuant to subparagraphs (I) to (V) of this paragraph (a), who shall represent entities outside of the basin that own water rights within the basin. Members appointed pursuant to this subparagraph (VI) shall not be required to reside within the borders of the roundtable.

(B) If no one qualifies for selection pursuant to sub-subparagraph (A) of this subparagraph (VI), three nonvoting members shall be selected from outside the basin who have interests in and are knowledgeable about water matters.

(b) Members shall serve for a term of five years; except that initial terms shall be staggered pursuant to each roundtable's bylaws. Vacancies shall be filled pursuant to the same criteria as the original appointment.

(c) The member of the Colorado water conservation board who resides within the borders of the basin roundtable shall act as the board's liaison to the basin roundtable and to the interbasin compact committee for the purpose of ensuring the proper coordination of Colorado water conservation board information, policies, and resources. Such coordination shall be subject to available staff resources as determined by the director of the board and the executive director of the department of natural resources.

(5) A basin roundtable shall be deemed to be a local public body for purposes of the open meetings law, part 4 of article 6 of title 24, C.R.S.

Source: L. 2005: Entire article added, p. 1473, § 1, effective June 7. **L. 2006:** (3)(b)(IV) and (3)(b)(VII) amended, p. 1283, § 3, effective May 26.

37-75-105. Interbasin compact committee - report. (1) (a) To facilitate the process of interbasin compact negotiations, a twenty-seven-member interbasin compact committee is hereby created. The interbasin compact committee shall include two representatives from each basin roundtable, at least one of whom shall reside within the borders of the roundtable and at least one of whom shall own adjudicated water rights, including owners of shares in a ditch or reservoir company or their agents, six at-large members appointed by the governor, one member

appointed by the chairperson of the house agriculture, livestock, and natural resources committee, one member appointed by the chairperson of the senate agriculture, natural resources, and energy committee, and the director of compact negotiations. The governor's appointments shall come from geographically diverse parts of the state and shall include individuals with expertise in environmental, recreational, local governmental, industrial, and agricultural matters. No more than three of the governor's appointees shall be affiliated with the same political party. Any such agent shall be appointed by the member the agent represents and shall reside within the borders of the member's roundtable.

(b) As soon as practicable following June 7, 2005, the committee shall establish bylaws to govern its actions, including a procedure whereby basin roundtables that opt out of the procedures established in this article are no longer represented on the committee but may opt back in.

(2) (a) Not later than July 1, 2006, the interbasin compact committee shall establish and refer to the general assembly an interbasin compact charter that shall govern and guide all negotiations between basin roundtables under this article. Upon receipt, consideration, and approval of the charter by the general assembly acting by bill, negotiations between basin roundtables may commence. Any compact or other agreement established using the procedures established in this article shall fully comply with the terms, requirements, and procedures established in the interbasin compact charter as approved pursuant to this subsection (2).

(b) The general assembly hereby approves the interbasin compact charter as submitted to the general assembly on April 6, 2006, by the interbasin compact committee. The revisor of statutes shall publish the full text of the charter in the Colorado Revised Statutes as nonstatutory matter in accordance with section 2-5-102 (9), C.R.S.

(3) At a minimum, the interbasin compact charter shall include the following:

(a) A negotiating framework and foundational principles to guide voluntary negotiations between basin roundtables, including present and future consumptive and nonconsumptive water uses and such policies as may be necessary to ensure that compacts or other agreements between roundtables do not conflict or otherwise not conform with one another;

(b) Subject to the principles established in section 37-75-102, procedures for ratifying compacts or other agreements between basin roundtables, including the requirement that every basin roundtable whose waters are affected by a proposed compact or other agreement shall provide its affirmative support for such proposed compact or other agreement before such compact or agreement is final or binding;

(c) As deemed appropriate by the interbasin compact committee but subject to the principles established in section 37-75-102, authorities and procedures for making compacts or other agreements between roundtables legally binding and enforceable; and

(d) As deemed appropriate by the interbasin compact committee, procedures for integrating the processes established in this article with existing planning, permitting, and public participation processes related to the conservation and development of water within Colorado; except that no provision of the charter shall supercede, impair, or otherwise modify the authority, jurisdiction, or permitting powers of counties or other local government entities.

(4) Notwithstanding section 24-1-136 (11)(a)(I), 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 money from the water supply reserve fund created in section 39-29-109 (2)(c) was allocated during the previous twelve months for water activities approved by basin roundtables.

(5) The committee shall be deemed to be a state public body for purposes of the open meetings law, part 4 of article 6 of title 24, C.R.S.

Source: L. 2005: Entire article added, p. 1476, § 1, effective June 7. **L. 2006:** (2) amended, p. 1282, § 1, effective May 26. **L. 2007:** (2)(a) amended, p. 2048, § 94, effective June 1. **L. 2009:** (4) amended, (SB 09-106), ch. 386, p. 2091, § 4, effective July 1. **L. 2012, 1st Ex. Sess.:** (4) amended, (SB 12S-002), ch. 1, p. 2420, § 17, effective May 19. **L. 2017:** (4) amended, (HB 17-1257), ch. 254, p. 1067, § 13, effective August 9.

Editor's note: Subsection (2) provides that the revisor of statutes shall publish the full text of the "Colorado Water for the 21st Century Interbasin Compact Committee Charter" in the Colorado Revised Statutes as nonstatutory matter in accordance with section 2-5-102 (9), Colorado Revised Statutes. The charter is as follows:

The Colorado Water for the 21st Century
Interbasin Compact Committee Charter

I. Preamble

The Colorado Water for the 21st Century Act creates a voluntary, collaborative process to help the state address its water challenges. The process is based upon the premise that Coloradoans can work together to address the water needs within the state. The Act sets up a framework that provides a permanent forum for broad-based water discussions. It creates nine Basin Roundtables and the Interbasin Compact Committee (IBCC), a statewide committee that will guide discussions and voluntary negotiations between basins.

The IBCC is mandated to: 1) Establish bylaws to govern its actions, 2) Establish and refer to the general assembly an interbasin compact charter that shall govern and guide all negotiations between Basin Roundtables, 3) Submit an annual report to the legislature concerning the status of compact negotiations, and 4) Develop a public education, participation, and outreach working group.

HB 05-1177 states that the IBCC Charter should contain a negotiating framework and foundational principles to guide voluntary negotiations between Basin Roundtables, including present and future consumptive and nonconsumptive water uses and such policies as may be necessary to ensure that compacts or other agreements between Roundtables do not conflict or otherwise not conform with one another.

II. Foundational Legal Principles

The following foundational legal principles are drawn from the text of the legislation.

1. The current system of allocating water within Colorado shall not be superseded, abrogated, or otherwise impaired by this article.

2. Nothing in HB 05-1177 shall be interpreted to repeal or in any manner amend the existing water rights adjudication system.

3. HB 05-1177 affirms the state constitution's recognition of water rights as a private usufructuary property right, and is not intended to restrict the ability of the holder of a water right to use or to dispose of that water right in any manner permitted under Colorado law.

4. HB 05-1177 affirms the protections for contractual and property rights recognized by the contract and takings protections under the state constitution and related statutes.

5. HB 05-1177 shall not be implemented in any way that would diminish, impair, or cause injury to any property or contractual right created by intergovernmental agreements, contracts, stipulations among parties to water cases, terms and conditions in water decrees, or any other similar document related to the allocation or use of water.

6. HB 05-1177 shall not be construed to supersede, abrogate, or cause injury to vested water rights or decreed conditional water rights.

7. HB 05-1177 does not impair, limit, or otherwise affect the rights of persons or entities to enter into agreements, contracts, or memoranda of understanding with other persons or entities relating to the appropriation, movement, or use of water under other provisions of law.

III. Foundational Guiding Principles

The IBCC is informed and guided by the following foundational principles, which will provide a framework for future discussions.

1. All Colorado water users must share in solving Colorado's water resource problems.

2. The State of Colorado should provide assistance, when requested, for local water supply planning and assist in the implementation of consensus-based water resource solutions that respect local authorities, private property and water rights.

3. During the process of planning to meet future needs, water suppliers and utilities should give preference to development of economically viable local water sources and demand management as they consider other options, including development of new water transfers.

4. Additional water storage should be pursued through the improvement and rehabilitation of existing structures and the development of new structures. These activities should be accomplished with local consensus.

5. The right of water rights owners to market their water rights must be protected.

a. Colorado must fully explore flexible, market-based approaches to water supply management, including interruptible water contracts, water banking, in-state water leasing and groundwater recharge management.

b. Those seeking to transfer agricultural water to another use should consider leasing or other temporary arrangements for transfer of water, rather than relying exclusively on the purchase of water rights. Leasing or other such temporary arrangements could allow for reversion of the water to agricultural purposes under certain conditions.

c. In the event that agricultural water is transferred, the transaction must adequately address the need for maintaining the existing tax base, protecting the remaining water rights in the area, and maintaining the proper stewardship of the land including revegetation and weed control.

6. Appropriate recognition should be given to preservation of flows necessary to support recreational, hydroelectric and environmental needs concurrent with development of water for beneficial consumptive uses.

7. Adverse economic, environmental, and social impacts of future water projects and water transfers should be minimized; unavoidable adverse impacts must be reasonably mitigated;

all communities involved should commit themselves to identifying and implementing reasonable mitigation measures as an integral part of future water projects or transfers.

8. Future water supply solutions must benefit both the area of origin and the area of use.

9. Water conservation measures that do not injure other water rights should be aggressively pursued.

10. There must be an ongoing, concerted effort to educate all Coloradoans on the importance of water, and the need to conserve, manage, and plan for the needs of this and future generations.

IV. Roles of the Committee

The IBCC will:

1. Provide a forum to develop and disseminate information, create a positive environment for a statewide perspective, and develop a vision for statewide water negotiations;

2. Serve as a forum for discussing and addressing the socio-economic, recreation and environmental impacts of water development and management, as well as potential impacts on the ability of the state to use its entitlements and meet its Interstate Compact requirements.

3. Assist in finding resources to enable Roundtables to develop basin-wide visions;

4. Encourage development of a common technical platform upon which negotiations can be based;

5. Guide the process of negotiating interbasin compacts and other agreements by providing a framework that creates incentives for successful deliberations, agreements, and their implementation; and

6. Perform all other roles and functions of the IBCC identified in legislation.

V. Use of the Negotiation Charter

1. Discussions or negotiations conducted under the framework of the IBCC offer an opportunity for parties with water rights, project proponents, others concerned about water issues and Basin Roundtables to collaboratively search for solutions that hold mutual benefit, avoid litigation, and are sustainable and stable.

2. While all negotiations are voluntary and may be conducted directly between the parties with water rights, project proponents, others concerned about water issues and Basin Roundtables involved, parties are encouraged but not compelled to use the IBCC framework as a forum for discussions and as a way to keep all parties informed.

3. Should the Basin Roundtables feel it necessary or beneficial to bring discussion of a particular topic, issue, or proposal of interest to one or more basins before the entire IBCC, the committee members representing the basin(s) may raise the issue during a meeting of the IBCC. The IBCC will then decide on a procedure that will be utilized by the IBCC for discussing the issue or proposal.

4. Every Basin Roundtable whose waters are affected by a proposed compact or other agreement negotiated under the framework of the IBCC and Basin Roundtables, must provide its affirmative support for such proposed compact or other agreement before such compact or other agreement can be approved or ratified by the IBCC.

VI. Negotiating Framework

1. The IBCC, in helping Roundtables reach agreements, will encourage the use of a collaborative decision making process. Collaborative decision making processes may include but are not limited to:

a. Unassisted cooperative problem solving and/or negotiation.

b. Assisted cooperative problem solving and/or negotiation by facilitation and/or mediation.

c. Adaptive management.

d. Any other procedures on which Roundtables can mutually agree.

2. Informed constituencies will enhance the prospects for acceptance of compacts or other agreements negotiated by the Roundtables or decisions made by the IBCC.

a. Members of the IBCC who represent constituencies or agencies will inform their constituents and solicit their opinions about the issues under discussion. They will represent the interests of their constituent group and bring their constituents' concerns and ideas to the deliberations.

b. Members of the IBCC may elect to hold regular meetings with their constituent group (a formal caucus), to provide copies of work session minutes to their constituents and request comments, and to communicate informally with their constituents.

c. Prior to any decision being made by the IBCC, representatives will have adequate time to consult with their constituents or other relevant officials to explain deliberations and gain their input and/or approval.

d. IBCC meetings will be open to the public. In order for the IBCC to achieve its mission, discussion and deliberation at work sessions must be focused and manageable. Participation by non-members of the IBCC will be at the discretion of the Director of Compact Negotiations. IBCC will include a period for public comment at each of its meetings.

VII. Agreements Between Roundtables

1. Basin Roundtables choosing to enter into agreements with other Basin Roundtables are responsible for the form and structure of those agreements. Where appropriate and in a mutually agreed upon manner, agreements will have authorities and procedures addressing the extent to which the agreements are legally binding and enforceable.

VIII. Integration with other Processes

1. The IBCC will coordinate as appropriate with existing planning, permitting, and public participation processes related to the conservation and development of water within Colorado. No provision of this Charter is intended to supersede, impair, or otherwise modify the authority, jurisdiction, planning or permitting powers of counties or other local government entities.

IX. Ratification of Negotiated Agreements

1. Every Basin Roundtable whose waters are affected by a proposed compact or other agreement negotiated under the framework of the IBCC and Basin Roundtables must provide its affirmative support for such proposed compact or other agreement before such compact or other agreement can be approved or ratified by the IBCC.

2. The IBCC will review from a statewide perspective all compacts or other agreements reached by Basin Roundtables or other concerned parties, which are referred to it for assessment and ratification. If questions or concerns arise during the IBCC's review and approval process, the Committee will communicate its questions or concerns to involved Roundtables or parties through appropriate Basin representatives to the IBCC. The IBCC may choose to defer further discussion of a compact or other agreement until its questions or concerns have been adequately addressed.

3. When reviewing or ratifying compacts or other agreements reached by Basin Roundtables or other concerned parties, the IBCC will first use a decision making process that

seeks to identify and positively affirm a broad general level of support for or approval of the issue or proposal in question by all Committee members. An agreement will be considered to have been reached when either the facilitator or a group member has articulated the proposed agreement, and all IBCC members either verbally affirm their support for it, or at a minimum agree not to actively oppose or subvert it. The above process does not require all Committee members to support a proposal or ultimate agreement to the same degree for an agreement to have been reached. Some members may strongly endorse an agreement, while others may believe it to be not ideal, but ultimately workable and acceptable.

4. When a decision is being made using the above process, any IBCC member may request a non-binding poll of Committee members to determine their views. Members may voice affirmative support for a proposal or agreement, remain silent and allow the agreement to be approved without objection, or state that a broad general level of agreement has not been reached, and request the committee to continue deliberations.

5. If the IBCC cannot reach a mutually acceptable agreement on a proposed compact or other agreement that has been brought to it for review and ratification, its members will use the following procedure. After a complete discussion of the issue(s) in question has occurred at three or more IBCC meetings, and all members have had an opportunity to consult their Basin Roundtables and been given a fair opportunity to present their views and be heard, the Committee may change its decision making process from one seeking broad support for or agreement on an issue or proposal in question, to a majority/minority vote. The shift from one decision making procedure to another will require a 75% or greater majority of the members attending the meeting in favor of the shift. In addition, all IBCC members must have been given the opportunity to be present at the meeting at which the vote to shift decision making procedures is taken, and properly notified of the proposed action.

6. If a 75% majority of IBCC members attending the meeting do not approve changing the decision making process, the issue(s) under consideration along with IBCC members questions or concerns will be returned to concerned Roundtables or parties for further clarification and/or to be addressed by the Roundtables or parties.

7. If a 75% majority of IBCC members attending the meeting vote to shift the IBCC's decision making process to voting, a decision by vote may be made at the next regularly scheduled IBCC meeting. A compact or other agreement will be considered to have been approved or ratified by the IBCC if a 75% majority of IBCC members attending the meeting vote to approve it. All IBCC members must have been given the opportunity to be present at the meeting at which the vote is taken, and properly notified of the proposed action. Following the vote, majority and minority reports will be prepared. Reports will indicate the number of IBCC members that support each view. Reports will be forwarded to concerned parties and made available to the general public.

X. Provisions for Modification of the Charter

1. Proposals for revision of the Charter can be raised by any IBCC member at any time.

2. Final revisions to the IBCC Charter can only be made after discussions of revisions have occurred at two consecutive regularly scheduled meetings. This procedure will allow time for members to deliberate and consult other parties as appropriate. If an agreement cannot be reached in two meetings, a third may be allowed.

3. When revising the IBCC's Charter, the Committee will first use a decision making process similar to the one described above for review and approval of compacts or agreements

between Basin Roundtables or other concerned parties. The process will seek to identify and positively affirm a broad general level of support for or approval of a proposed change to the Charter by all Committee members. An agreement will be considered to have been reached when either the facilitator or a group member has articulated the proposed change in the Charter, and all IBCC members either verbally affirm their support for it, or at a minimum agree not to actively oppose or subvert it.

4. When a decision is being made using the above process, any IBCC member may request a non-binding poll of Committee members to determine their views on the proposed change to the Charter.

5. If the IBCC cannot reach a mutually acceptable agreement on a proposed change to the Charter, Committee members will use the following procedure. After a complete discussion of issue(s) in question has occurred at two or more IBCC meetings, and all members have had an opportunity to consult their Basin Roundtables and been given a fair opportunity to present their views and be heard, the Committee may change its decision making process from one seeking broad support for or agreement on a proposal, to a majority/minority vote. The shift from one decision making procedure to another will require a 75% or greater majority of IBCC members present at the meeting in favor of the shift. All IBCC members must have been given the opportunity to be present at the meeting at which the vote to shift decision making procedures is taken, and properly notified of the proposed change.

6. If a 75% majority of IBCC members present at the meeting do not approve a shift in the decision making procedure, the charter modification under consideration may be dropped. Alternatively, the IBCC may continue to discuss the proposed change with the goal of developing either a broad level of support for it or another mutually acceptable option, or the issue may be deferred until such time as a 75% majority of Committee members agree to change the decision making process.

7. If a 75% majority vote to shift the IBCC's decision has been attained, the proposal for a change may be voted on at the Committee's next regularly scheduled meeting. Approval of proposed changes will require a 75% majority of IBCC members. All IBCC members must have been given the opportunity to be present at the meeting at which the vote to change the Charter is taken, and properly notified of the proposed change.

37-75-106. Public education - outreach. (1) The interbasin compact committee shall develop a public education, participation, and outreach working group.

(2) The public education, participation, and outreach working group shall:

(a) Create a process to inform, involve, and educate the public on the interbasin compact committee's activities and progress of the interbasin compact negotiations; and

(b) Create a mechanism by which public input and feedback can be relayed to the interbasin compact committee and compact negotiators.

Source: L. 2005: Entire article added, p. 1478, § 1, effective June 7.

37-75-107. Interbasin compact committee operation fund - creation. (1) There is hereby created in the state treasury the interbasin compact committee operation fund, which shall be administered by the Colorado water conservation board and shall consist of all money transferred by the treasurer as specified in section 39-29-109.3 (2)(i). All money in the fund is

continuously appropriated to the Colorado water conservation board for the purposes stated in this article 75. All money in the fund at the end of each fiscal year shall be retained in the fund and shall not revert to the general fund or any other fund.

(2) Repealed.

Source: L. 2008: Entire section added, p. 1868, § 3, effective June 2. **L. 2018:** Entire section amended, (HB 18-1338), ch. 201, p. 1311, § 12, effective May 4.

Editor's note: (1) For the text of subsection (2), enacted by HB 18-1338, in effect from May 4, 2018, to July 1, 2018, see chapter 201, Session Laws of Colorado 2018. (L. 2018, p. 1311.)

(2) Subsection (2)(b) provided for the repeal of subsection (2), effective July 1, 2018. (See L. 2018, p. 1311.)

WATER RIGHTS AND IRRIGATION

General and Administrative

ARTICLE 80

State Engineer

Cross references: For the appointments and functions of water division engineers, see § 37-92-202.

37-80-101. State engineer. Pursuant to section 13 of article XII of the state constitution, the governor shall appoint a state engineer. The office of the state engineer must be located within the state capitol complex. The state engineer shall be provided the resources, including an operating budget, necessary to discharge the duties of the office.

Source: L. 1889: p. 371, § 1. **R.S. 08:** § 3321. **C.L.** § 1803. **CSA:** C. 90, § 201. **CRS 53:** § 147-11-1. **C.R.S. 1963:** § 148-11-1. **L. 2017:** Entire section amended, (SB 17-026), ch. 47, p. 139, § 1, effective August 9.

Cross references: For the state personnel system, see § 13 of art. XII, Colo. Const., and article 50 of title 24.

37-80-102. General duties of state engineer - supervision and utilization of employees - satellite and telemetry-based monitoring systems. (1) The state engineer is the executive officer in charge of supervising the work of all division engineers and may direct their supervision of their employees. The state engineer has executive responsibility and authority with respect to:

(a) Discharge of the obligations of the state of Colorado imposed by compact or judicial order on the office of the state engineer;

(b) Securing and implementing legal opinions and assistance regarding the work within his or her jurisdiction;

(c) Coordinating the work of the division of water resources with other departments of the state government, including executive departments, the general assembly, educational institutions, and also related local government authorities and municipal and quasi-municipal corporations, subject to the provisions of subsection (6) of this section;

(d) The supervision of employees in the office of the division of water resources, together with defining their duties so that all obligations of the division of water resources will be efficiently discharged;

(e) Construction contracts, professional and technical consultants, and other contracts related to the operation of the division of water resources;

(f) The keeping and preparation of records and investigations as related to carrying out the functions of the division of water resources, including water well licensing;

(g) Rule-making for the division of water resources;

(h) General supervisory control over measurement, record keeping, and distribution of the public waters of the state;

(i) Collection and distribution of data on snowfall and prediction of probable runoff therefrom;

(j) The making and implementing of contracts with public and private agencies, individuals, corporations, and other entities as necessary for the operation of the division of water resources and performance of the duties of the state engineer's office;

(k) Such other acts as may be reasonably necessary to enable the state engineer to secure the effective and efficient operation of the division of water resources, including power and authority to make and enforce rules as he or she may find necessary to effectuate the performance of his or her duties. The making of rules is not a prerequisite to control of personnel of the division of water resources or the performance of the state engineer's duties under the constitution or laws of Colorado or any compact, treaty, or judicial decree or decision that does not, by its specific terms, require implementation by rule.

(l) Receiving and expending grants and distributions of money, property, and equipment from the Colorado water conservation board, another entity, or an individual for use in making investigations, contracting projects, or otherwise carrying out the purposes of this article 80. 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.

(2) The state engineer has authority to delegate to any other person the obligation to discharge one or more portions of the duties imposed upon him, but no such delegation shall relieve the state engineer of ultimate responsibility for proper and efficient conduct of his office or the duties devolving upon him. The state engineer may reassign or delegate duties and responsibilities as he may find necessary or desirable.

(3) In addition to statutory duties devolving upon division engineers and others who are within the general supervision of the state engineer, their duties may be enlarged by the state engineer who shall collaborate with those having statutory duties so as to provide sufficient ancillary assistance to them so as to enable them to efficiently discharge their duties and obligations as state officers or employees. Insofar as reasonably possible, duties and lines of authority shall be established in written form and related to particular offices or employment.

(4) Employees within each general classification shall be deployed by the state engineer to work in such locations and according to patterns of accomplishment to be established from time to time by the state engineer. The state engineer shall avoid unnecessary or unreasonable

changes in location of the place of performance of duties of those under his authority, but, within limits of the exercise of reasonable judgment, he has full, final, and complete authority to require persons within the division of water resources, temporarily or on a basis of relative permanence, to perform their duties in those areas which the state engineer finds necessary or desirable for the most efficient or effective operation and discharge of the functions under his authority.

(5) To such extent as is reasonably necessary to keep employees of the division of water resources abreast of developments and knowledge in the field of their duties, the state engineer has authority to make necessary arrangements for educational opportunities and experiences for the various employees in the division of water resources including himself, in order that all personnel of the division of water resources may be qualified to effectively meet their responsibilities.

(6) (a) The state engineer and those under his supervision shall be subject to the direction of the executive director of the department of natural resources with respect to those matters concerning the division of water resources which require coordination with other branches of the department of natural resources.

(b) Repealed.

(7) Under the control and direction of the state engineer, and in cooperation with the Colorado water conservation board, there shall be a water supply section, which has the duty to collect and study data and distribute such information on the water supplies, both surface and groundwater, of the state of Colorado in order to make a more efficient administration of the uses thereof. The state engineer shall employ such hydrologists and hydraulic engineers as are necessary to determine sources of water supply, forecast runoff, define characteristics and amounts of return flows, and determine diversion requirements, transmission losses, evaporation losses, historic usage, and general stream regimen.

(8) The state engineer shall use in all his calculations, measurements, records, and reports the cubic foot per second as the unit of measurement of flowing water and the cubic foot or acre-foot as the unit of measurement of volume.

(9) Repealed.

(10) The state engineer is authorized to accept, operate, and house in suitable locations automated data processing equipment and programs associated with satellite or telemetry-based monitoring systems dedicated to the state of Colorado for operation and use by the Colorado state engineer. The state engineer shall use new technology that becomes available if the technology:

(a) Can accomplish the same functions for which the state engineer uses satellite or telemetry-based monitoring systems; and

(b) Is more cost-effective than satellite or telemetry-based monitoring systems with respect to any costs borne by:

(I) The state engineer;

(II) Program donors; and

(III) Water users.

Source: L. 1889: p. 372, § 2. **R.S. 08:** § 3322. **C.L.** § 1804. **CSA:** C. 90, § 203. **CRS 53:** § 147-11-3. **C.R.S. 1963:** § 148-11-3. **L. 64:** p. 178, § 156. **L. 69:** p. 1192, § 2. **L. 77:** (6)(b) repealed, p. 289, § 69, effective June 29. **L. 83:** (9) added, p. 1405, § 1, effective June 1. **L. 84:** (10) added, p. 960, § 1, effective April 2; (9) repealed, p. 969, § 13, effective April 30. **L. 88:**

(10) amended, p. 1433, § 20, effective June 11. **L. 2012, 1st Ex. Sess.:** IP(1) amended and (1)(l) added, (SB 12S-002), ch. 1, p. 2420, § 18, effective May 19. **L. 2017:** (1)(b), (1)(j), (1)(k), (1)(l), and (10) amended, (SB 17-026), ch. 47, p. 140, § 2, effective August 9.

Cross references: For the state engineer as head of the division of water resources, see §§ 24-1-124 (3)(a) and 24-33-104 (1)(e); for fees collected by state engineer, see § 37-80-110; for compensation of state engineer, see § 37-80-113; for powers of the state engineer to enforce laws concerning groundwater, see § 37-90-110; for duty of state engineer to appoint water division engineers, see § 37-92-202.

37-80-103. Additional duties of state engineer. The state engineer shall perform all duties imposed upon him by law and, when called upon by the governor, shall give his counsel and services to any state department or institution. He shall be allowed all actual traveling and other necessary expenses and the actual cost of preparing necessary maps and drawings, which actual expenses shall be paid by the department or institution requiring his services.

Source: L. 1889: p. 373, § 6. **R.S. 08:** § 3325. **C.L.** § 1808. **CSA:** C. 90, § 207. **CRS 53:** § 147-11-6. **C.R.S. 1963:** § 148-11-6.

Cross references: For the state engineer as head of the division of water resources, see §§ 24-1-124 (3)(a) and 24-33-104 (1)(e); for fees collected by state engineer, see § 37-80-110; for compensation of state engineer, see § 37-80-113; for powers of the state engineer to enforce laws concerning groundwater, see § 37-90-110; for duty of state engineer to appoint water division engineers, see § 37-92-202.

37-80-104. Compact requirements - state engineer's duties. The state engineer shall make and enforce such regulations with respect to deliveries of water as will enable the state of Colorado to meet its compact commitments. In those cases where the compact is deficient in establishing standards for administration within Colorado to provide for meeting its terms, the state engineer shall make such regulations as will be legal and equitable to regulate distribution among the appropriators within Colorado obligated to curtail diversions to meet compact commitments, so as to restore lawful use conditions as they were before the effective date of the compact insofar as possible.

Source: L. 69: p. 1195, § 5. **C.R.S. 1963:** § 148-11-24.

37-80-105. Supervision over division engineers. (1) The state engineer shall:

(a) Supervise the work of the division engineers;

(b) Furnish division engineers with all the data and information necessary for the proper and intelligent discharge of the duties of their offices;

(c) Require division engineers to report their official actions to him or her at suitable times; and

(d) Require division engineers to submit annual reports of the amount of water diverted from the public streams in their respective divisions and any other statistics that, in the judgment of the state engineer, will benefit the state.

Source: L. 1889: p. 373, § 4. **R.S. 08:** § 3324. **C.L.** § 1807. **CSA:** C. 90, § 206. **CRS 53:** § 147-11-5. **C.R.S. 1963:** § 148-11-5. **L. 69:** p. 1222, § 15. **L. 2017:** Entire section amended, (SB 17-026), ch. 47, p. 141, § 3, effective August 9.

37-80-106. Appointment of deputies. (1) The state engineer may appoint one or more deputies to assist in the discharge of the duties of the state engineer's office. The state engineer may deputize any person to perform a particular service, and the state engineer may revoke such appointments when, in his or her judgment, there is no further need for the services of anyone appointed or deputized. The appointments and revocations of appointments must be in writing over the signature and official seal of the state engineer, and the original of each appointment or revocation shall be maintained in the state engineer's office.

(2) In addition to the deputies provided for in this section, the state engineer may employ, pursuant to section 13 of article XII of the state constitution, assistants as the state engineer deems necessary.

Source: L. 1889: p. 373, § 7. **R.S. 08:** § 3327. **C.L.** § 1810. **L. 35:** p. 1058, § 1. **CSA:** C. 90, § 209. **CRS 53:** § 147-11-9. **C.R.S. 1963:** § 148-11-9. **L. 2017:** Entire section amended, (SB 17-026), ch. 47, p. 141, § 4, effective August 9.

Cross references: For the state personnel system, see § 13 of art. XII, Colo. Const., and article 50 of title 24.

37-80-107. Employment of engineers or geologists. The state engineer may employ one or more consulting engineers, geologists, or other specialists to advise the state engineer or any division engineer concerning any diversion or proposed diversion of the waters of the state including the sufficiency of any reservoirs or other structures involved in the diversion.

Source: L. 35: p. 1060, § 1. **CSA:** C. 90, § 212. **CRS 53:** § 147-11-11. **C.R.S. 1963:** § 148-11-11. **L. 69:** p. 1222, § 16. **L. 2017:** Entire section amended, (SB 17-026), ch. 47, p. 141, § 5, effective August 9.

37-80-108. Appoint deputy for special work. The state engineer, on request of any party interested and on payment of his or her per diem charges and reasonable expenses, may appoint a deputy to measure, compute, and ascertain all necessary data of any canal, dam, reservoir, or other construction, as required or as may be desired to establish court decrees, or for filing statements in compliance with law in the county clerk and recorder's records.

Source: L. 1889: p. 373, § 5. **R.S. 08:** § 3326. **C.L.** § 1809. **CSA:** C. 90, § 208. **CRS 53:** § 147-11-8. **C.R.S. 1963:** § 148-11-8. **L. 2017:** Entire section amended, (SB 17-026), ch. 47, p. 142, § 6, effective August 9.

37-80-109. State engineer's authority to contract for services. (1) The state engineer shall secure the limited or temporary services of persons necessary to carry out the duties or functions of the division of water resources in cases where it would be infeasible or impractical

for regular state employees to perform the duties or functions, especially in the following instances:

(a) In which work is of such a nature as to require special training or aptitudes and is of such limited application that the full-time regular employment normally expected of state employees would be unduly expensive;

(b) In nonrecurring situations of limited duration in which the situation can be concluded within a reasonable time by special assistants but could not be concluded without such assistance;

(c) To meet emergencies that reasonable foresight could not have anticipated; and

(d) To furnish services that the state engineer may require of persons who deal with the state engineer's office and who will fully reimburse the state engineer for the services.

(2) Whenever there are more hearings or determinations before the state engineer and the division engineers than can be acted upon promptly, the state engineer shall employ and maintain adequate personnel to assist the state engineer and the division engineers in arriving at required determinations. Regular employees may provide such assistance or, in cases falling within the purview of subsection (1) of this section, temporary employees on a contract basis may provide such assistance.

(3) In the same manner provided for in subsection (2) of this section, the state engineer may employ and maintain personnel to adequately staff any water conservation project provided for by law.

(4) The state engineer shall employ and maintain appropriate personnel for keeping records and making investigations respecting the performance of the functions of the state engineer's office and shall provide similar personnel in the office of each division engineer to function under the general direction of the office.

Source: L. 69: p. 1195, § 4. **C.R.S. 1963:** § 148-11-23. **L. 2017:** Entire section amended, (SB 17-026), ch. 47, p. 142, § 7, effective August 9.

37-80-110. Fees collected by state engineer. (1) The state engineer shall collect fees for work done in his or her office as follows:

(a) to (d) Repealed.

(e) With respect to a proposed project for a dam, for the examination and filing of each set of plans and specifications required by law to be filed in the office of the state engineer, six dollars for each one thousand dollars or fraction thereof of the estimated cost of a proposed project; but the total amount of fees for examination and filing of each set of plans and specifications must not be less than one hundred dollars nor more than thirty thousand dollars;

(f) to (h) Repealed.

(i) For rating any pipe, ditch, canal, or reservoir inlet or outlet, at the request of the owner or of any agent or employee having control of the pipe, ditch, canal, or reservoir inlet or outlet, seventy-five dollars.

(2) Repealed.

Source: L. 03: p. 294, § 1. **R.S. 08:** § 3332. **L. 11:** p. 607, § 1. **L. 19:** p. 657, § 1. **C.L.** § 1815. **L. 25:** p. 479, § 1. **L. 35:** p. 1062, § 1. **CSA:** C. 90, § 216. **CRS 53:** § 147-11-15. **L. 57:** p. 861, § 1. **C.R.S. 1963:** § 148-11-15. **L. 90:** (1)(e) amended, p. 1616, § 2, effective July 1. **L.**

2015: IP(1) and (1)(e) amended, (HB 15-1247), ch. 305, p. 1252, § 1, effective September 1, 2016. **L. 2017:** (1)(a) to (1)(d), (1)(f), (1)(g), (1)(h), and (2) repealed and (1)(i) amended, (SB 17-026), ch. 47, p. 143, § 8, effective August 9.

37-80-111. Fees deposited with department of the treasury. At the end of each month, the sum of the fees collected during the month, as provided in section 37-80-110, shall be transmitted to the department of the treasury with a complete statement showing the amounts thus received and the sources from which they are derived, and the said amounts shall be credited to the general fund.

Source: L. 03: p. 295, § 2. **R.S. 08:** § 3333. **C.L.** § 1816. **CSA:** C. 90, § 217. **CRS 53:** § 147-11-16. **C.R.S. 1963:** § 148-11-16. **L. 69:** pp. 1196, 1223, §§ 7, 17. **L. 85:** Entire section amended, p. 1155, § 1, effective July 1.

37-80-111.5. Fees - rules - satellite monitoring system cash fund - well inspection cash fund - created.

(1) (a) and (b) Repealed.

(c) The state engineer shall set and collect fees by rule for the use of the equipment and programs of the satellite and telemetry-based monitoring systems authorized under section 37-80-102 (10). All such fees collected by the state engineer and any other money received from whatever source for the satellite and telemetry-based monitoring systems shall be transmitted to the satellite monitoring system cash fund, which fund is hereby created. The state engineer may expend money in the satellite monitoring system cash fund for the purposes of section 37-80-102 (10) and this subsection (1)(c), subject to appropriation by the general assembly.

(d) Of each fee collected pursuant to sections 37-90-105 (3)(a)(I) and (4)(a), 37-90-107 (7)(d)(I), 37-90-116 (1)(a), (1)(c), and (1)(h), 37-90-137 (2)(a), and 37-92-602 (3)(a) and (5), forty dollars shall be credited to the well inspection cash fund, which fund is hereby created. Moneys in the well inspection cash fund shall be appropriated to and expended by the state engineer for the purposes established in section 37-91-113. Any moneys credited to the well inspection cash fund and unexpended at the end of any given fiscal year remain in the fund and do not revert to the general fund. All interest derived from the deposit and investment of this fund remain in the fund and do not revert to the general fund.

(2) Repealed.

(3) Nothing in this section requires the purchase of any publication referred to in this section.

(4) Repealed.

Source: L. 85: Entire section added, p. 1155, § 2, effective July 1. **L. 87:** (1)(d) added and (2) amended, pp. 1300, 1301, §§1, 2, effective July 1. **L. 89:** (4) repealed, p. 1419, § 1, effective April 20. **L. 93:** (1)(c) amended, p. 4, § 3, effective February 16. **L. 98:** (1)(d) amended, p. 1211, § 1, effective August 5. **L. 2002:** (1)(d) amended, p. 463, § 2, effective May 23. **L. 2003:** (1)(d) amended, p. 42, § 2, effective (see editor's note); (1)(d) amended, p. 1682, § 13, effective May 14. **L. 2006:** (1)(d) amended, p. 1002, § 5, effective May 25. **L. 2009:** (1)(d) amended, (SB 09-080), ch. 179, p. 788, § 1, effective July 1. **L. 2012:** (1)(a), (1)(b), and (2)

repealed and (1)(d) amended, (SB 12-009), ch. 197, p. 790, § 2, effective July 1. **L. 2017:** (1)(c) and (3) amended, (SB 17-026), ch. 47, p. 144, § 9, effective August 9.

Editor's note: Section 10 of chapter 7, Session Laws of Colorado 2003, provides for an effective date of March 1, 2003; however, the Governor did not sign the act until March 5, 2003.

Cross references: For the legislative declaration contained in the 2003 act amending subsection (1)(d), see section 1 of chapter 7, Session Laws of Colorado 2003.

37-80-111.7. Water resources cash fund - created - uses. (1) There is hereby created in the state treasury the water resources cash fund, referred to in this section as the "fund". Revenues credited to the fund and unexpended at the end of each fiscal year remain in the fund and do not revert to the general fund. All interest derived from the deposit and investment of revenues in the fund remain in the fund and do not revert to the general fund.

(2) The state engineer shall collect the following fees and transmit them to the state treasurer, who shall credit them to the fund, except as specified in paragraph (b) of this subsection (2):

(a) The state engineer shall set fees by rule for:

(I) The distribution of data generated, collected, studied, and compiled about the water supplies of this state, which fees shall reflect the direct and indirect costs of such distribution;

(II) The sale of publications of the division of water resources, which fees shall reflect the direct and indirect costs of such publications;

(b) The state engineer shall collect fees pursuant to sections 37-90-105 (3)(a) and (4); 37-90-107 (7)(c)(I) and (7)(d)(I); 37-90-108 (4) and (6); 37-90-116 (1)(a), (1)(c), (1)(h), and (1)(i); 37-90-137 (2), (3)(a), and (3)(c); 37-90.5-106; 37-92-305 (17); 37-92-308; and 37-92-602 (1)(g)(III)(C), (3)(a), and (5). The treasurer shall credit the fees collected pursuant to this paragraph (b) to the fund except as specified in section 37-80-111.5 (1)(d).

(3) The state engineer may expend moneys in the fund, subject to appropriation by the general assembly, for the purposes specified in the sections listed in paragraph (b) of subsection (2) of this section and for the following purposes:

(a) Developing an automated well permit processing system that will expedite the issuance of well permits, creating and maintaining a groundwater information management system, establishing a groundwater data network, establishing groundwater recharge programs, conducting groundwater investigations, monitoring compliance with rooftop precipitation capture laws and permits pursuant to section 37-92-602 (1)(g), the administration of rotational crop management contracts, and for other groundwater-related activities that are deemed necessary by the state engineer in performing statutory duties, subject to appropriation by the general assembly. The office of the state engineer shall make data in the groundwater data network available to the public as expeditiously as possible.

(b) Paying for publications made pursuant to section 37-90-116 (1)(f) to process final permits pursuant to section 37-90-108;

(c) Reviewing applications for approval of a plan for augmentation or a plan of substitute supply pursuant to section 37-90-137 (11)(f);

(d) Investigating and conducting enforcement of violations of orders issued by the state engineer or the ground water commission for the illegal withdrawal of designated groundwater, including costs associated with the implementation of section 37-90-111.5;

(e) Reviewing engineering reports, field inspections, and administering rotational crop management contracts pursuant to section 37-92-305 (17);

(f) Publishing and administrative costs incurred in processing applications and renewals and administering substitute water supply plans pursuant to section 37-92-308;

(g) Publishing and administrative costs incurred in processing applications, reviewing engineering reports, and administering interruptible water supply agreements pursuant to section 37-92-309; and

(h) Funding the operations and administration of the division based on ongoing priorities of the division.

Source: L. 2012: Entire section added, (SB 12-009), ch. 197, p. 788, § 1, effective July 1. **L. 2014:** (2)(b) amended, (SB 14-105), ch. 48, p. 226, § 1, effective July 1. **L. 2016:** IP(3) amended, (SB 16-189), ch. 210, p. 791, § 101, effective June 6.

37-80-112. Report of state engineer. The state engineer shall report to the executive director of the department of natural resources at such times and on such matters concerning the state engineer's office and the division of water resources as the executive director may require.

Source: L. 1889: p. 374, § 11. **R.S. 08:** § 3331. **C.L.** § 1814. **CSA:** C. 90, § 215. **CRS 53:** § 147-11-14. **C.R.S. 1963:** § 148-11-14. **L. 64:** p. 178, § 157. **L. 2017:** Entire section amended, (SB 17-026), ch. 47, p. 144, § 10, effective August 9.

Cross references: For publication of reports and statistics concerning water development and supply, see § 37-60-117.

37-80-113. State engineer - qualifications - salary - conflict of interest. (1) The state personnel director shall require that the state engineer is a person qualified to be a registered engineer in Colorado having the background of knowledge and experience in areas essential to the proper discharge of his duties and functions.

(2) The salary of the state engineer shall be fixed, within the authority granted by section 13 of article XII of the state constitution at a grade requiring compensation adequate to attract and hold in regular employment a person qualified to carry out the functions, duties, and responsibilities of the office, and shall be paid out of general funds of the state as the salaries of the executive officers of the state are paid.

(3) If the state engineer has any personal interest in any matter coming before his office for decision, he shall immediately notify the governor in writing, delineating that interest, and the governor has authority to designate some appropriate person to carry out the functions of the state engineer regarding such matters and to cause such person to be paid a reasonable amount for his services. Personal interest does not mean those matters which members of the public generally may have with respect to any given subject.

Source: L. 27: p. 648, § 1. **CSA:** C. 90, § 202. **CRS 53:** § 147-11-2. **C.R.S. 1963:** § 148-11-2. **L. 69:** p. 1192, § 1.

Cross references: For the state personnel system, see § 13 of art. XII, Colo. Const., and article 50 of title 24; for compensation of state engineer for county boundary surveys, see § 30-6-111.

37-80-114. Deputy state engineer - powers. (1) The state engineer shall appoint a deputy state engineer, subject to section 13 of article XII of the state constitution, whose duties are to assist the state engineer in the administration of the state engineer's office. The deputy state engineer has the power to act for the state engineer in all of the state engineer's official duties, including the administration of interstate river compacts, when the state engineer is out of the office or when the state engineer so directs the deputy state engineer.

(2) The salary of the deputy state engineer shall be paid as the salaries of the officers of the executive department of the state are paid. The deputy state engineer shall also receive reimbursement for the actual necessary expenses incurred in the performance of his or her official duties, as the state engineer shall allot from funds appropriated for that purpose. The controller is authorized to pay warrants for the deputy state engineer's salary and expenses upon vouchers approved by the state engineer.

(3) (Deleted by amendment, L. 2017.)

Source: L. 43: p. 374, §§ 1-3. **CSA:** C. 90, § 207(1). **CRS 53:** § 147-11-7. **C.R.S. 1963:** § 148-11-7. **L. 2017:** Entire section amended, (SB 17-026), ch. 47, p. 144, § 11, effective August 9.

Cross references: For the state personnel system, see § 13 of art. XII, Colo. Const., and article 50 of title 24.

37-80-115. Performance of personnel - duties. (1) The state engineer shall furnish such directions and require such performance with respect to the work of those under his jurisdiction as will insure continuous, efficient, and effective discharge of the functions of the division of water resources.

(2) It is the duty of the state engineer to call to the attention of the state personnel director any conduct or failure of conduct of any employee in the division of water resources which would merit discharge or discipline beyond the authority of the state engineer, and, if necessary, he shall file formal charges with respect to such matters.

(3) Default in performance of his duties by the state engineer may be made the subject of charges by the executive director of the department of natural resources or the governor.

(4) Effective administration being essential to good government, it is the duty of the state personnel board to promptly hear, determine, and take action necessary to make effective the provisions of this section whenever the occasion may rise, and such board may, of its own motion, undertake whatever action may be necessary to insure efficient and honorable conduct on the part of employees within the division of water resources.

Source: L. 69: R&RE, p. 1194, § 3. **C.R.S. 1963:** § 148-11-4.

37-80-116. Legal services authorized. (1) (a) The attorney general shall assign an assistant from his or her office to act as an advisor to the state engineer and to the various employees of the state who are subject to the administrative authority of the state engineer. The state engineer shall use the services of the assistant to whatever extent the performance of his or her duties can be facilitated by legal consultation.

(b) To whatever extent additional legal services are required, they must be procured at the request of the state engineer, but the cost of their services must be paid for out of funds budgeted to the state engineer for professional services, and in preparing budgets the state engineer shall anticipate his or her probable requirements for such additional assistants. All such assistants are selected by and serve at the pleasure of the attorney general and may include attorneys employed for special areas of the state or for the performance of specific duties on a fee rather than salary basis.

(2) The state engineer and the various division engineers may call on the assistant attorney general assigned to the state engineer, or any additional assistants who may be employed, to furnish services customarily furnished by lawyers.

Source: L. 69: R&RE, p. 1196, § 6. **C.R.S. 1963:** § 148-11-13. **L. 2016:** (1) amended, (HB 16-1094), ch. 94, p. 269, § 21, effective August 10.

37-80-117. Regulation of water for measurements. Whenever it is necessary for any duly authorized hydrographer from the office of the state engineer, or any hydrographer duly authorized by the state engineer or division engineer or water commissioner, or for any water official to make a rating of any weir or flume or measuring section of any canal, the owners, superintendent, or persons having charge and control of the diversion of water into said canal shall increase and decrease the flow of water into said canal as may be ordered and required by the person making such measurements in order that accurate ratings may be taken of the water flowing in said canal at different depths and gauge heights. Any person refusing so to regulate the flow of water into said canal for such purpose is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars for the first offense and not more than five hundred dollars for the second and succeeding offenses.

Source: L. 21: p. 481, § 5. **C.L.** § 1822. **CSA:** C. 90, § 223. **CRS 53:** § 147-11-21. **C.R.S. 1963:** § 148-11-21.

37-80-118. False reports of gauge heights. Any headgate keeper, owner, employee, or other person having charge of any automatic self-registering device installed and operated pursuant to order of the state engineer or a division engineer or compiling gauge height records pursuant to order of the state engineer or division engineer, or any gauge height observer at any river station in this state, installed, maintained, and operated for the purpose of recording the amount of water flowing in said stream, or any reservoir keeper having charge of the keeping of gauge height records on weirs on intakes or outlets of reservoirs who makes false or fictitious reports of gauge heights or who alters, changes, or falsifies any gauge height record or report or who alters or modifies the record made by any automatic self-registering device is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars for each violation of the provisions of this section.

Source: L. 21: p. 480, § 3. **C.L.** § 1820. **CSA:** C. 90, § 221. **CRS 53:** § 147-11-19. **C.R.S. 1963:** § 148-11-19. **L. 69:** p. 1223, § 18.

37-80-119. Interference with recording instruments. It is unlawful for any person who does not have charge of any weir, headgate, automatic self-registering device, or other measuring recording device or any canal or reservoir intake or outlet, who does not have authority to install, repair, maintain, or operate any such device or to inspect the same from the owners thereof or from the water officials of the state of Colorado, or who represents any other canal diverting water from the same stream to interfere with or seek to examine or regulate any such instrument or device or structure. Any person who willfully injures or destroys any automatic self-registering device, gauge, or other instrument installed upon any canal or weir for the measuring and recording of the water depths upon such weir, who tampers with or falsifies any record made or being made by any such instrument or device, or who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars for the first offense and not more than one thousand dollars for the second and succeeding offenses.

Source: L. 21: p. 480, § 4. **C.L.** § 1821. **CSA:** C. 90, § 222. **CRS 53:** § 147-11-20. **C.R.S. 1963:** § 148-11-20.

37-80-120. Upstream storage - substitute supply - historic natural depletion. (1) In every case in which the state engineer finds that water can be stored out of priority under circumstances such that the water so stored can be promptly made available to downstream senior storage appropriators in case they are unable to completely store their entire appropriative right due to insufficient water supply, the state engineer may permit such upstream storage out of priority, but such storage water shall be promptly released on demand of a downstream senior whenever needed by such senior for actual use.

(2) Individuals and private or public entities, alone or in concert, may provide a substituted supply of water to one or more appropriators senior to them, not to exceed that to which any senior appropriator is entitled from time to time by virtue of his appropriations, and, to the extent that such substituted water is made available to meet the appropriative requirements of such senior, the right of such senior to draw water pursuant to his appropriation shall be deemed to be satisfied. The rights of such senior may be used for effectuating such substitution during the period while it is in operation, and the practice may be confirmed by court order as provided for determining water rights.

(3) Any substituted water shall be of a quality and continuity to meet the requirements of use to which the senior appropriation has normally been put.

(4) Whenever substitute water is supplied to a senior ditch, the supplier or his assignee may take an equivalent amount for beneficial use from water of the state of Colorado to the fullest extent possible without impairing the availability of water lawfully divertible by others. A practice of substitution or exchange pursuant to law may constitute an appropriative right and may be adjudicated or otherwise evidenced as any other right of appropriation.

(5) In determining the quantity of water required as a substitute supply to replace evaporation from groundwater exposed to the atmosphere in connection with the extraction of sand and gravel by open mining as defined in section 34-32-103 (9), C.R.S., there shall be no

requirement to replace the amount of historic natural depletion to the waters of the state, if any, caused by the preexisting natural vegetative cover on the surface of the area which will be, or which has been, permanently replaced by an open water surface. The applicant shall bear the burden of proving the historic natural depletion.

(6) In determining the quantity of water required as a substitute supply to replace stream depletions in connection with any mining operation as defined in section 34-32-103 (8), C.R.S., for which a reclamation permit has been obtained as set forth in section 34-32-109, C.R.S., there is no requirement to replace the amount of historic natural depletion to the waters of the state, if any, caused by the preexisting natural vegetative cover and evaporation on the surface of the area that will be, or that has been, eliminated or made impermeable as part of the permitted mining operation. The applicant bears the burden of proving the historic natural depletion.

Source: L. 69: p. 1196, § 8. **C.R.S. 1963:** § 148-11-25. **L. 89:** (5) added, p. 1425, § 4, effective July 15. **L. 2012:** (6) added, (HB 12-1022), ch. 15, p. 38, § 1, effective August 8.

37-80-121. Water administration fee - cash fund - rules - report - definitions - repeal. (Repealed)

Source: L. 2003: Entire section added, p. 1509, § 1, effective May 1. **L. 2004:** (1), (2), (3), (5), and (6) repealed, p. 361, § 2, effective April 7; (4) repealed, p. 361, § 1, effective July 1.

37-80-122. South Platte river alluvial aquifer groundwater monitoring network. (1) The state engineer shall, as specified in this section, design and operate a tributary groundwater monitoring network in the South Platte river alluvial aquifer, referred to in this section as the monitoring network. The objective of the monitoring network is to:

(a) Provide accurate groundwater level data to be used in scientific investigations, analyses, and decision making;

(b) Increase the public's understanding of and access to data regarding the movement of tributary groundwater in the South Platte river alluvial aquifer; and

(c) Assist in water planning.

(2) The monitoring network consists of the following components:

(a) (I) The following groundwater wells to be used for monitoring groundwater levels with the goal of identifying ambient groundwater conditions, or the effects of natural, climatic-related hydrologic stresses, and anthropogenic influences on the aquifer:

(A) The existing division of water resources groundwater monitoring network, the addition of data loggers on up to twenty existing wells in the network, and up to ten wells to be added to the network in areas where there are data gaps, as more definitively described in the recommendations of the technical committee of the South Platte basin roundtable dated November 18, 2014, and as modified on November 21, 2014;

(B) Wells that are part of an independent monitoring network and owned by qualified parties other than the division of water resources who submit their groundwater monitoring data to the monitoring network. The division of water resources, the metro roundtable, the South Platte basin roundtable, and the Colorado water conservation board shall cooperatively lead the effort to recruit these qualified parties and provide them with a clear understanding of the benefits to the qualified parties of providing data to motivate their participation.

(C) Additional wells that have been designated by the state engineer to be part of the monitoring network.

(II) In designating wells to be part of the network, including new wells and the addition of data loggers, the state engineer, in consultation with the Colorado water conservation board and after soliciting and considering public input, shall attempt to:

(A) Provide good geographic, hydrogeologic, and temporal coverage of the South Platte river alluvial aquifer, including: Wells that monitor groundwater that is relatively free of land use, diversion, and recharge effects; wells with high water conditions and those that show strong trends in water level change since 2003; and wells that demonstrate the effects of diversion structures;

(B) Include wells in areas that exhibit short-term responses to human-induced activities in the aquifer and areas that show long-term trends as a result of the same activities;

(C) Include as many wells as possible that have a long, uninterrupted history of data;

(D) Optimize the collection of continuous data as opposed to twice-yearly or other periodic data; and

(E) Consider not only the up-front costs of designating or adding the wells but also the long-term cost of maintaining them as part of the monitoring network;

(b) Data analysis standards and protocols. The state engineer, in consultation with the Colorado water conservation board and after soliciting and considering public input, shall develop and publish one or more protocols for groundwater level data measurement, data collection, and data entry, and shall attempt to automate, where practical, the process of collecting groundwater-level data and uploading it to the division of water resources' website. The state engineer shall enter and upload the data within thirty days after receiving it.

(c) Dissemination of the monitoring data. The division of water resources shall make the data available on its website and otherwise as specified by the state engineer.

(3) In the design and operation of the monitoring network, the state engineer shall consider and be guided by:

(a) The "Report to the Colorado Legislature: HB12-1278 Study of the South Platte River Alluvial Aquifer", dated December 31, 2013, prepared by the Colorado Water Institute; and

(b) The recommendations of the technical committee of the South Platte basin roundtable dated November18, 2014, and as modified on November 21, 2014.

(4) The revenues to pay the costs of implementing this section are payable from the Colorado water conservation board construction fund as specified in section 37-60-121 (1)(b)(II); except that, if revenues in the Colorado water conservation board construction fund are insufficient to meet all other lawful uses of the fund, the revenues to pay the costs of implementing this section are payable from the general fund. If the United States geological survey discontinues funding of groundwater monitoring for one or more wells that are part of the monitoring network, the cost of operating and maintaining such wells may be paid from one or both of the funds, and in the manner, specified in this subsection (4).

Source: L. 2015: Entire section added, (HB 15-1166), ch. 302, p. 1243, § 1, effective June 5.

37-80-123. Lease, loan, or trade of agricultural water protection water right - rules - definition. (1) (a) As soon as practicable, the state engineer shall initiate the promulgation of

rules governing the review of a substitute water supply plan pursuant to section 37-92-308 (12). In promulgating the rules, the state engineer shall follow the state engineer's own rule-making procedures.

(b) The rules must include:

(I) Terms and conditions that the state engineer may impose through an approved substitute water supply plan pursuant to section 37-92-308 (12);

(II) Criteria that the state engineer should consider in reviewing a substitute water supply plan application filed pursuant to section 37-92-308 (12);

(III) Criteria to ensure that substitute water supply plans approved pursuant to section 37-92-308 (12) do not facilitate the diversion of water between water divisions by direct diversion, exchange, replacement, or other means;

(IV) Procedures by which the state engineer may reconsider a decision; and

(V) Procedures for creating a database that tracks and inventories substitute water supply plans approved under section 37-92-308 (12) and for making the following information from the database accessible to the public:

(A) The amount of water subject to each approved plan;

(B) The location of use of water under each approved plan; and

(C) The decreed beneficial use of water leased, loaned, or traded in connection with each approved plan.

(c) The water judge for water division 1 shall review the rules promulgated under this section in accordance with the procedures set forth in section 37-92-501 (2)(g), (3)(a), and (3)(b).

(2) As used in this section, "agricultural water protection water right" has the same meaning as in section 37-92-305 (19)(a).

Source: L. 2016: Entire section added, (HB 16-1228), ch. 175, p. 599, § 2, effective August 10.

Water Rights - Generally

ARTICLE 80.5

Arkansas River Water Bank Pilot Program

37-80.5-101. Short title. This article shall be known and may be cited as the "Arkansas River Pilot Water Banking Act".

Source: L. 2001: Entire article added, p. 1060, § 1, effective June 5.

37-80.5-102. Legislative declaration. The general assembly hereby finds, determines, and declares that the purpose of this article is to authorize the creation of water banks within each water division to be operated under strict parameters established by rules approved by the water court. Accordingly, this article provides for the promulgation of rules concerning water banks and requires the water court to approve the rules and the state engineer to report to the general assembly regarding the operation of the banks. The water bank program created by this

article is intended to simplify and improve the approval of water leases, loans, and exchanges, including interruptible supply agreements, of stored water within each river basin, reduce the costs associated with such transactions, and increase the availability of water-related information. It is also the purpose of the water banks to assist farmers and ranchers by developing a mechanism to realize the value of their water rights assets without forcing the permanent severance of those water rights from the land. The general assembly affirms the state constitution's recognition of water rights as a private usufructuary property right, and this article is not intended to restrict the ability of the holder of a water right to sell, lease, or exchange that water right in any other manner that is currently permitted under Colorado law. Further, this article is not intended to be implemented in any way that would cause material injury to the owner of or persons entitled to use water under a vested water right or a decreed conditional water right, nor to repeal or in any manner amend the existing water rights adjudication system except as may be specifically set forth in this article.

Source: L. 2001: Entire article added, p. 1060, § 1, effective June 5. **L. 2003:** Entire section amended, p. 2391, § 1, effective June 5.

37-80.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Bank" means a water bank operated pursuant to rules promulgated under this article.

(2) "Program" means a water bank program created in this article.

Source: L. 2001: Entire article added, p. 1061, § 1, effective June 5. **L. 2003:** Entire section amended, p. 2392, § 2, effective June 5.

37-80.5-104. Water bank - creation - duties of state engineer - rules - repeal. (Repealed)

Source: L. 2001: Entire article added, p. 1061, § 1, effective June 5. **L. 2003:** (4) added, p. 2392, § 3, effective June 5.

Editor's note: (1) Subsection (4) provided for the repeal of this section, effective when the period to file an appeal regarding promulgation of the rules under § 37-80.5-104.5 has expired or, if such an appeal is filed, when the litigation concerning such appeal has been fully resolved. The revisor of statutes was notified November 1, 2010, that the appeal period regarding the promulgation of the rules has expired and no appeal has been filed.

(2) For additional information pertaining to the repeal of this section and the affect on the Arkansas river basin, see § 37-80.5-104.5 (4).

37-80.5-104.5. Water banks within each water division - duties of state engineer - rules. (1) (a) Upon request by a water conservancy district or water conservation district, the state engineer shall promulgate program rules necessary or convenient for the operation of a water bank within the division in which such district is located. The state engineer shall hold public meetings and consult with the Colorado water conservation board regarding formulation of the rules. The rules shall be promulgated in accordance with the following:

(I) The rules shall authorize, facilitate, and permit the lease, exchange, or loan of stored water within a water division; except that nothing in this article shall be construed to authorize any lease, exchange, or loan of water that would negatively affect any of Colorado's interstate compacts.

(II) The rules shall not permit the transfer, lease, loan, exchange, or sale of water from the banks to instream flow uses as provided in section 37-92-102 (3) unless such transfer, lease, loan, exchange, or sale is to the Colorado water conservation board.

(III) The banks shall operate within existing requirements of Colorado water law as set forth in the "Water Right Determination and Administration Act of 1969", article 92 of this title, including specifically the requirement that water transferred through the banks be put to a beneficial use, and the "Colorado Groundwater Management Act", article 90 of this title; except that, in compliance with rules promulgated pursuant to this article, leases, loans, and exchanges effectuated through the banks need not require adjudication pursuant to article 92 of this title, and the state engineer shall administer such leases, loans, and exchanges notwithstanding the fact that they may not have been adjudicated.

(IV) The rules shall define the terms "interruptible supply" and "water banking".

(V) The rules shall take into account and address, as appropriate, any necessary or desirable limitations upon the time, place, or type of use of waters made available through the water banks, and the appropriate length of agreements implementing banking transactions.

(b) The rules shall ensure that operation of the banks shall not cause any material injury to the owner of or persons entitled to use water under a vested water right or a decreed conditional water right.

(c) The rules shall establish criteria pursuant to which the state engineer shall:

(I) Accept a deposit of a quantity of water in a bank, including necessary proof of:

(A) Ownership or a lease or contract that includes the right to use and control the disposition of water; and

(B) The legal parameters of the water for use subject to the proposed deposit, whether by decree or by contract;

(II) Credit a withdrawal of a quantity of water from a bank, including the term, location, and type of the proposed use of the withdrawn water;

(III) Publish a summary of each water bank's transactions, including the amounts of water subject to such transactions; and

(IV) Administer the withdrawn water:

(A) Within the priority system if the withdrawn water is subject to prior appropriation;

(B) With or without the need for an adjudication; and

(C) Without causing material injury to the owner of or persons entitled to use water under a vested water right or a decreed conditional water right.

(d) The rules shall delegate administration of a bank to the water conservancy district or water conservation district that submitted the request for the bank. Such district shall be entitled to charge a transaction fee for deposits, withdrawals, or both, sufficient to cover the bank's administration costs. Notwithstanding any restriction on the power of a water conservancy district or a water conservation district to act outside the geographic boundaries of such district, a district that has been delegated authority pursuant to this paragraph (d) shall have full authority to administer the bank's operations pursuant to this section, including any power to act outside the geographic boundaries of such district when necessary to administer the bank.

(2) The deposit of credits in a bank is voluntary, and credits may be removed by the owner at any time prior to an actual transaction in which control of a credit is transferred, subject to the terms and conditions of the deposit agreement executed with the operator of the bank.

(3) The state engineer shall seek a waiver or clarification of any federal laws, rules, or regulations that may impede the implementation of the water bank program.

(4) (a) The repeal of section 37-80.5-104 shall not affect the validity of any bank operating in the Arkansas river basin or any such bank's water deposit or withdrawal. After such repeal, such bank shall operate pursuant to the rules promulgated pursuant to this section.

(b) The state engineer shall provide the revisor of statutes with written notification when the period to file an appeal regarding promulgation of the rules under this section has expired or, if such an appeal is filed, when the litigation concerning such appeal has been fully resolved.

Source: L. 2003: Entire section added, p. 2392, § 4, effective June 5.

Editor's note: Subsection (4)(b) requires the state engineer to provide the revisor of statutes with written notice when the period to file an appeal regarding the promulgation of rules under this section has expired or, if an appeal is filed, when the litigation on the appeal has been resolved. The revisor of statutes was notified November 1, 2010, that the period for filing an appeal has ended and there has been no appeal of the rules.

37-80.5-105. Review of rules. Judicial review of all rules promulgated pursuant to this article shall be in accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S.; except that venue for such review shall lie exclusively with the appropriate water judge for each water division.

Source: L. 2001: Entire article added, p. 1063, § 1, effective June 5. **L. 2003:** Entire section amended, p. 2394, § 5, effective June 5.

37-80.5-106. Report. (1) The state engineer shall submit a report to the general assembly and the governor on or before November 1, 2005, regarding:

(a) The effectiveness of the program;

(b) Existing statutory, regulatory, or contractual constraints on the successful use of water banking within Colorado;

(c) Institutional constraints upon the successful use of water banking within Colorado;

(d) Interstate compact constraints upon the successful use of water banking within Colorado;

(e) Social or economic constraints upon the successful use of water banking within Colorado; and

(f) Any recommended limitations upon the use of water banks within Colorado, with specific reference to the time, place, or type of use of waters made available under such recommended limitations and the length of agreements implementing the same.

Source: L. 2001: Entire article added, p. 1063, § 1, effective June 5. **L. 2003:** (1)(a) amended, p. 2394, § 6, effective June 5.

37-80.5-107. Repeal of article. (Repealed)

Source: L. 2001: Entire article added, p. 1063, § 1, effective June 5. **L. 2007:** Entire section repealed, p. 422, § 1, effective April 9.

ARTICLE 81

Diversion of Waters from State

Law reviews: For article, "Water Export", see 13 Colo. Law. 1004 (1984); for article, "State Water and State Lines: Commerce in Water Resources", see 56 U. Colo. L. Rev. 347 (1985); for article "Water Export: Is it Legal Yet?", see 24 Colo. Law. 817 (1995).

37-81-101. Diversion of water outside state - application required - special conditions - penalty. (1) (a) The general assembly hereby finds and declares that the location and availability of water in this state varies greatly from place to place and that the state as a whole suffers a shortage of water. The general assembly further recognizes that, because of Colorado's unique location at the headwaters of four of the nation's major western rivers and because all the major river systems in Colorado flow out of the state, and that, in order to insure the availability of these scarce water resources for the use of citizens of the state of Colorado, compacts have been entered into with the downstream states on all the major rivers originating in Colorado.

(b) It is also recognized that it has been the continuing historical policy of the state of Colorado to conserve and prevent waste of its water resources to provide adequate supplies of water necessary to insure the continued health, welfare, and safety of all of its citizens. Accordingly, the general assembly hereby determines that, for the purpose of conserving the scarce water resources of this state and to thereby insure the continuing health, welfare, and safety of the citizens of this state, it is unlawful for any person, including a corporation, association, or other entity, to divert, carry, or transport by ditches, canals, pipes, conduits, natural streams, watercourses, or any other means any of the water resources found in this state into any other state for use therein without first complying with this section and section 37-81-104.

(2) To effectuate the purposes of subsection (1) of this section and section 37-81-104, no person may divert, carry, or transport any surface or groundwater from this state by ditches, canals, pipes, conduits, natural streams, watercourses, or other means without meeting the requirements for obtaining a permit to construct a well if the source of water is to be groundwater or if a well permit is not required without first obtaining an adjudication from the water court for the right to use water outside the state. In the case of a well for which a permit has been issued for a use of groundwater within Colorado, a change of use for a use outside the state must be approved by the water court or, if it is designated groundwater, the change must be approved by the Colorado ground water commission. A person desiring to divert, carry, or transport any water outside Colorado shall file an appropriate application therefor and comply with the requirements of this section in addition to any other requirements, terms, and conditions provided or authorized by law pertaining to such application.

(3) Prior to approving an application, the state engineer, ground water commission, or water judge, as the case may be, must find that:

(a) The proposed use of water outside this state is expressly authorized by interstate compact or credited as a delivery to another state pursuant to section 37-81-103 or that the proposed use of water does not impair the ability of this state to comply with its obligations under any judicial decree or interstate compact which apportions water between this state and any other state or states;

(b) The proposed use of water is not inconsistent with the reasonable conservation of the water resources of this state; and

(c) The proposed use of water will not deprive the citizens of this state of the beneficial use of waters apportioned to Colorado by interstate compact or judicial decree.

(4) Any diversion of water from this state which is not in compliance with this section shall not be recognized as a beneficial use for purposes of perfecting a water right to the extent of such unlawful diversion or use.

Source: L. 17: p. 539, § 1. **C.L.** § 1618. **CSA:** C. 90, § 1. **CRS 53:** § 147-1-1. **C.R.S. 1963:** § 148-1-1. **L. 79:** Entire section amended, p. 1364, § 1, effective May 31. **L. 83:** Entire section R&RE, p. 1410, § 1, effective June 3. **L. 85:** (1)(b) and (2) amended, p. 287, § 7, effective May 23.

Cross references: For water of streams being public property, see § 5 of art. XVI, Colo. Const.

37-81-102. Officials charged with enforcement. It is the duty of the state engineer, the division engineers, and the water commissioners of this state to see that the waters of the state are available for the use and benefit of the citizens and inhabitants of the state for its growth, prosperity, and general welfare, and it is the further duty of said officials to prevent the waters thereof from being diverted, carried, conveyed, or transported by ditches, canals, pipes, conduits, natural streams, watercourses, or other means into other states for use therein unless there is specific authorization therefor, as provided in section 37-81-101. Upon its being brought to the knowledge of the state engineer of Colorado that any person, corporation, or association is unlawfully carrying or transporting any of such waters into any other state for use therein, or is intending so to do, it is his duty to immediately call the matter to the attention of the attorney general, in behalf of and in the name of the state, who shall apply to any district court or to the supreme court of the state of Colorado for such restraining orders or injunctions, both preliminary and final, as may be necessary to enforce the provisions of this section and section 37-81-101, and jurisdiction is conferred upon said courts for such purposes.

Source: L. 17: p. 539, § 2. **C.L.** § 1619. **CSA:** C. 90, § 2. **CRS 53:** § 147-1-2. **C.R.S. 1963:** § 148-1-2. **L. 79:** Entire section amended, p. 1365, § 2, effective May 31. **L. 83:** Entire section amended, p. 1411, § 2, effective June 3.

Cross references: For the appointments and functions of water division engineers, see § 37-92-202.

37-81-103. Effect of apportionment credits upon diversions of water from state. (1) For the purpose of evaluating applications made pursuant to section 37-81-101, no water occurring in any aquifer or being a part of or hydraulically connected to any interstate stream system may be diverted or appropriated in Colorado for a use which contemplates or involves the transportation of such water into or through another state or states through which such interstate stream system flows, for use of such diverted water in such other state or states whether as a vehicle or medium for the transportation of another substance, or for any other use, unless the amount of water so diverted or appropriated and transported through or into such other state or states is credited as a delivery to such other state or states by Colorado, of water to which such other state or states may be or claim to be entitled from such interstate source under an existing interstate compact or otherwise. Water mixed with other substances in the process of forming a slurry for the purpose of transporting any substance as a suspended solid shall not be deemed to have lost its character as water.

(2) The burden shall be upon the claimant or other person seeking to divert or appropriate water or seeking a water right based upon a claimed diversion or appropriation coming within the provisions of subsection (1) of this section to prove that a means exists and is accepted by each state, including Colorado, through which said stream system and said diverted water flows or will flow by which the credit required in this section will be entered and recognized by each such state.

(3) This article shall not be applicable to water contained in agricultural crops, animal and dairy products, beverages, or processed or manufactured products or to products transported in cans, bottles, packages, kegs, or barrels.

Source: L. 77: Entire section added, p. 1694, § 1, effective July 15. **L. 83:** Entire section R&RE, p. 1412, § 3, effective June 3.

37-81-104. Fee for diversion - fund created. (1) (a) To effectuate the purposes of this article, the general assembly hereby authorizes a fee of fifty dollars per acre-foot to be assessed and collected by the state engineer on water diverted, carried, stored, or transported in this state for beneficial use outside this state measured at the point of release from storage or at the point of diversion.

(b) Notwithstanding the amount specified for the fee in paragraph (a) of this subsection (1), the state engineer by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the state engineer by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S.

(2) All moneys collected pursuant to subsection (1) of this section shall be credited to the water diversion fund, which fund is hereby created. The general assembly shall annually appropriate all moneys in said fund for water projects for the state. Said appropriation shall be consistent with part 13 of article 3 of title 2, C.R.S.

Source: L. 85: Entire section added, p. 287, § 6, effective May 23. **L. 98:** (1) amended, p. 1343, § 69, effective June 1.

ARTICLE 82

Appropriation and Use of Water

Cross references: For water rights provisions in the state constitution, see §§ 5 to 8 of art. XVI; for water compacts, see articles 61 to 69 of this title; for conservancy and irrigation districts, see articles 41 to 45 of this title; for conveyance of water rights as real property, see § 38-30-102; for exemption from taxation of ditches, canals, and flumes, see § 39-3-104.

37-82-101. Waters of natural surface streams subject to appropriation. (1) The water of every natural stream, as referred to in sections 5 and 6 of article XVI of the state constitution, includes all the water occurring within the state of Colorado which is in or tributary to a natural surface stream but does not include nontributary groundwater as that term is defined in section 37-90-103. All nontributary groundwater shall be subject to such administration and use as the general assembly may provide by law. Such nontributary waters, when released from the dominion of the user, become a part of the natural surface stream where released, subject to water rights on such stream in the order of their priority.

(2) A stream system which arises as a natural surface stream and, as a natural or man-induced phenomenon, terminates within the state of Colorado through naturally occurring evaporation and transpiration of its waters, together with its underflow and tributary waters, is a natural surface stream subject to appropriation as provided in subsection (1) of this section.

Source: L. 69: R&RE, p. 1219, § 2. **C.R.S. 1963:** § 148-2-1. **L. 79:** Entire section R&RE, p. 1366, § 1, effective June 22. **L. 85:** (1) amended, p. 1166, § 4, effective July 1.

37-82-102. Priority of right to spring water. All ditches constructed for the purpose of utilizing the waste, seepage, or spring waters of the state shall be governed by the same laws relating to priority of right as those ditches constructed for the purpose of utilizing the water of running streams; but the person upon whose land the seepage or spring waters first arise shall have the prior right to such waters if capable of being used upon his lands.

Source: L. 1889: p. 215, § 1. **R.S. 08:** § 3177. **C.L.** § 1637. **CSA:** C. 90, § 20. **CRS 53:** § 147-2-2. **C.R.S. 1963:** § 148-2-2.

37-82-103. Appropriation of natural springs. The waters of natural flowing springs may be appropriated for all beneficial uses, and the priorities of such appropriations may be determined as provided by law. If it is found that the water of any such springs is not tributary to any natural stream, the determinations shall fix the rights of appropriators from such springs among themselves.

Source: L. 17: p. 541, § 1. **C.L.** § 1638. **CSA:** C. 90, § 21. **CRS 53:** § 147-2-3. **C.R.S. 1963:** § 148-2-3. **L. 69:** p. 1219, § 3.

37-82-104. Not to impair vested rights. Nothing in sections 37-82-103 to 37-82-105 shall be construed to amend or repeal section 37-82-102; or impair, diminish, or destroy any

valid appropriation of water for any beneficial use which has been made or decreed in accordance with law; or modify, amend, or affect any decree of court or the statutes limiting the time wherein appropriators must appear for determination of priorities of right for diversions from natural streams or the decisions of the courts construing the statutes.

Source: L. 17: p. 542, § 2. **C.L.** § 1639. **CSA:** C. 90, § 22. **CRS 53:** § 147-2-4. **C.R.S. 1963:** § 148-2-4.

37-82-105. Interference with flow - damages. Any person, association, or corporation who, without lawful right so to do, causes any diminution of or obstruction or interference with the flow of waters from any such natural springs to the injury of any appropriator of any such waters shall be liable in damages to the injured party to the amount of such injury.

Source: L. 17: p. 542, § 3. **C.L.** § 1640. **CSA:** C. 90, § 23. **CRS 53:** § 147-2-5. **C.R.S. 1963:** § 148-2-5.

37-82-106. Right to reuse of imported water. (1) Whenever an appropriator has lawfully introduced foreign water into a stream system from an unconnected stream system, such appropriator may make a succession of uses of such water by exchange or otherwise to the extent that its volume can be distinguished from the volume of the streams into which it is introduced. Nothing in this section shall be construed to impair or diminish any water right which has become vested.

(2) To the extent that there exists a right to make a succession of uses of foreign, nontributary, or other developed water, such right is personal to the developer or his successors, lessees, contractees, or assigns. Such water, when released from the dominion of the user, becomes a part of the natural surface stream where released, subject to water rights on such stream in the order of their priority, but nothing in this subsection (2) shall affect the rights of the developer or his successors or assigns with respect to such foreign, nontributary, or developed water, nor shall dominion over such water be lost to the owner or user thereof by reason of use of a natural watercourse in the process of carrying such water to the place of its use or successive use.

Source: L. 1891: p. 402, § 1. **R.S. 08:** § 3178. **C.L.** § 1641. **CSA:** C. 90, § 24. **CRS 53:** § 147-2-6. **L. 69:** p. 1223, § 21. **C.R.S. 1963:** § 148-2-6. **L. 79:** Entire section amended, p. 1366, § 2, effective June 22.

ARTICLE 83

Exchange of Water

Cross references: For the appointments and functions of water division engineers, see § 37-92-202.

37-83-101. Transfer from one stream to another. Whenever any person or company diverts water from one public stream and turns it into another public stream, such person or

company may take out the same amount of water again, less a reasonable deduction for seepage and evaporation, to be determined by the state engineer.

Source: L. 1897: p. 176, § 1. **R.S. 08:** § 3222. **C.L.** § 1702. **CSA:** C. 90, § 100. **CRS 53:** § 147-6-1. **C.R.S. 1963:** § 148-6-1.

37-83-102. Maintenance of measuring devices. Any person or company transferring water from one public stream to another is required to construct and maintain, under the direction of the state engineer, measuring flumes or weirs and self-registering devices at the point where the water leaves its natural watershed and is turned into another and also at the point where it is finally diverted for use from the public stream.

Source: L. 1897: p. 176, § 2. **R.S. 08:** § 3223. **C.L.** § 1703. **CSA:** C. 90, § 101. **CRS 53:** § 147-6-2. **C.R.S. 1963:** § 148-6-2.

37-83-103. Division engineer to keep record. It is the duty of the division engineer of the division in which the water is used to keep a record of the amount of water so turned into his division from any other division.

Source: L. 1897: p. 176, § 3. **R.S. 08:** § 3224. **C.L.** § 1704. **CSA:** C. 90, § 102. **CRS 53:** § 147-6-3. **C.R.S. 1963:** § 148-6-3.

37-83-104. Reservoirs and ditches may exchange. When the rights of others are not injured thereby, it is lawful for the owner of a reservoir to deliver stored water into a ditch entitled to water or into the public stream to supply appropriations from said stream and take in exchange therefor from the public stream higher up an equal amount of water, less a reasonable deduction for loss, if any there be, to be determined by the state engineer. The person or company desiring such exchange shall be required to construct and maintain, under the direction of the state engineer, measuring flumes or weirs and self-registering devices at the point where the water is turned into the stream or ditch taking the same or as near such point as is practicable so that the division engineer may readily determine and secure the just and equitable exchange of water.

Source: L. 1897: p. 177, § 4. **R.S. 08:** § 3225. **C.L.** § 1705. **CSA:** C. 90, § 103. **CRS 53:** § 147-6-4. **C.R.S. 1963:** § 148-6-4.

37-83-105. Owner may loan agricultural water right - loans to Colorado water conservation board for instream flows. (1) Subject to the limitations of this subsection (1) and pursuant to the procedures set forth in paragraph (b) of subsection (2) of this section, the owner of a water right decreed and used solely for agricultural irrigation purposes may loan all or a portion of the water right to another owner of a decreed water right on the same stream system and that is used solely for agricultural irrigation purposes for no more than one hundred eighty days during any one calendar year if the division engineer approves such loan in advance and the loan does not cause injury to other decreed water rights.

(2) (a) A water right owner may loan water to the Colorado water conservation board for use as instream flows pursuant to a decreed instream flow water right held by the board for a period not to exceed one hundred twenty days, subject to the following:

(I) Prior to accepting the loan, the Colorado water conservation board shall compile a statement about the duration of the loan, a description of the original points of diversion, and other relevant information sufficient for the state engineer to determine that such loan does not injure existing decreed water rights.

(II) Consistent with current law, only the Colorado water conservation board is entitled to hold instream flow water rights and may accept proposed loans in accordance with section 37-92-102 (3).

(III) The loan shall not be accepted unless the state engineer determines that the Colorado water conservation board's temporary instream flow use will not injure existing water rights of others.

(IV) A loan approved pursuant to this paragraph (a) shall not be exercised for more than three years in a ten-year period, for which only a single approval by the state engineer is required. The ten-year period shall begin when the state engineer approves the loan. The state engineer shall not approve a loan pursuant to this paragraph (a) for another ten-year period; except that, if the agreement has not been exercised during the term of the agreement, an applicant may reapply one time by repeating the application process pursuant to this subsection (2).

(V) A party may file comments concerning potential injury to such party's water rights or decreed conditional water rights due to the operations of the loan of a water right to a decreed instream flow right with the state engineer by January 1 of the year following each year that the loan is exercised. The procedures of paragraph (b) of this subsection (2) regarding notice, opportunity to comment, the state engineer's decision, and an appeal of such decision shall again be followed with regard to such party's comments.

(b) In determining whether injury will occur, the division engineer shall ensure that the following conditions are met:

(I) The proponent has filed a request for approval of the loan with the division engineer, together with a filing fee in the amount of one hundred dollars. Moneys from the fee shall be transmitted to the state treasurer and deposited in the water resources cash fund created in section 37-80-111.7 (1). The request for approval shall include:

(A) Evidence of the proponent's legal right to use the loaned water right;

(B) A statement of the duration of the proposed loan;

(C) A description of the original points of diversion, the return flow pattern, the stream reach, and the time, place, and types of use of the loaned water right;

(D) A description of the new proposed points of diversion, the return flow pattern, the stream reach, and the time, place, and types of use of the loaned water right; and

(E) A reasonable estimate of the historic consumptive use of the loaned water right;

(II) The proponent has provided written notice of the request for approval of the loan by first-class mail or electronic mail to all parties on the substitute water supply plan notification list established pursuant to section 37-92-308 (6) for the water division in which the proposed loan is located and proof of such notice is filed with the division engineer;

(III) The proposed use of the loaned water right is for agricultural irrigation purposes or for instream flow purposes by the Colorado water conservation board;

(IV) None of the water rights involved in the loan are adjudicated to or diverted at a well located more than one hundred feet from the bank of the nearest flowing stream;

(V) The division engineer has given the owners of water rights and decreed conditional water rights fifteen days after the date of mailing of notice under subparagraph (II) of this paragraph (b) to file comments on the proposed loan; except that the division engineer may act on the application immediately after the applicant provides evidence that all persons entitled to notice of the application under subparagraph (II) of this paragraph (b) have either consented to or commented on the application. Such comments shall include any claim of injury or any terms and conditions that should be imposed upon the proposed loan to prevent injury to a party's water right and any other information the commenting party wishes the division engineer to consider in reviewing the proposed loan.

(VI) The division engineer, after consideration of any comments received, has determined that the operation and administration of the proposed loan will not cause injury to other decreed water rights and, for loans made pursuant to paragraph (a) of this subsection (2), will not affect Colorado's compact entitlements. The division engineer shall impose such terms and conditions as are necessary to ensure that these standards are met. In making the determinations specified in this subparagraph (VI), the division engineer shall not be required to hold any formal hearings or conduct any other formal proceedings, but may conduct a hearing or formal proceeding if the division engineer finds it necessary to address the issues.

(VII) The division engineer shall approve or deny the proposed loan within twenty days after the date of mailing of notice under subparagraph (II) of this paragraph (b), or within five days after the applicant provides evidence that all persons entitled to notice of the application under subparagraph (II) of this paragraph (b) have either consented to or commented on the application, whichever is earlier.

(VIII) When the division engineer approves or denies a proposed loan, the division engineer shall serve a copy of the decision on all parties to the application by first-class mail or, if such parties have so elected, by electronic mail. Neither the approval nor the denial by the division engineer shall create any presumptions, shift the burden of proof, or serve as a defense in any legal action that may be initiated concerning the loan. Any appeal of a decision by the division engineer concerning the loan pursuant to this section shall be made to the water judge in the applicable water division within fifteen days after the date on which the decision is served on the parties to the application. The water judge shall hear such appeal on an expedited basis.

(c) All periods of time during which a loaned water right is used by the board for instream flow purposes shall be excluded from any historic consumptive use analysis of the loaned water right required under any water court proceeding.

Source: L. 1899: p. 236, § 3. **R.S. 08:** § 3232. **C.L.** § 1712. **CSA:** C. 90, § 110. **CRS 53:** § 147-6-5. **C.R.S. 1963:** § 148-6-5. **L. 2003:** Entire section amended, p. 2396, § 1, effective June 5. **L. 2004:** (1), IP(2)(b), (2)(b)(III), (2)(b)(VI), and (2)(b)(VII) amended, p. 1014, § 1, effective May 21. **L. 2005:** IP(2)(a) amended and (2)(a)(IV) and (2)(a)(V) added, p. 82, § 1, effective August 8. **L. 2007:** (2)(c) added, p. 48, § 1, effective August 3. **L. 2012:** IP(2)(b)(I) amended, (SB 12-009), ch. 197, p. 792, § 6, effective July 1.

37-83-106. Authority of political subdivisions to lease or exchange water. Water conservancy districts and water conservation districts which own or hold rights to water may

enter into cooperative agreements with other political subdivisions of the state for the lease or exchange of water produced in the exercise of such district's water rights and the construction or use of waterworks within or outside of district boundaries, according to such terms as such district and political subdivision agree upon. Conservation districts, conservancy districts, and other political subdivisions of the state may enter into agreements with each other to provide funds or undertake measures to carry out section 37-45-118 (1)(b)(II), including agreements for the exchange or lease of such water outside the boundaries of the conservation or conservancy district. Such leases and exchanges may cover the time period necessary to amortize, or repay bonds issued for, the cost of constructing the waterworks involved, and may be renewable according to such terms as such district and political subdivision may agree upon. Any water rights leased or exchanged under this section shall be only for the time certain contained in each such agreement or extension thereof. Any water rights or changes of water rights which are necessary to implement such agreements shall be adjudicated as provided by law. If mutually agreeable, districts and other political subdivisions may submit any contractual disputes arising under this section between them to nonbinding arbitration, as they may determine.

Source: L. 89: Entire section added, p. 1420, § 1, effective April 12. **L. 2001:** Entire section amended, p. 1278, § 50, effective June 5.

ARTICLE 84

Responsibility of User or Owner

Cross references: For the appointments and functions of water division engineers, see § 37-92-202.

37-84-101. Maintenance of embankments and tail ditch. The owners of any ditch for irrigation or other purposes shall carefully maintain the embankments thereof so that the waters of such ditch may not flood or damage the premises of others, and shall make a tail ditch so as to return the water in such ditch with as little waste as possible into the stream from which it was taken.

Source: R.S. p. 364, § 7. **L. 1872:** p. 144, § 1. **G.L.** § 1378. **G.S.** § 1728. **R.S. 08:** § 3233. **C.L.** § 1713. **CSA:** C. 90, § 111. **CRS 53:** § 147-7-1. **C.R.S. 1963:** § 148-7-1.

Cross references: For requirement of keeping ditch in repair, see § 7-42-108.

37-84-102. Vested rights not impaired. Nothing in articles 80 to 92 of this title shall be so construed as to impair the prior vested rights of any mill or ditch owner or other person to use the waters of any such watercourse.

Source: R.S. p. 364, § 8. **G.L.** § 1379. **G.S.** § 1729. **R.S. 08:** § 3234. **C.L.** § 1714. **CSA:** C. 90, § 112. **CRS 53:** § 147-7-2. **C.R.S. 1963:** § 148-7-2.

37-84-103. Bridge when ditch crosses highway. (1) Any bridge constructed on a public highway, a public traveled road, a street, or an alley to accommodate the crossing of any ditch, canal, or other waterway shall be constructed in accordance with applicable standards established by the state, county, or municipality having jurisdiction over such public highway, public traveled road, street, or alley.

(2) Any person, partnership, association, or corporation desiring to have such a bridge constructed shall bear the cost of construction and enter into an agreement with the unit of government having such jurisdiction. Payment for such construction shall be made before construction begins.

Source: R.S. p. 364, § 10. **G.L.** § 1381. **G.S.** § 1730. **R.S. 08:** § 3235. **C.L.** § 1715. **CSA:** C. 90, § 113. **CRS 53:** § 147-7-3. **C.R.S. 1963:** § 148-7-3. **L. 81:** Entire section R&RE, p. 1775, § 1, effective July 1.

37-84-104. Ditch must be bridged in three days. (Repealed)

Source: R.S. p. 364, § 11. **G.L.** § 1382. **G.S.** § 1731. **R.S. 08:** § 3236. **C.L.** § 1716. **CSA:** C. 90, § 114. **CRS 53:** § 147-7-4. **C.R.S. 1963:** § 148-7-4. **L. 81:** Entire section repealed, p. 1777, § 5, effective July 1.

37-84-105. Proceedings against owner for payment. (Repealed)

Source: R.S. p. 365, § 12. **G.L.** § 1383. **G.S.** § 1732. **R.S. 08:** § 3237. **C.L.** § 1717. **CSA:** C. 90, § 115. **CRS 53:** § 147-7-5. **C.R.S. 1963:** § 148-7-5. **L. 64:** p. 341, § 344. **L. 81:** Entire section repealed, p. 1777, § 5, effective July 1.

37-84-106. Bridges over ditch - maintenance. All bridges constructed over any ditch, race, drain, or flume crossing any public highway, street, or alley, after construction, shall be maintained by and at the expense of the county or municipality in which such ditch, race, drain, or flume may be situated.

Source: L. 13: p. 150, § 1. **C.L.** § 1718. **CSA:** C. 90, § 116. **CRS 53:** § 147-7-6. **C.R.S. 1963:** § 148-7-6.

37-84-107. Owner of ditch must prevent waste. The owner of any irrigating or mill ditch shall carefully maintain and keep the embankments thereof in good repair and prevent the water from wasting.

Source: L. 1876: p. 78, § 1. **G.L.** § 1385. **G.S.** § 1733. **R.S. 08:** § 3238. **C.L.** § 1719. **CSA:** C. 90, § 117. **CRS 53:** § 147-7-7. **C.R.S. 1963:** § 148-7-7.

Cross references: For requirement of keeping ditch in repair, see § 7-42-108.

37-84-108. Running excess of water forbidden. (1) During the summer season a person shall not run through his or her irrigating ditch any greater quantity of water than is

absolutely necessary for irrigating, domestic, and stock purposes to prevent the wasting and useless discharge and running away of water.

(2) A person using an irrigating ditch or ditch system may use a tail ditch to return water to the stream in variable amounts as necessary to facilitate efficient operation of the ditch and delivery of water to persons served by the ditch or ditch system. The state engineer shall not require the delivery of any minimum amount of such water, except as required by court decree. Nothing in this section limits the state engineer's authority to administer water rights to prevent waste.

Source: L. 1876: p. 78, § 2. **G.L.** § 1386. **G.S.** § 1734. **R.S. 08:** § 3239. **C.L.** § 1720. **CSA:** C. 90, § 118. **CRS 53:** § 147-7-8. **C.R.S. 1963:** § 148-7-8. **L. 2015:** Entire section amended, (SB 15-055), ch. 54, p. 131, § 1, effective August 5.

37-84-109. Penalty for violation of sections. Any person who willfully violates any of the provisions of sections 37-84-107 and 37-84-108, upon conviction thereof, shall be fined not less than one hundred dollars. Suits for penalties under sections 37-84-107 and 37-84-108 shall be brought in the name of the people of the state of Colorado.

Source: L. 1876: p. 78, § 3. **G.L.** § 1387. **G.S.** § 1735. **R.S. 08:** § 3240. **C.L.** § 1721. **CSA:** C. 90, § 119. **CRS 53:** § 147-7-9. **C.R.S. 1963:** § 148-7-9.

37-84-110. Head of ditch to be latticed. Every corporation and company, whether created by special act or organized under the general incorporation laws of this state, and every partnership or any persons who own or control any canal or ditch, or any part thereof, being two feet in width or over and carrying water to the depth of twelve inches or over, which canal or ditch, or any part thereof, is within the corporate limits of any city with a population of seventy thousand or more or any city existing by special charter of a population equal to or exceeding seventy thousand, or any of the additions thereto, at their own expense, shall safely and securely lattice or slat the head of any flume or covering of the canal or ditch with proper materials, so that persons or animals cannot accidentally enter such flume or covering at the head thereof and pass or be carried down the current of the canal or ditch, and they shall thereafter maintain and keep the same in good order and repair at their own cost and expense.

Source: L. 1887: p. 66, § 2. **R.S. 08:** § 3242. **C.L.** § 1723. **CSA:** C. 90, § 121. **CRS 53:** § 147-7-11. **C.R.S. 1963:** § 148-7-10. **L. 72:** p. 621, § 166.

37-84-111. Penalty for failure to cover and lattice. If any such corporation, company, partnership, or person fails or refuses to comply with any of the provisions of section 37-84-110, such corporation, company, partnership, or person shall forfeit and pay the sum of fifty dollars for each day such failure or refusal continues, to be recovered by a civil action in the name of the people of the state of Colorado, in any court of competent jurisdiction. Nothing in this section and section 37-84-110 shall be construed to bar an action for special damages by any person who has suffered such damages by reason of any failure to comply with said sections.

Source: L. 1887: p. 66, § 3. **R.S. 08:** § 3243. **C.L.** § 1724. **CSA:** C. 90, § 122. **CRS 53:** § 147-7-12. **C.R.S. 1963:** § 148-7-11.

37-84-112. Headgates - specifications - failure to maintain - penalty. (1) The owners of any irrigation ditch, canal, flume, or reservoir in this state, taking water from any stream, shall erect where necessary and maintain in good repair, at the point of intake of such ditch, canal, flume, or reservoir, a suitable and proper headgate of height and strength and with embankments sufficient to control the water at all ordinary stages and suitable and proper measuring flumes, weirs, and devices and shall also erect and maintain in good repair suitable wastegates where necessary in connection with such ditch, canal, flume, or reservoir intake. The framework of such headgate shall be constructed of timber not less than four inches square, and the bottom, sides, and gate shall be of plank not less than two inches in thickness, or said gate may be made of other material of equal strength and durability or may be made and constructed upon plans and specifications approved by the state engineer. No such headgate shall be deemed complete until provided with suitable locks and fastenings (except when the division engineer deems such locks and fastenings unnecessary therefor) and keys therefor are delivered to the division engineer of the division who has control thereof during the seasons of the distribution of water.

(2) If the owners of any such irrigation ditch, canal, flume, or reservoir fail or neglect to erect or maintain in good repair said headgate, measuring flume, weir, or devices, in the manner and form provided in this section, then the state engineer or division engineer, upon ten days' previous notice in writing, duly served upon such owners, or upon any agent or employee representing them or controlling such ditch, canal, flume, or reservoir, shall refuse to deliver any water from such stream to such owners, or to such ditch, canal, flume, or reservoir, until such owners erect or repair the headgate, measuring flume, weirs, or devices of such ditch, canal, flume, or reservoir. The owners of all such ditches, canals, flumes, or reservoirs shall be liable for all damages resulting from their neglect or refusal to comply with the provisions of sections 37-84-112 to 37-84-117. Such owners who divert water from any such stream and into any such ditch, canal, flume, or reservoir contrary to the orders of the state engineer or division engineer are guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, and each day of violation shall be deemed a separate offense.

Source: L. 01: p. 193, § 1. **R.S. 08:** § 3248. **L. 11:** p. 463, § 1. **C.L.** § 1727. **CSA:** C. 90, § 125. **CRS 53:** § 147-7-13. **C.R.S. 1963:** § 148-7-12. **L. 69:** p. 1220, § 9.

37-84-113. Measuring flumes - construction. The owners of any irrigation ditch, canal, or reservoir, transferring water from one natural stream to another, or from a reservoir, ditch, or flume to a stream in order that said water may be diverted from such stream for irrigation or any other purpose, shall construct suitable and proper measuring flumes or weirs, equipped with self-registering devices if required by the state engineer, for the proper and accurate determination of the amount and flow of water turned into, carried through, and diverted out of said natural stream. If the owners of any such irrigation ditch, canal, or reservoir fail or neglect, upon five days' previous notice in writing duly served upon them or their agent or employee, to erect, maintain, or repair such measuring flume, weir, or device, the state engineer or division engineer shall refuse to allow to be taken or diverted from any stream any water whatever on account of delivery of water to such stream, for such time and until such owners cause to be erected or

repaired such flumes, weirs, or devices, at the point of delivery to and taking from said natural streams so used as a conduit.

Source: L. 01: p. 194, § 2. **R.S. 08:** § 3249. **L. 11:** p. 464, § 2. **C.L.** § 1728. **CSA:** C. 90, § 126. **CRS 53:** § 147-7-14. **C.R.S. 1963:** § 148-7-13.

37-84-114. Rating of flumes and weirs. The state engineer or division engineer shall rate the measuring flume and weirs referred to in sections 37-84-112 to 37-84-117, and the original notes of such rating, together with a complete table compiled therefrom, shall be filed as a part of the records of the office of the state engineer, and the state engineer shall supply the division engineer of the division in which such measuring flumes or weirs are located with a copy of such rating table, which shall be used by him in measuring water flowing to and from such natural stream.

Source: L. 01: p. 194, § 3. **R.S. 08:** § 3250. **L. 11:** p. 465, § 3. **C.L.** § 1729. **CSA:** C. 90, § 127. **CRS 53:** § 147-7-15. **C.R.S. 1963:** § 148-7-14. **L. 69:** p. 1221, § 10.

37-84-115. Gauge rods. A gauge rod, marked in feet and tenths and one-hundredths of a foot, shall be permanently fixed and maintained at the outlets of all reservoirs, under the supervision of the division engineer, and if any owner or possessor of any reservoir fails or refuses to provide, fix, and maintain such gauge rod then the owner or possessor of such reservoir shall not be entitled to impound any water whatever in said reservoirs until the provisions of this section are fully complied with. Notwithstanding the foregoing the division engineer may determine that such rod is not necessary with respect to specific reservoirs. Such determination shall be in writing and may be rescinded in writing at any time.

Source: L. 01: p. 194, § 4. **R.S. 08:** § 3251. **L. 11:** p. 465, § 4. **C.L.** § 1730. **CSA:** C. 90, § 128. **CRS 53:** § 147-7-16. **C.R.S. 1963:** § 148-7-15. **L. 69:** p. 1221, § 11.

37-84-116. Control of headgates and weirs. All headgates, measuring weirs, flumes, and devices used in connection with canals, flumes, and ditches or reservoirs for the measuring and delivering of waters therefrom and thereto shall be under the supervision and control at all times of the state engineer and the division engineer of the water division wherein such headgates, measuring weirs, flumes, and devices are located. Nothing in sections 37-84-112 to 37-84-117 shall be construed as prohibiting any water user in the state of Colorado or his appointed agent from reading any gauge, gauge rod, or measuring device or from determining the quantity of water diverted by any canal or impounded in or delivered from any reservoir, and it is here declared the intent and purpose of sections 37-84-112 to 37-84-117 to give any water user of Colorado or his appointed agent the right of ascertaining the quantity of water being diverted by any canal or impounded in or delivered from any reservoir without his being required to assign any reason for making such observations. Noncompliance with the provisions of sections 37-84-112 to 37-84-117 shall, during such noncompliance, forfeit the right to divert water into any canal or to impound water in or deliver water from any reservoir.

Source: L. 01: p. 195, § 5. **R.S. 08:** § 3252. **L. 11:** p. 466, § 5. **L. 15:** § 290, § 1. **C.L.** § 1731. **CSA:** C. 90, § 129. **CRS 53:** § 147-7-17. **C.R.S. 1963:** § 148-7-16. **L. 69:** p. 1221, § 12.

37-84-117. Reservoirs in streams. (1) The owners of any reservoir located upon or in the bed of any natural stream or through which any natural stream flows, for the purpose of storing or diverting water, at the expense of the owner, shall furnish a complete survey of the contour lines of the reservoir for the state engineer's approval. Alternatively, in the discretion of the state engineer, a survey of the contour lines of the reservoir shall be made under the supervision of the state engineer, the deputy state engineer, or the division engineer of the division in which the reservoir is located. Contour lines must be ascertained for at least every vertical foot in depth and, where deemed necessary by the state engineer, for fractions of a foot. The owners of any reservoir shall prepare a table to be filed with and approved by the state engineer, showing the capacity, in cubic feet, for each foot in depth or fraction of a foot in depth of the reservoir. The owners of the reservoir shall file a copy of the table with the division engineer in whose division the reservoir is located. All maps, plats, field notes, tables, and surveys for a reservoir shall be filed with and approved by the state engineer and remain a part of the records of the state engineer's office.

(2) The owners of a reservoir described in subsection (1) of this section, at their own expense, under the supervision and with the approval of the state engineer, shall permanently fix and maintain a gauge rod or other instrument, or both, as directed by the state engineer, to measure the surface elevation of the reservoir at or near the outlet of the reservoir, marked in feet and tenths and one-hundredths of a foot, and in correspondence with the contour lines, from and by means of which the amount of water stored in the reservoir may be correctly ascertained. The owners, at their own expense, and under the supervision and with the approval of the state engineer, shall construct and permanently maintain a suitable and permanent measuring structure equipped with self-registering devices, according to plans and specifications approved by the state engineer, either in the bed and channel of every natural stream or watercourse discharging waters into the reservoir or on each release from the reservoir by means of which, in combination with the amount of water stored, all of the water flowing into the reservoir from the natural stream or watercourse may be definitively ascertained and determined at all times.

(3) (a) Any instruments or structures described in subsection (2) of this section are subject to inspection at all times by the owner or duly authorized agent or representative of the owners of any appropriation of water from the stream upon or in which the reservoir is constructed or operated.

(b) The state engineer or division engineer may refuse to allow any water to be taken into or diverted from a reservoir if:

(I) The owners of the reservoir fail to construct or permanently maintain any required instruments or structures, equipped as described in subsection (2) of this section; or

(II) Except as specified in subsection (3)(c) of this section, within thirty-five days after the state engineer or division engineer has provided written notice to the owners or their agents or employees directing the owners to make a contour survey, as described in subsection (1) of this section, the owners fail to cause a complete survey of the contour lines of the reservoir to be made.

(c) If suitable instruments and structures have been installed and equipped and the owners, their agents, or their employees are making good-faith efforts to complete the contour

survey, the state engineer and division engineer may allow water to be stored in any such reservoir after the expiration of the thirty-five days notice as described in subsection (3)(b)(II) of this section.

(4) If the state engineer or a division engineer receives from the owner of a water right appropriating water from a stream upon which a reservoir is located, or a stream that is tributary to such a stream, a complaint alleging facts against the owner of the reservoir that, if true, would amount to a violation of this section, the state engineer or division engineer shall investigate the complaint and, if the allegations are found to be true, shall enforce this section.

(5) The state engineer may order that an owner of a reservoir release an amount of water from the reservoir that, in the determination of the state engineer, is necessary to prevent evaporation on the surface of the reservoir from depleting the natural flow of the stream running through the reservoir that would otherwise be available for use by other appropriators. In determining the quantity of any evaporation release under this section, the state engineer shall compute the surface evaporation from the reservoir and deduct from the surface evaporation any accretions to the stream flow resulting from the existence of the reservoir and any natural depletions to the stream flow that would have resulted if the reservoir were not in existence.

Source: L. 01: p. 195, § 6. **R.S. 08:** § 3253. **L. 11:** p. 466, § 6. **C.L.** § 1732. **CSA:** C. 90, § 130. **CRS 53:** § 147-7-18. **C.R.S. 1963:** § 148-7-17. **L. 65:** p. 1241, § 1. **L. 69:** p. 1222, § 13. **L. 2017:** Entire section amended, (SB 17-026), ch. 47, p. 145, § 12, effective August 9.

37-84-118. Ditch owners to provide flow - when. Every person or company owning or controlling any canal or ditch used for the purposes of irrigation and carrying water for pay, when demanded by the users from April 1 until November 1 in each year, shall keep a flow of water therein, so far as may be reasonably practicable for the purpose of irrigation, sufficient to meet the requirements of all such persons as are properly entitled to the use of water therefrom, to the extent, if necessary, to which such person may be entitled to water and no more. Whenever the rivers or public streams or sources from which the water is obtained are not sufficiently free from ice, or the volume of water therein is too low and inadequate for that purpose, then such canal or ditch shall be kept with as full a flow of water therein as may be practicable, subject, however, to the rights of priorities from the streams or other sources, as provided by law, and the necessity of cleaning, repairing, and maintaining the same in good condition.

Source: L. 1887: p. 304, § 1. **L. 1893:** p. 299, § 1. **R.S. 08:** § 3254. **C.L.** § 1733. **CSA:** C. 90, § 131. **CRS 53:** § 147-7-19. **C.R.S. 1963:** § 148-7-18.

37-84-119. Ditches to be kept in repair. The owners, or persons in control, of any canal or ditch used for irrigating purposes shall maintain the same in good order and repair, ready to receive water by April 1 in each year, so far as can be accomplished by the exercise of reasonable care and diligence, and shall construct the necessary outlets in the banks of the canal or ditch for a proper delivery of the water to persons having paid-up shares or who have rights to the use of water. A multiplicity of outlets in the canal or ditch shall at all times be avoided, so far as the same shall be reasonably practicable, and the location of the same shall be under the control of and shall be at the most convenient and practicable points consistent with the

protection and safety of the ditch for the distribution of water among the various claimants thereof; and such location shall be under the control of a superintendent.

Source: L. 1887: p. 305, § 2. **R.S. 08:** § 3255. **C.L.** § 1734. **CSA:** C. 90, § 132. **CRS 53:** § 147-7-20. **C.R.S. 1963:** § 148-7-19.

Cross references: For requirement of keeping ditch in repair, see § 7-42-108.

37-84-120. Measurement of water. It is the duty of those owning or controlling such canals or ditches to appoint a superintendent, whose duty it is to measure the water from such canal or ditch through the outlets to those entitled thereto, each according to his pro rata share.

Source: L. 1887: p. 305, § 3. **R.S. 08:** § 3256. **C.L.** § 1735. **CSA:** C. 90, § 133. **CRS 53:** § 147-7-21. **C.R.S. 1963:** § 148-7-20.

37-84-121. Penalty for refusal to deliver water. Any superintendent or any person having charge of said ditch who willfully neglects or refuses to deliver water, as provided in sections 37-84-118 to 37-84-123, or any person who prevents or interferes with the proper delivery of water to the persons having the right thereto is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten dollars nor more than one hundred dollars for each offense, or by imprisonment in the county jail for not more than one month, or by both such fine and imprisonment. The money thus collected shall be paid into the general fund of the county in which the misdemeanor has been committed. The owners of such ditches shall be liable in damages to the persons deprived of the use of the water to which they were entitled as provided in sections 37-84-118 to 37-84-123.

Source: L. 1887: p. 305, § 4. **R.S. 08:** § 3257. **C.L.** § 1736. **CSA:** C. 90, § 134. **CRS 53:** § 147-7-22. **C.R.S. 1963:** § 148-7-21.

37-84-122. Division engineer to measure water. Any division engineer, or his deputy or assistant, who willfully neglects or refuses, after being called upon, to promptly measure water from the stream or other source of supply into the irrigating canals or ditches, in his division, according to their respective priorities, to the extent to which water may be actually necessary for the irrigation of lands under such canals or ditches, is guilty of a misdemeanor and, upon conviction thereof, shall be subject to the same penalty as provided in section 37-84-121.

Source: L. 1887: p. 305, § 5. **R.S. 08:** § 3258. **C.L.** § 1737. **CSA:** C. 90, § 135. **CRS 53:** § 147-7-23. **C.R.S. 1963:** § 148-7-22. **L. 69:** p. 1222, § 14.

37-84-123. Jurisdiction of county court. In all cases declared misdemeanors by sections 37-84-118 to 37-84-123, the county court of the county in which the offense was committed has jurisdiction.

Source: L. 1887: p. 306, § 6. **R.S. 08:** § 3259. **C.L.** § 1738. **CSA:** C. 90, § 136. **CRS 53:** § 147-7-24. **L. 64:** p. 341, § 345. **C.R.S. 1963:** § 148-7-23.

37-84-124. Amount of water taken. It is the duty of every person who is entitled to take water for irrigation purposes from any ditch, canal, or reservoir to see that he receives no more water from such ditch, canal, or reservoir through his headgate, or by any ways or means whatsoever, than the amount to which he is entitled. At all times, such person shall take every precaution to prevent more water than the amount to which he is entitled from such ditch, canal, or reservoir from coming upon his land.

Source: L. 1887: p. 312, § 1. **R.S. 08:** § 3260. **C.L.** § 1739. **CSA:** C. 90, § 137. **CRS 53:** § 147-7-25. **C.R.S. 1963:** § 148-7-24.

37-84-125. Receipt of too much water. It is the duty of every such person, taking water from any ditch, canal, or reservoir, to be used for irrigation purposes, on finding that he is receiving more water from such ditch, canal, or reservoir, either through his headgate or by means of leaks, or by any means whatsoever, immediately to take steps to prevent his further receiving more water from such ditch, canal, or reservoir than the amount to which he is entitled. If knowingly he permits such extra water to come upon his land from such ditch, canal, or reservoir, and does not immediately notify the owners of such ditch or take steps to prevent its further flowing upon his land, he shall be liable to any person, company, or corporation who may be injured by such extra appropriation of water, for the actual damage sustained by the party aggrieved. The damages shall be adjudged to be paid, together with the costs of suit, and a reasonable attorney's fee to be fixed by the court and taxed with the costs.

Source: L. 1887: p. 312, § 2. **R.S. 08:** § 3261. **C.L.** § 1740. **CSA:** C. 90, § 138. **CRS 53:** § 147-7-26. **C.R.S. 1963:** § 148-7-25.

ARTICLE 85

Charge for Delivery of Water

Cross references: For rates for a corporation furnishing water, see § 7-42-107.

37-85-101. "Person" defined - liability. "Person", as used in this article, includes corporations and associations and the plural as well as the singular number. Every officer of a corporation or member of an association or co-ownership and every agent violating any of the provisions of sections 37-85-108 to 37-85-111 shall be liable to restore the unlawful consideration extorted and be punishable under the penal provisions of sections 37-85-108 to 37-85-111, the same as if the thing done in disobedience to said provisions were done for his own sole benefit and advantage.

Source: L. 1887: p. 310, § 5. **R.S. 08:** § 3275. **C.L.** § 1751. **CSA:** C. 90, § 149. **CRS 53:** § 147-8-11. **C.R.S. 1963:** § 148-8-11.

37-85-102. Right to continue purchasing water. Any persons, acting jointly or severally, who have purchased and used water for irrigation for lands occupied by them from any ditch or reservoir, and have not ceased to do so for the purpose or with intent to procure water

from some other source of supply, have the right to continue to purchase water to the same amount for their lands, on paying or tendering the price thereof fixed by the board of county commissioners as provided in sections 37-85-103 to 37-85-106 or, if no price has been fixed by them, the price at which the owners of such ditch or reservoir may be then selling water or did sell water during the then last preceding year. This section shall not apply to the case of those who may have taken water as stockholders or shareholders after they have sold or forfeited their shares or stock, unless they have retained a right to procure such water by contract, agreement, or understanding and use between themselves and the owners of such ditch and not then to the injury of other purchasers of water from or shareholders in the same ditch.

Source: L. 1879: p. 96, § 3. **G.S.** § 1740. **R.S. 08:** § 3264. **C.L.** § 1741. **CSA:** C. 90, § 139. **CRS 53:** § 147-8-1. **C.R.S. 1963:** § 148-8-1.

37-85-103. County commissioners to hear and consider applications. The board of county commissioners of each county, at its regular sessions in each year, and at such other sessions as it in its discretion may deem proper, in view of the irrigation and harvesting season, and the convenience of all parties interested, shall hear and consider all applications which may be made to it by any party interested, either in furnishing and delivering for compensation in any manner, or in procuring for such compensation, water for irrigation, mining, milling, manufacturing, or domestic purposes, from any ditch, canal, conduit, or reservoir, the whole or any part of which lies in such county. The application shall be supported by such affidavits as the applicant may present, showing reasonable cause for such board of county commissioners to proceed to fix a reasonable maximum rate of compensation for water to be thereafter delivered from such ditch, canal, conduit, or reservoir, within such county.

Source: L. 1887: p. 291, § 1. **R.S. 08:** § 3265. **C.L.** § 1742. **CSA:** C. 90, § 140. **CRS 53:** § 147-8-2. **C.R.S. 1963:** § 148-8-2.

37-85-104. Commissioners to appoint day for hearing. Every board of county commissioners, upon examination of such affidavit, or from the oaths of witnesses in addition thereto, if it finds that the facts sworn to show the application to be in good faith, and that there are reasonable grounds to believe that unjust rates of compensation are or are likely to be charged or demanded for water from such ditch, canal, conduit, or reservoir, shall enter an order fixing a day not sooner than twenty days thereafter nor later than the third day of the next regular session of the board, when they will hear all parties interested in such ditch, or other waterworks, or parties interested in procuring water therefrom for any of the said uses, as well as all documentary or oral evidence or depositions, taken according to law, touching the said ditch or other work and the cost of furnishing water therefrom.

Source: L. 1887: p. 292, § 2. **R.S. 08:** § 3266. **C.L.** § 1743. **CSA:** C. 90, § 141. **CRS 53:** § 147-8-3. **C.R.S. 1963:** § 148-8-3.

Cross references: For the taking of depositions, see C.R.C.P. 26 to 37.

37-85-105. Order fixing date of hearing. (1) At the time so fixed, all persons interested, on either side of the controversy, in lands which may be irrigated from such ditch, or other work, may appear by themselves, their agents, or their attorneys, and said board of county commissioners shall then proceed to take action in the matter of fixing such rates of compensation for the delivery of water; but the applicant, if the application is made by a party desirous of procuring water, within ten days from the time of entering the said order fixing the hearing, shall cause a copy of such order, duly certified, to be delivered to the owner of such ditch, canal, conduit, or reservoir, or to the president, secretary, or treasurer of the company, if it is owned by a corporation or association having such officers. If such owner cannot be found, a copy shall be left at his usual place of abode, with some person residing there over twelve years of age; and, if such officer of any corporation or association cannot be found, such copy shall be left at the usual place of business of the company of which he is such officer or at his residence if such company has no place of business; and, if such ditch or other work is owned by several owners not being an incorporated company, it shall be sufficient to serve notice by delivering copies to a majority of them.

(2) If the applicant is the owner or party controlling such ditch, canal, conduit, or reservoir, such notice shall be given by causing printed copies of such order in handbill form, in conspicuous type, to be posted securely in ten or more public places throughout the district watered from such ditch, or other work, if the water is used for irrigation, and one copy shall be posted for every mile in length of such ditch; but, if such ditch, or other work, is for the supply of water for milling or mining, it shall be sufficient to serve such copy on the parties then taking water therefrom. The person making such service or posting such printed copies shall make affidavit of the manner in which the same has been done, which affidavit shall be filed with the said board of county commissioners.

(3) Depositions mentioned in section 37-85-104, to be used before the board of county commissioners, shall be taken before any officer in the state authorized by law to take depositions, upon reasonable notice being given to the opposite party of the time and place of taking the same.

Source: L. 1887: p. 292, § 3. **R.S. 08:** § 3267. **C.L.** § 1744. **CSA:** C. 90, § 142. **CRS 53:** § 147-8-4. **C.R.S. 1963:** § 148-8-4.

37-85-106. Hearing - testimony - maximum rates. (1) The board of county commissioners may adjourn or postpone any hearing from time to time as may be found necessary or for the convenience of parties or of public business. It shall hear and examine all legal testimony or proofs offered by any party interested concerning the original cost and present value of works and structure of such ditch, canal, conduit, or reservoir, the cost and expense of maintaining and operating the same, and all matters which may affect the establishing of a reasonable maximum rate of compensation for water to be furnished and delivered therefrom. It may issue subpoenas for witnesses, which subpoenas shall be served by the sheriff of the county, who shall receive the lawful fees for all such service; and said board may also issue a subpoena for the production of all books and papers required for evidence before it.

(2) Upon hearing and considering all the evidence and facts and matters involved in the case, said board of county commissioners shall enter an order describing the ditch, canal, conduit, reservoir, or other work in question with sufficient certainty and fixing a just and

reasonable maximum rate of compensation for water to be thereafter delivered from such ditch or other work within the county in which such board of county commissioners acts, and such rate shall not be changed within two years from the time when it is so fixed, unless upon good cause shown. The district court of the proper county in case of refusal to obey the subpoena of the board of county commissioners may compel obedience thereto or punish for refusal to obey, after hearing, as in cases of attachment, for contempt of such district court.

Source: L. 1887: p. 293, § 4. **R.S. 08:** § 3268. **C.L.** § 1745. **CSA:** C. 90, § 143. **CRS 53:** § 147-8-5. **C.R.S. 1963:** § 148-8-5.

37-85-107. False swearing. Every person who swears or affirms falsely in any matter is guilty of perjury in the second degree. Every person who testifies falsely after being duly sworn or having affirmed as a witness in any proceeding provided for in sections 37-85-103 to 37-85-106 is guilty of perjury in the first degree and, upon conviction thereof, shall be punished accordingly.

Source: L. 1887: p. 294, § 5. **R.S. 08:** § 3269. **C.L.** § 1746. **CSA:** C. 90, § 144. **CRS 53:** § 147-8-6. **C.R.S. 1963:** § 148-8-6. **L. 72:** p. 574, § 66.

Cross references: For perjury in the first and second degree, see §§ 18-8-502 and 18-8-503; for the punishment therefor, see §§ 18-1.3-401 and 18-1.3-501.

37-85-108. Bonus deemed an extortionate rate. (1) It shall not be lawful for any person owning or controlling, or claiming to own or control, any ditch, canal, or reservoir carrying or storing, or designed for the carrying or storing of, any water taken from any natural stream or lake within this state, to be furnished or delivered for compensation for irrigation, mining, milling, or domestic purposes, to persons not interested in such ownership or control, to demand, bargain for, accept, or receive from any person who may apply for water for any of the aforesaid purposes any money or other valuable thing whatsoever, or any promise or agreement therefor, directly or indirectly, as royalty, bonus, or premium prerequisite or condition precedent to the right or privilege of applying, or bargaining for, or procuring such water. Such water shall be furnished, carried, and delivered upon payment or tender of the charges fixed by the board of county commissioners of the proper county, as is provided by law.

(2) Any moneys, and every valuable thing, or consideration of whatsoever kind, which is so demanded, charged, bargained for, accepted, received, or retained, contrary to the provisions of this section, shall be deemed an additional and corrupt rate, charge, or consideration for the water intended to be furnished and delivered therefor, or because thereof, and wholly extortionate and illegal; and, when paid, delivered, or surrendered may be recovered by the party paying, delivering, or surrendering the same from the party to whom, or for whose use, the same has been paid, delivered, or surrendered, together with costs of suit, including reasonable fees of attorneys of plaintiff, by proper action in any court having jurisdiction.

Source: L. 1887: p. 308, § 1. **R.S. 08:** § 3271. **C.L.** § 1747. **CSA:** C. 90, § 145. **CRS 53:** § 147-8-7. **C.R.S. 1963:** § 148-8-7.

37-85-109. Penalty for collecting excessive rate. Every person owning or controlling, or claiming to own or control, any ditch, canal, or reservoir, who, after demand in writing made upon him for the supply or delivery of water for irrigation, mining, milling, or domestic purposes, to be delivered from the canal, ditch, or reservoir, owned, possessed, or controlled by him, and after tender of the lawful rate of compensation therefor in lawful money, shall demand, require, bargain for, accept, receive, or retain from the party making such application any money or other thing of value, or any promise or contract, or any valuable consideration whatever, as such royalty, bonus, or premium prerequisite or condition precedent, as is prohibited by section 37-85-108, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five thousand dollars, or by imprisonment in the county jail for not less than three months nor more than one year, or by both such fine and imprisonment.

Source: L. 1887: p. 309, § 2. **R.S. 08:** § 3272. **C.L.** § 1748. **CSA:** C. 90, § 146. **CRS 53:** § 147-8-8. **C.R.S. 1963:** § 148-8-8.

37-85-110. Penalty for refusal to deliver water. Every person owning or controlling, or claiming to own or control, any ditch, canal, or reservoir, such as is mentioned in section 37-85-108, who, after demand in writing made upon him for the supply or delivery of water for irrigation, mining, milling, or domestic purposes, to be delivered from the canal, ditch, or reservoir, owned, possessed, or controlled by him, and after tender of the lawful rate of compensation therefor in lawful money, refuses to furnish or carry and deliver from such ditch, canal, or reservoir any water so applied for, which water may be by use of reasonable diligence in that behalf and, within the carrying or storage capacity of such ditch, canal, or reservoir, be lawfully furnished and delivered without infringement of prior rights, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five thousand dollars, or by imprisonment in the county jail for not less than three months nor more than one year, or by both such fine and imprisonment.

Source: L. 1887: p. 309, § 3. **R.S. 08:** § 3273. **C.L.** § 1749. **CSA:** C. 90, § 147. **CRS 53:** § 147-8-9. **C.R.S. 1963:** § 148-8-9.

37-85-111. Action when corporation refuses to deliver water. When any corporation, in defiance or by attempted evasion of the provisions of sections 37-85-101 and 37-85-108 to 37-85-111, after tender of the compensation, refuses to deliver water, such as is mentioned in section 37-85-110, to any person lawfully entitled to apply for water, it is the duty of the attorney general, upon request of the board of county commissioners of the proper county or upon his or her otherwise receiving due notice thereof, to institute and prosecute to judgment and final determination proceedings in the nature of quo warranto for the forfeiture of the corporate rights, privileges, and franchises of any such corporation so offending or by mandamus or other proper proceedings to compel it to do its duty in that behalf.

Source: L. 1887: p. 310, § 4. **R.S. 08:** § 3274. **C.L.** § 1750. **CSA:** C. 90, § 148. **CRS 53:** § 147-8-10. **C.R.S. 1963:** § 148-8-10. **L. 2016:** Entire section amended, (HB 16-1094), ch. 94, p. 269, § 22, effective August 10.

ARTICLE 85.5

Resource Mitigation Banking Act

37-85.5-101 to 37-85.5-111. (Repealed)

Editor's note: (1) This article was added in 1991 and was not amended prior to its repeal in 1997. For the text of this article prior to 1997, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 37-85.5-111 provided for the repeal of this article, effective July 1, 1997. (See L. 91, p. 2013.)

Reservoirs and Waterways

ARTICLE 86

Rights-of-way and Ditches

Law reviews: For article, "Cities and Ditch Companies: Can They Live Together? -- Parts I and II", see 16 Colo. Law. 815 and 996 (1987).

37-86-101. Sections liberally construed. This section and sections 37-86-108 to 37-86-110 are passed in the exercise of the police power of the state, and their provisions shall be liberally construed for the purpose of effectuating their object.

Source: L. 19: p. 506, § 4. **C.L.** § 1632. **CSA:** C. 90, § 15. **CRS 53:** § 147-3-10. **C.R.S. 1963:** § 148-3-10.

37-86-102. Right-of-way through other lands. Any person owning a water right or conditional water right shall be entitled to a right-of-way through the lands which lie between the point of diversion and point of use or proposed use for the purpose of transporting water for beneficial use in accordance with said water right or conditional water right.

Source: R.S. p. 363, § 2. **G.L.** § 1373. **G.S.** § 1712. **R.S. 08:** § 3167. **C.L.** § 1623. **CSA:** C. 90, § 6. **CRS 53:** § 147-3-1. **C.R.S. 1963:** § 148-3-1. **L. 69:** p. 1219, § 4.

37-86-103. Extent of right-of-way. Such right-of-way shall extend only to a ditch, dike, cutting, pipeline, or other structure sufficient for the purpose required.

Source: R.S. p. 363, § 3. **G.L.** § 1374. **G.S.** § 1713. **R.S. 08:** § 3168. **C.L.** § 1624. **CSA:** C. 90, § 7. **CRS 53:** § 147-3-2. **C.R.S. 1963:** § 148-3-2. **L. 69:** p. 1219, § 5.

37-86-104. Condemnation of right-of-way. (1) Upon the refusal of owners of tracts of land through which said right-of-way is proposed to run, to allow passage through their property,

the person desiring such right-of-way may proceed to condemn and take same under the provisions of articles 1 to 7 of title 38, C.R.S., concerning eminent domain.

(2) State agencies shall, to the maximum extent practicable, cooperate with persons desiring a right-of-way for water conveyance structures.

Source: G.L. § 1376. **G.S.** § 1715. **R.S. 08:** § 3169. **C.L.** § 1625. **CSA:** C. 90, § 8. **CRS 53:** § 147-3-3. **C.R.S. 1963:** § 148-3-3. **L. 69:** p. 1220, § 6. **L. 2003:** Entire section amended, p. 1367, § 2, effective April 25.

37-86-105. No land burdened with more than one ditch. No tract or parcel of improved or occupied land, without the written consent of the owner thereof, shall be subjected to the burden of two or more ditches or other structures constructed for the purpose of conveying water through said land when the same object can feasibly and practicably be attained by uniting and conveying all the water necessary to be conveyed through such property through one ditch or other structure.

Source: L. 1881: p. 164, § 1. **G.S.** § 1716. **R.S. 08:** § 3170. **C.L.** § 1626. **CSA:** C. 90, § 9. **CRS 53:** § 147-3-4. **C.R.S. 1963:** § 148-3-4. **L. 69:** p. 1220, § 7.

37-86-106. Shortest route must be taken. Whenever any persons find it necessary to convey water through the lands of others, they shall select for the line of such conveyance the shortest and most direct route practicable upon which said ditch can be constructed with uniform or nearly uniform grade.

Source: L. 1881: p. 164, § 2. **G.S.** § 1717. **R.S. 08:** § 3171. **C.L.** § 1627. **CSA:** C. 90, § 10. **CRS 53:** § 147-3-5. **C.R.S. 1963:** § 148-3-5. **L. 69:** p. 1220, § 8.

37-86-107. Owner of ditch must permit enlargement. No persons having constructed a private ditch for the purposes and in the manner provided in section 37-86-106 shall prohibit or prevent any other person from enlarging or using any ditch by them constructed in common with them, upon payment to them of a reasonable proportion of the cost of construction of said ditch.

Source: L. 1881: p. 164, § 3. **G.S.** § 1718. **R.S. 08:** § 3172. **C.L.** § 1628. **CSA:** C. 90, § 11. **CRS 53:** § 147-3-6. **C.R.S. 1963:** § 148-3-6.

37-86-108. Incorporation of lateral ditch owners. Whenever the owners of sixty percent or more of the area of lands served by any one lateral ditch used for the delivery of water for irrigation from a common source organizes a corporation having for its object the taking over and owning of all of the interests of the incorporators in said lateral, said incorporators to receive shares of stock in said corporation for their holdings, the corporation as organized has power, under the eminent domain laws of the state of Colorado, to condemn the interest in said lateral belonging to the owners of the remaining forty percent or less of the lands so served by the lateral.

Source: L. 19: p. 505, § 1. **C.L.** § 1629. **CSA:** C. 90, § 12. **CRS 53:** § 147-3-7. **C.R.S. 1963:** § 148-3-7.

37-86-109. Consideration of incorporation benefits. In such condemnation proceedings, the court, jury, or commissioners having authority in the premises shall consider, as one of the elements of benefit accruing to the owners of the property so being condemned, the advantages accruing to said owner by reason of the organization of said corporation.

Source: L. 19: p. 505, § 2. **C.L.** § 1630. **CSA:** C. 90, § 13. **CRS 53:** § 147-3-8. **C.R.S. 1963:** § 148-3-8.

37-86-110. Payment of damages. It is lawful for such corporation to pay the damages, if any, assessed on account of the taking in such condemnation proceedings, in its own corporate stock at the same price per share paid therefor by the original incorporators, and the court, jury, or commissioners having authority in the premises, in arriving at the damage to be awarded, shall take into consideration the amount of stock which the original incorporators have received for their holdings.

Source: L. 19: p. 505, § 3. **C.L.** § 1631. **CSA:** C. 90, § 14. **CRS 53:** § 147-3-9. **C.R.S. 1963:** § 148-3-9.

37-86-111. Head of ditch may be relocated. (1) In case the channel of a natural stream becomes so cut out, lowered, turned aside, or otherwise changed from any cause as to prevent any ditch, canal, or feeder of any reservoir from receiving the proper inflow of water to which it may be entitled from the natural stream, the owners of the ditch, canal, or feeder have the right to relocate the head of the ditch, canal, or feeder to such distance to the stream that supplies it as may be necessary for securing a sufficient flow of water into the ditch, canal, or feeder. For that purpose they have the same right to maintain proceedings for condemnation of a right-of-way for the relocation as in the case of constructing a new ditch. The priority of right to take water from a stream through such ditch, canal, or feeder remains unaffected in any respect by reason of the relocation; but the relocation must not physically interfere with the complete use or enjoyment of any absolute or decreed conditional water right.

(2) If an owner of a water right relocates a surface diversion structure to a new surface point of diversion in compliance with subsection (1) of this section, the owner does not need to file a change of water right application for the new surface point of diversion.

Source: L. 1881: p. 161, § 1. **G.S.** § 1719. **R.S. 08:** § 3173. **C.L.** § 1633. **CSA:** C. 90, § 16. **CRS 53:** § 147-3-11. **C.R.S. 1963:** § 148-3-11. **L. 2014:** Entire section amended, (HB 14-1005), ch. 198, p. 725, § 1, effective May 15.

37-86-112. Water to be prorated among consumers. If at any time any ditch or reservoir from which water is drawn for irrigation shall not be entitled to a full supply of water from the natural stream which supplies the same, the water actually received into and carried by such ditch, or held in such reservoir, shall be divided among all the consumers of water from such ditch or reservoir, as well as the owners, shareholders, or stockholders thereof, as the

parties purchasing water therefrom and parties taking water partly under and by virtue of holding shares and partly by purchasing the same to each his share pro rata, according to the amount he is then entitled, so that all owners and purchasers shall suffer from the deficiency arising from the cause aforesaid each in proportion to the amount of water which he should have received in case no such deficiency of water had occurred.

Source: L. 1879: p. 97, § 4. **G.S.** § 1722. **R.S. 08:** § 3175. **C.L.** § 1635. **CSA:** C. 90, § 18. **CRS 53:** § 147-3-13. **C.R.S. 1963:** § 148-3-13.

37-86-113. Irrigation of meadows. All persons who have enjoyed the use of the water in any natural stream for the irrigation of any meadow land by the natural overflow or operation of the water of such stream, in case the diminishing of the water supplied by such stream, from any cause, prevents such irrigation therefrom in as ample a manner as formerly, shall have right to construct a ditch for the irrigation of such meadow and to take water from such stream therefor. Their right to water through such ditch shall have the same priority as though such ditch had been constructed at the time they first occupied and used such land as meadow ground.

Source: L. 1879: p. 106, § 37. **G.S.** § 1723. **R.S. 08:** § 3176. **C.L.** § 1636. **CSA:** C. 90, § 19. **CRS 53:** § 147-3-14. **C.R.S. 1963:** § 148-3-14.

ARTICLE 87

Reservoirs

Editor's note: Pursuant to § 35-49-104, the provisions of §§ 37-87-101 to 37-87-108 and §§ 37-87-114 to 37-87-115 do not apply to reservoirs constructed as livestock water tanks as defined in § 35-49-103.

37-87-101. Storage of water. (1) (a) The right to store water of a natural stream for later application to beneficial use is recognized as a right of appropriation in order of priority under the Colorado constitution. No water storage facility may be operated in such a manner as to cause material injury to the senior appropriative rights of others. Acquisition of those interests in real property reasonably necessary for the construction, maintenance, or operation of any water storage reservoir, together with inlet, outlet, or spillway structures or other facilities necessary to make such reservoir effective to accomplish the beneficial use or uses of water stored or to be stored therein, may be secured under the laws of eminent domain.

(b) State agencies shall, to the maximum extent practicable, cooperate with persons desiring to acquire real property for water storage structures.

(2) Underground aquifers are not reservoirs within the meaning of this section except to the extent such aquifers are filled by other than natural means with water to which the person filling such aquifer has a conditional or decreed right.

(3) (a) Water attributable to a water right for which a previous change of water right has been judicially approved, that has been decreed for storage, and for which the historical consumptive use was previously quantified may be stored in any reservoir that is located on the

same ditch or diversion system, including a nontributary aquifer if the requirements of subsection (2) of this section are complied with, as an alternate place of storage if:

(I) The water that is to be stored at the alternate place of storage is diverted from a point of diversion that has already been decreed for that water right;

(II) The owner or operator of the storage water right gives previous notice to the division engineer that identifies the water right, alternate place of storage, decreed point of diversion, and how the storage of the water in the alternate place of storage will be accounted for;

(III) Transit and ditch losses, if applicable, are assessed against the water right from the decreed point of diversion to the alternate place of storage; and

(IV) The division engineer has approved the accounting for the storage of the water in the alternate place of storage.

(b) A person who is entitled to claim injury to a water right has the right to a de novo hearing before the water court to argue that an alternate place of storage injures the person's water right.

(c) Nothing in this subsection (3) allows the storage of water in an alternate place of storage if that water was imported from another water division.

(d) Other than the place of storage, all of the terms and conditions of the previous change of water right decree continue to apply to the water right.

Source: L. 1879: p. 106, § 38. **G.S.** § 1724. **R.S. 08:** § 3202. **C.L.** § 1682. **L. 35:** p. 661, § 1. **CSA:** C. 90, § 79. **CRS 53:** § 147-5-1. **C.R.S. 1963:** § 148-5-1. **L. 79:** Entire section amended, p. 1367, § 3, effective June 22. **L. 84:** (1) R&RE, p. 961, § 1, effective April 30. **L. 86:** (1) R&RE, p. 1087, § 1, effective July 1. **L. 2003:** (1) amended, p. 1368, § 3, effective April 25. **L. 2017:** (3) added, (HB 17-1291), ch. 338, p. 1804, § 1, effective August 9.

Cross references: For proceedings and procedures for taking private property for public use, see § 15 of art. II, Colo. Const., and article 1 of title 38; for condemnation of property and water rights by cities and towns, see article 6 of title 38.

37-87-102. Definitions - natural streams and use thereof by reservoir owners. (1) As used in this article, unless the context otherwise requires:

(a) "Mean annual flood" means a flood which has a magnitude (peak discharge) which is expected to be equaled or exceeded on the average once every 2.33 years and has a forty-three percent chance of being equaled or exceeded (0.43 exceedance probability) during any year, by application of the criteria defined in subsection (2) of this section.

(b) "Natural stream" means a place on the surface of the earth where water naturally flows regularly or intermittently with a perceptible current between observable banks, although the location of such banks may vary under different conditions.

(c) "One-hundred-year flood" means a flood which has a magnitude (peak discharge) which is expected to be equaled or exceeded on the average once during any one-hundred-year period (recurrence interval) and has a one percent chance of being equaled or exceeded during any year (0.01 exceedance probability). The terms "one-hundred-year flood", "one percent chance flood", and "intermediate regional flood" are synonymous.

(d) "One-hundred-year floodplain" means that area in and adjacent to a natural stream which is subject to flooding as a result of the occurrence of a one-hundred-year flood.

(e) "Ordinary high watermark" of any stream means the visible channel of a natural watercourse within which water flows with sufficient frequency so as to preclude the erection or maintenance of man-made improvements without special provision for protection against flows of water in such channel or the channel defined by the mean annual flood, whichever is greater.

(2) Whenever the records basic to a determination of probable future water flows, either with respect to this section or by other requirements of law, extend for a period of one hundred or more years, the calculation based upon those results shall be deemed conclusive. If such records do not extend for a period of one hundred or more years the determination shall be made by interpolation and correlation to a full one hundred years of records by relating them to known records of water basins as similar as reasonably possible to the basin under consideration or by other acceptable methods.

(3) (a) In any case in which a determination of probable future surface water flows at any place in the state is required, the calculation shall be based upon past surface water runoff at the place in question supplemented as provided in this section. Such probable flows shall be determined by reference to the records of reliable stream gauging stations. A stream gauging station record shall be deemed reliable if made by the state of Colorado or the United States as part of a regular program of either of those entities, except as to any part of such records which the state engineer shall have designated as being unreliable, on the basis of facts so showing. Whenever a designation of probable future runoff is required at a place other than the location of a reliable stream gauging station, the determination of probable runoff at such other place shall be made by relating the probable future runoff at that place to the recorded runoff at a comparable gauging station or gauging stations by the interpolation of reasonable hydrologic, geologic, and natural vegetative factors supplemented as provided in this section. Unless clearly unrelated, the factors of the comparison shall include, but not be limited to, the following elements or characteristics:

(I) The water basin contributing to the probable future flow at the place where probable future runoff is to be determined, considering:

(A) The size;

(B) The altitude or altitudes;

(C) The various soil permeabilities;

(D) The various vegetative covers;

(II) The known runoff as determined by reliable stream gauging stations using interpolations when necessary from comparable gauging stations and relating interpolations to the characteristics of the basin measured by the comparable gauging stations as related to the basin of runoff being determined;

(III) The slope or slopes of the terrain whose surface runoff contributes to the surface water flows at the place at which a determination of probable future surface water flows is required.

(b) The state engineer shall promulgate rules pursuant to section 24-4-103, C.R.S., which include other factors for consideration in any area or situation in which calculations based on the criteria in paragraph (a) of this subsection (3) will probably be made more accurate by use of other or additional criteria. Whenever conditions are such that records of past precipitation are an appropriate factor, he may designate any portion of official precipitation records of agencies of the United States or of the state of Colorado which are appropriate in evaluating probable future

water flows. He may approve use of factors referred to in this paragraph (b) with respect to particular areas or design of specific structures when requested to do so.

(c) No dam safety requirement shall be imposed to meet a potential hazard of a flood whose magnitude is such that the hazard would probably exist whether or not the dam failed.

(3.5) Whenever a determination of probable future surface water flows, or the probability of frequency of their recurrence, at any place in Colorado is required by relation to a longer period of flow than that for which there is a reliable record of flow as defined in subsection (3) of this section, the determination shall be made by interpolation and correlation of known records to the longer period by relating known records of water basins as similar as reasonably possible to the place of determination or basin under consideration, or by use of geologic determinations, or by use of other methods reasonably calculated to formulate an accurate estimate of probable future flows or the probability of frequency of their recurrence at the place of determination of such flows.

(3.7) Calculations of probable flows or frequency of recurrence based upon application of the principles set forth in subsections (3) and (3.5) of this section shall relieve anyone acting in accordance with such principles of any liability respecting an occurrence different than that predicted. This exemption from liability shall apply to the state and its public officials or employees when acting in performance of their public duties.

(4) The owners of any reservoir may conduct the waters legally stored therein into and along any of the natural streams of the state, but not so as to raise the waters thereof above ordinary high watermark, and may take the same out again at any point desired if no material injury results to the prior or subsequent rights of others to other waters in said natural streams. Due allowance shall be made for evaporation and other losses from natural causes for the protection of all rights to the waters flowing in said streams, such losses to be determined by the state engineer.

Source: L. 1879: p. 107, § 39. **G.S.** § 1725. **R.S. 08:** § 3203. **C.L.** § 1683. **L. 35:** p. 638, § 1. **CSA:** C. 90, § 80. **CRS 53:** § 147-5-2. **C.R.S. 1963:** § 148-5-2. **L. 84:** Entire section amended, p. 961, § 2, effective April 30. **L. 86:** (2) and (3) R&RE and (3.5) and (3.7) added, pp. 1088, 1089, §§ 1, 2, effective April 4.

37-87-103. Notice of release of stored water. The owner of a reservoir who uses the reservoir for water storage shall give reasonable notice to the division engineer of the division in which the reservoir is located of the date on which the reservoir owner desires to release stored water into any natural streams, together with the amount to be released in cubic feet per second, the duration of the releases, and the name of the structure or other location to which the water released from storage is to be delivered, to allow the water officials in charge of any stream into which the stored water is released to make and record the necessary measurements of flow and storage and to provide for a proper patrol of the stream, for the protection of the reservoir owner and all other appropriators along the stream whose interests might be affected as a result of the reservoir release.

Source: L. 35: p. 639, § 2. **CSA:** C. 90, § 81. **CRS 53:** § 147-5-3. **C.R.S. 1963:** § 148-5-3. **L. 2017:** Entire section amended, (SB 17-026), ch. 47, p. 147, § 13, effective August 9.

Cross references: For the appointments and functions of water division engineers, see § 37-92-202.

37-87-104. Liability of owners for damage. (1) Any provision of law to the contrary notwithstanding, no entity or person who owns, controls, or operates a water storage reservoir shall be held liable for any personal injury or property damage resulting from water escaping from that reservoir by overflow or as a result of the failure or partial failure of the structure or structures forming that reservoir unless such failure or partial failure has been proximately caused by the negligence of that entity or person. No entity or person shall be required to pay punitive or exemplary damages for such negligence in excess of that provided by law. Any previous rule of law imposing absolute or strict liability on such an entity or person is hereby repealed.

(2) No such entity or person shall be liable for allowing the inflow to such reservoir to pass through it into the natural stream below such reservoir.

(3) (a) No stockholder, officer, or member of a board of directors of an owner of a reservoir shall be liable for any personal injury or property damage resulting from water escaping from such reservoir or as a result of the failure or partial failure of the structure or structures forming such reservoir for which the owner shall have been found liable if a valid liability insurance policy, or adequate substitute as provided in paragraph (b) of this subsection (3), has been purchased by the owner of the reservoir and is in effect at the time such damage occurs. Such insurance policy shall insure against such damages and provide coverage in an amount of not less than fifty thousand dollars for each claim and in an aggregate amount of not less than five hundred thousand dollars for all claims which arise out of any one incident. The policy may provide that it does not apply to any act or omission of a stockholder, officer, or member of a board of directors of an owner if such act or omission is dishonest, fraudulent, malicious, or criminal. The policy may also contain other reasonable provisions with respect to policy periods, territory, claims, conditions, and other matters common to such policies of insurance. The limitation of liability pursuant to this paragraph (a) shall not apply to any criminal, fraudulent, or malicious act or omission by a member of the board of directors of the owner, an officer of the owner, or a stockholder of the owner, nor shall it apply to any ultra vires act of the owner or of a member of the board of directors, an officer, or a stockholder of such owner. The provisions of this paragraph (a) shall not be deemed to impose any liability upon a member of the board of directors, an officer, or a stockholder of the owner of a reservoir beyond that provided in section 7-42-118, C.R.S.

(b) An adequate substitute for such insurance may be in the form of:

(I) A good and sufficient bond, in an amount equal to such recovery limitations duly executed by a qualified corporate surety approved by the commissioner of insurance, conditioned upon the payment by the entity or person who owns, controls, or operates a water storage reservoir of any valid and final judgment for damages imposed within the judgment limitations established in this subsection (3);

(II) A good and sufficient escrow of acceptable securities, as defined in section 24-91-102, C.R.S., or an annual irrevocable letter or annual letters of credit issued by any national or state bank or any bank for cooperatives as chartered under Title III of the federal "Farm Credit Act of 1971", as amended, and deposited with an escrow agent pursuant to an escrow contract or agreement requiring the escrow agent to pay from the escrow account amounts necessary to

discharge a valid and final judgment for damages within the limits established in this subsection (3). Such escrow contract or agreement shall provide that it cannot be revoked or amended until after any claims for damage against such entity or person have been discharged or until applicable statutes of limitations pertaining thereto have expired.

(III) A combination of insurance and any of the substitutes described in this paragraph (b).

Source: L. 1879: p. 107, § 40. **G.S.** § 1726. **R.S. 08:** § 3204. **C.L.** § 1684. **CSA:** C. 90, § 82. **CRS 53:** § 147-5-4. **C.R.S. 1963:** § 148-5-4. **L. 81:** Entire section R&RE, p. 1778, § 1, effective May 27. **L. 84:** (1) and (2) amended and (2.5) added, p. 963, § 3, effective April 30. **L. 85:** (2) amended, p. 1157, § 1, effective June 6. **L. 86:** Entire section R&RE, p. 1091, § 1, effective May 16.

Cross references: For the federal "Farm Credit Act of 1971", as amended, see 12 U.S.C. § 2001 et seq.

37-87-104.5. Notification of ownership of dam - when person in control deemed owner. The person or persons actually in control of the physical structure of any dam shall be deemed, for determining liability arising from ownership of a dam and with respect to operation thereof, to be the owners thereof unless notice of the name and address of the true owner thereof, together with reasonable evidence of such ownership, has been filed in the office of the state engineer by January 1, 1985. Any change in ownership shall be immediately filed in the office of the state engineer.

Source: L. 84: Entire section added, p. 968, § 12, effective April 30.

37-87-105. Approval of plans for reservoir - notice of modification. (1) No dam shall be constructed in this state to impound water above the elevation of the natural surface of the ground for the purpose of creating a reservoir with a capacity of more than one hundred acre-feet of water or with a surface area at the high water line in excess of twenty acres or if the height of the dam will exceed ten feet measured vertically from the elevation of the lowest point of the natural surface of the ground, where that point occurs along the longitudinal centerline of the dam, up to the flowline crest of the spillway of the dam before plans and specifications for that dam have been filed in the office of the state engineer and approved by him in accordance with regulations established by the state engineer governing such structures.

(2) Repealed.

(3) In making his determination for approval, the state engineer shall be guided by dam, spillway, and construction regulations established pursuant to this article. Such regulations may include less stringent requirements than those dictated by consideration of probable maximum precipitation. The state engineer shall issue his written decision regarding the approval of plans and specifications within one hundred eighty days of submittal to him. The state engineer shall have authority to require the material used and the work of construction to be accomplished in accordance with regulations which the state engineer may establish. No work shall be deemed complete until the state engineer furnishes to the owners of such structures a written statement of acceptance, which statement shall specify the dimensions of such dam and capacity of such

reservoir. The state engineer shall render his written decision regarding acceptance within sixty days of written notification by the owner that construction has been completed.

(4) No alteration, modification, repair, or enlargement of a reservoir or dam which will affect the safety of the structure shall be made without prior written notice and approval in accordance with this section to the state engineer. General maintenance, ordinary repairs, or emergency actions not impairing safety shall be excluded from the terms of this subsection (4).

Source: L. 1899: p. 314, § 1. **R.S. 08:** § 3205. **C.L.** § 1685. **L. 25:** p. 330, § 1. **CSA:** C. 90, § 83. **CRS 53:** § 147-5-5. **C.R.S. 1963:** § 148-5-5. **L. 77:** Entire section amended, p. 1696, § 1, effective July 23. **L. 79:** Entire section amended, p. 1370, § 1, effective May 24. **L. 83:** Entire section amended, p. 1405, § 2, effective June 1. **L. 84:** (1), (3), and (4) amended and (2) repealed, pp. 964, 969, §§ 4, 13, effective April 30.

37-87-106. Cost of inspections and observation. (Repealed)

Source: L. 1899: p. 314, § 2. **R.S. 08:** § 3206. **C.L.** § 1686. **L. 25:** p. 331, § 1. **CSA:** C. 90, § 84. **CRS 53:** § 147-5-6. **C.R.S. 1963:** § 148-5-6. **L. 71:** p. 1307, § 1. **L. 83:** Entire section R&RE, p. 1406, § 3, effective June 1. **L. 84:** Entire section amended, p. 965, § 5, effective April 30. **L. 90:** Entire section repealed, p. 1617, § 5, effective July 1.

37-87-107. Safety inspections - amount of water to be stored. Dam safety inspections shall be made on all dams within the state by qualified, experienced personnel as often as the state engineer deems necessary or appropriate for the protection of public health and safety so that a determination of the amount of water which is safe to impound in the reservoir can be made by the state engineer. The dam safety inspections shall include, but shall not be limited to, review of previous inspections, reports and drawings, site inspection of the dam, spillways, outlet facilities, seepage control and measurement system, and permanent monument or monitoring installations, if any. Based upon inspection reports and other information affecting the safety of each dam, the state engineer shall determine the amount of water which is safe to impound in the reservoir. It is unlawful for the owners of any reservoir to store in said reservoir water in excess of the amount so determined by the state engineer to be safe.

Source: L. 1899: p. 315, §3. **R.S. 08:** § 3207. **C.L.** § 1687. **CSA:** C. 90, § 85. **CRS 53:** § 147-5-7. **C.R.S. 1963:** § 148-5-7. **L. 84:** Entire section amended, p. 965, § 6, effective April 30.

37-87-108. Withdrawal of excess water. If the owners of any such reservoir impound water therein to a depth greater than that determined by the state engineer to be safe, it is the duty of the division engineer of the district wherein such reservoir is located to forthwith proceed to withdraw from said reservoir so much of the water as shall be in excess of the amount so determined by the state engineer to be safe, and the division engineer shall close the inlets to the same to prevent said reservoir from being refilled to an amount beyond what said state engineer has designated as being safe. If the owners of said reservoir, or any other persons, interfere with the division engineer in the discharge of said duty, the said division engineer shall call to his aid such persons as he deems necessary and employ such force as the circumstances demand to enable him to comply with the requirements of this section. Any costs incurred by the state

engineer in rectifying a failure of compliance by the owner may be recovered in a suit for civil damages.

Source: L. 1899: p. 315, § 4. **R.S. 08:** § 3208. **C.L.** § 1688. **CSA:** C. 90, § 86. **CRS 53:** § 147-5-8. **C.R.S. 1963:** § 148-5-8. **L. 84:** Entire section amended, p. 966, § 7, effective April 30.

Cross references: For the appointments and functions of water division engineers, see § 37-92-202.

37-87-108.5. Emergency actions. (1) If, in the opinion of the state engineer, conditions of any dam or reservoir are so dangerous to the health and safety of life or property as not to permit time for issuance and enforcement of an order relative to construction, modification, maintenance, or restriction of storage, or the dam is threatened by any large flood, the state engineer may immediately employ remedial measures necessary to protect such life and property.

(2) (a) The state engineer shall maintain complete control of any such dam or reservoir which, pursuant to subsection (1) of this section, has been determined to be dangerous to life or property until such dam or reservoir is deemed safe, or until any emergency conditions which precipitated the state engineer taking control of any such dam or reservoir, pursuant to subsection (1) of this section, have abated. The state engineer is hereby empowered to determine the proper time at which to relinquish control of any such dam or reservoir.

(b) For purposes of this paragraph (b), measures taken by the state engineer pursuant to subsection (1) of this section shall be deemed final action by the state engineer for purposes of judicial review. The owner or operator of any dam upon which the state engineer has employed remedial measures pursuant to subsection (1) of this section may seek judicial review of the propriety of such measures by filing an action in the state district court for the district in which such dam is located.

(3) (a) Any necessary and reasonable costs and expenses incurred by the state engineer in fulfilling the duties mandated by subsections (1) and (2) of this section in connection with a remedial or emergency action shall be recoverable by the state engineer from the owner of any such dangerous or threatened dam.

(b) Any owner failing or refusing, after written notice has been given, to pay the reasonable costs and expenses incurred by the state engineer pursuant to paragraph (a) of this subsection (3) shall be, upon complaint by the state engineer to the attorney general, subject to reasonable attorney fees incurred in the recovery of such costs and expenses.

(4) (a) All moneys collected by the state engineer pursuant to subsection (3) of this section shall be credited to the emergency dam repair cash fund created in section 37-60-122.5, to the extent necessary to replenish the account. Moneys collected in excess of such amount shall be credited to the Colorado water conservation board construction fund.

(b) The general assembly shall make annual appropriations from the emergency dam repair cash fund created in section 37-60-122.5, for the direct and indirect costs incurred by the state engineer in the performance of those duties authorized to be carried out by the state engineer in this section.

Source: L. 92: Entire section added, p. 2308, § 11, effective June 3. **L. 2001:** (4) amended, p. 696, § 35, effective May 30.

37-87-109. Complaint that reservoir is unsafe. Upon complaint being made to the state engineer by one or more persons residing or having property in such a location that their homes or property would be in danger of destruction or damage in the event of a flood occurring on account of the breaking of the embankment of any reservoir within the state, that said reservoir is in an unsafe condition, or that it is being filled with water to such an extent as to render it unsafe, it is the duty of the state engineer to forthwith examine said reservoir and determine the amount of water it is safe to impound therein. If, upon such examination, the state engineer finds that said reservoir is unsafe, or is being filled with water to such an extent as to render it unsafe, it is his duty to immediately cause said water to be drawn from said reservoir to such an extent as will, in his judgment, render the same safe. If water is then flowing into said reservoir, he shall cause it to be discontinued.

Source: L. 1899: p. 315, § 5. **R.S. 08:** § 3209. **C.L.** § 1689. **CSA:** C. 90, § 87. **CRS 53:** § 147-5-9. **C.R.S. 1963:** § 148-5-9. **L. 71:** p. 1307, § 2.

37-87-110. Engineer may use force. The state engineer is authorized to use such force as is necessary to perform the duties required of him in section 37-87-109 and to have and exercise all of the powers conferred upon the division engineer by section 37-87-108. If, after any of such reservoirs have been examined by said state engineer, the owners thereof, or any other person, fills or attempts to fill them, or any of them, to a point in excess of the amount the state engineer has determined to be safe, then it is the duty of the division engineer of the district wherein such reservoir is located to proceed as directed by section 37-87-108. All direct, actual, and necessary expenses incurred in performing any action authorized by this section shall be recoverable by the state engineer from the owner of the affected reservoir and if not reimbursed may be collected by action brought by the state engineer in the district court of the county in which the reservoir, or part thereof, is located.

Source: L. 1899: p. 316, § 6. **R.S. 08:** § 3210. **C.L.** § 1690. **CSA:** C. 90, § 88. **CRS 53:** § 147-5-10. **C.R.S. 1963:** § 148-5-10. **L. 84:** Entire section amended, p. 966, § 8, effective April 30.

Cross references: For the appointments and functions of water division engineers, see § 37-92-202.

37-87-111. Expense of examination. The person calling upon the state engineer to perform the duty required of him by section 37-87-109, if the request is frivolous or made in bad faith, shall pay him any invoiced expenses and mileage at the rate prevailing for state officers and employees under section 24-9-104, C.R.S., for each mile actually and necessarily traveled in going to and from said reservoir, and, should the state engineer find upon examination that such reservoir is in an unsafe condition, the owners thereof shall be liable for all expenses incurred in such examination.

Source: L. 1899: p. 316, § 7. **R.S. 08:** § 3211. **C.L.** § 1691. **CSA:** C. 90, § 89. **CRS 53:** § 147-5-11. **C.R.S. 1963:** § 148-5-11. **L. 71:** p. 1308, § 3. **L. 84:** Entire section amended, p. 966, § 9, effective April 30. **L. 90:** Entire section amended, p. 1616, § 3, effective July 1.

37-87-112. Review of action of state engineer. Any action of the state engineer under section 37-87-110 shall be subject to review in a de novo proceeding commenced by complaint of the owner in the district court in and for the county where the affected structure is located. When the state engineer has directed that certain measures shall be taken immediately for the protection of the public safety, any such judicial proceeding shall be accelerated on the court's calendar and determined immediately upon the conclusion of such proceeding. The judgment and action of the state engineer shall control until judicial determination of the cause.

Source: L. 1899: p. 316, § 8. **R.S. 08:** § 3212. **C.L.** § 1692. **CSA:** C. 90, § 90. **CRS 53:** § 147-5-12. **C.R.S. 1963:** § 148-5-12. **L. 64:** p. 341, § 343. **L. 84:** Entire section R&RE, p. 967, § 10, effective April 30.

37-87-113. Breakage of reservoir - damages. (Repealed)

Source: L. 1899: p. 316, § 9. **R.S. 08:** § 3213. **C.L.** § 1693. **CSA:** C. 90, § 91. **CRS 53:** § 147-5-13. **C.R.S. 1963:** § 148-5-13. **L. 81:** Entire section amended, p. 1779, § 2, effective May 27. **L. 86:** Entire section repealed, p. 1093, § 4, effective May 16.

37-87-114. Penalty - disposition of fines. (1) Any reservoir owner or operator failing or refusing, after notice in writing has been given, to obey the reasonable directions of the state engineer as to the construction or safe operation of any reservoir shall be subject to a fine of not less than five hundred dollars for each offense, and each day's continuance after time of notice has expired shall be considered a separate offense. Such fines shall be recovered by civil action in the name of the people by the district attorney, upon the complaint of the state engineer, in the district court of the county where the injury complained of occurred. The proceeds of all fines, after payment of costs and charges of the proceedings, shall be paid into the county treasury for the use of the general fund of the county.

(2) Upon the complaint of the state engineer, the attorney general is authorized to commence proceedings against any reservoir owner or operator for refusing, after notice in writing has been given, to obey the directions of the state engineer as to the construction or safe operation of any reservoir to secure compliance with any such reasonable direction necessary for public safety in the district court of the county wherein any portion of such reservoir is located, pursuant to the Colorado rules of civil procedure; except that, if it appears to the court that the public safety is in jeopardy as the result of a failure to obey the directions of the state engineer, the court shall expedite the proceedings so that determinations may be made with respect to the directions of the state engineer commencing not later than twenty days from the service of the complaint on the owner or operator of a reservoir.

Source: L. 1899: p. 317, § 10. **R.S. 08:** § 3214. **C.L.** § 1694. **CSA:** C. 90, § 92. **CRS 53:** § 147-5-14. **C.R.S. 1963:** § 148-5-14. **L. 71:** p. 1308, § 4. **L. 84:** Entire section amended, p. 967, § 11, effective April 30. **L. 85:** (2) amended, p. 1159, § 1, effective April 12.

37-87-114.4. Annual report. Notwithstanding section 24-1-136 (11)(a)(I), the state engineer shall submit an annual report to the general assembly by November 1 of each year concerning the activities of the state engineer and the division of water resources relating to sections 37-87-105 to 37-87-114 for the preceding fiscal year. The report must include information on the following: Approvals of plans and specifications for construction of dams and reservoirs and for alterations, modifications, repairs, and enlargements; number of safety inspections made and the results thereof; use of appropriated funds; receipts generated for inspections of dams and reservoirs; rules and regulations adopted or amended; enforcement orders and proceedings; dam failures and reasons therefor; and other available data regarding the effectiveness of the state's dam and reservoir safety program.

Source: L. 84: Entire section added, p. 968, § 12, effective April 30. **L. 85:** Entire section amended, p. 1366, § 38, effective June 28. **L. 2002:** Entire section amended, p. 880, § 16, effective August 7. **L. 2014:** Entire section amended, (SB 14-026), ch. 4, p. 81, § 1, effective August 6. **L. 2017:** Entire section amended, (HB 17-1257), ch. 254, p. 1067, § 14, effective August 9.

37-87-114.5. Applicability of provisions - exemptions. (1) The provisions of sections 37-87-105 to 37-87-114 shall not apply to:

(a) Structures not designed or operated for the purpose of storing water;

(b) Mill tailings impoundment structures permitted under article 32 or 33 of title 34, C.R.S.;

(c) Uranium mill tailings and liquid impoundment structures permitted under article 11 of title 25, C.R.S.; except that the state engineer shall render such consultation as necessary for the permitting of such structures;

(d) Siltation structures permitted under article 33 of title 34, C.R.S.; or

(e) Structures which store water only below the elevation of the natural surface of the ground.

Source: L. 84: Entire section added, p. 968, § 12, effective April 30.

37-87-115. Damages. The provisions of this article are undertaken by the state of Colorado in the discretionary exercise of its governmental authority; therefore, neither the state of Colorado nor the state engineer, any member of his staff, or any person appointed by him shall be liable in damages for any act done by him or for his failure to act in pursuance of the provisions of this article. In addition, the state engineer, any member of his staff, and any person appointed by him shall have the same immunity from liability as other public employees pursuant to the provisions of article 10 of title 24, C.R.S.

Source: L. 03: p. 264, § 7. **R.S. 08:** § 3221. **C.L.** § 1701. **CSA:** C. 90, § 99. **CRS 53:** § 147-5-21. **C.R.S. 1963:** § 148-5-21. **L. 71:** p. 1308, § 5. **L. 86:** Entire section amended, p. 1094, § 1, effective May 3.

37-87-116. Tax reduction where reservoirs located. (Repealed)

Source: L. 37: p. 787, § 1. **CSA:** C. 90, § 99(1). **CRS 53:** § 147-5-22. **C.R.S. 1963:** § 148-5-22. **L. 71:** p. 1308, § 6. **L. 87:** Entire section repealed, p. 1304, § 1, effective May 20.

37-87-117. Landowner to submit plans. (Repealed)

Source: L. 37: p. 788, § 2. **CSA:** C. 90, § 99(2). **CRS 53:** § 147-5-23. **C.R.S. 1963:** § 148-5-23. **L. 71:** p. 1309, § 7. **L. 77:** Entire section amended, p. 1696, § 2, effective July 23. **L. 83:** Entire section amended, p. 1406, § 4, effective June 1. **L. 87:** Entire section repealed, p. 1304, § 1, effective May 20.

37-87-118. State engineer's authority over construction. (Repealed)

Source: L. 37: p. 788, § 3. **CSA:** C. 90, § 99(3). **CRS 53:** § 147-5-24. **C.R.S. 1963:** § 148-5-24. **L. 71:** p. 1309, § 8. **L. 83:** Entire section amended, p. 1407, § 5, effective June 1. **L. 87:** Entire section repealed, p. 1304, § 1, effective May 20.

37-87-119. Completion of dam. (Repealed)

Source: L. 37: p. 789, § 4. **CSA:** C. 90, § 99(4). **CRS 53:** § 147-5-25. **C.R.S. 1963:** § 148-5-25. **L. 71:** p. 1309, § 9. **L. 87:** Entire section repealed, p. 1304, § 1, effective May 20.

37-87-120. Reduction in valuation for assessment. (Repealed)

Source: L. 37: p. 789, § 5. **CSA:** C. 90, § 99(5). **L. 39:** p. 444, § 1. **CRS 53:** § 147-5-26. **C.R.S. 1963:** § 148-5-26. **L. 71:** p. 1310, § 10. **L. 87:** Entire section repealed, p. 1304, § 1, effective May 20.

37-87-121. Application to existing dams. (Repealed)

Source: L. 37: p. 790, § 6. **CSA:** C. 90, § 99(6). **CRS 53:** § 147-5-27. **C.R.S. 1963:** § 148-5-27. **L. 71:** p. 1310, § 11. **L. 87:** Entire section repealed, p. 1304, § 1, effective May 20.

37-87-122. Erosion control dams. (1) The provisions of sections 37-87-101 to 37-87-108 shall not apply to erosion control dams of the character defined in this section, unless such dams also come within the specification requirements of said sections.

(2) Erosion control dams for reservoirs may be constructed on watercourses, the channels of which have been determined by the state engineer to be normally dry, having a vertical height not exceeding fifteen feet from the bottom of the channel to the bottom of the spillway, and having a capacity not exceeding ten acre-feet at the emergency spillway level, upon approval of an application for such erosion control dam by the state engineer, which application shall be accompanied by a fee of fifteen dollars. The approval by the state engineer of an erosion control dam shall be chronologically numbered in order of approval and in concert with any livestock water tanks approved pursuant to section 35-49-109, C.R.S. When such reservoirs are to be constructed with such height exceeding fifteen feet and such capacity exceeding ten acre-feet, they shall be constructed in accordance with section 37-87-105.

(3) Such reservoirs may be constructed with a capacity in excess of two acre-feet if, at or below the two acre-feet level, an ungated outlet tube is installed, with twelve inches minimum diameter and large enough to assure adequate capacity to drain within thirty-six hours any impoundment in excess of two acre-feet.

(4) The state engineer shall prepare and keep on file at the office of the state engineer standard specifications for erosion control dams which shall be subject to revision by the state engineer and shall in general be used as a guide by persons proposing to construct such dams.

(5) The fees collected pursuant to subsection (2) of this section shall be deposited by the state engineer with the state treasurer, who shall credit all such fees to the general fund of the state.

Source: L. 73: p. 1518, § 1. **C.R.S. 1963:** § 148-5-30. **L. 87:** (1) amended, p. 1304, § 2, effective May 20. **L. 90:** (2) amended and (5) added, p. 1617, § 4, effective July 1. **L. 92:** (2) and (4) amended, p. 2309, § 12, effective June 3.

37-87-123. Dam and reservoir information. (Repealed)

Source: L. 83: Entire section added, p. 1407, § 6, effective June 1. **L. 84:** Entire section repealed, p. 969, § 13, effective April 30.

37-87-124. Restriction of facilities within reservoirs. (1) The general assembly hereby declares that the prevention of seasonal flooding which causes destruction of property and crops, loss of livestock, and risk or loss of human life is manifestly of greater concern and benefit to this state than the availability of recreational facilities and other facilities, not functionally related to the operation of the reservoir, constructed below the high water level of a reservoir.

(2) In order to achieve the purposes of subsection (1) of this section, no person, including any state or federal agency, quasi-municipal corporation, or political subdivision, shall construct any permanent recreational structure within a reservoir below the elevation at the crest of the spillway of the reservoir unless such facility is constructed in such a manner as to withstand partial or complete inundation and sustain minimal or no damage thereby or unless such facility is necessary to the operation of the reservoir. Said facility should be capable of being restored to full recreational use with a minimum amount of cleaning or expense. This subsection (2) and subsection (3) of this section shall not apply to facilities completed before July 1, 1984, but shall apply to any enlargement or remodeling of such facilities.

(3) The state engineer shall order the removal of any facilities constructed, enlarged, or remodeled in violation of this section. Such order may be appealed by the affected person or enforced by the state engineer pursuant to article 4 of title 24, C.R.S.

Source: L. 84: Entire section added, p. 970, § 1, effective April 2.

37-87-125. Notice of intent to construct impoundment structure. Any person proposing to construct a reservoir for the purpose of storing water, other than a reservoir specified in section 37-87-105 (1) or a livestock water tank as described in section 35-49-103, C.R.S., shall submit notice thereof to the state engineer prior to the beginning of any construction. Such notice shall include the location of such proposed reservoir with reference to

section, township, and range and the dimensions of the reservoir, the dam, and the spillway. If any reservoir is constructed without the notice required by this section, the state engineer may prohibit the storage of water in such reservoir or direct the withdrawal of water from such reservoir. The provisions of this section shall not apply to structures listed in section 37-87-114.5.

Source: L. 84: Entire section added, p. 968, § 12, effective April 30.

ARTICLE 88

State Canals and Reservoirs

37-88-101. Authority to locate and construct. For the purpose of reclaiming, by irrigation, state and other lands and for the purpose of furnishing work for inmates, the department of corrections is authorized to locate, acquire, and construct, in the name of and for the use of the state of Colorado, ditches, canals, reservoirs, and feeders, for irrigating and domestic purposes, and for that purpose may use the labor of persons in the custody of the department of corrections.

Source: L. 1889: p. 285, § 1. **R.S. 08:** § 3499. **C.L.** § 1933. **CSA:** C. 90, § 350. **CRS 53:** § 147-17-1. **C.R.S. 1963:** § 148-17-1. **L. 77:** Entire section amended, p. 954, § 32, effective August 1. **L. 79:** Entire section amended, p. 704, § 85, effective July 1.

37-88-102. State engineer shall survey, lay out, and locate. (Repealed)

Source: L. 1889: p. 285, § 2. **R.S. 08:** § 3500. **C.L.** § 1934. **CSA:** C. 90, § 351. **CRS 53:** § 147-17-2. **C.R.S. 1963:** § 148-17-2. **L. 77:** Entire section amended, p. 954, § 33, effective August 1. **L. 2017:** Entire section repealed, (SB 17-026), ch. 47, p. 147, § 14, effective August 9.

37-88-103. Rights and powers given. The department of corrections is given all the rights and powers that an individual or corporation now has under the laws of the state, or of the United States, to acquire the rights-of-way over, upon, and to any lands necessary for it to use or occupy in the construction and maintenance of said ditches, canals, reservoirs, or feeders.

Source: L. 1889: p. 286, § 3. **R.S. 08:** § 3501. **C.L.** § 1935. **CSA:** C. 90, § 352. **CRS 53:** § 147-17-3. **C.R.S. 1963:** § 148-17-3. **L. 77:** Entire section amended, p. 954, § 34, effective August 1.

37-88-104. Title shall vest in state. The title to all ditches, canals, reservoirs, or feeders, so constructed, shall vest and remain in the state of Colorado, and the proceeds thereof shall be paid into the state treasury.

Source: L. 1889: p. 286, § 4. **R.S. 08:** § 3502. **C.L.** § 1936. **CSA:** C. 90, § 353. **CRS 53:** § 147-17-4. **C.R.S. 1963:** § 148-17-4.

37-88-105. Contract for and lease of water rights. When any part of any ditch, canal, reservoir, or feeder is constructed, said department of corrections may contract for and may lease water rights upon such terms and under such rules and regulations as may be adopted by said department and approved by the governor of the state, to such individuals or corporations as may desire to lease the same.

Source: L. 1889: p. 286, § 5. **R.S. 08:** § 3503. **C.L.** § 1937. **CSA:** C. 90, § 354. **CRS 53:** § 147-17-5. **C.R.S. 1963:** § 148-17-5. **L. 77:** Entire section amended, p. 955, § 35, effective August 1.

37-88-106. Aiding in the construction. For the purpose of aiding in the construction of said ditches, canals, reservoirs, and feeders, the department of corrections is authorized to receive subscriptions and advancements of money from persons owning land along the line of said proposed ditches, canals, reservoirs, and feeders, or persons desiring the construction of the same, and to issue receipts or certificates to such persons so advancing money for the amount thereof, which receipt or certificate shall draw interest at the rate of seven percent per annum, and both principal and interest shall be payable in water to be taken from said ditches, canals, reservoirs, or feeders, under such rules and regulations as may be adopted by said department and the state engineer and approved by the governor of the state.

Source: L. 1889: p. 286, § 6. **R.S. 08:** § 3504. **C.L.** § 1938. **CSA:** C. 90, § 355. **CRS 53:** § 147-17-6. **C.R.S. 1963:** § 148-17-6. **L. 77:** Entire section amended, p. 955, § 36, effective August 1.

37-88-107. Penalty for damaging state reservoirs. Any person interfering with or damaging any state reservoir, or parts or appurtenances thereof, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars or by imprisonment in the county jail for not more than one year.

Source: L. 1891: p. 351, § 9. **R.S. 08:** § 3545. **C.L.** § 1950. **CSA:** C. 90, § 367. **CRS 53:** § 147-17-8. **C.R.S. 1963:** § 148-17-8. **L. 73:** p. 1419, § 110.

37-88-108. Control of Boss lake reservoir. (1) The board of county commissioners of Chaffee county has charge and control of that certain state reservoir situated in said county and commonly known as the Boss lake reservoir and, without expense to the state of Colorado, other than expenses payable from the Colorado water conservation board construction fund and such financial assistance or other aid as may be available to nonstate-owned reservoirs, shall maintain and keep said reservoir in good condition and provide for the storage of water as contemplated in the law providing for the construction of said reservoir and also for the distribution of said water under the direction of the division engineer for the district in which said reservoir is situated, at such times as the scarcity of water in the stream known as the South Arkansas demands that the waters in said stream should be replenished; except that said waters shall be distributed by the said division engineer pro rata without reference to the dates of priorities of water rights and further except that the county of Chaffee shall assume and shall be held responsible for any damages resulting from breakage of the dam or water discharges therefrom unless the

responsibility for damages has been assumed by the upper Arkansas water conservancy district as part of the agreement pursuant to subsection (2) of this section.

(2) The board of county commissioners of Chaffee county may agree with the upper Arkansas water conservancy district in which the Boss lake reservoir is located for said district's assumption of the duty to control, maintain, and keep the reservoir in good condition. The agreement may further provide for the upper Arkansas water conservancy district to assume and be held responsible for any damages resulting from breakage of the dam or water discharges therefrom.

Source: L. 1897: p. 119, § 1. **R.S. 08:** § 3560. **C.L.** § 1957. **CSA:** C. 90, § 374. **CRS 53:** § 147-17-15. **C.R.S. 1963:** § 148-17-15. **L. 81:** Entire section amended, p. 1780, § 1, effective June 19.

Cross references: For the appointments and functions of water division engineers, see § 37-92-202.

37-88-109. County control of reservoirs. (1) The board of county commissioners of any county wherein is situated any state reservoir shall have charge and control of such reservoir and, without expense to the state of Colorado, other than expenses payable from the Colorado water conservation board construction fund and such financial assistance or other aid as may be available to nonstate-owned reservoirs, shall maintain and keep said reservoir in good condition and provide for the storage of water as contemplated in the law providing for the construction of said reservoir and also for the distribution of said water under the direction of the division engineer for the district in which said reservoir is situated, at such times as the scarcity of water in the stream which such reservoir is intended to reinforce demands that the water in said stream should be replenished for agricultural purposes; except that said waters shall be distributed by said division engineer pro rata without reference to priority of water rights and also except that the counties in which said reservoirs are situated shall assume and shall be held responsible for any damages resulting from breakage of the dams or water discharges therefrom. The provisions of this section shall not apply to any state reservoir constructed primarily for the purpose of irrigating state lands, but any such reservoir shall remain in the control of the state board of land commissioners.

(2) In the case of reservoirs owned by the division of parks and wildlife, the state engineer or the division engineer in the district in which such reservoirs are located shall have the authority to cause the release of water stored therein for domestic and municipal purposes in time of scarcity. All expenses occasioned by the release of such waters for said purposes shall be borne by the counties or the beneficiaries of such releases, and said reservoirs, when refilled in priority, shall be restocked at the expense of the county or the beneficiary of said release.

Source: L. 1899: p. 350, § 1. **R.S. 08:** § 3562. **C.L.** § 1959. **CSA:** C. 90, § 376. **CRS 53:** § 147-17-16. **C.R.S. 1963:** § 148-17-16. **L. 81:** Entire section amended, p. 1781, § 2, effective June 19.

Cross references: For the appointments and functions of water division engineers, see § 37-92-202.

37-88-110. Monument lake dam and reservoir - transfer of title - ownership and control. (1) Upon completion of the repair described in subsection (2) of this section, the governor is hereby authorized to execute a deed of conveyance to the town of Monument of all the right, title, and interest of the state of Colorado in and to the structure known as Monument lake dam located in El Paso county.

(2) The transfer of title to Monument lake dam pursuant to subsection (1) of this section shall not occur until such time as the dam is repaired to the satisfaction of the state engineer's office and other governmental entities with applicable jurisdiction. The town of Monument and El Paso county are jointly responsible for financing the repair of Monument lake dam and are authorized to apply for financial assistance from the Colorado water resources and power development authority established in article 95 of this title, the Colorado water conservation board established in article 60 of this title, and from any other appropriate state, federal, or private source.

(3) As there are no adjudicated water rights to Monument lake reservoir, upon the transfer of title to Monument lake dam pursuant to subsection (1) of this section, the town of Monument may acquire and assume the duties and responsibilities relating to the storage of water in Monument lake reservoir.

(4) Upon the transfer of title to Monument lake dam pursuant to subsection (1) of this section, the town of Monument shall assume all liability and responsibility relating to the control, management, and maintenance of Monument lake dam and reservoir, and at such time the board of county commissioners of El Paso county shall be relieved from all responsibilities relating to Monument lake reservoir pursuant to section 37-88-109.

Source: L. 2000: Entire section added, p. 680, § 1, effective May 23.

Editor's note: Section 18 of chapter 47 (SB 17-026), Session Laws of Colorado 2017, provides that the act changing this section applies to fees owed on or after August 9, 2017.

ARTICLE 89

Offenses

37-89-101. Penalty for cutting or breaking gate, bank, flume. Any person who knowingly and willfully cuts, digs, breaks down, or opens any gate, bank, embankment, or side of any ditch, canal, flume, feeder, or reservoir, or who knowingly and willfully breaks, cuts, checks, or otherwise interferes with the flow of water in any drainage ditch, box drain, or tile drain, or any manhole, or other opening in any box drain or tile drain, in which such person may be a joint owner, or which may be the property of another, or in the lawful possession of another and used for the purpose of drainage, irrigation, manufacturing, mining, or domestic purposes, with intent to injure any person, association, or corporation, or for personal gain, unlawfully, with intent of stealing, taking, or causing to run or pour out of or into such ditch, canal, reservoir, feeder, flume, drainage ditch, box drain, or tile drain any water for personal profit, benefit, or advantage, or with intent to check or change the flow in any such ditch, canal, feeder, flume, drainage ditch, box drain, or tile drain, to the injury of any other person, association, or corporation, lawfully in the use of such water or of such ditch, canal, reservoir, feeder, flume,

drainage ditch, box drain, or tile drain, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than seven hundred fifty dollars or by imprisonment in the county jail for not more than ninety days. The court shall further order that such person make full restitution to the victim of his or her conduct for the actual damages that were sustained. The amount of such restitution shall be equal to the actual pecuniary damages sustained by the victim. The court shall fix the manner and time in which such restitution shall be made.

Source: L. 1881: p. 163, § 1. **G.S.** § 1759. **R.S. 08:** § 3495. **L. 21:** p. 476, § 1. **C.L.** § 1929. **CSA:** C. 90, § 346. **CRS 53:** § 147-16-1. **C.R.S. 1963:** § 148-16-1. **L. 2001:** Entire section amended, p. 988, § 1, effective August 8.

Cross references: For the penalty of damaging a ditch or flume, see § 7-42-109; for trespass, tampering, and criminal mischief, see part 5 of article 4 of title 18.

37-89-102. Jurisdiction of county court. The county court has jurisdiction of all offenses under the provisions of section 37-89-101.

Source: L. 1881: p. 163, § 2. **G.S.** § 1761. **R.S. 08:** § 3496. **C.L.** § 1930. **CSA:** C. 90, § 347. **CRS 53:** § 147-16-2. **C.R.S. 1963:** § 148-16-2. **L. 64:** p. 342, § 346.

37-89-103. Penalty for interfering with adjusted headgates. (1) Every person who willfully and without authority opens, closes, changes, or interferes with any headgate of any ditch, or any water box or measuring device of any ditch for the receiving or delivery of water, after the headgate of the ditch has been adjusted by and is in the control of the division engineer, or after such water box or measuring device has been adopted by the ditch officer in charge, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment.

(2) Any person who is found using water taken through any such headgate, water box, or measuring device so unlawfully interfered with shall prima facie be deemed guilty of a violation of this section.

Source: L. 1879: p. 108, § 44. **G.S.** § 1755. **L. 01:** p. 196, § 1. **R.S. 08:** § 3497. **C.L.** § 1931. **CSA:** C. 90, § 348. **CRS 53:** § 147-16-3. **C.R.S. 1963:** § 148-16-3.

Cross references: For the appointments and functions of water division engineers, see § 37-92-202.

37-89-104. Jurisdiction of county court. The county court has jurisdiction to hear, try, and determine actions brought for violations of section 37-89-103.

Source: L. 01: p. 197, § 2. **R.S. 08:** § 3498. **C.L.** § 1932. **CSA:** C. 90, § 349. **CRS 53:** § 147-16-4. **C.R.S. 1963:** § 148-16-4. **L. 64:** § 342, § 347.

Underground Water

ARTICLE 90

Underground Water

Editor's note: This article was numbered as article 18 of chapter 148, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1965, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1965, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

Law reviews: For article, "Representing a Developer Purchaser of Water and Water Rights", see 13 Colo. Law. 627 (1984); for article, "Plans and Studies: The Recent Quest for Utopia in the Utilization of Colorado's Water Resources", see 55 U. Colo. L. Rev. 391 (1984); for casenote, "Nontributary, Nondesignated Ground Water: The Huston Decision", see 56 U. Colo. L. Rev. 135 (1984); for article, "Principles and Law of Colorado's Nontributary Ground Water", see 62 Den. U. L. Rev. 809 (1985); for article, "Use of Colorado Water Rights In Secured Transactions", see 18 Colo. Law. 2307 (1989); for article, "The Constitution, Property Rights and the Future of Water Law", see 61 U. Colo. L. Rev. 257 (1990).

37-90-101. Short title. This article shall be known and may be cited as the "Colorado Groundwater Management Act".

Source: L. 65: R&RE, p. 1268, § 1. **C.R.S. 1963:** § 148-18-38.

37-90-102. Legislative declaration. (1) It is declared that the traditional policy of the state of Colorado, requiring the water resources of this state to be devoted to beneficial use in reasonable amounts through appropriation, is affirmed with respect to the designated groundwaters of this state, as said waters are defined in section 37-90-103 (6). While the doctrine of prior appropriation is recognized, such doctrine should be modified to permit the full economic development of designated groundwater resources. Prior appropriations of groundwater should be protected and reasonable groundwater pumping levels maintained, but not to include the maintenance of historical water levels. All designated groundwaters in this state are therefore declared to be subject to appropriation in the manner defined in this article.

(2) The general assembly finds and declares that the allocation of nontributary groundwater pursuant to statute is based upon the best available evidence at this time. The general assembly recognizes the unique, finite nature of nontributary groundwater resources outside of designated groundwater basins and declares that such nontributary groundwater shall be devoted to beneficial use in amounts based upon conservation of the resource and protection of vested water rights. Economic development of this resource shall allow for the reduction of hydrostatic pressure levels and aquifer water levels consistent with the protection of appropriative rights in the natural stream system. The doctrine of prior appropriation shall not apply to nontributary groundwater. To continue the development of nontributary groundwater resources consonant with conservation shall be the policy of this state. Such water shall be

allocated as provided in this article upon the basis of ownership of the overlying land. This policy is a reasonable exercise of the general assembly's plenary power over this resource.

(3) Repealed.

Source: L. 65: R&RE, p. 1246, § 1. **C.R.S. 1963:** § 148-18-1. **L. 85:** Entire section amended, p. 1160, § 1, effective July 1. **L. 98:** (3) added, p. 852, § 1, effective May 26. **L. 2001:** (3) amended, p.158, § 1, effective March 28. **L. 2003:** (3) amended, p. 1596, § 2, effective May 2.

Editor's note: Subsection (3)(b) provided for the repeal of subsection (3), effective July 1, 2004. (See L. 1998, p. 852.)

37-90-103. Definitions - repeal. As used in this article, unless the context otherwise requires:

(1) "Alternate point of diversion well" means any well drilled and used, in addition to an original well or other diversion, for the purpose of obtaining the present appropriation of that original well, from more than one point of diversion.

(2) "Aquifer" means a formation, group of formations, or part of a formation containing sufficient saturated permeable material that could yield a sufficient quantity of water that may be extracted and applied to a beneficial use.

(3) "Artesian well" means a well tapping an aquifer in which the static water level in the well rises above where it was first encountered in the aquifer, due to hydrostatic pressure.

(4) "Board" or "board of directors" means the board of directors of a ground water management district as organized under section 37-90-124.

(5) "Colorado water conservation board" refers to the board created in section 37-60-102.

(6) (a) "Designated groundwater" means that groundwater which in its natural course would not be available to and required for the fulfillment of decreed surface rights, or groundwater in areas not adjacent to a continuously flowing natural stream wherein groundwater withdrawals have constituted the principal water usage for at least fifteen years preceding the date of the first hearing on the proposed designation of the basin, and which in both cases is within the geographic boundaries of a designated groundwater basin. "Designated groundwater" shall not include any groundwater within the Dawson-Arkose, Denver, Arapahoe, or Laramie-Fox Hills formation located outside the boundaries of any designated groundwater basin that was in existence on January 1, 1983.

(b) (I) However, "designated groundwater" may include any groundwater in the Crow Creek drainage area in Weld county, upstream from the confluence of Crow Creek and Little Crow Creek, within the Laramie-Fox Hills formation located outside such boundaries when the Laramie-Fox Hills formation is not overlaid by the Dawson-Arkose, Denver, or Arapahoe formations.

(II) If, upon receipt by the state engineer of the findings of the Laramie-Fox Hills study, as authorized by Senate Bill 250, 1985 legislative session, that the upper Crow Creek drainage area in Weld county, upstream from the confluence of Crow Creek and Little Crow Creek, within the Laramie-Fox Hills formation when the Laramie-Fox Hills formation is not overlaid by

the Dawson-Arkose, Denver, or Arapahoe formations should not be a designated groundwater basin, this paragraph (b) is repealed.

(7) "Designated groundwater basin" means that area established by the ground water commission in accordance with section 37-90-106.

(8) "Ground water commission" or "commission" refers to the ground water commission created and provided for in section 37-90-104 to facilitate the functioning of this article.

(9) "Ground water management district" or "district" means any district organized under the provisions of this article.

(10) "Historical water level" means the average elevation of the groundwater level in any area before being lowered by the activities of man, as nearly as can be determined from scientific investigation and available facts.

(10.5) "Nontributary groundwater" means that groundwater, located outside the boundaries of any designated groundwater basins in existence on January 1, 1985, the withdrawal of which will not, within one hundred years of continuous withdrawal, deplete the flow of a natural stream, including a natural stream as defined in sections 37-82-101 (2) and 37-92-102 (1)(b), at an annual rate greater than one-tenth of one percent of the annual rate of withdrawal. The determination of whether groundwater is nontributary shall be based on aquifer conditions existing at the time of permit application; except that, in recognition of the de minimis amount of water discharging from the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers into surface streams due to artesian pressure, when compared with the great economic importance of the groundwater in those aquifers, and the feasibility and requirement of full augmentation by wells located in the tributary portions of those aquifers, it is specifically found and declared that, in determining whether groundwater of the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers is nontributary, it shall be assumed that the hydrostatic pressure level in each such aquifer has been lowered at least to the top of that aquifer throughout that aquifer; except that not nontributary groundwater, as defined in subsection (10.7) of this section, in the Denver basin shall not become nontributary groundwater as a result of the aquifer's hydrostatic pressure level dropping below the alluvium of an adjacent stream due to Denver basin well pumping activity. Nothing in this subsection (10.5) shall preclude the designation of any aquifer or basin, or any portion thereof, which is otherwise eligible for designation under the standard set forth in subsection (6) of this section relating to groundwater in areas not adjacent to a continuously flowing natural stream wherein groundwater withdrawals have constituted the principal water usage for at least fifteen years preceding the date of the first hearing on the proposed designation of a basin.

(10.7) "Not nontributary groundwater" means groundwater located within those portions of the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers that are outside the boundaries of any designated groundwater basin in existence on January 1, 1985, the withdrawal of which will, within one hundred years, deplete the flow of a natural stream, including a natural stream as defined in sections 37-82-101 (2) and 37-92-102 (1)(b), at an annual rate of greater than one-tenth of one percent of the annual rate of withdrawal.

(10.9) "Oil and gas well" means a well permitted by the Colorado oil and gas conservation commission or a well authorized by a federal or tribal entity for the primary purpose of mining, including exploration or production, of petroleum products.

(11) "Person" means any individual, partnership, association, or corporation authorized to do business in the state of Colorado, or any political subdivision or public agency thereof, or

any agency of the United States, making a beneficial use, or taking steps, or doing work preliminary to making a beneficial use of designated undergroundwaters of Colorado.

(12) "Private driller" means any individual, corporation, partnership, association, political subdivision, or public agency which operates as lessee or owner its own well drilling rig and equipment and which digs, drills, redrills, cases, recases, deepens, or excavates a well upon the property of such entity.

(12.5) "Quarter-quarter" means a fourth of a fourth of a section of land and is equal to approximately forty acres.

(12.7) "Replacement plan" means a detailed program to increase the supply of water available for beneficial use in a designated groundwater basin or portion thereof for the purpose of preventing material injury to other water rights by the development of new points of diversion, by pooling of water resources, by water exchange projects, by providing substitute supplies of water, by the development of new sources of water, or by any other appropriate means consistent with the rules adopted by the commission. "Replacement plan" does not include the salvage of designated groundwater by the eradication of phreatophytes, nor does it include the use of precipitation water collected from land surfaces that have been made impermeable, thereby increasing the runoff, but not adding to the existing supply of water.

(13) "Replacement well" means a new well which replaces an existing well and which shall be limited to the yield of the original well and shall take the date of priority of the original well, which shall be abandoned upon completion of the new well.

(14) "Resident agriculturist" means a bona fide farmer or rancher residing in the designated groundwater basin whose major source of income is derived from the production and sale of agricultural products.

(15) "State engineer" means the state engineer of Colorado or any person deputized by him in writing to perform a duty or exercise a right granted in this article.

(16) "Subdivision" means an area within a groundwater basin.

(17) "Supplemental well" means any well drilled and used, in addition to an original well or other diversion, for the purpose of obtaining the quantity of the original appropriation of the original well, which quantity can no longer be obtained from the original well.

(18) "Taxpaying elector" means a person qualified to vote at general elections in Colorado, who owns real or personal property within the district and has paid ad valorem taxes thereon in the twenty months immediately preceding a designated time or event, which property is subject to taxation at the time of any election held under the provisions of this article or at any other time in reference to which the term "taxpaying elector" is used. A person who is obligated to pay taxes under a contract to purchase real property in the district shall be considered an owner. The ownership of any property subject to the payment of a specific ownership tax on a motor vehicle or trailer or of any other excise or property tax other than general ad valorem property taxes shall not constitute the ownership of property subject to taxation as provided in this article.

(19) "Underground water" and "groundwater" are used interchangeably in this article and mean any water not visible on the surface of the ground under natural conditions.

(20) "Waste" means causing, suffering, or permitting any well to discharge water unnecessarily above or below the surface of the ground.

(21) (a) "Well" means any structure or device used for the purpose or with the effect of obtaining groundwater for beneficial use from an aquifer. Well includes an augmentation well

that diverts groundwater tributary to the South Platte river and delivers it to a surface stream, ditch, canal, reservoir, or recharge facility to replace out-of-priority stream depletions, or to meet South Platte river compact obligations, either directly or by recharge accretions, as part of a plan for augmentation approved by the water judge for water division 1 or a substitute water supply plan approved pursuant to section 37-92-308.

(b) "Well" does not include a naturally flowing spring or springs where the natural spring discharge is captured or concentrated by installation of a near-surface structure or device less than ten feet in depth located at or within fifty feet of the spring or springs' natural discharge point and the water is conveyed directly by gravity flow or into a separate sump or storage, if the owner obtains a water right for such structure or device as a spring pursuant to article 92 of this title.

(22) "Well driller" means any individual, corporation, partnership, association, political subdivision, or public agency which digs, drills, cases, recases, deepens, or excavates a well either by contract or for hire or for any consideration whatsoever.

Source: L. 65: R&RE, p. 1246, § 1. **C.R.S. 1963:** § 148-18-2. **L. 67:** p. 275, §§ 1, 2. **L. 71:** p. 1311, § 1. **L. 83:** (6) amended, p. 1414, § 1, effective May 23. **L. 85:** (6) amended, p. 1170, § 1, effective July 1; (10.5) added, p. 1161, § 2, effective July 1. **L. 92:** (12.5) added and (13) amended, p. 2297, § 1, effective March 19. **L. 95:** (21) amended, p. 139, § 1, effective April 7. **L. 96:** (10.5) amended and (10.7) added, p. 1360, § 1, effective June 1. **L. 98:** (12.7) added, p. 1212, § 2, effective August 5. **L. 2003:** (21)(a) amended, p. 1453, § 2, effective April 30. **L. 2009:** (10.5) amended and (10.9) added, (HB 09-1303), ch. 390, p. 2107, § 1, effective June 2.

Editor's note: The upper Crow Creek drainage area is a designated groundwater basin (see rule 5.2.9 of the ground water commission, 2 CCR 410-1). Therefore, subsection (6)(b) is not repealed.

Cross references: For the authorization by Senate Bill 85-250 as specified in subsection (6)(b)(II) of this section, see p. 1452 and footnote 70 on p. 1487 of the 1985 general appropriation act, chapter 344, Session Laws of Colorado 1985.

37-90-104. Commission - organization - expenses. (1) There is created a ground water commission to consist of twelve members, nine of whom shall be appointed by the governor and confirmed by the senate.

(2) The appointed members of the commission holding office as of July 1, 1971, shall continue in office for the term of their appointment and until their successors are appointed.

(3) (a) All appointments to the commission shall be for four-year terms, except those made to fill vacancies, which shall be for the remainder of the term vacated.

(b) Appointments made after July 1, 1971, as terms expire or are vacated, shall be made so that the commission includes six members who are resident agriculturists of designated groundwater basins, with no more than two resident agriculturists from the same groundwater basin to be members of the commission at the same time; one member who shall be a resident agriculturist and who shall be appointed from water division 3; and two residents of the state who shall represent municipal or industrial water users of the state, one of whom shall be appointed from the area west of the continental divide.

(4) In addition to the appointed members, the executive director of the department of natural resources shall be a voting member, and the state engineer, and the director of the Colorado water conservation board shall be nonvoting members of the commission. Six voting members shall constitute a quorum at any regularly or specially called meeting of the commission, and a majority vote of those present shall rule. The commission shall establish and maintain a schedule of at least four general meetings each year. The chairman, at his discretion, or two members may call special meetings of the commission to dispose of accumulated business.

(5) Members of the commission shall be paid no compensation but shall be paid actual necessary expenses incurred by them in the performance of their duties as members thereof and a per diem of fifty dollars per day while performing official duties, not to exceed two thousand four hundred dollars in any year.

(6) The commission shall biennially select a chair and vice-chair from among the appointed members. The state engineer shall be ex officio the executive director of the commission and shall carry out and enforce the decisions, orders, and policies of the commission. The commission may delegate to the executive director the authority to perform any of the functions of the commission as set forth in this article except the determination of a designated groundwater basin as set forth in section 37-90-106 and the creation of ground water management districts. If any person is dissatisfied with any action of the executive director under the exercise of the powers delegated by the commission, the person may appeal said action to the commission, which shall hear the person's appeals as specified in sections 37-90-113 and 37-90-114.

(7) The provisions of section 24-6-402 (3)(a)(II), C.R.S., concerning imminent court action, as applied to the ground water commission and to any member, employee, contractor, agent, servant, attorney, or consultant thereof, shall not include any actions within the scope of sections 37-90-106 to 37-90-109 and section 37-90-111.

Source: L. 65: R&RE, p. 1248, § 1. **C.R.S. 1963:** § 148-18-3. **L. 67:** p. 52, § 1. **L. 69:** p. 1198, §§ 1, 2. **L. 71:** pp. 1312, 1319, 1320, §§ 3, 1-3. **L. 83:** (4) amended and (7) added, p. 1416, § 1, effective June 10. **L. 98:** (5) amended, p. 1074, § 1, effective June 1; (5) and (6) amended, p. 1212, § 3, effective August 5. **L. 2001:** (7) amended, p. 1279, § 51, effective June 5.

Editor's note: Subsection (5) was amended in Senate Bill 98-15. Those amendments were superseded by the amendment of subsection (5) in House Bill 98-1151.

37-90-105. Small capacity wells. (1) The state engineer has the authority to approve permits for the following types of wells and to allow the following types of rooftop precipitation collection systems in designated groundwater basins without regard to any other provisions of this article:

(a) Wells not exceeding fifty gallons per minute and used for no more than three single-family dwellings, including the normal operations associated with such dwellings but not including the irrigation of more than one acre of land;

(b) Wells not exceeding fifty gallons per minute and used for watering of livestock on range and pasture;

(c) (I) One well not exceeding fifty gallons per minute and used in one commercial business.

(II) To qualify as a "commercial business" under this paragraph (c), the business shall be:

(A) A business that will be operated by the well owner and that will have its own books, bank accounts, checking accounts, and separate tax returns;

(B) A business that will use water solely on the land indicated in the permit for the well and for the purposes stated in such permit;

(C) A business that will maintain its individual assets and will own or lease the property on which the well is to be located or where the business is operated;

(D) A business that will have its own contractual agreements for operation of the business;

(E) A business that agrees not to transfer a permit issued under this paragraph (c) to another entity that also holds a small capacity commercial well permit under this paragraph (c); and

(F) A business that agrees to notify any potential buyer that such buyer shall notify the state engineer of any change in ownership of such business within sixty days after any such change in ownership.

(d) Wells to be used exclusively for monitoring and observation purposes if said wells are capped and locked and used only to monitor water levels or for water quality sampling;

(e) Wells to be used exclusively for fire-fighting purposes if said wells are capped and locked and available for use only in fighting fires; or

(f) (I) Any system or method of collecting precipitation from the roof of a building that is used primarily as a residence and is not served by, whether or not connected to, a domestic water system that serves more than three single-family dwellings, but only if the use of the water so collected is limited to one or more of the following:

(A) Ordinary household purposes;

(B) Fire protection;

(C) The watering of poultry, domestic animals, and livestock on farms and ranches; or

(D) The irrigation of not more than one acre of gardens and lawns.

(II) On and after July 1, 2009, any person wishing to use a system or method of rooftop precipitation capture that meets the requirements of subparagraph (I) of this paragraph (f) shall comply with one of the following provisions:

(A) A person who has a well permit issued or recorded pursuant to this section and who intends to use a system or method of rooftop precipitation capture that qualifies under subparagraph (I) of this paragraph (f) shall file, on a form prescribed by the state engineer and consistent with this section, a notice and description of the system or method of rooftop precipitation capture to be used in conjunction with the well. No fee shall be charged for the filing of this form.

(B) A person who applies for a new well permit pursuant to paragraph (a) of this subsection (1) and who intends to use a system or method of rooftop precipitation capture that qualifies under subparagraph (I) of this paragraph (f) shall include on the well permit application a description of the system or method of rooftop precipitation capture to be used in conjunction with the well. An applicant under this sub-subparagraph (B) shall pay the well permit application fee pursuant to sub-subparagraph (C) of subparagraph (I) of paragraph (a) of subsection (3) of

this section; however, such applicant shall not be required to pay any additional application fee for the rooftop precipitation collection system.

(C) A person who does not intend to construct and use a well, but would otherwise be entitled to the issuance of a well permit pursuant to paragraph (a) of this subsection (1), shall submit an application in the form and manner designated by the state engineer for a permit to install and use a system or method of rooftop precipitation capture and pay a fee in an amount to be determined by the state engineer. If the state engineer determines that the proposed system or method of rooftop precipitation capture meets the requirements of this paragraph (f), the state engineer shall issue a permit for the system or method, but not otherwise. The state engineer shall enforce the provisions of the permit in the same manner as the enforcement of any well permit issued pursuant to paragraph (a) of this subsection (1).

(III) A person using or legally entitled to use a well pursuant to paragraph (a) of this subsection (1) shall be allowed to collect rooftop precipitation pursuant to this paragraph (f) only for use by the same dwellings that are or would be served by the well and subject to all of the limitations on use contained in the well permit or, in the absence of a well permit, the well permit to which the person would be legally entitled, as determined by the state engineer or as otherwise limited by the board of a groundwater management district pursuant to subsection (7) of this section.

(2) The state engineer has the authority to adopt rules in accordance with section 24-4-103, C.R.S., to carry out the provisions of this section. Any party adversely affected or aggrieved by a rule adopted by the state engineer may seek judicial review of such action pursuant to section 24-4-106, C.R.S.

(3) (a) (I) (A) and (B) Repealed.

(C) Effective July 1, 2006, wells of the type described in this section may be constructed only upon the issuance of a permit in accordance with the provisions of this section. A fee of one hundred dollars shall accompany any application for a new well permit under this section. A fee of sixty dollars shall accompany any application for a replacement well of the type described in subsection (1) of this section.

(II) Notwithstanding the amount specified for any fee in subparagraph (I) of this paragraph (a), the commission by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commission by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

(b) Beginning on August 5, 1998, the state engineer shall not approve a permit for a small capacity well with an annual volume of use in excess of five acre-feet, unless the well is located in a ground water management district that has adopted rules that allow an annual volume in excess of five acre-feet. This limitation shall not apply to a replacement permit for a well where the original permit allows an annual volume of use in excess of five acre-feet or to a permit for a well covered by the provisions of subsection (4) of this section where the actual annual volume of use was in excess of five acre-feet.

(c) If the application is made pursuant to this section for a well that will be located in a subdivision, as defined in section 30-28-101 (10), C.R.S., and approved on or after June 1, 1972, pursuant to article 28 of title 30, C.R.S., for which the water supply plan has not been

recommended for approval by the state engineer, the cumulative effect of all such wells in the subdivision shall be considered in determining material injury, and the state engineer shall deny the application if it is determined that the proposed well will cause material injury to existing water rights.

(d) (I) If any person wishes to replace an existing well of the type described in subsection (1) of this section, such person shall file an application pursuant to this subsection (3) for the construction of a well and shall state in such application such person's intent to abandon the existing well that is to be replaced.

(II) If such a replacement well will not change the amount or type of use of water that can lawfully be made by means of the existing well, a permit to construct and use the replacement well shall be issued, and the existing well shall be abandoned within ninety days after the completion of the replacement well.

(e) (I) Repealed.

(II) Effective July 1, 2006, wells for which permits have been granted or may be granted shall be constructed within two years after the permit is issued, which time may be extended for successive years at the discretion of the state engineer for good cause shown.

(4) (a) (I) Repealed.

(II) Effective July 1, 2006, any wells of the type described by this section that were put to beneficial use prior to May 8, 1972, and any wells that were used exclusively for monitoring and observation purposes prior to August 1, 1988, not of record in the office of the state engineer, may be recorded in that office upon written application, payment of a processing fee of one hundred dollars, and permit approval. The record shall include the date the water is claimed to have been first put to beneficial use.

(b) Any owner of an existing well that was constructed prior to May 8, 1972, or has a well permit issued prior to January 1, 1996, under the provisions of this section, and that was put to beneficial use for watering livestock in a confined animal-feeding operation prior to January 1, 1996, and has been used for that purpose, may apply by December 31, 1999, to obtain a new permit for that well up to the extent of its beneficial use prior to January 1, 1996, for watering livestock in that commercial business pursuant to paragraph (c) of subsection (1) of this section. Such well shall be in addition to the one commercial business well allowed in paragraph (c) of subsection (1) of this section. Such an application shall include a sixty dollar filing fee and shall provide documentation of the annual volume of water put to beneficial use from the well. The state engineer shall have the authority to determine the adequacy of the submitted information for the purpose of approving completely, approving in part, or denying the application. Permits issued after January 1, 1996, up to August 5, 1998, shall remain valid thereafter according to the terms and conditions of those permits.

(5) The state engineer shall act upon an application filed under this section within forty-five days after such filing and shall support the ruling with a written statement of the basis therefor.

(6) (a) Any person aggrieved by a decision of the state engineer granting or denying an application under this section may request a hearing before the state engineer pursuant to section 24-4-104, C.R.S. The state engineer may, in the state engineer's discretion, have such hearings conducted before such agent as it may designate for a ruling in the matter. Any party who seeks to reverse or modify the ruling of the agent of the state engineer may file an appeal to the state engineer pursuant to section 24-4-105, C.R.S.

(b) Any party aggrieved by a final decision of the state engineer granting or denying an application filed under this section may within thirty days after such decision file a petition for review with the district court in the county in which the well is located. Upon receipt of such petition, the designated groundwater judge for the basin in which the well is located shall conduct such hearings, pursuant to section 24-4-106, C.R.S., as necessary to determine whether or not the decision of the state engineer shall be upheld. In any case in which the state engineer's decision is reversed, the judge shall order the state engineer to grant or deny the application, as such reversal may require, and may specify such terms and conditions as are appropriate.

(7) (a) The board of a groundwater management district may adopt rules that further restrict the issuance of small capacity well permits and use of rooftop precipitation collection systems or graywater treatment works. In addition, the board of a groundwater management district may adopt rules that expand the acre-foot limitations for small capacity wells set forth in this section. However, the board of a groundwater management district shall not allow an annual volume of more than eighty acre-feet for any small capacity well.

(b) The board may institute its rules only after a public hearing. The board shall publish notice of the hearing, stating the time and place of the hearing and describing, in general terms, the rules proposed. Within sixty days after the hearing, the board shall announce the rules adopted and shall publish notice of the action. In addition, the board shall mail, within five days after the adoption of the rules, a copy of the rules to the state engineer.

(c) Any party adversely affected or aggrieved by a rule may, not later than thirty days after the last date of publication, initiate judicial review in accordance with section 24-4-106, C.R.S.; except that venue for judicial review of the rule must be in the district court for the county in which the office of the groundwater management district is located.

(8) A person withdrawing water from a well pursuant to paragraph (a) or (c) of subsection (1) of this section may use graywater through use of a graywater treatment works, as those terms are defined in section 25-8-103 (8.3) and (8.4), C.R.S., in compliance with the requirements of section 25-8-205 (1)(g), C.R.S. Any limitations on use set forth in the well permit apply to the use of graywater.

Source: L. 65: R&RE, p. 1249, § 1. **C.R.S. 1963:** § 148-18-4. **L. 67:** p. 276, § 3. **L. 71:** R&RE, p. 1312, § 2. **L. 85:** (1)(c) amended, p. 1172, § 1, effective May 31. **L. 87:** (2) amended and (3) added, p. 1301, § 3, effective July 2. **L. 92:** (1)(b) and (1)(c) amended and (1)(d) added, p. 2297, § 2, effective March 19. **L. 98:** (3)(a) amended, p. 1343, § 70, effective June 1; entire section amended, p. 1213, § 4, effective August 5. **L. 2003:** (3)(a)(I), (3)(e), and (4)(a) amended, p. 43, § 3, effective (see editor's note); (3)(a)(I)(A), (3)(a)(I)(C), (4)(a)(I)(A), and (4)(a)(II) amended, p. 1683, § 14, effective May 14. **L. 2009:** IP(1), (1)(d), (1)(e), and (7) amended and (1)(f) added, (SB 09-080), ch. 179, p. 789, § 2, effective July 1. **L. 2013:** (7) amended and (8) added, (HB 13-1044), ch. 228, p. 1090, § 6, effective May 15.

Editor's note: (1) Senate Bill 98-194 was harmonized with House Bill 98-1151 resulting in the renumbering of subsection (2) in Senate Bill 98-194 to subsection (3)(a).

(2) Section 10 of chapter 7, Session Laws of Colorado 2003, provides for an effective date of March 1, 2003; however, the Governor did not sign the act until March 5, 2003.

(3) Subsection (3)(a)(I)(B) provided for the repeal of subsections (3)(a)(I)(A) and (3)(a)(I)(B), subsection (3)(e)(I)(B) provided for the repeal of subsection (3)(e)(I), and

subsection (4)(a)(I)(B) provided for the repeal of subsection (4)(a)(I), effective July 1, 2006. (See L. 2003, p. 43.)

Cross references: For the legislative declaration contained in the 2003 act amending subsections (3)(a)(I), (3)(e), and (4)(a), see section 1 of chapter 7, Session Laws of Colorado 2003. For the legislative declaration in the 2013 act amending subsection (7) and adding subsection (8), see section 1 of chapter 228, Session Laws of Colorado 2013.

37-90-106. Determination of designated groundwater basins - exception - legislative declaration - repeal. (1) (a) The commission shall, from time to time as adequate factual data become available, determine designated groundwater basins and subdivisions thereof by geographic description. If factual data obtained after the designation of a groundwater basin justify, the commission may alter the boundaries or description of that designated groundwater basin by adding lands to the basin. After a determination of a designated groundwater basin becomes final, the commission may alter the boundaries to exclude lands from that basin only if factual data justify the alteration and the alteration would not exclude from the designated groundwater basin any well for which a conditional or final permit to use designated groundwater has been issued. The general assembly hereby finds, determines, and declares that allowing alterations to exclude lands from a designated groundwater basin only under such circumstances as set forth in this paragraph (a) reaffirms, rather than alters, the general assembly's original intent that there be a cut-off date beyond which the legal status of groundwater included in a designated groundwater basin cannot be challenged, and that such cut-off date was intended to be the date of finality for the original designation of the basin. After this cut-off date has passed, any request to exclude wells that are permitted to use designated groundwater from an existing groundwater basin shall constitute an impermissible collateral attack on the original decision to designate the basin.

(a.5) Nothing in Senate Bill 10-052, enacted in 2010, shall affect litigation brought under this section that is pending on January 1, 2010.

(b) In making such determinations the commission shall make the following findings:

(I) The name of the aquifer within the proposed designated basin;

(II) The boundaries of each aquifer being considered;

(III) The estimated quantity of water stored in each aquifer;

(IV) The estimated annual rate of recharge;

(V) The estimated use of the groundwater in the area.

(2) If the source is an area of use exceeding fifteen years as defined in section 37-90-103 (6), the commission shall list those users who have been withdrawing water during the fifteen-year period, the use made of the water, the average annual quantity of water withdrawn, and the year in which the user began to withdraw water.

(3) Before determining or altering the boundaries of a designated groundwater basin or subdivisions thereof, the state engineer shall prepare and file in his office a map clearly showing all lands included therein, together with a written description thereof sufficient to apprise interested parties of the boundaries of the proposed basin or subdivisions thereof. The commission shall publish the same and hold a hearing thereon. Following such hearing, the commission shall enter an order to either create the proposed designated groundwater basin, to

include modification of the proposed boundaries, if any, or dismiss the original proposal, according to the factual information presented or available.

(4) (a) The commission shall not, after May 23, 1983, determine as part of any designated groundwater basin any groundwater within the Dawson-Arkose, Denver, Arapahoe, or Laramie-Fox Hills formations which was located outside the boundaries of any designated groundwater basin that was in existence on January 1, 1983.

(b) (I) However, the commission may determine as a part of any designated groundwater basin any groundwater in the Crow Creek drainage area in Weld county, upstream from the confluence of Crow Creek and Little Crow Creek, within the Laramie-Fox Hills formation when the Laramie-Fox Hills formation is not overlaid by the Dawson-Arkose, Denver, or Arapahoe formations.

(II) If, upon receipt by the state engineer of the findings of the Laramie-Fox Hills study, as authorized by Senate Bill 250, 1985 legislative session, that the upper Crow Creek drainage area in Weld county, upstream from the confluence of Crow Creek and Little Crow Creek, within the Laramie-Fox Hills formation when the Laramie-Fox Hills formation is not overlaid by the Dawson-Arkose, Denver, or Arapahoe formations should not be a designated groundwater basin, this paragraph (b) is repealed.

Source: L. 65: R&RE, p. 1249, § 1. **C.R.S. 1963:** § 148-18-5. **L. 71:** pp. 1312, 1318, §§ 4, 17. **L. 83:** (3) added, p. 1414, § 2, effective May 23. **L. 85:** (3) amended, p. 1171, § 2, effective July 1. **L. 2010:** (1)(a) amended and (1)(a.5) added, (SB 10-052), ch. 63, p. 223, § 1, effective August 11.

Editor's note: This section was renumbered on revision in preparation of the C.R.S. 1973 and again in preparation of the 1990 replacement volume to conform to standard C.R.S. numbering format, resulting in the renumbering of subsection (3), as enacted in House Bill 83-1399 and as amended in House bill 85-1173, to subsection (4).

Cross references: For the authorization by Senate Bill 85-250 as specified in subsection (4)(b)(II) of this section, see p. 1452 and footnote 70 on p. 1487 of the 1985 general appropriation act, chapter 344, Session Laws of Colorado 1985.

37-90-107. Application for use of groundwater - publication of notice - conditional permit - hearing on objections - well permits. (1) Any person desiring to appropriate groundwater for a beneficial use in a designated groundwater basin shall make application to the commission in a form to be prescribed by the commission. The applicant shall specify the particular designated groundwater basin or subdivision thereof from which water is proposed to be appropriated, the beneficial use to which it is proposed to apply such water, the location of the proposed well, the name of the owner of the land on which such well will be located, the estimated average annual amount of water applied for in acre-feet, the estimated maximum pumping rate in gallons per minute, and, if the proposed use is irrigation, the description of the land to be irrigated and the name of the owner thereof, together with such other reasonable information as the commission may designate on the form prescribed. The amount of water applied for shall only be utilized on the land designated on the application. The place of use shall not be changed without first obtaining authorization from the ground water commission.

(2) Upon the filing of such application, a preliminary evaluation shall be made to determine if the application may be granted. If the application can be given favorable consideration by the ground water commission under existing policies, then, within thirty days, the application shall be published.

(3) After the expiration of the time for filing objections, if no such objections have been filed, the commission shall, if it finds that the proposed appropriation will not unreasonably impair existing water rights from the same source and will not create unreasonable waste, grant the said application, and the state engineer shall issue a conditional permit to the applicant within forty-five days after the expiration of the time for filing objections or within forty-five days after the hearing provided for in subsection (4) of this section to appropriate all or a part of the waters applied for, subject to such reasonable conditions and limitations as the commission may specify.

(4) If objections have been filed within the time in said notice specified, the commission shall set a date for a hearing on the application and the objections thereto and shall notify the applicants and the objectors of the time and place. Such hearing shall be held in the designated groundwater basin and within the district, if one exists, in which the proposed well will be located or at such other place as may be designated by the commission for the convenience of, and as agreed to by, the parties involved. If after such hearing it appears that there are no unappropriated waters in the designated source or that the proposed appropriation would unreasonably impair existing water rights from such source or would create unreasonable waste, the application shall be denied; otherwise, it shall be granted in accordance with subsection (3) of this section. The commission shall consider all evidence presented at the hearing and all other matters set forth in this section in determining whether the application should be denied or granted.

(5) In ascertaining whether a proposed use will create unreasonable waste or unreasonably affect the rights of other appropriators, the commission shall take into consideration the area and geologic conditions, the average annual yield and recharge rate of the appropriate water supply, the priority and quantity of existing claims of all persons to use the water, the proposed method of use, and all other matters appropriate to such questions. With regard to whether a proposed use will impair uses under existing water rights, impairment shall include the unreasonable lowering of the water level, or the unreasonable deterioration of water quality, beyond reasonable economic limits of withdrawal or use. If an application for a well permit cannot otherwise be granted pursuant to this section, a well permit may be issued upon approval by the ground water commission of a replacement plan that meets the requirements of this article and the rules adopted by the commission. A replacement plan shall not be used as a vehicle for avoiding limitations on existing wells, including but not limited to restrictions on change of well location. Therefore, before approving any replacement plan that includes existing wells, the commission shall require independent compliance with all rules governing those existing wells in addition to compliance with any guidelines or rules governing replacement plans.

(5.5) A person withdrawing water from a well pursuant to subsection (3) of this section may use graywater through use of a graywater treatment works, as those terms are defined in section 25-8-103 (8.3) and (8.4), C.R.S., in compliance with the requirements of section 25-8-205 (1)(g), C.R.S. Any limitations on use set forth in the well permit, or in the provisions of any approved replacement plan, apply to the use of graywater.

(6) (a) (I) A person shall not, in connection with the extraction of sand and gravel by open mining, as defined in section 34-32.5-103 (15), expose designated groundwater to the atmosphere unless the person has obtained a well permit from the ground water commission. If an application for such a well permit cannot otherwise be granted pursuant to this section, a well permit shall be issued upon approval by the ground water commission of a replacement plan that meets the requirements of this article 90, pursuant to the guidelines or rules adopted by the commission. The well permit and replacement plan may authorize uses of water incidental to open mining for sand and gravel, including processing and washing mined materials; dust suppression; mined land reclamation including temporary irrigation for revegetation; liner or slurry wall construction; production of concrete and other aggregate-based construction materials; dewatering; and mitigation of impacts from mining and dewatering.

(II) Any person who extracted sand and gravel by open mining and exposed groundwater to the atmosphere after December 31, 1980, shall apply for a well permit pursuant to this section and, if applicable, shall submit a replacement plan prior to July 15, 1990.

(b) If any designated groundwater was exposed to the atmosphere in connection with the extraction of sand and gravel by open mining as defined in section 34-32-103 (9), C.R.S., prior to January 1, 1981, no such well permit or replacement plan shall be required to replace depletions from evaporation; except that the burden of proving that such designated groundwater was exposed prior to January 1, 1981, shall be upon the party claiming the benefit of this exception.

(c) Any person who has reactivated or reactivates open mining operations which exposed designated groundwater to the atmosphere but which ceased activity prior to January 1, 1981, shall obtain a well permit and shall apply for approval of a replacement plan or a plan of substitute supply pursuant to paragraph (a) of this subsection (6).

(d) In addition to the well permit filing fee required by section 37-90-116, the commission shall collect the following fees for exposing groundwater to the atmosphere for the extraction of sand and gravel by open mining:

(I) For persons who exposed groundwater to the atmosphere on or after January 1, 1981, but prior to July 15, 1989, one thousand five hundred ninety-three dollars; except that, if such plan is filed prior to July 15, 1990, as required by subparagraph (II) of paragraph (a) of this subsection (6), the filing fee shall be seventy dollars if such plan includes ten acres or less of exposed groundwater surface area or three hundred fifty dollars if such plan includes more than ten acres of exposed groundwater surface area;

(II) For persons who expose groundwater to the atmosphere on or after July 15, 1989, one thousand five hundred ninety-three dollars regardless of the number of acres exposed. In the case of new mining operations, such fee shall cover two years of operation of the plan.

(III) For persons who reactivated or who reactivate mining operations that ceased activity prior to January 1, 1981, and who enlarge the surface area of any gravel pit lake beyond the area it covered before the cessation of activity, one thousand five hundred ninety-three dollars;

(IV) For persons who request renewal of an approved substitute water supply plan prior to the expiration date of the plan, two hundred fifty-seven dollars regardless of the number of acres exposed;

(V) For persons whose approved substitute water supply plan has expired and who submit a subsequent plan, one thousand five hundred ninety-three dollars regardless of the

number of acres exposed. An approved plan shall be considered expired if the applicant has not applied for renewal before the expiration date of the plan. The state engineer shall notify the applicant in writing if the plan is considered expired.

(VI) For persons whose proposed substitute water supply plan was disapproved and who submit a subsequent plan, one thousand five hundred ninety-three dollars regardless of the number of acres exposed. The state engineer shall notify the applicant in writing of disapproval of a plan.

(e) Excluding the well permit filing fee required by section 37-90-116 (2), the state treasurer shall credit all fees collected with a replacement plan to the water resources cash fund created in section 37-80-111.7 (1).

(f) A person who has obtained a reclamation permit pursuant to section 34-32-112, C.R.S., shall be allowed to apply for a single well permit and to submit a single replacement plan for the entire acreage covered by the reclamation plan without regard to the number of gravel pit lakes located within such acreage.

(g) Notwithstanding the amount specified for any fee in paragraph (d) of this subsection (6), the commission by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commission by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

(7) (a) The commission shall allocate, upon the basis of the ownership of the overlying land, any designated groundwater contained in the Dawson, Denver, Arapahoe, or Laramie-Fox Hills aquifers. Permits issued pursuant to this subsection (7) shall allow withdrawals on the basis of an aquifer life of one hundred years. The commission shall adopt the necessary rules to carry out the provisions of this subsection (7).

(b) Any right to the use of groundwater entitling its owner or user to construct a well, which right was initiated prior to November 19, 1973, as evidenced by a current decree, well registration statement, or an unexpired well permit issued prior to November 19, 1973, shall not be subject to the provisions of paragraph (a) of this subsection (7).

(c) (I) (A) and (B) Repealed.

(C) Effective July 1, 2006, rights to designated groundwater in the Dawson, Denver, Arapahoe, or Laramie-Fox Hills aquifers to be allocated pursuant to paragraph (a) of this subsection (7) may be determined in accordance with the provisions of this section. Any person desiring to obtain such a determination shall make application to the commission in a form to be prescribed by the commission. A fee of sixty dollars shall be submitted with the application for each aquifer, which sum shall not be refunded. The application may also include a request for approval of a replacement plan if one is required under commission rules to replace any depletions to alluvial aquifers caused due to withdrawal of groundwater from the Dawson, Denver, Arapahoe, or Laramie-Fox Hills aquifers.

(II) The publication and hearing requirements of this section shall also apply to an application for determination of water rights pursuant to this subsection (7).

(III) Any such commission approved determination shall be considered a final determination of the amount of groundwater so determined; except that the commission shall

retain jurisdiction for subsequent adjustment of such amount to conform to the actual local aquifer characteristics from adequate information obtained from well drilling or test holes.

(d) (I) (A) and (B) Repealed.

(C) Effective July 1, 2006, any person desiring a permit for a well to withdraw groundwater for a beneficial use from the Dawson, Denver, Arapahoe, or Laramie-Fox Hills aquifers shall make application to the commission on a form to be prescribed by the commission. A fee of one hundred dollars shall be submitted with the application, which sum shall not be refunded.

(II) A well permit shall not be granted unless a determination of groundwater to be withdrawn by the well has been made pursuant to paragraph (c) of this subsection (7).

(III) The application for a well permit shall also include a replacement plan if one is required under commission rules to replace any depletions to alluvial aquifers caused due to withdrawal of groundwater from the Dawson, Denver, Arapahoe, or Laramie-Fox Hills aquifers and the required plan has not been approved pursuant to paragraph (c) of this subsection (7). The publication and hearing requirements of this section shall apply to an application for such a replacement plan.

(IV) The annual amount of withdrawal allowed in any well permits issued under this subsection (7) shall be less than or equal to the amount determined pursuant to paragraph (c) of this subsection (7) and may, if so provided by any such determination, provide for the subsequent adjustment of such amount to conform to the actual aquifer characteristics encountered upon drilling of the well or test holes.

(8) The commission shall have the exclusive authority to issue or deny well permits under this section. The commission shall consider any recommendation by groundwater management districts concerning well permit applications under this section.

Source: L. 65: R&RE, p. 1250, § 1. **C.R.S. 1963:** § 148-18-6. **L. 71:** p. 1313, § 5. **L. 79:** (4) amended, p. 1371, § 1, effective June 7. **L. 87:** (3) amended, p. 1301, § 4, effective July 2. **L. 89:** (6) added, p. 1424, § 3, effective July 15. **L. 93:** (6)(c) and (6)(d) amended, p. 1832, § 2, effective June 6. **L. 98:** (6)(g) added, p. 1343, § 71, effective June 1; (5) amended and (7) and (8) added, p. 1216, § 5, effective August 5. **L. 2003:** (7)(c)(I) and (7)(d)(I) amended, p. 44, § 4, effective (see editor's note); (7)(d)(I)(A) and (7)(d)(I)(C) amended, p. 1683, § 15, effective May 14. **L. 2006:** (6)(d) amended, p. 1270, § 1, effective July 1. **L. 2012:** (6)(e) amended, (SB 12-009), ch. 197, p. 792, § 7, effective July 1. **L. 2013:** (5.5) added, (HB 13-1044), ch. 228, p. 1090, § 7, effective May 15. **L. 2018:** (6)(a)(I) amended, (SB 18-041), ch. 9, p. 157, § 1, effective August 8.

Editor's note: (1) Section 10 of chapter 7, Session Laws of Colorado 2003, provides for an effective date of March 1, 2003; however, the Governor did not sign the act until March 5, 2003.

(2) Subsection (7)(c)(I)(B) provided for the repeal of subsections (7)(c)(I)(A) and (7)(c)(I)(B) and subsection (7)(d)(I)(B) provided for the repeal of subsections (7)(d)(I)(A) and (7)(d)(I)(B), effective July 1, 2006. (See L. 2003, p. 44.)

(3) Section 3 of chapter 9 (SB 18-041), Session Laws of Colorado 2018, provides that the act changing this section applies to conduct occurring on or after August 8, 2018.

Cross references: For the legislative declaration contained in the 2003 act amending subsections (7)(c)(I) and (7)(d)(I), see section 1 of chapter 7, Session Laws of Colorado 2003. For the legislative declaration in the 2013 act adding subsection (5.5), see section 1 of chapter 228, Session Laws of Colorado 2013.

37-90-107.5. Replacement plans. Any person desiring to obtain an approval of a replacement plan within the boundaries of a designated groundwater basin pursuant to the provisions of this article shall make an application to the commission in a form prescribed by the commission. The applicant shall also submit a summary of the application to the commission for publication. If the commission determines the application to be complete, it shall be published pursuant to section 37-90-112 within sixty days after the filing of such an application. If an objection is filed, a hearing shall be held pursuant to section 37-90-113. The commission shall approve the replacement plan if the commission determines that the replacement plan meets the requirements of this article and rules adopted by the commission. A replacement plan shall not be used as a vehicle for avoiding limitations on existing wells, including but not limited to restrictions on change of well location. Therefore, before approving any replacement plan that includes existing wells, the commission shall require independent compliance with all rules governing those existing wells in addition to compliance with any guidelines or rules governing replacement plans.

Source: L. 98: Entire section added, p. 1218, § 6, effective August 5.

37-90-107.6. Aquifer storage-and-recovery plans - publication - objection - hearing - rules. If a person seeks to obtain an approval of an aquifer storage-and-recovery plan within the boundaries of a designated groundwater basin, the person must apply to the commission in a form and manner determined by the commission by rule. When submitting the application to the commission, the applicant must also submit a summary of the application to the commission for publication. If the commission determines that the application is complete, the application shall be published pursuant to section 37-90-112 within sixty days after the filing of the completed application. If an objection to the application is filed, the commission shall hold a hearing on the application pursuant to section 37-90-113. The commission shall approve an aquifer storage-and-recovery plan if the commission determines that the aquifer storage-and-recovery plan meets the requirements of this article 90 and rules adopted by the commission. An aquifer storage-and-recovery plan shall not be used as a vehicle for avoiding limitations on existing wells, including but not limited to restrictions on change of well location. Therefore, before approving any aquifer storage-and-recovery plan that includes existing wells, the commission shall require independent compliance with all rules governing those existing wells in addition to compliance with any guideline or rules governing aquifer storage-and-recovery plans.

Source: L. 2018: Entire section added, (HB 18-1199), ch. 106, p. 794, § 1, effective August 8.

37-90-108. Final permit - evidence of well construction and beneficial use - limitations. (1) (a) After having received a conditional permit to appropriate designated

groundwater, the applicant, within one year from the date of the issuance of said permit, shall construct the well or other works necessary to apply the water to a beneficial use.

(b) The applicant, upon completion of the well, shall furnish information to the commission, in the form prescribed by the commission, as to the depth of the well, the water-bearing formations intercepted by the well, and the maximum sustained pumping rate in gallons per minute.

(c) If the well described in the conditional permit is not constructed within one year from the date of the issuance of the conditional permit as provided in this subsection (1), the conditional permit shall expire and be of no force or effect; except that, upon a showing of good cause, the commission may grant one extension of time only for a period not to exceed one year. If the well has been constructed timely but the completion information required by this subsection (1) has not been furnished to the commission, the procedures specified in subsection (6) of this section shall apply.

(2) (a) If the well or wells described in a conditional permit have been constructed in compliance with subsection (1) of this section, the applicant, within three years after the date of the issuance of said permit, shall furnish by sworn affidavit, in the form prescribed by the commission, evidence that water from such well or wells has been put to beneficial use; except that this paragraph (a) does not apply to a well described in a conditional permit to withdraw designated groundwater from the Dawson, Denver, Arapahoe, or Laramie-Fox Hills aquifers.

(b) Such affidavit shall be prima facie evidence of the matters contained therein but shall be subject to objection by others, including groundwater management districts, claiming to be injured thereby and to such verification and inquiry as the commission shall consider appropriate in each particular case.

(c) If such required affidavit is not furnished to the commission within the time and as provided in this subsection (2), the conditional permit shall expire and be of no force or effect except as provided in subsection (4) of this section.

(d) If the well described in a conditional permit issued to withdraw designated groundwater from the Dawson, Denver, Arapahoe, or Laramie-Fox Hills aquifers has been constructed in compliance with subsection (1) of this section, the applicant shall file a notice with the commission of commencement of beneficial use on a form prescribed by the commission within thirty days after the first beneficial use of any water withdrawn from the well.

(3) (a) (I) To the extent that the commission finds that water has been put to a beneficial use and that the other terms of the conditional permit have been complied with and after publication of the information required in the final permit, as provided in section 37-90-112, the commission shall order the state engineer to issue a final permit to use designated groundwater, containing such limitations and conditions as the commission deems necessary to prevent waste and to protect the rights of other appropriators. In determining the extent of beneficial use for the purpose of issuing final permits, the commission may use the same criteria for determining the amount of water used on each acre that has been irrigated that is used in evaluating the amount of water available for appropriation under section 37-90-107. This subparagraph (I) does not apply to a well described in a conditional permit issued to withdraw designated groundwater from the Dawson, Denver, Arapahoe, or Laramie-Fox Hills aquifers.

(II) A final permit is not required to be issued for a well described in a conditional permit to withdraw designated groundwater from the Dawson, Denver, Arapahoe, or Laramie-

Fox Hills aquifers. For such a well, a conditional permit, subject to the conditions of issuance of such a permit, shall be considered a final determination of a well's water right if the well is in compliance with all other applicable requirements of this article.

(b) In determining the extent of beneficial use prior to the issuance of a final permit, the commission may either increase or decrease the quantity of water and the amount of irrigated acreage, if any, according to the evidence presented to the commission, but no increase shall be permitted which will increase the quantity of water beyond that authorized by the original decree, conditional permit, registration statement, or other well permit issued prior to basin designation or which otherwise will unreasonably affect the rights of other appropriators.

(c) Any owner of an existing valid conditional permit issued before July 1, 1978, may file with the commission an amended statement of beneficial use, in the form prescribed by the commission, on or before December 31, 1979, and not thereafter, if any such change occurred and was approved on or before August 5, 1977.

(4) The procedural requirement that a statement of beneficial use shall be filed shall apply to all permits wherein the water was put to beneficial use since May 17, 1965. If information pertaining to completion of the well as required in subsection (1) of this section has been received but evidence that water has been placed to beneficial use has not been received as of three years after the date of issuance of the conditional permit, the commission shall so notify the applicant by certified mail. The notice shall give the applicant the opportunity to submit proof that the water was put to beneficial use prior to three years after the date of issuance of the conditional permit. The proof must be received by the commission within twenty days after receipt of the notice by the applicant, and, if the conditional permit was issued on or after July 14, 1975, the proof must be accompanied by a filing fee of thirty dollars. If the commission finds the proof to be satisfactory, the conditional permit shall remain in force and effect. The commission shall consider any records of the commission and any evidence provided to the commission and all other matters set forth in this section in determining whether the conditional permit should remain in force and effect.

(5) (a) All final permits must set forth the following information as a minimum:

(I) The priority date;

(II) The name of the claimant;

(III) The quarter-quarter in which the well is located;

(IV) The maximum annual volume of the appropriation in acre-feet per year;

(V) The maximum pumping rate in gallons per minute; and

(VI) The maximum number of acres that have been irrigated, if used for irrigation.

(b) Notwithstanding any rule of law to the contrary other than a change of use case under section 37-90-111 (1)(g), once the state engineer issues a final permit for the withdrawal of designated groundwater pursuant to this section, a reduction in the amount of water used pursuant to the permit due to the conservation of water is not grounds to reduce:

(I) The maximum annual volume of the appropriation in acre-feet per year;

(II) The maximum pumping rate in gallons per minute; or

(III) The maximum number of acres that have been irrigated, if used for irrigation.

(6) The procedural requirement that the well completion information required by subsection (1) of this section be furnished to the commission shall apply to all permits issued after May 17, 1965. If the well has been constructed within twenty-four months after the date of issuance of the permit where the permit was issued before June 7, 1979, or within twelve months

after the date of issuance of the permit where the permit was issued on or after June 7, 1979, or by the expiration date of the permit, including any extension, but the completion information has not been furnished to the commission within six months after said allowable time for the well completion, the commission shall so notify the applicant by certified mail. The notice shall give the applicant the opportunity to submit proof that the well was completed within the time specified above or by the expiration date of the permit and to submit the information required by subsection (1) of this section and a showing that, due to excusable neglect, inadvertence, or mistake, the applicant failed to submit the evidence and information on time. The proof and information must be received by the commission within twenty days after receipt of the notice by the applicant and must be accompanied by a filing fee of thirty dollars. If the commission finds the proof to be satisfactory, the permit shall remain in force and effect. The commission shall consider any records of the commission and any evidence provided to the commission and all other matters set forth in this section in determining whether the permit should remain in force and effect.

(7) Notwithstanding the amount specified for any fee in this section, the commission by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commission by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

Source: L. 65: R&RE, p. 1251, § 1. **C.R.S. 1963:** § 148-18-7. **L. 71:** p. 1314, § 6. **L. 75:** (3) amended and (4) added, p. 1394, § 1, effective July 14. **L. 79:** (1) to (3) R&RE, p. 1371, § 2, effective June 7. **L. 85:** (1)(c), (3)(a), (3)(b), and (4) amended and (5) and (6) added, p. 1172, § 2, effective May 31. **L. 86:** (6) amended, p. 1221, § 34, effective May 30. **L. 92:** (4), (5)(c), and (6) amended, p. 2298, § 3, effective March 19. **L. 94:** (1)(c) and (2)(a) amended and (2)(d) added, p. 1746, § 1, effective July 1. **L. 98:** (7) added, p. 1344, § 72, effective June 1; (2)(a), (2)(d), (3)(a), (4), and (6) amended, p. 1218, § 7, effective August 5. **L. 2013:** (2)(a), (2)(d), and (3)(a) amended, (SB 13-072), ch. 30, p. 73, § 1, effective August 7; (5) amended, (SB 13-075), ch. 35, p. 101, § 1, effective August 7.

Editor's note: Section 2 of chapter 30, Session Laws of Colorado 2013, provides that the act amending subsections (2)(a), (2)(d), and (3)(a) applies to permits issued for designated groundwater from the Dawson, Denver, Arapahoe, or Laramie-Fox Hills aquifers before, on, or after August 7, 2013.

37-90-109. Priority - discontinuance orders - grounds. (1) Priority of claims for the appropriation of designated groundwater shall be determined by the doctrine of prior appropriation. All claims based on actual taking of designated groundwater for beneficial use prior to May 17, 1965, shall be determined by the doctrine of prior appropriation and shall relate back to the date of placing designated groundwater to beneficial use. All claims for the beneficial use of designated groundwater initiated after May 17, 1965, shall relate back to the date of filing of an application with the commission, unless such application is rejected.

(2) In order to establish priority of a claim to appropriate designated groundwater which has existed prior to May 17, 1965, a priority date shall be awarded to each well based upon the time the water was first applied to a beneficial use. The date shown in the records now filed in the state engineer's office shall be prima facie evidence of the date the water was first applied to beneficial use. All wells constructed as replacements for or as supplements to original wells for the same beneficial use shall be considered as a unit and awarded a priority date of the earliest well.

(3) As soon as practical after the establishment of a designated groundwater basin, the commission shall establish tentative priority dates for the respective wells within such designated groundwater basin, or subdivisions thereof, in accordance with the information contained in its files. The commission may require such additional information from the well claimant as will permit it to make a proper determination of the priority date and may request such other information as is required to be set forth in a final permit pursuant to section 37-90-108 (5). If the claimant fails or refuses to furnish the requested information within a period of thirty days, the commission may proceed to make a determination from the records available.

(4) After establishing the proposed priority date and after receiving the information required by section 37-90-108 (5) for the final permit on claims for the beneficial use of designated groundwater, the commission shall order the state engineer to issue a final permit to appropriate designated groundwater in the manner and pursuant to the standards set forth in section 37-90-108 for final permits; except that a final permit is not required to be issued for a well described in a conditional permit issued on or after July 1, 1991, to withdraw designated groundwater from the Dawson, Denver, Arapahoe, or Laramie-Fox Hills aquifers and except that this section shall not apply to any final priority lists established by the commission prior to January 1, 1985, and any final permits issued pursuant to said lists.

(5) and (6) Repealed.

Source: L. 65: R&RE, p. 1252, § 1. **C.R.S. 1963:** § 148-18-8. **L. 71:** p. 1314, § 7. **L. 79:** (4) R&RE, p. 1373, § 3, effective June 7. **L. 85:** (2) and(3) amended, (4) R&RE, and (5) and (6) repealed, pp. 1174, 1175, 1178, §§ 3, 4, 14, effective May 31. **L. 98:** (4) amended, p. 1220, § 8, effective August 5.

37-90-110. Powers of the state engineer. (1) In the administration and enforcement of this article and in the effectuation of the policy of this state to conserve its groundwater resources and for the protection of vested rights, the state engineer, either in the state engineer's own capacity or as the executive director of the commission, is empowered:

(a) To require all flowing wells to be equipped with valves so that the flow of water can be controlled;

(b) To require both flowing and nonflowing wells to be so constructed and maintained as to prevent the waste of groundwaters through leaky wells, casings, pipes, fittings, valves, or pumps, either above or below the land surface;

(c) To go upon all lands, both public and private, for the purpose of inspecting wells, pumps, casings, pipes, fittings, and measuring devices, including wells used or claimed to be used for domestic or stock purposes;

(d) To order the cessation of the use of a well pending the correction of any defect that the state engineer has ordered corrected;

(e) To commence actions to enjoin the illegal opening or excavation of wells or withdrawal or use of water therefrom and to appear and become a party to any action or proceeding pending in any court or administrative agency when it appears that the determination of such action or proceeding might result in depletion of the groundwater resources of the state contrary to the public policy expressed in this article or might injure vested rights of other appropriators;

(f) To take such action as may be required to enforce compliance with any regulation, control, or order promulgated pursuant to the provisions of this article;

(g) To issue to the owners or users of wells pumping designated groundwater in the state such orders as are necessary to implement the provisions of this section and section 37-90-111. In addition to any other method of giving notice, the mailing of the order in a certified letter to the well owner or operator, together with the posting of a written order, in plain sight, at the well head, shall be considered sufficient notice of the order of the state engineer, and, when so posted, the order shall be effective from the time of posting.

(h) To administer the movement of water involved in any commission-issued replacement plan or plan for augmentation involving designated groundwater. In such administration, the state engineer shall issue such orders as are necessary and appropriate.

(i) To order any person supplying energy used to pump designated groundwater to provide, at reasonable times, records of energy used to pump groundwater. The state engineer may exercise this authority only in connection with an alleged violation of this article. Suppliers of energy used to pump groundwater shall not be required to maintain records of energy used to pump groundwater more than five years after the year in which the energy is consumed. Suppliers of energy used to pump groundwater shall be held harmless from any and all civil or criminal liability with respect to the transfer of records pursuant to this section. Nothing contained in this paragraph (i) shall affect any reporting requirements of the public utilities commission pursuant to section 40-3-110, C.R.S. This paragraph (i) shall not apply to any person diverting by means of a well described in section 37-90-105 (1)(a).

Source: L. 65: R&RE, p. 1253, § 1. **C.R.S. 1963:** § 148-18-9. **L. 71:** p. 1318, § 17. **L. 94:** IP(1) and (1)(f) amended, p. 1747, § 2, effective July 1. **L. 2004:** IP(1) amended and (1)(g), (1)(h), and (1)(i) added, p. 1164, § 1, effective May 27.

Cross references: For general duties of the state engineer, see § 37-80-102.

37-90-111. Powers of the ground water commission - limitations. (1) In the administration and enforcement of this article and in the effectuation of the policy of this state to conserve its designated groundwater resources and for the protection of vested rights and except to the extent that similar authority is vested in groundwater management districts pursuant to section 37-90-130 (2), the ground water commission is empowered:

(a) To supervise and control the exercise and administration of all rights acquired to the use of designated groundwater. In the exercise of this power it may, by summary order, prohibit or limit withdrawal of water from any well during any period that it determines that such withdrawal of water from said well would cause unreasonable injury to prior appropriators; except that nothing in this article shall be construed as entitling any prior designated groundwater appropriator to the maintenance of the historic water level or any other level below

which water still can be economically extracted when the total economic pattern of the particular designated groundwater basin is considered; and further except that no such order shall take effect until six months after its entry.

(b) To establish a reasonable groundwater pumping level in an area having a common designated groundwater supply. Water in wells shall not be deemed available to fill the water right therefor if withdrawal therefrom of the amount called for by such right would, contrary to the declared policy of this article, unreasonably affect any prior water right or result in withdrawing the groundwater supply at a rate materially in excess of the reasonably anticipated average rate of future recharge.

(c) To issue permits for the construction of replacement wells. Any permits issued shall set forth the conditions under which a well may be modified by a change of the well itself or the pumping equipment therefor, by the drilling of a replacement well, or otherwise, in order to make it possible for the owner of a well to obtain the water to which such owner may be entitled by virtue of his original appropriation.

(d) In the exercise of any of the powers or duties conferred by this section, to confer and consult with the board of directors of the ground water management district board in the affected area, if any such board exists, before promulgating any orders or regulations which would affect the district in general;

(e) To order the total or partial discontinuance of any diversion within a groundwater basin to the extent the water being diverted is not necessary for application to a beneficial use;

(f) In any area where a ground water management district has not been formed, to prescribe satisfactory and economical measuring methods for the measurement of water levels in and the amount of water withdrawn from wells and to require reports to be made at the end of each pumping season showing the date and water level at the beginning of the pumping season, the date and water level at the end of the pumping season, and showing any period of more than thirty days' cessation of pumping during such pumping season;

(g) Upon application therefor by any permit holder, to authorize a change in acreage served, volume of appropriation, place, time, or type of use of and by any water right, or of any well location, either conditional or final, granted under the authority of the commission but only upon such terms and conditions as will not cause material injury to the vested rights of other appropriators. No such change that increases the volume of appropriation beyond that authorized by the original decree, conditional permit, registration statement, or other well permit issued prior to basin designation shall be authorized, and no such change shall be approved until after publication of such application as provided in section 37-90-112; except that publication shall not be required to approve a temporary change pursuant to the rules adopted by the commission and except that publication shall not be required for replacement wells that are relocated no further than the maximum distance allowed by district rules and regulations without prior board approval or by commission policy where no district exists or where no district rule has been adopted.

(h) To adopt rules necessary to carry out the provisions of this article.

(2) No supplemental wells or alternate point of diversion wells shall be allowed in any area of any designated groundwater basin in which the proposed well or wells combined would deplete the aquifer in excess of the rate of depletion prescribed by the ground water commission or by the ground water management district rules and regulations.

(3) In the exercise of any of the powers or duties conferred by this section, the commission shall confer and consult with the board of directors of the ground water management district board in the affected areas, if any such board exists, before promulgating any orders or regulations which would affect the district in general, and shall request written recommendations from the board of any existing district within which the conditional or final permit has been issued, before taking final action on any request or application made pursuant to this section.

(4) In any area within a designated groundwater basin which has not been included within the boundaries of a ground water management district, the commission has the authority to exercise any power given by this article to the board of directors of a ground water management district, but, before instituting control measures pursuant to section 37-90-130, the commission shall follow the procedures set out in section 37-90-131.

(5) Notwithstanding any other provision of this article, the commission shall allocate, upon the basis of ownership of the overlying land, any designated groundwater contained in the Dawson, Denver, Arapahoe, or Laramie-Fox Hills aquifers. Permits issued pursuant to this subsection (5) shall allow withdrawals on the basis of an aquifer life of one hundred years.

Source: L. 65: R&RE, p. 1254, § 1. **C.R.S. 1963:** § 148-18-10. **L. 67:** p. 276, § 4. **L. 71:** p. 1314, § 8. **L. 79:** IP(1) amended and (1)(g), (3), and (4) added, pp. 1373, 1374, §§ 4, 5, effective June 7. **L. 85:** (1)(g) and (3) amended, p. 1175, § 5, effective May 31. **L. 88:** (5) added, p. 1238, § 1, effective July 1. **L. 92:** (1)(c) amended, p. 2299, § 4, effective March 19. **L. 94:** (1)(h) added, p. 1747, § 3, effective July 1. **L. 98:** (1)(g) amended, p. 1220, § 9, effective August 5.

37-90-111.5. Well enforcement - injunction - fines. (1) (a) If an order of the ground water management district, commission, or state engineer issued pursuant to section 37-90-105, 37-90-107, 37-90-108, 37-90-110, or 37-90-130 (4) in relation to designated groundwater or pursuant to section 37-90-111 is not complied with, a ground water management district in its own name or the commission or state engineer in the name of the people of the state of Colorado, through the attorney general, shall apply to the district court in the county in which the water right or well is situated:

(I) For an injunction enjoining the person to whom such order was directed from continuing to violate the order. The term "injunction" includes a temporary restraining order and mandatory relief.

(II) To recover the civil penalties specified in paragraph (a) of subsection (5) of this section.

(b) In the proceeding, the prevailing party shall be entitled to the costs of the proceeding and reasonable attorney fees.

(2) In the case of an order with respect to the withdrawal of designated groundwater, the designated groundwater judge in ruling upon such injunction shall consider, depending on the basis for the order, whether the designated groundwater is being applied to a beneficial use, whether the withdrawal is causing or will cause injury to persons or entities owning or entitled to use water under vested water rights, and whether the withdrawal of designated groundwater is in violation of the statute; the rules adopted by the ground water management district, commission, or state engineer; or the well permit's terms and conditions. The commission, state engineer, and

district shall coordinate enforcement actions to ensure that multiple actions are not filed with regard to the same violation or failure to comply.

(3) Any person who has an interest in the subject matter of such proceedings may intervene, if such intervention is timely and will not cause undue delay.

(4) In the case of a violation of an injunction issued under this section, the designated groundwater judge shall try and punish the offender for contempt of court. Such proceedings shall be in addition to, and not in lieu of, any other penalties and remedies, public or private, provided by law.

(5) (a) (I) Any person who diverts designated groundwater contrary to a valid order of the commission or state engineer issued pursuant to section 37-90-105, 37-90-107, 37-90-108, 37-90-110, or 37-90-111, or in violation of rules adopted by the commission or state engineer shall forfeit and pay a sum not to exceed five hundred dollars for each day such violation continues.

(II) Any person who, when required to do so by rules adopted by the ground water management district, commission, or state engineer, fails to submit data as to the amounts of designated groundwater pumped from a well, makes a false or fictitious report of the amounts of designated groundwater pumped from a well, falsifies any data as to amounts pumped from a well, makes a false or fictitious report of a power coefficient for a well, or falsifies any power coefficient test shall forfeit and pay a sum not to exceed five hundred dollars for each violation; except that this subparagraph (II) does not apply to an order issued pursuant to section 37-90-110 (1)(i).

(III) It is unlawful for any person not authorized by the well owner, commission, or state engineer to willfully interfere with any power meter, totalizing flow meter, or other device used to measure designated groundwater diversions. Any person who willfully damages a power meter, totalizing flow meter, or other device used to measure designated groundwater diversions or who tampers with or falsifies any record made or being made by any such power meter, totalizing flow meter, or other device shall forfeit and pay a sum not to exceed five hundred dollars for each violation.

(IV) This paragraph (a) shall not apply to any person diverting by means of a well described in section 37-90-105 (1)(a).

(b) The state engineer shall transmit all fines collected for violations of paragraph (a) of this subsection (5) to the state treasurer, who shall deposit them in the water resources cash fund created in section 37-80-111.7 (1); except that a ground water management district shall collect and retain the fines for a violation of an order or rule of the ground water management district.

(6) Any person required by a valid order of the ground water management district, commission, or state engineer, or by existing rules of the ground water management district, commission, or state engineer, to cease diversions of designated groundwater or replace depletions caused by diversions of designated groundwater, and whose failure to adhere to the order or rule results in the violation of an interstate compact, is liable for all direct, actual, and necessary expenses incurred by the state of Colorado in performing any action, including the purchase of water or payment of damages, necessary for the state of Colorado to remedy the violation of such compact. The ground water management district in its own name or the commission or state engineer in the name of the people of the state of Colorado, through the attorney general, shall apply to the district court in the county in which the water right or well is situated to recover such expenses. If the ground water management district, commission, or state

engineer prevails, the court shall also award the costs of the proceeding and reasonable attorney fees.

Source: L. 2004: Entire section added, p. 1165, § 2, effective May 27. **L. 2012:** (5)(b) amended, (SB 12-009), ch. 197, p. 792, § 5, effective July 1. **L. 2014:** IP(1)(a), (2), (5)(a)(II), (5)(b), and (6) amended, (HB 14-1052), ch. 56, p. 255, § 2, effective March 21.

37-90-112. Notice - publication. (1) When any notice is required to be published under any section of this article, including notice of elections, it shall be deemed to mean a publication in a newspaper of general circulation in each of the counties concerned. Publication of all notices shall be once each week for two successive weeks. The notice shall state the hour and date of the commencement of hearings on the subject matter of the notice; the place at which the hearings will be held; the place where written objections may be filed; and the final date by which written objections will be received; or, if for an election, the date, hours, and polling places.

(2) All objections, either to the published notice or any matter contained therein, shall be in writing and shall briefly state the nature of the objection and shall be filed within the time and at the place designated in the notice.

(3) The time for filing any written objections to notices described in this article shall extend to thirty days following the last publication of the notice.

Source: L. 65: R&RE, p. 1255, § 1. **C.R.S. 1963:** § 148-18-11. **L. 71:** p. 1315, § 9.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24.

37-90-113. Hearings. (1) Hearings on all matters to be heard by the commission shall be held within the boundaries of the designated groundwater basin and within the ground water management district, if one exists, in which the water rights directly involved are situated or at such other place as may be designated by the commission for the convenience of, and as agreed to by, the parties involved. The hearings shall be conducted before the commission under reasonable rules and regulations of procedure prescribed by it. All parties to the hearing, including the commission, have the right to subpoena witnesses, who shall be sworn by the chairman or acting chairman of the commission to testify under oath at the hearing. All parties to the hearing shall be entitled to be heard either in person or by attorney.

(2) In any hearings required to be conducted by the commission, it may, in its discretion, have such hearings conducted before such agent as it may designate, either alone or in conjunction with the appearance of the commission if the agent is technically qualified to conduct or assist in such hearings. Unless agreed otherwise by all parties to a hearing or unless ordered otherwise by the commission due to extenuating circumstances, a hearing pursuant to this section shall be held within one hundred eighty days after the filing of a request for such a hearing. Appeals of rulings of the agent designated by the commission shall be reviewed at any regular or special commission meeting at the location chosen by the commission for that meeting.

(3) At any hearing or proceedings conducted or authorized by the commission affecting any water rights, either existing or potential, within any ground water management district, the commission shall receive and fully consider the testimony and recommendations of the board of

directors or authorized agents of said district, if such testimony and recommendations are offered on behalf of the affected district.

(4) In addition to any authority established by rule by the commission for commission matters to be referred to alternative dispute resolution, the commission or an agent designated by the commission pursuant to subsection (2) of this section may refer a matter before the commission to alternative dispute resolution pursuant to section 13-22-313.

Source: L. 65: R&RE, p. 1255, § 1. **C.R.S. 1963:** § 148-18-12. **L. 71:** p. 1315, § 10. **L. 79:** (1) amended and (3) added, p. 1374, § 6, effective June 7. **L. 98:** (2) amended, p. 1221, § 10, effective August 5. **L. 2017:** (4) added, (SB 17-036), ch. 140, p. 468, § 1, effective August 9.

37-90-114. Other administrative hearings. Any person claiming to be injured within the boundaries of a designated groundwater basin by any act of the state engineer or commission under the provisions of this article, or the failure of the state engineer or commission to take any action under the provisions of this article, except as provided for the small capacity wells in section 37-90-105, shall file a written petition with the commission stating the basis of the alleged injury. Thereafter, only upon request by a petitioner and upon thirty-five days' written notice to any adverse party, the commission shall conduct a hearing upon the petition in the manner provided in section 37-90-113. If notice of any such act has been published pursuant to section 37-90-112 and no hearing has been requested pursuant to such notice, this section shall not be construed to create a subsequent or additional right to request a hearing concerning such act.

Source: L. 65: R&RE, p. 1256, § 1. **C.R.S. 1963:** § 148-18-13. **L. 71:** p. 1316, § 11. **L. 85:** Entire section amended, p. 1176, § 6, effective May 31. **L. 98:** Entire section amended, p. 1221, § 11, effective August 5. **L. 2012:** Entire section amended, (SB 12-175), ch. 208, p. 883, § 152, effective July 1.

37-90-115. Judicial review of actions of the ground water commission or the state engineer. (1) (a) Any party, including a ground water management district, adversely affected or aggrieved by any decision or act of the ground water commission, except for the adoption of rules, under the provisions of this article or by a decision or act of the state engineer under section 37-90-110 may take an appeal to the district court in the county wherein the water rights or wells involved are situated.

(b) (I) The notice of such appeal shall be served by the appellant upon the state engineer or the commission and all interested parties within thirty-five days after the notice of such decision or act and, unless such appeal is taken within said time, the action of the state engineer or the commission shall be final and conclusive. For purposes of service only, "all interested parties" shall be limited to those parties which appeared at, and were granted party status in, any administrative hearing held by the commission or state engineer concerning the decision or act from which the appeal is taken. If no administrative hearing has been held, notice of such appeal shall be given by publication pursuant to section 37-90-112.

(II) Notice of such appeal, proof of service, and docketing of the appeal in the district court shall be accomplished in the same manner as any other civil suit originally commenced in the district courts of this state. Costs shall be charged to the appellant as in any other civil suit.

(III) A district court shall review the commission's or state engineer's decision or action de novo, considering only evidence that was taken in the administrative proceeding appealed from and included in the record. The district court shall consider evidence in its determination of the matter if the evidence:

(A) Was wrongly excluded at the administrative proceeding; or

(B) Existed at the time of the administrative proceeding but was discovered after the administrative proceeding and, in the exercise of good faith and reasonable diligence, could not have been made available and offered at the administrative proceeding.

(IV) It is the duty of the commission or the state engineer, upon being served with a notice of appeal pursuant to this section, to transmit to the district court to which the appeal is taken the papers, maps, plats, field notes, orders, decisions, and other available data affecting the matter in controversy or certified copies thereof, which certified copies shall be admitted in evidence as of equal validity with the originals.

(V) For the purpose of maximizing continuity in the disposition of designated groundwater cases, on or before January 10 of each year, the supreme court shall designate or redesignate a designated groundwater judge for each designated groundwater basin, who shall be selected from a judicial district within which some part of that designated groundwater basin lies, and any vacancy that occurs during such year shall be filled by designation of the supreme court. The services of each designated groundwater judge shall be in addition to such judge's regular duties as a district judge but shall take priority over such regular duties, and the schedules of the district judges in each such judicial district shall be arranged and adjusted so that the designated groundwater judge shall be free to hear designated groundwater cases. All cases relating to designated groundwater which are filed in each judicial district shall be assigned to the designated groundwater judge, and all proceedings regarding said cases shall be heard by the designated groundwater judge. If it becomes necessary during any year for the proper handling of designated groundwater cases in any judicial district, the supreme court shall designate one or more additional designated groundwater judges from that judicial district or may make temporary assignments of other judges to hear such cases.

(2) Any party adversely affected or aggrieved by a rule adopted by the ground water commission may take an appeal pursuant to section 24-4-106, C.R.S.

Source: L. 65: R&RE, p. 1256, § 1. **C.R.S. 1963:** § 148-18-14. **L. 79:** Entire section R&RE, p. 1374, § 7, effective June 7. **L. 83:** Entire section R&RE, p. 1416, § 2, effective June 10. **L. 85:** (2) amended and (6) added, p. 1176, § 7, effective May 31. **L. 94:** Entire section amended, p. 1747, § 4, effective July 1. **L. 2012:** (1)(b)(I) amended, (SB 12-175), ch. 208, p. 883, § 153, effective July 1. **L. 2017:** (1)(b)(III) amended, (SB 17-036), ch. 140, p. 468, § 2, effective August 9.

37-90-116. Fees. (1) The state engineer or the commission shall collect the following fees:

(a) (I) Repealed.

(II) Effective July 1, 2006, with an application for the use of groundwater, one hundred dollars, which sum shall not be refunded.

(b) Repealed.

(c) (I) Repealed.

(II) Effective July 1, 2006, for issuing a permit to modify or replace an existing well, one hundred dollars.

(d) For making a copy of a document filed in his office, fifty cents per page or fraction thereof;

(e) For certifying copies of documents, records, or maps, two dollars for each certification;

(f) The actual expenses of publication, if any is required, which sums shall be promptly billed to the applicant and paid prior to the approval of any permit or other application, unless the commission requires the applicant to pay these expenses directly to the newspaper, and the applicant provides a proof of such payment to the commission. All fees for publication expenses collected by the state engineer or by the commission shall be transmitted to the state treasurer, who shall credit them to the water resources cash fund created in section 37-80-111.7 (1).

(g) With an objection to an application for the use of groundwater, ten dollars, which sum shall not be refunded;

(h) (I) Repealed.

(II) Effective July 1, 2006, with an application for any change in a well permit, whether conditional or final, submitted pursuant to section 37-90-111 (1)(g), one hundred dollars, which sum shall not be refunded.

(i) (I) Repealed.

(II) Effective July 1, 2006, with a request to extend the expiration date on a well permit, other than a well permit issued pursuant to section 37-90-105, sixty dollars.

(2) Departments and agencies of the state of Colorado that own and operate wells on state land are exempt from the payment of fees for applications for the use of groundwater or for a permit to construct a well.

(3) Notwithstanding the amount specified for any fee in subsection (1) of this section, the commission by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commission by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

Source: L. 65: R&RE, p. 1256, § 1. **C.R.S. 1963:** § 148-18-15. **L. 69:** p. 1199, § 1. **L. 71:** p. 1316, § 12. **L. 85:** IP(1) and (1)(f) amended and (1)(b) repealed, pp. 1177, 1178, §§ 8, 14, effective May 31. **L. 87:** (1)(a), (1)(c), and (1)(h) amended, p. 1301, § 5, effective July 2. **L. 98:** (3) added, p. 1344, § 73, effective June 1; (1)(f) amended and (1)(i) added, p. 1222, § 12, effective August 5. **L. 2003:** (1)(a), (1)(c), (1)(h), and (1)(i) amended, p. 45, § 5, effective (see editor's note); (1)(a)(I)(A), (1)(a)(II), (1)(c)(I)(A), (1)(c)(II), (1)(h)(I)(A), and (1)(h)(II) amended, p. 1684, § 16, effective May 14. **L. 2012:** (1)(f) amended, (SB 12-009), ch. 197, p. 791, § 3, effective July 1. **L. 2017:** (2) amended, (SB 17-026), ch. 47, p. 147, § 15, effective August 9.

Editor's note: (1) Section 10 of chapter 7, Session Laws of Colorado 2003, provides for an effective date of March 1, 2003; however, the Governor did not sign the act until March 5, 2003.

(2) Subsection (1)(a)(I)(B) provided for the repeal of subsection (1)(a)(I), subsection (1)(c)(I)(B) provided for the repeal of subsection (1)(c)(I), subsection (1)(h)(I)(B) provided for the repeal of subsection (1)(h)(I), and subsection (1)(i)(I)(B) provided for the repeal of subsection (1)(i)(I), effective July 1, 2006. (See L. 2003, p. 45.)

Cross references: For the legislative declaration contained in the 2003 act amending subsections (1)(a), (1)(c), (1)(h), and (1)(i), see section 1 of chapter 7, Session Laws of Colorado 2003.

37-90-117. Water conservation board - duties. The Colorado water conservation board has the power, and it is its duty, to investigate and determine the nature and extent of the groundwater resources of the state of Colorado. It is also the duty of said board to study and determine the effect, if any, of the withdrawal of groundwater upon aquifer supply and upon the surface flow of streams, and the information obtained thereby shall be made available to the state engineer and the ground water commission and any designated ground water management district. Nothing in this section shall be construed as impairing the authority of the state engineer, the ground water commission, or any ground water management district to make such investigation as it may find necessary or desirable to enable it to perform its duties under this article.

Source: L. 65: R&RE, p. 1257, § 1. **C.R.S. 1963:** § 148-18-16.

Cross references: For other duties of the Colorado water conservation board, see § 37-60-106.

37-90-118. Ground water management districts - formation. Within areas determined as designated groundwater basins by action of the commission in accordance with section 37-90-106, ground water management districts may be formed in the manner, and having the power, provided in sections 37-90-118 to 37-90-135; but no district shall be organized unless all groundwater aquifers containing designated groundwater within the geographic boundaries of the district have been included as a part of the district by the commission.

Source: L. 65: R&RE, p. 1257, § 1. **C.R.S. 1963:** § 148-18-17. **L. 85:** Entire section amended, p. 1177, § 9, effective May 31.

37-90-119. Creation of districts - proposal - submission - changes - proposed boundaries. A proposal for the formation of a designated ground water management district must be first submitted to the ground water commission, which shall make a hydrologic, geographic, and geologic evaluation of the proposed boundaries and recommend any changes in such boundaries as are indicated by such evaluation. No further steps for the formation of such district shall be taken until the commission, in writing, gives its consent to the boundaries thereof. The commission shall give either its consent or disapproval of the proposed boundaries within ninety days after the proposal has been submitted to it.

Source: L. 65: R&RE, p. 1257, § 1. **C.R.S. 1963:** § 148-18-18.

37-90-120. Management districts - petition - signatures required - filing. Following receipt of the consent required by section 37-90-119, a petition calling for formation of the proposed district may be filed with the commission. The petition shall be signed by not less than fifteen percent of the taxpaying electors within the proposed district.

Source: L. 65: R&RE, p. 1258, § 1. **C.R.S. 1963:** § 148-18-19. **L. 67:** p. 276, § 5.

37-90-121. Management districts - petition - contents - minor defects - amendment. (1) The petition referred to in section 37-90-120 shall set forth:

(a) The name of the proposed district and boundaries thereof;

(b) A proposed division of the district into divisions as nearly equal in size as may be practicable, and considering the population thereof, each of which is to be represented by a director, who shall be a resident taxpaying elector in such division or reside within the designated groundwater basin within which the district is located and be a resident agriculturist who owns and actively farms or ranches land located within such division;

(c) The number of directors that the district shall have if formed, not less than five nor more than fifteen in number, together with the name and address of each of the proposed directors, the division to be represented by each of them, and their terms of office, which shall be so designated that approximately one-half of them shall expire on the first Tuesday in March of the second year after the organization of the district is completed, and the remainder of them on the first Tuesday in March of the fourth year after the organization of the district is completed;

(d) Where the offices of such proposed district are to be maintained; and

(e) A prayer that the organization of the district be submitted to a vote of the taxpaying electors as provided in section 37-90-124.

(2) No petition for the organization of a district with the requisite signatures shall be declared null and void on account of minor defects, but the commission may at any time, prior to final determination of the sufficiency thereof, permit the petition to be amended in form to conform to the facts. Several similar petitions or duplicate copies of the same petition for the organization of the same district may be filed and shall together be regarded as one petition. All petitions, filed prior to the determination of the sufficiency of such petition, shall be considered as though filed with the first petition placed on file.

Source: L. 65: R&RE, p. 1258, § 1. **C.R.S. 1963:** § 148-18-20. **L. 67:** p. 276, § 6. **L. 2009:** (1)(b) amended, (HB 09-1159), ch. 43, p. 164, § 1, effective August 5.

37-90-122. Management district - petition - certification of signatures - hearing - notice - publication. The commission shall examine the petition, and, if it finds that it bears the requisite number of signatures and otherwise meets the stated requirements, it shall thereupon set a date for hearing upon such petition and shall cause notice of such hearing, together with a copy of such petition, to be published, the final publication being not less than ten days nor more than thirty days prior to the date set for such hearing. The cost of such publication shall be paid by the petitioners and shall be advanced by them prior to publication.

Source: L. 65: R&RE, p. 1259, § 1. **C.R.S. 1963:** § 148-18-21.

37-90-123. Management districts - hearing - objections - change of boundaries. At the time set for such hearing, the commission shall examine the petition and hear objections thereto and may order changes in the boundaries thereof by the inclusion or removal of land therefrom upon finding that such change would be hydrologically, geologically, and geographically sound. The action of the commission may be reviewed by the district court in appeal proceedings filed within twenty days after its decision has been announced, which decision shall be announced within ninety days after the hearing.

Source: L. 65: R&RE, p. 1259, § 1. **C.R.S. 1963:** § 148-18-22.

37-90-124. Election on organization. (1) If, after the completion of the hearing on the feasibility of the organization of a district, it is determined that such district shall be organized, the commission shall forthwith make an order allowing the prayer of the petition, and, by order duly entered upon its record, shall call an election of the taxpaying electors in the district for the purpose of determining whether such district shall be organized, and shall set the date for such election.

(2) The commission shall thereupon publish a notice, the final publication to be not less than ten days nor more than thirty days immediately preceding the election, which notice shall state: The fact of filing of the petition; in summary form, the information required by section 37-90-121 (1) to be included in the petition; that an election will be held to decide the question of organization of the proposed district; the date of such election; the polling places at which such election is to be held; the qualifications of those eligible to vote at such election; and the specific question to be submitted.

(3) The commission shall appoint three taxpaying electors of the district as judges for each designated polling place. The election shall be held and conducted as nearly as may be in the same manner as general elections in this state. There shall be no special registration for such election, but, for the purpose of determining qualifications of electors, the judges shall be permitted to use the last official registration lists of electors residing in the district and a certified list of taxpayers in the district prepared by the county treasurer and, in addition, may require the execution of an affidavit concerning the qualification of any such taxpaying elector to vote.

(4) At such election the voters shall vote for or against the organization of the district. The judges of each polling place shall certify the returns of the election to the ground water commission. If a majority of votes cast at said election are against the organization of the district, the commission shall forthwith dismiss the petition, and no election shall be held on the original petition or another petition for organization of the same district within one year of such dismissal.

(5) If a majority of the votes cast at said election are for the organization of said district, the commission, by order duly entered of record, shall declare the district organized, define the boundaries thereof, and give it the corporate name designated in the petition by which in all proceedings it shall thereafter be known and designate the members of the first board of directors, as named in the organization petition and the districts they represent. Thereupon the district shall be a governmental subdivision of the state of Colorado and a body corporate with all the powers of a public or quasi-municipal corporation.

Source: L. 65: R&RE, p. 1259, § 1. **C.R.S. 1963:** § 148-18-23. **L. 67:** p. 276, § 7.

Cross references: For elections generally, see articles 1 to 13 of title 1.

37-90-125. Filing decree. Within thirty days after the district has been declared a corporation by the commission, it shall transmit to the county clerk and recorder of each of the counties in which the district or a part thereof extends copies of the decree of the commission incorporating the district.

Source: L. 65: R&RE, p. 1260, § 1. **C.R.S. 1963:** § 148-18-24. **L. 67:** p. 281, § 12.

37-90-126. Management district - directors - qualifications - oath or affirmation - bond - vacancies. The members of the board of directors shall meet the qualifications established in section 37-90-121 (1)(b). Each member of the board shall take an oath or affirmation in accordance with section 24-12-101, shall give bond in the sum of five thousand dollars conditioned that he or she shall faithfully perform the duties of director and of such further office to which he or she may be elected in such district, and shall account for all funds or property coming into his or her hands as such director or other officer. Such bonds shall run to the district, shall be signed by a surety approved by the ground water commission, and shall be filed and recorded in the office of the state engineer. When such bond is so filed and approved, such person so elected shall take and hold office until his or her successor is elected and qualified. When a vacancy occurs on the board, such vacancy shall be filled by the remaining members of the board.

Source: L. 65: R&RE, p. 1260, § 1. **C.R.S. 1963:** § 148-18-25. **L. 67:** p. 277, § 8. **L. 2009:** Entire section amended, (HB 09-1159), ch. 43, p. 164, § 2, effective August 5. **L. 2018:** Entire section amended, (HB 18-1138), ch. 88, p. 703, § 44, effective August 8.

Cross references: For the legislative declaration in HB 18-1138, see section 1 of chapter 88, Session Laws of Colorado 2018.

37-90-127. Management district - directors - election - term of office. As the terms of the members of the board of directors expire, their successors shall be nominated by petitions containing the signatures of not less than fifteen percent of the number of qualified taxpaying electors of the division who voted at the last preceding district election, to be filed with the secretary of the district not less than thirty-five days before the election; thereafter, the members shall be elected for terms of four years by the plurality vote of the taxpaying electors of the division of the district which they represent. Such elections shall be held on the first Tuesday in February preceding the expiration of such terms and shall be conducted by the district board in the general manner prescribed in section 37-90-124.

Source: L. 65: R&RE, p. 1261, § 1. **C.R.S. 1963:** § 148-18-26. **L. 2012:** Entire section amended, (SB 12-175), ch. 208, p. 883, § 154, effective July 1.

37-90-128. Management district - directors - no compensation - expenses. The members of the board of directors shall receive no compensation but shall be paid their actual expenses while engaged in the business of such district.

Source: L. 65: R&RE, p. 1261, § 1. **C.R.S. 1963:** § 148-18-27.

37-90-129. Management district - officers - election. The board of directors shall annually elect a president, vice-president, secretary, treasurer, and such other officers as may be necessary.

Source: L. 65: R&RE, p. 1261, § 1. **C.R.S. 1963:** § 148-18-28.

37-90-130. Management districts - board of directors - enforcement. (1) The district board has the duty and responsibility of consulting with the commission on all groundwater matters affecting the district to determine whether proposed restrictions or regulations are suitable for such area, to determine in conjunction with the commission whether the area of the district should be enlarged or contracted, to cooperate with the commission and the state engineer in the assembling of data on the groundwater aquifers in the area and the enforcement of regulations or restrictions which may be imposed thereon, and to assist the commission and the state engineer to the end of conserving the groundwater supplies of the area for the maximum beneficial use thereof.

(2) After the issuance of any well permit for the use of groundwater within the district by the ground water commission as provided in sections 37-90-107 and 37-90-108, the district board has the authority to regulate the use, control, and conservation of the groundwater of the district covered by such permit by any one or more of the following methods, but the proposed controls, regulations, or conservation measures shall be subject to review and final approval by the ground water commission if objection is made in accordance with section 37-90-131:

(a) To provide for the spacing of wells producing from the groundwater aquifer or subdivision thereof and to regulate the production therefrom so as to minimize as far as practicable the lowering of the water table or the reduction of the artesian pressure;

(b) To acquire lands for the erection of dams and for the purpose of draining lakes, draws, and depressions, and to construct dams, drain lakes, depressions, draws, and creeks, and to install pumps and other equipment necessary to recharge the groundwater reservoir or subdivision thereof;

(c) To develop comprehensive plans for the most efficient use of the water of the groundwater aquifer or subdivision thereof and for the control and prevention of waste of such water, which plans shall specify in such detail as may be practicable the acts, procedure, performance, and avoidance which are or may be necessary to effect such plans, including specifications therefor; to carry out research projects, develop information, and determine limitations, if any, which should be made on the withdrawal of water from the groundwater aquifer or subdivisions thereof; to collect and preserve information regarding the use of such water and the practicability of recharge of the groundwater aquifer; and to publish such plans and information and bring them to the notice and attention of the users of such groundwater within the district and to encourage their adoption and execution;

(d) To require the owner or operator of any land in the district upon which is located any open or uncovered well to close or cap the same permanently with a covering capable of sustaining weight of not less than four hundred pounds, except when said well is in actual use by the owner or operator thereof;

(e) To promulgate reasonable rules and regulations for the purpose of conserving, preserving, protecting, and recharging the groundwater of the groundwater aquifer or subdivision thereof, in conformity with the provisions of this article;

(f) To prohibit, after affording an opportunity for a hearing before the board of the local district and presentation of evidence, the use of groundwater outside the boundaries of the district where such use materially affects the rights acquired by permit by any owner or operator of land within the district;

(g) In the control and administration of the quantity of groundwater extracted from the aquifer, to adopt such devices, procedures, measures, or methods as it deems appropriate to effectuate this purpose;

(h) To promulgate reasonable rules and regulations with respect to the protection and compensation of the owners of any small capacity wells as defined in section 37-90-105 which may be injured by irrigation wells;

(i) To represent the district at any hearings or proceedings conducted or authorized by the commission affecting any water rights, either actual or potential, within the district;

(j) To exercise such other administrative and regulatory authority concerning the groundwaters of the district as, without the existence of the district, would otherwise be exercised by the ground water commission.

(3) All special and regular meetings of the board shall be held at locations which are within the boundaries of the district or which are within the boundaries of any county in which the district is located, in whole or in part, or in any county so long as the meeting location does not exceed twenty miles from the district boundaries. The provisions of this subsection (3) may be waived only if the following criteria are met:

(a) The proposed change of location of a meeting of the board appears on the agenda of a regular or special meeting of the board; and

(b) A resolution is adopted by the board stating the reason for which a meeting of the board is to be held in a location other than under the provisions of this subsection (3) and further stating the date, time, and place of such meeting.

(4) (a) After the issuance of any well permit within the district, the district has the authority to enforce compliance with the terms and conditions of the permit, the district's rules, and an order issued by the district concerning the well and issued pursuant to this article governing the use of the groundwater allowed by the permit to ensure that the use is within the scope of what is allowed by this article, the district's rules, an order issued by the district concerning the well and issued pursuant to this article, and the well permit.

(b) The district may proceed pursuant to section 37-90-111.5 against a well owner who does not comply with an order issued under paragraph (a) of this subsection (4).

(c) A ground water management district shall provide notice of an order in a manner consistent with the local district's rules. In the absence of a local rule regarding notice, in addition to any other method of giving notice, the mailing of the order in a certified letter to the well owner or operator is sufficient notice of the order of the ground water management district. In the case of circumstances warranting an emergency injunctive proceeding, mailing of the order in a certified letter to the well owner or operator, together with the posting of a written order in plain sight at the well head, is sufficient notice of the order of the ground water management district. The order to the well owner or operator becomes effective on the date of posting in the case of posting at the well head or three days after the certified letter is placed in

the United States mail in the case of the certified letter. Except in the case of circumstances warranting an emergency injunctive proceeding, a ground water management district shall allow an alleged violator not less than seven days after the effective date of the order to cure an alleged violation before filing suit in district court.

Source: L. 65: R&RE, p. 1261, § 1. **C.R.S. 1963:** § 148-18-29. **L. 71:** p. 1316, § 13. **L. 75:** (2)(h) added, p. 1396, § 1, effective July 1. **L. 79:** IP(2) amended and (2)(i) and (2)(j) added, p. 1375, § 8, effective June 7. **L. 85:** (2)(h) amended, p. 1177, § 10, effective May 31. **L. 90:** (3) added, p. 1506, § 23, effective July 1. **L. 98:** IP(2) amended and (4) added, p. 1222, § 13, effective August 5. **L. 2014:** (4) amended, (HB 14-1052), ch. 56, p. 254, § 1, effective March 21.

37-90-131. Management district - board of directors - control measures - hearing - notice - publication - order. (1) (a) Whenever the board of directors determines that controls, regulations, or conservation measures are necessary in order to ensure the proper conservation of groundwater within the district, it shall confer with the ground water commission and groundwater users within the district. No such measures or regulations shall be instituted until after a public hearing. Notice of such hearing shall be published. Such notice shall state the time and place of the hearing and in general terms the corrective measures or regulations proposed. Within sixty-three days after such hearing, the board shall announce the measures or regulations ordered to be taken and shall cause notice of such action to be published. The board has the authority to compel compliance with such measures or regulations by an action brought in the district court of the county in which any failure to comply is found to exist.

(b) Any person adversely affected or aggrieved by the announcement of control or conservation measures or regulations adopted by the district board may appeal such decision to the ground water commission by filing a notice of appeal and the grounds therefor with the commission not later than thirty-five days after the date of last publication. The commission shall hear all such appeals pursuant to section 37-90-113. The commission shall have authority to affirm or reject the measures or regulations adopted by the district or to modify such measures or regulations but only upon consent from the district board. Judicial review of commission actions in such appeals may be taken pursuant to section 37-90-115.

(c) Any person adversely affected or aggrieved by an act of the district board, other than the announcement of control or conservation measures or regulations, has the right to be heard by the board. Such person shall file a written request for a hearing that states the basis of the alleged injury. Unless agreed otherwise by all parties to a hearing or unless otherwise approved by the district due to extenuating circumstances, a hearing shall be held within one hundred eighty-two days after filing the request for such a hearing. Upon thirty-five days' written notice to all adverse parties, the district shall conduct a hearing upon the matter. Hearing procedures shall be as informal as possible, with due regard for the rights of the parties. All parties shall have the right to subpoena witnesses and to be heard either in person or by attorney. The district board may have such hearings conducted before an agent or hearing officer. After such hearing, the district board shall issue a written decision containing its findings and conclusions and shall serve its decision upon all parties by first-class mail. Judicial review of such district decisions may be taken in the manner and governed by the standards set forth for review of commission and state engineer decisions in section 37-90-115.

(2) Subject to review by the ground water commission pursuant to subsection (1) of this section, the board may institute control measures or regulations to prescribe satisfactory and economical measuring methods for the measurement of water levels in and the amount of water withdrawn from wells and to require reports to be made at the end of each pumping season showing the date and water level at the beginning of the pumping season, the date and water level at the end of the pumping season, and any period of more than thirty-five days cessation of pumping during such pumping season.

Source: L. 65: R&RE, p. 1262, § 1. **C.R.S. 1963:** § 148-18-30. **L. 71:** p. 1316, § 14. **L. 79:** (1) R&RE, p. 1375, § 9, effective June 7. **L. 85:** (1)(b) R&RE and (1)(c) added, pp. 1177, 1178, §§ 11, 12, effective May 31. **L. 98:** Entire section amended, p. 1223, § 14, effective August 5. **L. 2012:** Entire section amended, (SB 12-175), ch. 208, p. 883, § 155, effective July 1.

37-90-132. Management district - board of directors - taxes - levy - limitation. The board of directors may levy and collect annually taxes necessary to finance the activities of such district to the amount of not more than two mills on the dollar of the valuation for assessment of all taxable property within the district. It shall, in accordance with the schedule prescribed by section 39-5-128, C.R.S., certify its mill levy to the board of county commissioners of the counties wholly or partially within the district, who shall extend the same on the county tax list, and the same shall be collected by the county treasurer in the same manner as state and county taxes are collected. In addition, annually the board of directors of the district may assess and certify a special assessment on all water wells, except those wells described in section 37-90-105, in the district not to exceed fifteen cents per acre-foot of the maximum annual volume of the appropriation of each such well. Said assessment shall be collected by the county treasurer in the same manner as other special assessments. It is the duty of the board to apply for and to receive from the county treasurers all money to the credit of the district.

Source: L. 65: R&RE, p. 1263, § 1. **C.R.S. 1963:** § 148-18-31. **L. 67:** p. 277, § 9. **L. 71:** p. 1317, § 15. **L. 77:** Entire section amended, p. 1516, § 86, effective July 15. **L. 79:** Entire section amended, p. 1375, § 10, effective June 7. **L. 85:** Entire section amended, p. 1178, § 13, effective May 31.

37-90-133. Management district - claims - warrants - payment. All claims against ground water management districts may be paid by warrants or orders, duly drawn against the district, as authorized by the board.

Source: L. 65: R&RE, p. 1263, § 1. **C.R.S. 1963:** § 148-18-32.

37-90-134. Management district - issuance of bonds - indebtedness - submission to electors. (1) To pay for the construction, operation, and maintenance of any works, and expenses preliminary and incidental thereto, which the board is authorized to construct for the benefit of the district, the board is authorized to enter into contracts providing for payment in installments or to issue negotiable bonds of the district. If bonds are authorized, the same shall bear interest at a rate such that the net effective interest rate of the issue does not exceed the maximum net effective interest rate authorized, payable semiannually, and shall be due and

payable not more than fifty years from their dates. The form, terms, and provisions of said bonds or contracts, provisions for their payment, and conditions for their retirement and calling, not inconsistent with law, shall be vested and determined by the board, and they shall be issued in payment of the works, equipment, expenses, and interest during and after the period of construction. Said bonds or contracts shall be executed in the name of and on behalf of the district and signed by the president of the board, the seal of the district affixed thereto and attested by the secretary of the board. Said bonds or contracts must be in such denominations or upon such conditions as the board determines and shall be payable to bearer and may be registered in the office of the county treasurer of each of the counties wherein the district or part of it is situated, with the interest coupons payable to bearer, which shall bear the facsimile signature of the president of the board. Bond interest shall be exempt from all state, county, municipal, school, and other taxes imposed by any taxing authority of the state of Colorado and shall not be sold at less than par and accrued interest.

(2) Whenever the board incorporated under this article, by resolution adopted by majority of said board, determines that the interests of said district and the public interest or necessity demand the acquisition, construction, or completion of any source of water supply, waterworks, or other improvements or facilities, or the making of any contract with the United States or other persons or corporations, to carry out the objects and purposes of said district, wherein the indebtedness or obligation is created, to satisfy which shall require a greater expenditure than the ordinary annual income and revenue of the district permits, said board shall order the submission of the proposition of incurring such obligation or bonded or other indebtedness for the purposes set forth in said resolution to the qualified taxpaying electors of the district at an election held for that purpose. Any election held for the purpose of submitting any proposition of incurring such obligation or indebtedness may be held separately or may be consolidated or held concurrently with any other election authorized by law at which such qualified taxpaying electors of the district are entitled to vote. Notice of the resolution and election shall be published in a form sufficient to apprise the taxpaying electors of the objects and purposes for which the indebtedness is proposed to be incurred, the estimated cost of the works or improvement, the amount of principal of the indebtedness to be incurred therefor, and the maximum rate of interest to be paid on such indebtedness. Such resolution and notice shall also fix the date upon which such election shall be held, the manner of holding the same, and the method of voting for or against the incurring of the proposed indebtedness. Such election shall be held in the same general manner as in this article provided for the election of directors. The bond issue or indebtedness proposed shall not be valid unless a majority of those voting at the election held for that purpose vote in favor of such bond issue or indebtedness in accordance with the terms of the resolution.

Source: L. 65: R&RE, p. 1263, § 1. **C.R.S. 1963:** § 148-18-33. **L. 81:** (1) amended, p. 1782, § 1, effective June 18; (2) amended, p. 2029, § 37, effective July 14.

37-90-135. Management district - dissolution - procedure - funds - disposition. If there are no debts outstanding, the board of directors may, on its own motion or on the written petition of twenty percent of the taxpaying electors of the district, request of the ground water commission that the question of dissolution of such district be submitted to the electors of the district. The commission shall fix the date of such election, notice of which shall be given and

which shall be conducted in the same manner as elections for the formation of such districts. If a majority of those voting on such question vote in favor of dissolution, the commission shall so certify to the county clerk and recorders of the counties involved and the district shall thereupon be dissolved. The question of dissolution shall not be submitted more often than once every twelve months. In case a district is dissolved the funds on hand or to be collected shall be held by the treasurer, and the directors shall petition the district court of the county in which the main office is located for an order approving the distribution of funds to the taxpayers of the district on the same basis as collected.

Source: L. 65: R&RE, p. 1265, § 1. **C.R.S. 1963:** § 148-18-34.

37-90-136. Unlawful to divert water for application outside of state. (Repealed)

Source: L. 65: R&RE, p. 1265, § 1. **C.R.S. 1963:** § 148-18-35. **L. 83:** Entire section repealed, p. 1413, § 5, effective June 3.

Cross references: For diversion of groundwater outside the state, see § 37-81-101.

37-90-137. Permits to construct wells outside designated basins - fees - permit no groundwater right - evidence - time limitation - well permits - rules. (1) On and after May 17, 1965, no new wells shall be constructed outside the boundaries of a designated groundwater basin nor the supply of water from existing wells outside the boundaries of a designated groundwater basin increased or extended, unless the user makes an application in writing to the state engineer for a permit to construct a well, in a form to be prescribed by the state engineer. The applicant shall specify the particular aquifer from which the water is to be diverted, the beneficial use to which it is proposed to apply such water, the location of the proposed well, the name of the owner of the land on which such well will be located, the average annual amount of water applied for in acre-feet per year, the proposed maximum pumping rate in gallons per minute, and, if the proposed use is agricultural irrigation, a description of the land to be irrigated and the name of the owner thereof, together with such other reasonable information as the state engineer may designate on the form prescribed.

(2) (a) (I) Repealed.

(II) Effective July 1, 2006, upon receipt of an application for a replacement well or a new, increased, or additional supply of groundwater from an area outside the boundaries of a designated groundwater basin, accompanied by a filing fee of one hundred dollars, the state engineer shall make a determination as to whether or not the exercise of the requested permit will materially injure the vested water rights of others.

(b) (I) The state engineer shall issue a permit to construct a well only if:

(A) The state engineer finds, as substantiated by hydrological and geological facts, that there is unappropriated water available for withdrawal by the proposed well and that the vested water rights of others will not be materially injured; and

(B) Except as specified in subparagraph (II) of this paragraph (b), the location of the proposed well will be more than six hundred feet from an existing well.

(II) If the state engineer, after a hearing, finds that circumstances in a particular instance so warrant, or if a court decree is entered for the proposed well location after notice has been

given in accordance with sub-subparagraph (B) of this subparagraph (II), the state engineer may issue a permit without regard to the limitation specified in sub-subparagraph (B) of subparagraph (I) of this paragraph (b); except that no hearing shall be required and the state engineer may issue a well permit without regard to the limitation specified in sub-subparagraph (B) of subparagraph (I) of this paragraph (b):

(A) If the state engineer notifies the owners of all wells within six hundred feet of the proposed well by certified mail and receives no response within the time set forth in the notice;

(B) If the proposed well is part of a water court proceeding adjudicating the water right for the well, or if the proposed well is part of an adjudication of a plan for augmentation or change of water right and if evidence is provided to the water court that the applicant has given notice of the water court application, at least fourteen days before making the application, by registered or certified mail, return receipt requested, to the owners of record of all wells within six hundred feet of the proposed well;

(C) If the proposed well will serve an individual residential site and the proposed pumping rate will not exceed fifteen gallons per minute; except that, if there is an oil and gas well within six hundred feet of the surface location of the proposed well, the state engineer shall notify the owner of such well by certified mail of the proposed well and may issue the well permit subject to the limitations specified in sub-subparagraph (A) of subparagraph (I) of this paragraph (b);

(D) If the proposed well is an oil and gas well and the only wells within six hundred feet of the surface location of the proposed well are oil and gas wells; or

(E) If the proposed well is an oil and gas well, there is an existing production water well that is not an oil and gas well within six hundred feet of the surface location of the proposed oil and gas well, the state engineer has provided written notice of the application by certified mail to the owners of such wells that are not oil and gas wells within thirty-five days after receipt of a complete application for the proposed well, and the state engineer has given those to whom notice was provided thirty-five days after the date of mailing of such notice to file comments on the proposed well's application.

(c) The permit shall set forth such conditions for drilling, casing, and equipping wells and other diversion facilities as are reasonably necessary to prevent waste, pollution, or material injury to existing rights.

(d) (I) The state engineer shall endorse upon the application the date of its receipt, file and preserve such application, and make a record of such receipt and the issuance of the permit in his office so indexed as to be useful in determining the extent of the uses made from various groundwater sources.

(II) The state engineer shall act upon an application filed under this section within forty-five days after its receipt.

(3) (a) (I) A permit to construct a well outside the boundaries of a designated groundwater basin issued on or after April 21, 1967, shall expire one year after issuance unless, before the expiration and on forms as may be prescribed by the state engineer, the applicant to whom the permit was issued, or the well construction contractor, furnishes to the state engineer:

(A) Evidence that the well was constructed and that the pump was installed; or

(B) A showing of good cause as to why the well has not been constructed nor the pump installed and an estimate of time necessary to complete the tasks, upon which the state engineer may extend the permit for only one additional period, not to exceed one year. The limitation on

the extension of well permits provided in this sub-subparagraph (B) shall not apply to well permits for federally authorized water projects contained in paragraph (d) of this subsection (3). The state engineer shall charge a fee of two hundred dollars for the extension; except that, on and after July 1, 2006, the state engineer shall charge a fee of sixty dollars for the extension.

(II) If the requirements of section 37-92-301 are met, the expiration of any permit pursuant to this paragraph (a) associated with a conditional groundwater right shall not be the sole basis to determine the existence of reasonable diligence toward completion of such conditional water right.

(III) The state engineer may require the metering or other reasonable measurement of withdrawals of groundwater pursuant to permits and the reasonable recording and disclosure of such measured withdrawals.

(b) Any permit to construct a well issued by the state engineer prior to April 21, 1967, shall expire on July 1, 1973, unless the applicant furnishes to the state engineer, prior to July 1, 1973, evidence that the water from such well has been put to beneficial use prior to that date. The state engineer shall give notice by certified or registered mail to all persons to whom such permits were issued at the address shown on the state engineer's records, setting forth the provisions of this subsection (3). Such notices shall be mailed not later than December 31, 1971.

(c) If evidence that the well has been constructed and that the pump was installed, as required pursuant to paragraph (a) of this subsection (3), has not been received as of the expiration date of the permit to construct a well, the state engineer shall so notify the applicant by certified mail. The notice shall give the applicant the opportunity to submit evidence that the well was constructed and that the pump was installed before the expiration date. The evidence must be received by the state engineer within twenty-one days after receipt of the notice by the applicant and must be accompanied by a filing fee of thirty dollars. If the state engineer finds the evidence to be satisfactory, the permit shall remain in force and effect. The state engineer shall consider any records available in the state engineer's office, any evidence provided to the state engineer, and all other matters set forth in this section in determining whether the permit should remain in force and effect.

(d) In the case of federally authorized water projects wherein well permits are required by this section and have been secured, the expiration dates thereof may be extended for additional periods based upon a finding of good cause by the state engineer following a review of any such project at least annually by the state engineer.

(4) (a) In the issuance of a permit to construct a well outside a designated groundwater basin and not meeting the exemptions set forth in section 37-92-602 to withdraw nontributary groundwater or any groundwater in the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers, the provisions of subsections (1) and (2) of this section shall apply.

(b) (I) Permits issued pursuant to this subsection (4) shall allow withdrawals on the basis of an aquifer life of one hundred years.

(II) Subject to the provisions of subsections (1) and (2) of this section, the amount of such groundwater available for withdrawal shall be that quantity of water, exclusive of artificial recharge, underlying the land owned by the applicant or underlying land owned by another:

(A) Who has consented in writing to the applicant's withdrawal; or

(B) Whose consent exists by virtue of a lawful municipal ordinance or a quasi-municipal district resolution in effect prior to January 1, 1985, and which consent was the subject of a

water court application for determination of nontributary groundwater rights filed by the affected municipality or quasi-municipal district prior to January 1, 1985; or

(C) Who shall be deemed to have consented to the withdrawal of groundwater pursuant to the provisions of subsection (8) of this section.

(b.5) (I) An applicant claiming to own the overlying land or to have the consent of the owner of the overlying land as contemplated in sub-subparagraph (A) of subparagraph (II) of paragraph (b) of this subsection (4) shall furnish to the state engineer, in addition to evidence of such consent, evidence that the applicant has given notice of the application by registered or certified mail, return receipt requested, no less than ten days prior to the making of the application, to every record owner of the overlying land and to every person who has a lien or mortgage upon, or deed of trust to, the overlying land recorded in the county in which the overlying land is located.

(II) For purposes of this paragraph (b.5), "person" means any individual, partnership, association, or corporation authorized to do business in the state of Colorado, or any political subdivision or public agency thereof, or any agency of the United States.

(III) The provisions of subparagraph (I) of this paragraph (b.5) do not apply to applicants whose right to withdraw the groundwater has been determined by a valid decree nor to political subdivisions of the state of Colorado, special districts, municipalities, or quasi-municipal districts that have obtained consent to withdraw the groundwater by deed, assignment, or other written evidence of consent where, at the time of application, the overlying land is within the water service area of such entity.

(c) Material injury to vested nontributary groundwater rights shall not be deemed to result from the reduction of either hydrostatic pressure or water level in the aquifer.

(d) The annual amount of withdrawal allowed in any well permits issued under this subsection (4) shall be the same as the amount determined by court decree, if any, and may, if so provided by any such decree, provide for the subsequent adjustment of such amount to conform to the actual aquifer characteristics encountered upon drilling of the well or test holes.

(5) Any right to the use of groundwater entitling its owner or user to construct a well, which right was initiated prior to July 6, 1973, as evidenced by an unexpired well permit issued prior to July 6, 1973, or a current decree, shall not be subject to the provisions of subsection (4) of this section.

(6) Rights to nontributary groundwater outside of designated groundwater basins may be determined in accordance with the procedures of sections 37-92-302 to 37-92-305. Such proceedings may be commenced at any time and may include a determination of the right to such water for existing and future uses. Such determination shall be in accordance with subsections (4) and (5) of this section. Claims pending as of October 11, 1983, which have been published pursuant to section 37-92-302 in the resume need not be republished.

(7) In the case of dewatering of geologic formations by withdrawing nontributary groundwater to facilitate or permit mining of minerals:

(a) Except for coal bed methane wells, no well permit is required unless the nontributary groundwater being removed will be beneficially used. Except for coal bed methane wells, no well permit is required if the nontributary groundwater being removed to facilitate or permit the mining of minerals will be used only by operators within the geologic basin where the groundwater is removed to facilitate or permit the mining of minerals, including: Injection into a properly permitted disposal well; evaporation or percolation in a properly permitted pit; disposal

at a properly permitted commercial facility; roadspreading or reuse for enhanced recovery, drilling, well stimulation, well maintenance, pressure control, pump operations, dust control on-site or off-site, pipeline and equipment testing, equipment washing, or fire suppression; discharge into state waters in accordance with the "Colorado Water Quality Control Act", article 8 of title 25, C.R.S., and the rules promulgated under that act; or evaporation at a properly permitted centralized exploration and production waste management facility.

(b) In the issuance of any well permit pursuant to this subsection (7), subsection (4) of this section does not apply and subsections (1), (2), and (3) of this section apply; except that, in considering whether the permit shall issue, the requirement that the state engineer find that there is unappropriated water available for withdrawal and the six-hundred-foot spacing requirement in subsection (2) of this section do not apply. The state engineer shall allow the rate of withdrawal stated by the applicant to be necessary to dewater the mine; except that, if the state engineer finds that the proposed dewatering will cause material injury to the vested water rights of others, the applicant may propose, and the permit shall contain, terms and conditions that will prevent such injury. The reduction of hydrostatic pressure level or water level alone does not constitute material injury. Permitting determinations pursuant to this subsection (7) neither confer a water right nor preclude determination of a water right by the water court.

(c) The state engineer may, pursuant to the "State Administrative Procedure Act", article 4 of title 24, C.R.S., adopt rules to assist with the administration of this subsection (7). The rule-making authority includes the promulgation of rules pursuant to which groundwater within formations and basins, in whole or part, is determined to be nontributary for the purposes of this subsection (7). The rules may also provide rule-making and adjudicatory procedures for nontributary determinations to be made after the initial rule-making pursuant to this subsection (7). In all rule-making proceedings authorized by this subsection (7), the state engineer shall afford interested persons the right of cross-examination. Judicial review of all rules promulgated pursuant to this subsection (7), including all nontributary determinations made pursuant to this subsection (7), is in accordance with the "State Administrative Procedure Act"; except that venue for such review lies exclusively with the water judge or judges for the water division or divisions within which the groundwater that is the subject of such rules or determinations is located. In any judicial action seeking to curtail the withdrawal, use, or disposal of groundwater pursuant to this subsection (7) or to otherwise declare such activities unlawful, the court shall presume, subject to rebuttal, that any applicable nontributary determination made by the state engineer is valid. Any rules promulgated pursuant to this subsection (7) must not conflict with existing laws and do not affect the validity of groundwater well permits existing prior to the adoption of such rules.

(8) It is recognized that economic considerations generally make it impractical for individual landowners to drill wells into the aquifers named in this subsection (8) for individual water supplies where municipal or quasi-municipal water service is available and that the public interest justifies the use of such groundwater by municipal or quasi-municipal water suppliers under certain conditions. Therefore, wherever any existing municipal or quasi-municipal water supplier is obligated either by law or by contract in effect prior to January 1, 1985, to be the principal provider of public water service to landowners within a certain municipal or quasi-municipal boundary in existence on January 1, 1985, said water supplier may adopt an ordinance or resolution, after ten days' notice pursuant to the provisions of part 1 of article 70 of title 24, C.R.S., which incorporates groundwater from the Dawson, Denver, Arapahoe, or Laramie-Fox

Hills aquifers underlying all or any specified portion of such municipality's or quasi-municipality's boundary into its actual municipal service plan. Upon adoption of such ordinance or resolution, a detailed map of the land area as to which consent is deemed to have been given shall be filed with the state engineer. Upon the effective date of such ordinance or resolution, the owners of land which overlies such groundwater shall be deemed to have consented to the withdrawal by that water supplier of all such groundwater; except that no such consent shall be deemed to be given with respect to any portion of the land if:

(a) Water service to such portion of the land is not reasonably available from said water supplier and no plan has been established by that supplier allowing the landowner to obtain an alternative water supply;

(b) Such ordinance or resolution is adopted prior to September 1, 1985, and, prior to January 1, 1985, such groundwater was conveyed or reserved or consent to use such groundwater was given or reserved in writing to anyone other than such water supplier and such conveyance, reservation, or consent has been properly recorded prior to August 31, 1985;

(c) Such ordinance or resolution is adopted on or after September 1, 1985, and said groundwater has been conveyed or reserved or consent to use such groundwater has been given or reserved in writing to anyone other than such water supplier and such conveyance, reservation, or consent is properly recorded before the effective date of that ordinance or resolution;

(d) Consent to use such groundwater has been given to anyone other than such water supplier by the lawful effect of an ordinance or resolution adopted prior to January 1, 1985;

(e) Such groundwater has been decreed or permitted to anyone other than such water supplier prior to the effective date of such ordinance or resolution; or

(f) Such portion of the land is not being served by said water supplier as of the effective date of such ordinance or resolution and such groundwater is the subject of an application for determination of a right to use groundwater filed in the water court prior to July 1, 1985.

(9) (a) For the purpose of making the state engineer's consideration of well permit applications for the withdrawal of groundwater from wells described in subsection (4) of this section more certain and expeditious, the state engineer may, to the extent provided in this subsection (9) and pursuant to the "State Administrative Procedure Act", adopt rules and regulations to prescribe reasonable criteria and procedures for the application for, and the evaluation, issuance, extension, and administration of, such well permits. Such rules and regulations shall only be promulgated after the state engineer has conducted a hydrogeologic analysis, the results of which factually support the promulgation and the content of such rules and regulations for any particular aquifer or portion thereof. All such rules and regulations shall allow the withdrawal pursuant to such permits of the full amount of groundwater determined under subsection (4) of this section and shall afford the applicant the opportunity to rebut any presumptive aquifer characteristics. Presumptive aquifer characteristics established by those rules and regulations shall also apply to the determination of rights to groundwater from wells described in subsection (4) of this section by the water judges, subject to rebuttal by any party. In all rule-making proceedings authorized by this subsection (9), the state engineer shall afford interested persons the right of cross-examination. Judicial review of all rules and regulations promulgated pursuant to this subsection (9) shall be in accordance with the "State Administrative Procedure Act"; except that venue for such review shall lie exclusively with the water judge or judges for the water division or divisions within which the subject groundwater is located.

(b) On or before December 31, 1985, the state engineer shall promulgate reasonable rules and regulations applying exclusively to the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers to the extent necessary to assure that the withdrawal of groundwater from wells described in subsection (4) of this section will not materially affect vested water rights to the flow of any natural stream. In no event shall the rules and regulations promulgated under this paragraph (b) require that persons who withdraw nontributary groundwater, as defined in section 37-90-103 (10.5), relinquish the right to consume, by means of original use, reuse, and successive use, more than two percent of the amount of such groundwater which is withdrawn without regard to dominion or control of the groundwater so relinquished, nor shall they require that judicial approval of plans for augmentation providing for such relinquishment be obtained.

(c) Repealed.

(c.5) (I) (A) As to wells that will be completed in the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers and will withdraw groundwater that is not nontributary groundwater, judicial approval of plans for augmentation is required prior to the use of the groundwater.

(B) As to such wells completed in the Dawson aquifer, decrees approving plans for augmentation must provide for the replacement of actual out-of-priority depletions to the stream caused by withdrawals from the wells and must meet all other statutory criteria for the plans.

(C) As to such wells completed in the Denver, Arapahoe, or Laramie-Fox Hills aquifers more than one mile from any point of contact between any natural stream including its alluvium on which water rights would be injuriously affected by any stream depletion, and any such aquifer, the decrees must provide for the replacement to the affected stream system or systems of a total amount of water equal to four percent of the amount of water withdrawn on an annual basis. As to such wells completed in such aquifers at points closer than one mile to any such contact, the amount of the replacement is determined using the assumption that the hydrostatic pressure level in each such aquifer has been lowered at least to the top of that aquifer throughout that aquifer. The decrees may also require the continuation of replacement after withdrawal ceases if necessary to compensate for injurious stream depletions caused by prior withdrawals from the wells and must meet all other statutory criteria for such plans.

(II) (Deleted by amendment, L. 2015.)

(d) On or before July 1, 1995, the state engineer shall promulgate reasonable rules that apply to the permitting and use of water artificially recharged into the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers. On or before July 1, 2018, the state engineer shall promulgate rules that apply to the permitting and use of water artificially recharged into a nontributary groundwater aquifer. The rules promulgated pursuant to this subsection (9)(d) must effectuate the maximum utilization of aquifers through the conjunctive use of surface and groundwater resources.

(10) Owners of such permits issued pursuant to subsection (4) of this section shall be entitled to the issuance of permits for additional wells to be constructed on the land referred to in subsection (4) of this section. The standards of subsection (4) of this section shall be applied as if the applications for those additional well permits were filed on the same dates that the original applications were filed.

(11) (a) (I) A person shall not, in connection with the extraction of sand and gravel by open mining as defined in section 34-32.5-103 (15), expose groundwater to the atmosphere unless the person has obtained a well permit from the state engineer pursuant to this section. The state engineer shall issue a well permit upon approval by the water court of a plan for

augmentation or upon approval by the state engineer of a plan of substitute supply; except that no increased replacement of water shall be required by the water court or the state engineer whenever the operator or owner of land being mined has, prior to January 15, 1989, entered into and continually thereafter complied with a written agreement with a water conservancy district or water users' association to replace or augment the depletions in connection with or resulting from open mining of sand and gravel. The well permit and plan of substitute supply may authorize uses of water incidental to open mining for sand and gravel, including processing and washing mined materials; dust suppression; mined land reclamation including temporary irrigation for revegetation; liner or slurry wall construction; production of concrete and other aggregate-based construction materials; dewatering; and mitigation of impacts from mining and dewatering.

(II) Any person who extracted sand and gravel by open mining and exposed groundwater to the atmosphere after December 31, 1980, shall apply for a well permit pursuant to this section and, if applicable, shall apply for approval of a plan for augmentation or a plan of substitute supply prior to July 15, 1990.

(b) If any groundwater was exposed to the atmosphere in connection with the extraction of sand and gravel by open mining as defined in section 34-32-103 (9), C.R.S., prior to January 1, 1981, no such well permit, plan for augmentation, or plan of substitute supply shall be required to replace depletions from evaporation; except that the burden of proving that such groundwater was exposed prior to January 1, 1981, shall be upon the party claiming the benefit of this exception. Notwithstanding the provisions of this paragraph (b), judgments and decrees entered prior to July 1, 1989, approving plans for augmentation, which plans include the replacement of depletions from such evaporation, shall be given full effect and shall be enforced according to their terms.

(c) Any person who has reactivated or reactivates open mining operations which exposed groundwater to the atmosphere but which ceased activity prior to January 1, 1981, shall obtain a well permit and shall apply for approval of a plan for augmentation or a plan of substitute supply pursuant to paragraph (a) of this subsection (11).

(d) No person who obtains or operates a plan for augmentation or plan of substitute supply prior to July 1, 1989, shall be required to make replacement for the depletions from evaporation exempted in this subsection (11) or otherwise replace water for increased calls which may result therefrom.

(e) In addition to the well permit filing fee required by subsection (2) of this section, the state engineer shall collect the following fees for exposing groundwater to the atmosphere for the extraction of sand and gravel by open mining:

(I) For persons who exposed groundwater to the atmosphere on or after January 1, 1981, but prior to July 15, 1989, one thousand five hundred ninety-three dollars; except that, if such plan is filed prior to July 15, 1990, as required by subparagraph (II) of paragraph (a) of this subsection (11), the filing fee shall be seventy dollars if such plan includes ten acres or less of exposed groundwater surface area or three hundred fifty dollars if such plan includes more than ten acres of exposed groundwater surface area;

(II) For persons who expose groundwater to the atmosphere on or after July 15, 1989, one thousand five hundred ninety-three dollars regardless of the number of acres exposed. In the case of new mining operations, such fee shall cover two years of operation of the plan.

(III) For persons who reactivated or who reactivate mining operations that ceased activity prior to January 1, 1981, and enlarge the surface area of any gravel pit lake beyond the area it covered before the cessation of activity, one thousand five hundred ninety-three dollars;

(IV) For persons who request renewal of an approved substitute water supply plan prior to the expiration date of the plan, two hundred fifty-seven dollars regardless of the number of acres exposed;

(V) For persons whose approved substitute water supply plan has expired and who submit a subsequent plan, one thousand five hundred ninety-three dollars regardless of the number of acres exposed. An approved plan shall be considered expired if the applicant has not applied for renewal before the expiration date of the plan. The state engineer shall notify the applicant in writing if the plan is considered expired.

(VI) For persons whose proposed substitute water supply plan was disapproved and who submit a subsequent plan, one thousand five hundred ninety-three dollars regardless of the number of acres exposed. The state engineer shall notify the applicant in writing of disapproval of a plan.

(f) Excluding the well permit filing fee required by subsection (2) of this section, the state treasurer shall credit all fees collected with an application for approval of a plan for augmentation or a plan of substitute supply to the water resources cash fund created in section 37-80-111.7 (1).

(g) A person who has obtained a reclamation permit pursuant to section 34-32-112, C.R.S., shall be allowed to apply for a single well permit and to submit a single plan for augmentation or a single plan of substitute supply for the entire acreage covered by the reclamation plan without regard to the number of gravel pit lakes placed within such acreage.

(12) (a) In considering any well permit application in water division 3 that involves a new withdrawal of groundwater that will affect the rate or direction of movement of water in the confined aquifer, the state engineer shall recognize that unappropriated water is not made available and injury is not prevented as a result of the reduction of water consumption by nonirrigated native vegetation.

(b) (I) Repealed.

(II) Subparagraph (I) of this paragraph (b) was repealed, effective July 1, 2004; except that nothing in this subsection (12) shall affect the validity of the rules adopted by the state engineer for groundwater withdrawals in water division 3, or affect the applicability of such rules to well permits that have been or will be issued, and judicial decrees that have been or will be entered, for the withdrawal of groundwater in water division 3.

(13) Notwithstanding the amount specified for any fee in this section, the commission by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commission by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

(14) The state engineer may issue permits for augmentation wells only in accordance with plans for augmentation approved by the water judge for water division 1 and substitute water supply plans approved pursuant to section 37-92-308 that include such wells.

(15) A person withdrawing water from a well pursuant to subsection (1) or (4) of this section may use graywater through the use of a graywater treatment works, as those terms are defined in section 25-8-103 (8.3) and (8.4), C.R.S., in compliance with the requirements of section 25-8-205 (1)(g), C.R.S. Any limitations on use set forth in the well permit, and the provisions of any decreed plan for augmentation, apply to the use of graywater.

Source: L. 65: R&RE, p. 1265, § 1. **C.R.S. 1963:** § 148-18-36. **L. 67:** p. 277, § 10. **L. 71:** pp. 1317, 1324, 1325, §§ 16, 3, 5. **L. 73:** p. 1520, § 1. **L. 77:** (3)(c) and (3)(d) added, p. 1700, § 1, effective July 1. **L. 79:** (3)(a) amended, p. 1377, § 1, effective May 18. **L. 83:** (5) added, p. 1418, § 1, effective May 23; (6) added, p. 2080, § 2, effective October 11. **L. 85:** (1), (3)(a), and (4) amended and (7) to (10) added, p. 1161, § 3, effective July 1; (8) amended, p. 1372, § 55, effective July 1. **L. 87:** (2) and (3)(a) amended, p. 1302, § 6, effective July 2. **L. 89:** (11) added, p. 1422, § 2, effective July 15. **L. 92:** (2) and (3)(c) amended, p. 2299, § 5, effective March 19; (4) amended, p. 2310, § 1, effective March 20. **L. 93:** (4)(b.5) amended, p. 85, § 1, effective March 30; (11)(e) and (11)(f) amended, p. 1833, § 3, effective June 6. **L. 94:** (9)(d) added, p. 617, § 1, effective April 13; (3)(a)(I) amended, p. 1208, § 1, effective May 19. **L. 95:** (2) amended, p. 139, § 2, effective April 7. **L. 96:** (2)(b)(I), (2)(b)(II), (4)(a), and IP(8) amended, pp. 327, 325, §§ 4, 1, effective April 16; (9)(c) amended and (9)(c.5) added, p. 1361, § 2, effective June 1. **L. 98:** (12) added, p. 853, § 2, effective May 26; (9)(c)(II) and (9)(c.5)(II) amended, p. 1072, § 1, effective June 1; (13) added, p. 1344, § 74, effective June 1. **L. 99:** (9)(c)(II) and (9)(c.5)(II) amended, p. 670, § 1, effective May 18. **L. 2001:** (12)(b) amended, p. 158, § 2, effective March 28; (9)(c)(II) and (9)(c.5)(II) amended, p. 727, § 2, effective July 1. **L. 2003:** (2)(a) and (3)(a)(I)(A) amended and (3)(a)(I)(A.3) and (3)(a)(I)(A.5) added, p. 46, § 6, effective (see editor's note); (14) added, p. 1454, § 4, effective April 30; (9)(c), (9)(c.5), and (12)(b) amended, pp. 1595, 1596, §§ 1, 3, effective May 2; (2)(a)(I)(A) and (2)(a)(II) amended, p. 1684, § 17, effective May 14. **L. 2004:** (3)(a) R&RE and (3)(c) amended, pp. 1128, 1129, §§ 1, 2, effective May 27. **L. 2006:** (11)(e) amended, p. 1271, § 2, effective July 1. **L. 2009:** (2)(b) and IP(7) amended and (7)(c) added, (HB 09-1303), ch. 390, pp. 2108, 2109, §§ 2, 3, effective June 2. **L. 2010:** IP(7), (7)(a), and (7)(b) amended, (SB 10-165), ch. 31, p. 112, § 1, effective March 22. **L. 2011:** IP(7) and (7)(c) amended, (HB 11-1286), ch. 135, p. 473, § 1, effective May 4. **L. 2012:** (9)(c)(II) and (9)(c.5)(II) amended, (SB 12-008), ch. 7, p. 21, § 1, effective March 8; (2)(b)(II)(B), (2)(b)(II)(E), and (3)(c) amended, (SB 12-175), ch. 208, p. 884, § 156, effective July 1; (11)(f) amended, (SB 12-009), ch. 197, p. 791, § 4, effective July 1. **L. 2013:** (15) added, (HB 13-1044), ch. 228, p. 1090, § 8, effective May 15. **L. 2015:** (9)(c) repealed and (9)(c.5) amended, (SB 15-010), ch. 5, p. 11, § 1, effective March 13. **L. 2017:** (9)(d) amended, (HB 17-1076), ch. 89, p. 272, § 1, effective August 9. **L. 2018:** (11)(a)(I) amended, (SB 18-041), ch. 9, p. 157, § 2, effective August 8.

Editor's note: (1) Section 10 of chapter 7, Session Laws of Colorado 2003, provides for an effective date of March 1, 2003; however, the Governor did not sign the act until March 5, 2003.

(2) Subsection (12)(b)(II) provided for the repeal of subsection (12)(b)(I), effective July 1, 2004. (See L. 2003, p. 1596.)

(3) Subsection (2)(a)(I)(B) provided for the repeal of subsection (2)(a)(I), effective July 1, 2006. (See L. 2003, p. 46.)

(4) Section 2 of chapter 135, Session Laws of Colorado 2011, provides that the act amending the introductory portion to subsection (7) and subsection (7)(c) applies to nontributary determinations made and rules promulgated before, on, or after May 4, 2011.

(5) Section 3 of chapter 9 (SB 18-041), Session Laws of Colorado 2018, provides that the act changing this section applies to conduct occurring on or after August 8, 2018.

Cross references: (1) For the "State Administrative Procedure Act", see article 4 of title 24; for the definition of designated groundwater, see § 37-90-103 (6); for small capacity wells, see § 37-90-105; for definitions of underground water, see §§ 37- 90-103 (19) and 37-92-103 (11); for exemptions from and presumptions formed in the application of article 92 of this title, see § 37-92-602.

(2) For the legislative declaration contained in the 2003 act amending subsections (2)(a) and (3)(a)(I)(A) and enacting subsections (3)(a)(I)(A.3) and (3)(a)(I)(A.5), see section 1 of chapter 7, Session Laws of Colorado 2003. For the legislative declaration in the 2013 act adding subsection (15), see section 1 of chapter 228, Session Laws of Colorado 2013.

37-90-137.5. Special water committee - creation - study - repeal. (Repealed)

Source: L. 96: Entire section added, p. 1362, § 3, effective June 1. **L. 98:** (6) amended, p. 1072, § 2, effective June 1. **L. 99:** (1.5) added and (6) amended, p. 670, § 2, effective May 18.

Editor's note: Subsection (6) provided for the repeal of this section, effective July 1, 2001. (See L. 99, p. 670.)

37-90-138. Waste - violations - permits. (1) The state engineer in cooperation with the commission has power to regulate the drilling and construction of all wells in the state of Colorado to the extent necessary to prevent the waste of water and the injury to or destruction of other water resources and shall require well drillers and private drillers to file a log of each well drilled whether or not exempt by virtue of section 37-90-105. The state engineer shall adopt such rules and regulations as are necessary to accomplish the purposes of this section.

(2) If the state engineer finds any well to have been drilled or maintained in a manner or condition or to be withdrawing groundwater contrary to this article or the rules issued under this article, the state engineer shall immediately notify the user in writing of the violation and give the user time as may reasonably be necessary, not to exceed sixty days, to correct deficiencies. If the user fails or refuses to correct the deficiencies within the allowed time, the state engineer is authorized to enter upon the user's land and do whatever is necessary in order that the user comply with this article or rules issued under this article. Prior to August 1, 2010, this subsection (2) does not apply to oil and gas wells. For an oil and gas well in existence on March 22, 2010, for which a well permit is required by this section, a well permit application shall be submitted to the state engineer on or before April 30, 2010. For an oil and gas well to be constructed between March 22, 2010, and August 1, 2010, for which a well permit is required by this section, a well permit application shall be submitted to the state engineer on or before June 15, 2010. All oil and gas wells to be constructed after August 1, 2010, for which a well permit is required by this section shall have a well permit prior to producing groundwater.

(3) No well construction contractor, pump installer, private pump installer, or private driller shall construct a new well or otherwise do work on any well requiring authority from the state engineer or commission until a permit with respect thereto has been secured for such work.

Source: L. 65: R&RE, p. 1266, § 1. **C.R.S. 1963:** § 148-18-37. **L. 67:** p. 697, § 14. **L. 92:** (3) amended, p. 2300, § 6, effective March 19. **L. 2009:** (2) amended, (HB 09-1303), ch. 390, p. 2110, § 4, effective June 2. **L. 2010:** (2) amended, (SB 10-165), ch. 31, p. 113, § 2, effective March 22.

37-90-139. Existing beneficial uses not recorded - fee. Existing uses of groundwater put to beneficial use prior to May 17, 1965, not of record in the office of the state engineer on April 21, 1967, may be recorded upon written application and payment of a filing fee of twenty-five dollars and shall retain the date of initiation when first put to beneficial use, but no such recording shall be accepted after December 31, 1968.

Source: L. 67: p. 278, § 11. **C.R.S. 1963:** § 148-18-39.

37-90-140. Inclusion of lands. (1) (a) The boundaries of any district organized under the provisions of this article may be changed in the manner prescribed in this section, but the change of boundaries of the district shall not impair or affect its organization or its rights in or to property or any of its rights and privileges whatsoever, nor shall it affect or impair or discharge any contract, obligation, lien, or charge for or upon which it might be liable or chargeable had any such change of boundaries not been made. An election for the inclusion of real property in the district may be initiated by a petition, in writing, filed with the secretary of the board.

(b) The petition shall describe the boundaries of the proposed additional territory with such certainty as to enable a property owner to determine whether or not his property is within the district and shall contain a prayer for the inclusion of such additional territory. Such petition shall be signed by not less than fifteen percent of the taxpaying electors within the territory sought to be included and acknowledged in the same manner that conveyances of land are required to be acknowledged.

(c) If lands proposed to be included within a district, duly organized under the provisions of this article, are located within the water basin or aquifer within which the district lies, as determined by the commission, such lands are eligible for inclusion within said district under the provisions of this article and not otherwise.

(d) Within twenty-one days after the filing of the petition, the board shall examine the petition, and, if it finds that it bears the requisite number of signatures and otherwise meets the stated requirements, it shall accept the petition and shall fix a time and place, not less than thirty-five days nor more than forty-two days after the date of such acceptance, for a hearing thereon. The secretary of the board shall publish a notice of such hearing by one publication in a newspaper of general circulation in every county in which any portion of the district and the proposed additional territory to be included in the district are located. The publication shall be at least fourteen days prior to the date of the hearing. Such notice shall state the nature of the petition, the description of the proposed additional territory, and that any person owning any interest in real property within the district or within the proposed additional territory to be

included in the district may appear at the hearing and show cause in writing why the petition should not be granted.

(2) The board, at the time and place fixed, or at such times to which the hearing may be continued, shall proceed to hear the petition and all objections thereto presented in writing. The failure of any person to object in writing shall be deemed an assent on his part to the inclusion of the proposed additional territory in the district as prayed for in the petition. Upon completion of the hearing, the board may order changes in the boundaries of the proposed lands to be included in the district by the inclusion or exclusion of land therefrom upon finding that such change in boundaries would be hydrologically, geologically, and geographically sound. The board, in its discretion, and on conditions to be determined by the board and accepted by the petitioners, may grant the petition, deny it, or grant it as to part of the proposed additional territory and deny it as to the remaining portion. Unless the petitioners are the owners of all the territory proposed to be added to the district, the board shall submit the question of the inclusion of the additional territory as so determined, to the taxpaying electors within the territory to be included, in an election held for that purpose.

(3) The board shall appoint three taxpaying electors of the district, including two from the area sought to be included, as judges of the election. The secretary of the board shall have published a notice of the time and place of said election to be held in the territory proposed for inclusion in the district by one publication in a newspaper of general circulation in the territory proposed for inclusion in the district. Such election shall not be held less than twenty-one days after said publication of notice.

(4) Such elections shall be held and conducted as nearly as may be in the same manner for creating districts as set forth in section 37-90-124. At the election, the taxpaying electors in the territory proposed for inclusion in the district shall vote for or against such inclusion. The judges of election shall certify the returns of the election to the board. If a majority of the votes cast at such election are for the inclusion of the additional territory, the board shall make an order to that effect and file the same with the secretary of the board.

(5) Any action of the board with respect to the inclusion of territory within an existing district may be reviewed by the district court in appeal proceedings filed within fourteen days after the board's decision has been announced.

(6) If the district within which the lands are included has incurred any prior bonded indebtedness, outstanding at the time of such inclusion, such additional land area shall be liable for its proportionate share of such prior indebtedness of said district.

Source: L. 67: p. 278, § 11. **C.R.S. 1963:** § 148-18-40. **L. 2012:** (1)(d), (3), and (5) amended, (SB 12-175), ch. 208, p. 885, § 157, effective July 1.

37-90-141. Exclusion of lands. (1) (a) The boundaries of any district organized under the provisions of this article may be changed in the manner prescribed in this section, but the change of boundaries of the district shall not impair or affect its organization or its rights in or to property or any of its rights and privileges whatsoever, nor shall it affect or impair or discharge any contract, obligation, lien, or charge for or upon which it might be liable or chargeable had any such change of boundaries not been made. An election for the exclusion of real property in the district may be initiated by a petition, in writing, filed with the secretary of the board.

(b) The petition shall describe the boundaries of the territory proposed for exclusion with such certainty as to enable a property owner to determine whether or not his property is within the district and shall contain a prayer for the exclusion of such territory. Such petition shall be signed by not less than fifteen percent of the taxpaying electors within the territory proposed for exclusion, and such petition must be acknowledged in the same manner that conveyances of land are required to be acknowledged.

(c) If lands proposed for exclusion from a district, duly organized under the provisions of this article, are located outside the water basin or aquifer within which the district lies, as determined by the commission, such lands are eligible to be excluded under the provisions of this article and not otherwise.

(d) Within twenty days after the filing of the petition, the board shall examine the petition, and, if it finds that it bears the requisite number of signatures and otherwise meets the stated requirements, it shall accept the petition and shall fix a time and place, not less than thirty days nor more than fifty days after the date of such acceptance, for a hearing thereon. The secretary of the board shall publish a notice of such hearing by one publication in a newspaper of general circulation in every county in which any portion of the district and the proposed territory for exclusion are located. Such notice shall state the nature of the petition, the description of the territories proposed for exclusion, and that any person owning any interest in real property within such territories or within the district encompassing such territories may appear at the hearing and show cause in writing why the petition should not be granted.

(2) The board, at the time and place fixed, or at such times to which the hearing may be continued, shall proceed to hear the petition and all objections thereto presented in writing. The failure of any person to object in writing shall be deemed an assent on his part to the exclusion of the lands as prayed for in the petition. Upon completion of the hearing, the board may order changes in the boundaries of the lands proposed for exclusion from the district by the inclusion or exclusion of land therefrom upon finding that such change in boundaries would be hydrologically, geologically, and geographically sound. The board, in its discretion, and on conditions to be determined by the board and accepted by the petitioners, may grant the petition, deny it, or grant it as to part of the proposed exclusion of territory and deny it as to the remaining portion.

(3) Any action of the board with respect to the exclusion of territory from an existing district may be reviewed by the district court in appeal proceedings filed within ten days after the board's decision has been announced.

(4) If the district within which lands are excluded has incurred any prior bonded indebtedness, outstanding at the time of such exclusion, such excluded lands shall continue to be liable for the proportionate share of any such bonded indebtedness which they were under obligation to pay at the time of exclusion.

Source: L. 67: p. 279, § 11. **C.R.S. 1963:** § 148-18-41.

37-90-142. State engineer - action upon permit. Except as otherwise provided by specific statute, the state engineer shall act upon an application for a well permit within forty-five days of the receipt thereof.

Source: L. 87: Entire section added, p. 1303, § 7, effective July 2.

37-90-143. Owners of well permits - update for name and address. (1) Effective July 1, 1994, any owner of an unexpired well permit issued pursuant to this article or article 92 of this title who changes a name or mailing address from that on file with the office of the state engineer shall file an update to the name or mailing address with the state engineer by January 1, 1995, on a form prescribed by the state engineer.

(2) Effective January 1, 1995, any owner of an unexpired well permit issued pursuant to this article or article 92 of this title who changes a name or mailing address from that on file with the state engineer shall file, in person, by mail, or by fax, an update with the state engineer within sixty-three days after the date of the change, on a form prescribed by the state engineer.

Source: L. 94: Entire section added, p. 1748, § 5, effective July 1. **L. 2012:** (2) amended, (SB 12-175), ch. 208, p. 886, § 158, effective July 1.

ARTICLE 90.5

Geothermal Resources

Editor's note: Prior to 1983, the "Colorado Geothermal Resources Act" was contained in article 70 of title 34.

Cross references: For the "Geothermal Heat Suppliers Act", see article 40 of title 40.

Law reviews: For article, "Getting Into Hot Water: The Law of Geothermal Resources in Colorado", see 39 Colo. Law. 65 (Sept. 2010).

37-90.5-101. Short title. This article shall be known and may be cited as the "Colorado Geothermal Resources Act".

Source: L. 83: Entire article added, p. 1419, § 1, effective June 10.

37-90.5-102. Legislative declaration. (1) The general assembly hereby declares that:

(a) The development of geothermal resources is in the public interest because it enhances local economies and provides an alternative to conventional fuel sources;

(b) The development of geothermal resources should be undertaken in such a manner as to safeguard life, health, property, public welfare, and the environment and to encourage the maximum economic recovery of the resource and prevent its waste;

(c) While the doctrine of prior appropriation is, and always has been, expressly recognized with respect to geothermal resources, such doctrine should be modified to permit the full economic development of the resource.

Source: L. 83: Entire article added, p. 1419, § 1, effective June 10.

37-90.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Direct use" means the utilization of geothermal resources for commercial, residential, agricultural, public facilities, or other energy needs other than the commercial production of electricity.

(1.5) "Geothermal by-products" means dissolved or entrained minerals and gases that may be obtained from the material medium, excluding hydrocarbon substances and carbon dioxide.

(2) "Geothermal fluid" means naturally occurring groundwater, brines, vapor, and steam associated with a geothermal resource.

(3) "Geothermal resource" means the natural heat of the earth and includes:

(a) The energy that may be extracted from that natural heat;

(b) The material medium used to extract the energy from a geothermal resource; and

(c) Geothermal by-products.

(4) "Hot dry rock" means a geothermal resource which lacks sufficient geothermal fluid to transport commercial amounts of energy to the surface and which is not in association with an economically useful groundwater resource.

(5) "Material medium" means geothermal fluid as well as any other substance used to transfer energy from a geothermal resource.

Source: L. 83: Entire article added, p. 1419, § 1, effective June 10. **L. 2010:** (1) amended and (1.5) added, (SB 10-174), ch. 189, p. 811, § 5, effective August 11.

37-90.5-104. Ownership declaration. (1) Where a geothermal resource is found in association with geothermal fluid which is tributary groundwater, such geothermal resource is declared to be a public resource to which usufructuary rights only may be established according to the procedures of this article. No correlative property right to such a geothermal resource in place is recognized as an incident of ownership of an estate in land.

(2) The property right to a hot dry rock resource is an incident of the ownership of the overlying surface, unless severed, reserved, or transferred with the subsurface estate expressly.

(3) Nothing in this section shall be deemed to derogate valid, existing property rights to geothermal resources which have vested prior to July 1, 1983. However, such property rights shall not be deemed vested absent the award of a decree for an application filed prior to June 10, 1983, pursuant to existing water law or the entering into of a geothermal lease prior to June 10, 1983, or unless utilizing facilities are actually in existence prior to July 1, 1983. A facility for utilization of geothermal resources shall be considered to be in existence if it is in actual operation or is undergoing significant construction activities prior to operation.

(4) Nothing in this section shall be deemed to derogate the rights of a landowner to nontributary groundwater.

Source: L. 83: Entire article added, p. 1420, § 1, effective June 10.

37-90.5-105. Access - reasonable accommodation. (1) Geothermal leases may be awarded by the state board of land commissioners for lands under its jurisdiction through negotiation or by competitive bidding, but no such lease may be awarded prior to a public notice period of thirty-five days.

(2) Where the property right to a severable geothermal resource has been severed, reserved, or transferred with the subsurface estate, its owner may enter upon the overlying surface parcel at reasonable times and in a reasonable manner to prospect for and produce the energy from such resource, if adequate compensation is paid to the owner of the surface parcel for damages and disturbance in accordance with subsection (3) of this section. This right of entry shall not include the right to construct surface utilization facilities, and such facilities may be constructed only upon agreement with the surface owner in accordance with subsection (3) of this section.

(3) (a) (I) A developer of any type of geothermal resource shall develop the resource in a manner that accommodates the surface owner by minimizing intrusion upon and damage to the surface of the land.

(II) As used in this section, "minimizing intrusion upon and damage to the surface" means selecting alternative locations for wells, roads, pipelines, or heat exchange or generation facilities, or employing alternative means of operation, that prevent, reduce, or mitigate the impacts of the geothermal development on the surface, where such alternatives are technologically sound, economically practicable, and reasonably available to the developer.

(III) The standard of conduct set forth in this subsection (3) does not prevent a developer from entering upon and using that amount of the surface as is reasonable and necessary to explore for and develop the geothermal resource.

(IV) The standard of conduct set forth in this subsection (3) does not abrogate or impair a contractual provision that is binding on the parties and that expressly provides for the use of the surface for the development of geothermal resources or that releases the developer from liability for the use of the surface.

(b) A geothermal resource developer's failure to meet the requirements set forth in this subsection (3) or, if applicable, subsection (2) of this section, gives rise to a cause of action by the surface owner. Upon a determination by the trier of fact that such failure has occurred, a surface owner may seek compensatory damages or such equitable relief as is consistent with paragraph (a) of this subsection (3) or, if applicable, subsection (2) of this section.

(c) (I) In any litigation or arbitration based upon subsection (2) of this section or paragraph (a) of this subsection (3), the surface owner shall present evidence that the developer's use of the surface materially interfered with the surface owner's use of the surface of the land. After such showing, the developer bears the burden of proof of showing that it met the standard set out in paragraph (a) of this subsection (3) and, if applicable, subsection (2) of this section. If a developer makes that showing, the surface owner may present rebuttal evidence.

(II) An operator may assert, as an affirmative defense, that it has conducted geothermal resource development in accordance with a regulatory requirement, contractual obligation, or land use plan provision that specifically applies to the alleged intrusion or damage.

(d) Nothing in this section:

(I) Precludes or impairs any person from obtaining any and all other remedies allowed by law;

(II) Prevents a developer and a surface owner from addressing the use of the surface for geothermal resource development in a lease, surface use agreement, or other written contract; or

(III) Establishes, alters, impairs, or negates the authority of local and county governments to regulate land use related to geothermal resource development.

Source: L. 83: Entire article added, p. 1420, § 1, effective June 10. **L. 2010:** (2) amended and (3) added, (SB 10-174), ch. 189, p. 812, § 6, effective August 11. **L. 2012:** (1) amended, (SB 12-175), ch. 208, p. 886, § 159, effective July 1.

37-90.5-106. Drilling permits - reinjection.

(1) (a) Repealed.

(b) Effective July 1, 2006, prior to constructing a geothermal resource exploration, production, or reinjection well, a permit shall be obtained from the state engineer. The state engineer shall adopt such rules as are necessary to protect the public health, safety, and welfare and the environment and to prevent the waste of any geothermal resource. The state engineer shall also adopt rules for the assessment of reasonable fees for the processing and granting of a permit under this section.

(2) The state engineer shall notify the Colorado water quality control commission of all applications for a reinjection permit under this section and shall consider its comments in deciding whether to issue a permit. The state engineer may incorporate such comments as conditions to a permit. The water quality control commission shall respond to the notice required by this subsection (2) within sixty days.

(3) Where the maintenance of underground pressures, the prevention of subsidence, or the disposal of brines is necessary, reinjection of geothermal fluid may be required by the state engineer.

(4) The state engineer shall notify the Colorado oil and gas conservation commission of all applications for a permit to construct a geothermal well which expects to encounter geothermal fluids having a temperature in excess of 212 degrees Fahrenheit or will be in excess of two thousand five hundred feet in depth. The state engineer shall consider the Colorado oil and gas conservation commission comments in deciding whether to issue a permit. The state engineer may incorporate such comments as conditions to a permit. The Colorado oil and gas conservation commission shall respond to the notice required by this subsection (4) within sixty days.

Source: L. 83: Entire article added, p. 1421, § 1, effective June 10. **L. 2003:** (1) amended, p. 47, § 7, effective (see editor's note).

Editor's note: (1) Section 10 of chapter 7, Session Laws of Colorado 2003, provides for an effective date of March 1, 2003; however, the Governor did not sign the act until March 5, 2003.

(2) Subsection (1)(a)(II) provided for the repeal of subsection (1)(a), effective July 1, 2006. (See L. 2003, p. 47.)

Cross references: For the legislative declaration contained in the 2003 act amending subsection (1), see section 1 of chapter 7, Session Laws of Colorado 2003.

37-90.5-107. Relationship to water - when permit required. (1) The use of water as a material medium is recognized as a beneficial use of such water. All applications to appropriate groundwater in order to utilize its geothermal energy shall be considered an application to appropriate geothermal fluid.

(2) (a) Prior to the production of geothermal fluid from a well, other than for flow-testing purposes, a permit to appropriate shall be obtained from the state engineer. This requirement shall not apply to nondiversionary utilization methods; however, such exemption shall not prevent the developer of a geothermal resource from establishing a property right based on his actual utilization.

(b) The permit to appropriate required by this subsection (2) may be waived by the state engineer for a diversionary utilization method which is nonconsumptive and which will not impair valid, prior water rights.

(c) The permit to appropriate required by this subsection (2) may allow for nonconsumptive secondary uses of geothermal fluid, including the recovery of geothermal by-products, and may allow for consumptive secondary uses of geothermal fluid, including sale, which will not impair valid, prior water rights.

(3) The state engineer shall grant a permit to appropriate geothermal fluids within one hundred eighty-two days after the filing of an application upon a finding that:

(a) The proposed appropriation will not materially injure a valid, prior water or geothermal right;

(b) The applicant has acquired or purchased an option to acquire adequate water rights to offset any material injury; or

(c) The applicant has obtained and offered to provide to any affected party an equivalent amount of replacement water of comparable quality.

(4) The appropriation of a geothermal fluid that is nontributary groundwater shall be in accordance with section 37-90-137 (4).

(5) The essence of the water right granted by a permit to appropriate geothermal fluid is the ability to extract geothermal energy from such fluid. The beneficial use of such energy is the basis, measure, and limit of the right and requires that efficient application methods be utilized.

(6) The provisions of articles 90 and 92 of this title relating to notice, hearings, appeals, and the administration of water rights shall govern all matters arising under this section.

(7) Any application to appropriate a geothermal fluid pending on June 10, 1983, shall be processed and evaluated under existing law prior to June 10, 1983.

(8) For purposes of this section, "materially injure" and "material injury" include any diminution or alteration in the quantity, temperature, or quality of any valid, prior water or geothermal right; except that, with regard to a geothermal right, "materially injure" and "material injury" include a diminution or alteration in the temperature of water only if the diminution or alteration adversely affects the valid, prior geothermal right.

Source: L. 83: Entire article added, p. 1421, § 1, effective June 10. **L. 92:** (7) amended, p. 2181, § 50, effective June 2. **L. 2010:** (8) amended, (SB 10-174), ch. 189, p. 813, § 7, effective August 11. **L. 2012:** IP(3) amended, (SB 12-175), ch. 208, p. 886, § 160, effective July 1.

37-90.5-108. Geothermal management districts. (1) The state engineer may adopt procedures under which geothermal management districts may be established. In such districts, the state engineer has the authority to:

(a) Control well-spacing and production rates;

(b) Control the quantity of geothermal fluid extracted from geothermal resources by such methods and procedures as he deems appropriate, including requirements to reinject;

(c) Adopt a comprehensive plan for the most efficient use of geothermal resources, guided by the principles of equitable apportionment, maximum economic recovery, and prevention of waste.

(2) The state engineer may delegate some or all of his authority under this section to a geothermal management district upon finding that the district has adequate organization and capability to administer an acceptable management plan.

Source: L. 83: Entire article added, p. 1422, § 1, effective June 10.

ARTICLE 91

Water Well Construction and
Pump Installation Contractors

37-91-101. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) It has been established by scientific evidence that improperly constructed wells, improperly abandoned wells, and improperly installed pumping equipment can adversely affect groundwater resources and the public health, safety, and welfare; and

(b) Therefore, the proper location, construction, repair, and abandonment of wells, the proper installation and repair of pumping equipment, the licensing and regulation of persons engaging in the business of contracting either for the construction of wells or for the installation of pumping equipment, and the periodic inspection of well construction and pump installation are essential for the protection of the public health and the preservation of groundwater resources.

Source: L. 67: p. 691, § 1. **C.R.S. 1963:** § 148-20-1. **L. 85:** Entire section amended, p. 1180, § 1, effective July 1. **L. 2003:** Entire section amended, p. 1675, § 1, effective May 14.

37-91-102. Definitions. As used in this article, unless the context otherwise requires:

(1) and (2) Repealed.

(3) "Board" means the state board of examiners of water well construction and pump installation contractors created by section 37-91-103.

(4) "Construction of wells" means any act undertaken at the well site for the establishment or modification of a well, including, without limitation, the location of the well and the excavation or fracturing thereof but not including surveying or other acts preparatory thereto, site preparation and modification or site modification, or the installation of pumping equipment.

(4.5) "Dewatering well" includes any excavation that is drilled, cored, bored, washed, fractured, driven, dug, jetted, or otherwise constructed when the intended use of such excavation is for temporary dewatering purposes for construction only.

(4.7) "Directly employed" means engaged in employment where the employer is responsible for and directly controls the performance of the employee, and, where applicable, the

employee is covered by workers' compensation and unemployment compensation. "Directly employed" does not refer to independent contractors or subcontractors.

(5) and (6) Repealed.

(7) "Groundwater" means any water not visible on the surface of the ground under natural conditions.

(8) "Installation of pumping equipment" means the selection, placement, and preparation for operation of pumping equipment, including all construction involved in entering the well and establishing well seals and safeguards to protect groundwater from contamination.

(9) Repealed.

(10) "License" means the document issued by the board to qualified persons making application therefor, pursuant to section 37-91-105, authorizing such persons to engage in one or more methods of well construction or pump installation or any combination of such methods.

(10.5) "Monitoring and observation well" includes any excavation that is drilled, cored, bored, washed, fractured, driven, dug, jetted, or otherwise constructed when the intended use of such excavation is for locating such well, pumping equipment or aquifer testing, monitoring groundwater, or collection of water quality samples.

(11) Repealed.

(11.5) "Person" means an individual, a partnership, a corporation, a municipality, the state, the United States, or any other legal entity, public or private.

(12) "Private driller" means any individual, corporation, partnership, association, political subdivision, or public agency that uses equipment owned by it to dig, drill, redrill, case, recase, deepen, or excavate a well entirely for its own use upon property owned by it.

(12.5) "Private pump installer" means any individual, corporation, partnership, association, political subdivision, or public agency that uses equipment owned by it to install pumping equipment on a well entirely for its own use on property owned by it.

(13) "Pumping equipment" means any pump or related equipment used or intended for use in withdrawing or obtaining groundwater, including, but not limited to, well seals, pitless adapters, and other safeguards to protect the groundwater from contamination and any waterlines up to and including the pressure tank and any coupling appurtenant thereto.

(14) "Pump installation contractor" means any person licensed to install, remove, modify, or repair pumping equipment for compensation.

(15) "Repair" means any change, replacement, or other alteration of any well or pumping equipment which requires a breaking or opening of the well seal or any waterlines up to and including the pressure tank and any coupling appurtenant thereto.

(15.5) "Supervision" means personal and continuous on-the-site direction by a licensed well construction contractor or licensed pump installation contractor, unless the licensed contractor has applied for and received from the board an exemption from continuous on-the-site direction for a specific task.

(15.7) "Test hole" includes any excavation that is drilled, cored, bored, washed, fractured, driven, dug, jetted, or otherwise constructed when the intended use of such excavation is for geotechnical, geophysical, or geologic investigation or soil- or rock-sampling.

(16) (a) "Well" for the purpose of this article means any test hole or other excavation that is drilled, cored, bored, washed, fractured, driven, dug, jetted, or otherwise constructed for the purpose of location, monitoring, dewatering, observation, diversion, artificial recharge, or

acquisition of groundwater for beneficial use or for conducting pumping equipment or aquifer tests.

(b) (I) "Well" does not include certain types of monitoring and observation wells, dewatering wells, and test holes that the board specifies in rules and regulations in order to allow for their construction, utilization, and abandonment by other than a well construction contractor, nor does such term include an excavation made for the purpose of obtaining or prospecting for minerals or those wells subject to the jurisdiction of the oil and gas conservation commission, as provided in article 60 of title 34, C.R.S., or those wells subject to the jurisdiction of the office of mined land reclamation, as provided in article 33 of title 34, C.R.S.

(II) "Well" does not include a naturally flowing spring or springs where the natural spring discharge is captured or concentrated by installation of a near-surface structure or device less then ten feet in depth located at or within fifty feet of the spring or springs' natural discharge point and the water is conveyed directly by gravity flow or into a separate sump or storage, if the owner obtains a water right for such structure or device as a spring pursuant to article 92 of this title.

(17) "Well construction contractor" means any person licensed pursuant to this article and responsible for the construction, test-pumping, or development of wells, either by contract or for hire or for any consideration whatsoever.

(18) "Well seal" means an approved arrangement or device used to cover a well or to establish and maintain a junction between the casing or curbing of a well and the piping or equipment installed therein, the purpose or function of which is to prevent contaminated water or other material from entering the well at the upper terminal.

Source: L. 67: p. 691, § 2. **C.R.S. 1963:** § 148-20-2. **L. 85:** (3), (4), (8), (10), (12), (15), and (18) amended, (4.5), (4.7), (10.5), (11.5), (12.5), (15.5), and (15.7) added, (13), (14), (16), and (17) R&RE, and (1), (2), (5), (6), (9), and (11) repealed, pp. 1180, 1182, 1189, §§ 2, 3, 16, effective July 1. **L. 90:** (4.7) amended, p. 574, § 71, effective July 1. **L. 92:** (16) amended, p. 1971, § 78, effective July 1. **L. 95:** (16) amended, p. 140, § 3, effective April 7. **L. 2003:** (4.7), (8), (10), (12), (12.5), (13), (14), (15.5), and (16)(a) amended, p. 1675, § 2, effective May 14.

37-91-103. State board of examiners of water well construction and pump installation contractors. (1) There is created, under the division of water resources in the department of natural resources, a state board of examiners of water well construction and pump installation contractors, consisting of five members and comprised of the following persons: The state engineer or a representative designated by him; a representative of the department of health designated by the executive director of the department; and three members appointed by the governor, two of whom shall be well construction contractors or pump installation contractors, each with a minimum of ten years' experience in the well construction or pump installation business preceding his appointment, and one of whom shall be an engineer or geologist with a minimum of ten years' experience in water supply and well construction preceding his appointment.

(2) All members shall be appointed for four-year terms, but no member shall be reappointed to or serve more than two consecutive four-year terms. Any vacancy occurring in the board membership of the governor's appointees, other than by expiration, shall be filled by

the governor by appointment for the unexpired term. Members shall serve without compensation but shall be reimbursed for actual expenses necessarily incurred in their official business.

(3) The board shall meet at least once every three months and at such other times as it deems necessary or advisable. Special board meetings may be called at any time on order of the chairman or vice-chairman or any three members of the board. The board shall determine the time and place of all meetings, but at least one meeting every three months shall be held in Denver. Three members of the board shall constitute a quorum, and the affirmative vote of three members shall be required to pass any action or motion of the board. The board may adopt bylaws to govern its own procedure.

Source: L. 67: p. 693, § 3. **C.R.S. 1963:** § 148-20-3. **L. 68:** p. 129, § 142. **L. 85:** (1) amended, p. 1182, § 4, effective July 1. **L. 2003:** (2) and (3) amended, p. 1677, § 3, effective May 14.

37-91-104. Duties of the board. (1) The board shall:

(a) Be responsible for the administration of this article and, with respect to such administration, shall enforce the provisions of this article and any rules adopted pursuant thereto and shall take such other actions as may be reasonably necessary to carry out the provisions of this article;

(b) Have general supervision and authority over the construction and abandonment of wells and the installation of pumping equipment, as provided by sections 37-91-109 and 37-91-110;

(c) Adopt, and from time to time revise, such rules, not inconsistent with law, as may be necessary to effectuate the provisions of this article, all such rules to be adopted in accordance with article 4 of title 24, C.R.S.;

(d) Employ, within funds available, personnel necessary for the proper performance of its work under this article;

(e) Examine for, deny, approve, revoke, suspend, and renew the licenses of applicants and licensees as provided in this article;

(f) Conduct hearings upon its own motion or upon receipt of written complaints with respect to any licensee under this article and with respect to the denial, revocation, or suspension of a license, all such hearings to be conducted in conformity with article 4 of title 24, C.R.S. The board may have such hearings conducted before a hearing officer or administrative law judge from the department of personnel designated by the board, who is technically qualified to conduct or assist in such hearings and who may be a member of the board.

(g) Repealed.

(h) Cause the prosecution and enjoinder of all persons violating this article;

(i) Disseminate information to pump installation contractors and well construction contractors in order to protect and preserve the groundwater resources of the state;

(j) Promulgate rules and regulations pursuant to article 4 of title 24, C.R.S., to allow certain types of monitoring and observation wells, dewatering wells, and test holes to be constructed, utilized, and abandoned by other than a well construction contractor;

(k) Adopt, and revise as necessary, such rules regarding the construction, use, and abandonment of monitoring and observation wells, dewatering wells, and test holes necessary to safeguard the public health of the people of Colorado. All such rules shall be adopted in

accordance with article 4 of title 24, C.R.S. The board may require that such wells or holes be designed, constructed, used, or abandoned by a licensed professional engineer, professional geologist, licensed well construction contractor, or anyone directly employed by or under the supervision of one of these individuals.

(l) (I) Assure protection of groundwater resources and the public health by ordering the nondestructive investigation, abandonment, repair, drilling, redrilling, casing, recasing, deepening, or excavation of a well where it finds such action to be necessary to correct violations of this article or rules promulgated by the board with respect to this article or to protect groundwater resources and the public health.

(II) Existing wells that were constructed in compliance with the laws and regulations in effect at the time of their construction shall not be required to be repaired, redrilled, or otherwise modified to meet the current standards for well construction contained in this article or the rules adopted by the board. Any such wells that present an imminent threat to public health or groundwater contamination may be ordered to be repaired or abandoned. The remedial action required by the board for such wells shall be the minimum repair necessary to remove the threat to public health or of groundwater pollution. An order to abandon a well that is issued under this article is not a determination of intent to abandon any water right associated with the well.

(2) The board may delegate to the state engineer the authority to perform any of the duties of the board as set forth in this article, except those duties authorized in paragraphs (c), (e), (j), and (k) of subsection (1) of this section.

Source: L. 67: p. 693, § 4. **C.R.S. 1963:** § 148-20-4. **L. 83:** (1)(g) amended, p. 844, § 77, effective July 1. **L. 85:** (1)(b), (1)(f), and (1)(h) amended and (2) added, p. 1183, §§ 5, 6, effective July 1. **L. 87:** (1)(f) amended, p. 976, § 99, effective March 13. **L. 95:** (1)(f) amended, p. 666, § 106, effective July 1. **L. 96:** (1)(g) repealed, p. 1216, § 5, effective August 7. **L. 2003:** (1)(l) added, p. 1677, § 4, effective May 14. **L. 2004:** (1)(k) amended, p. 1315, § 69, effective May 28.

Editor's note: Subsection (1)(l)(I) was originally enacted as (1)(l) and subsection (1)(l)(II) was originally enacted as (1)(m) in Senate Bill 03-045 but have been renumbered on revision for ease of location.

Cross references: (1) For the "Information Coordination Act", its policy, and the functions of the heads of principal departments, see § 24-1-136; for rule-making and licensing procedures by state agencies, see article 4 of title 24.

(2) For the legislative declaration contained in the 1996 act repealing subsection (1)(g), see section 1 of chapter 237, Session Laws of Colorado 1996.

37-91-105. Licensing - registration of rigs. (1) Every person, before engaging in the business of contracting either for the construction of wells or for the installation of pumping equipment, shall obtain a license for one or more methods of well construction or pump installation from the board and shall secure a registration from the board for each well-drilling or pump-installing rig to be operated or leased by him or his employee.

(2) The board shall issue a license to each applicant who files an application upon a form and in such manner as the board prescribes, accompanied by such fees and bond as required by section 37-91-107, and who furnishes evidence satisfactory to the board that the applicant:

(a) Is at least twenty-one years of age;

(b) Is a citizen of the United States or has declared his intention to become a citizen;

(c) (Deleted by amendment, L. 2003, p. 1678, § 5, effective May 14, 2003.)

(d) Has had not less than two years' experience in the type of well construction work or pump installation work for which the applicant is initially applying for a license; however:

(I) Once a person is licensed in one or more methods of well construction, the person is eligible without further experience to take an examination to obtain a license for a different method of well construction;

(II) Once a person is licensed for installing one or more types of pumps, the person is eligible without further experience to take an examination to obtain a license for a different type of pump installation; and

(III) Education in an accredited program approved by the board may substitute for well construction or pump installation experience upon application to and acceptance by the board;

(e) Demonstrates professional competence by passing a written and oral examination prescribed by the board.

(2.5) The board shall issue a special license for the use of special equipment or limited procedures in well construction or pump installation to each applicant who files an application upon a form and in such manner as the board prescribes, accompanied by such fees and bond as are required by section 37-91-107, and who furnishes evidence satisfactory to the board that he meets the requirements established in subsection (2) of this section; except that a special licensee shall not be eligible to take an examination to obtain a license for a different method of well construction or pump installation unless said licensee has at least two years of experience in the method of well construction or pump installation for which the additional license is sought.

(3) Upon investigation of the application and other evidence submitted, the board shall, not less than thirty days prior to the examination, notify each applicant that the application and evidence submitted for licensing is satisfactory and accepted, or unsatisfactory and rejected; if rejected, said notice shall state the reasons for such rejection.

(4) The place of examination shall be designated in advance by the board and shall be given annually and at such other times as, in the opinion of the board, the number of applicants warrants.

(5) The examination shall consist of an oral and written examination and shall fairly test the applicant's knowledge and application thereof in the following subjects: Basics of drilling methods, specific drilling methods, basics of pump installation methods, specific pump installation methods, and basics of well construction and his knowledge and application of state laws and local ordinances concerning the construction of wells or the installation of pumping equipment, or both, and rules promulgated in connection therewith.

(6) If an applicant fails to receive a passing grade on the examination, the applicant may reapply for examination after forty-five days and shall pay a reexamination fee upon such reapplication.

(7) Each licensee shall complete eight hours of continuing education training as approved by the board every year in order to maintain or renew a license.

Source: L. 67: p. 694, § 5. **C.R.S. 1963:** § 148-20-5. **L. 73:** p. 531, § 82. **L. 85:** (1), (2)(d), and (4) to (6) amended, p. 1184, § 7, effective July 1. **L. 89:** (1) amended and (2.5) added, p. 1428, § 1, effective April 7. **L. 2003:** IP(2), (2)(c), (2)(d), and (6) amended and (7) added, p. 1678, § 5, effective May 14.

Cross references: For the effect of a criminal conviction on employment rights, see § 24-5-101.

37-91-106. License - exemptions - rules.

(1) (Deleted by amendment, L. 2003, p. 1678, § 6, effective May 14, 2003.)

(2) A license shall not be required of any person who performs labor or services if he is directly employed by, or under the supervision of, a licensed well construction contractor or pump installation contractor.

(3) Private drillers and private pump installers are exempt from all license requirements under this article; except that such entities shall be required to comply with minimum construction standards as required by section 37-91-110 and the rules of the board.

(4) A license shall not be required of a professional engineer, professional geologist, or professional hydrologist or anyone directly employed by, or under the supervision of, a professional engineer, professional geologist, or professional hydrologist for the purpose of sampling, measuring, or test-pumping for scientific, engineering, or regulatory purposes. The board may promulgate rules governing such sampling, measuring, or test-pumping, and all such sampling, measuring, or test-pumping shall be done in compliance with such rules.

Source: L. 67: p. 695, § 6. **C.R.S. 1963:** § 148-20-6. **L. 85:** Entire section amended, p. 1184, § 8, effective July 1. **L. 2003:** (1), (3), and (4) amended, p. 1678, § 6, effective May 14. **L. 2005:** (3) amended, p. 157, § 1, effective April 5.

37-91-107. Fees and bonds - license renewal - continuing education. (1) All fees from applicants seeking a license under this article, and all renewal fees, shall be transmitted to the state treasurer, who shall credit the same to the well inspection cash fund created in section 37-80-111.5. No fees shall be refunded. A license shall be nontransferable and unassignable.

(2) The board shall charge an application fee of twenty dollars to accompany each application from a resident of the state of Colorado and a further fee of fifty dollars upon successful completion of examination before issuance of a license. In addition, each successful resident applicant shall file and maintain with the board evidence of financial responsibility, in the form of a savings account, deposit, or certificate of deposit, in the amount of ten thousand dollars, meeting the requirements of section 11-35-101, C.R.S., or an irrevocable letter of credit for the amount of ten thousand dollars, meeting the requirements of section 11-35-101.5, C.R.S., or shall file and maintain with the board an approved compliance bond with a corporate surety authorized to do business in the state of Colorado, in the amount of ten thousand dollars, for the use and benefit of any person or the state of Colorado suffering loss or damage, conditioned that such licensee will comply with the laws of the state of Colorado in engaging in the business for which he receives a license and the rules of the board promulgated in the regulation of such business.

(3) The board shall charge an application fee of fifty dollars to accompany each application from a nonresident of the state of Colorado and a further nonresident fee of four hundred dollars upon successful completion of examination before issuance of a license. In addition, each successful nonresident applicant shall file and maintain with the board evidence of financial responsibility, in the form of a savings account, deposit, or certificate of deposit in the amount of twenty thousand dollars, meeting the requirements of section 11-35-101, C.R.S., or shall file and maintain with the board an approved compliance bond in the amount of twenty thousand dollars with a corporate surety authorized to do business in the state of Colorado for the use and benefit of any person or the state of Colorado suffering loss or damage, conditioned that such licensee will comply with the laws of the state in engaging in the business for which he receives a license and the rules of the board promulgated in compliance therewith.

(3.5) The board shall not set the application and license fees in subsections (2) and (3) of this section at amounts greater than becomes necessary to further the purposes of this article. Such amounts shall not exceed the direct and indirect costs of the board in administering the provisions of this article.

(3.7) The board is authorized to set the bond amounts in subsections (2) and (3) of this section at higher amounts if such an increase becomes necessary to further the purposes of this article.

(4) Every licensed well construction contractor and licensed pump installation contractor in this state shall pay to the board during the month of January of each year, beginning in the year immediately subsequent to his or her initial licensing, a renewal fee of fifty dollars, shall concurrently file and maintain a new bond or letter of credit if required pursuant to this section, and shall annually file a certificate of completion of continuing education as required pursuant to section 37-91-105 (7). The secretary shall thereupon issue a renewal license for one year. The license of any well construction contractor or pump installation contractor who fails to have his or her license renewed during the month of January in each year shall lapse. Any lapsed license may be renewed, without reexamination, within a period of one year after such lapse upon payment of all fees in arrears. Licensees may elect to renew their licenses and file and maintain a bond or letter of credit for a term of up to three years, paying fifty dollars for each year the license will be in effect.

(4.5) A licensee shall maintain the amount of financial responsibility required by subsections (2), (3), and (4) of this section for the life of the license for which the financial responsibility is required. The license of any well construction contractor or pump installation contractor who fails to maintain such financial responsibility shall lapse. A license that has so lapsed may be reinstated upon submission of current evidence of the required financial responsibility to the board and payment to the board of a one-hundred-dollar reinstatement fee.

(5) The board shall charge an annual registration fee of ten dollars for each well drilling or pump installation rig to be operated in the state of Colorado.

(6) The board shall, no later than January 7, 2007, develop a continuing education program in conjunction with the Colorado water well contractors association or any analogous or successor organization.

Source: L. 67: p. 695, § 7. **C.R.S. 1963:** § 148-20-7. **L. 79:** (3) amended, p. 426, § 19, effective July 1. **L. 85:** (2), (3), (4), and (5) amended and (3.5) and (3.7) added, p. 1185, § 9, effective July 1. **L. 87:** (2), (3), (3.7), and (4) amended, p. 491, § 42, effective July 1. **L. 89:** (2),

(3), and (4) amended and (4.5) added, p. 1428, § 2, effective April 7. **L. 2003:** (1), (4), (4.5), and (5) amended and (6) added, p. 1679, § 7, effective May 14.

37-91-108. Denial, revocation, or suspension of license. (1) The board, by an affirmative vote of three of its five members, may withhold, deny, revoke, or suspend any license issued or applied for in accordance with the provisions of this article, upon proof that the licensee or applicant:

(a) Has used fraud or deception in applying for a license or in taking an examination provided for in this article;

(b) Has willfully or negligently violated any of the provisions of this article or of the "Colorado Groundwater Management Act";

(c) Has failed to comply with minimum standards prescribed by section 37-91-110 or the rules of the board promulgated with respect to this article;

(d) Has knowingly constructed a well or installed pumping equipment without a valid permit;

(e) Has knowingly filed with the division of water resources a document containing untrue statements;

(f) Has used fraud or deception in collecting fees from persons with whom he has contracted for well construction or pump installation;

(g) Has failed to submit a well completion report or a pump installation report pursuant to the requirement therefor in the rules and regulations of the board;

(h) Has authorized a person, not directly employed or directly supervised by the licensee, to construct wells or install pumping equipment under the authority of the licensee's license; or

(i) Has failed to complete the continuing education requirement established in section 37-91-107 within one year after the establishment of such requirement.

(2) No license shall be withheld, denied, revoked, or suspended except in conformity with article 4 of title 24, C.R.S.

(3) A hearing upon a complaint may be initiated only if the complaint was filed with the board within two years of the filing of the completion report for the well or pumping equipment, the construction or installation of which formed the basis of the complaint. If no completion report was filed, a hearing upon the complaint may be initiated only if the complaint was filed with the board within two years of the discovery of the violation or defect that constituted the grounds for the complaint.

(4) The board may order the nondestructive investigation, abandonment, repair, drilling, redrilling, casing, recasing, deepening, or excavation of a well to protect groundwater resources and the public health if the board finds such action to be necessary to correct violations of article 90 of this title, this article, or the rules promulgated by the board pursuant to this article.

(5) The board may assess fines of not less than fifty dollars nor more than one thousand dollars for violations of article 90 of this title, this article, or the rules promulgated by the board pursuant to this article for each such violation. Such fines shall be transmitted to the state treasurer, who shall credit them to the well inspection cash fund created in section 37-80-111.5.

Source: L. 67: p. 696, § 8. **C.R.S. 1963:** § 148-20-8. **L. 85:** (1)(c) amended and (1)(d) to (1)(h) and (3) added, p. 1186, §§ 10, 11, effective July 1. **L. 2003:** (1)(h) amended and (1)(i), (4), and (5) added, p. 1680, §§ 8, 9, effective May 14.

Cross references: For rule-making and licensing procedures by state agencies, see article 4 of title 24; for the "Colorado Groundwater Management Act", see article 90 of this title.

37-91-109. Further scope of article - orders - penalties. (1) In addition to the licensing of well construction contractors and pump installation contractors as required by this article, no well shall be located, constructed, repaired, or abandoned and no pumping equipment shall be installed or repaired contrary to the provisions of this article and applicable rules of the board promulgated to effectuate the purposes of this article. The board may by order require any licensee, private driller, or private pump installer to remedy any such noncompliant installation, construction, or repair and may, pursuant to rules and after due notice and a hearing, impose penalties for such noncompliance. The provisions of this article shall apply to any well or any pumping equipment not otherwise subject to regulation under the laws of this state and to any distribution, observation, monitoring, or dewatering of water therefrom; but this article shall not apply to any distribution of water beyond the point of discharge from the pressure tank or to any distribution of water beyond the point of discharge from the pumping equipment if no pressure tank or an overhead pressure tank is employed.

(2) Only a licensed pump installation contractor may install a cistern or other water storage tank between the wellhead and the pressure tank or downstream of the wellhead if no pressure tank is utilized.

Source: L. 67: p. 696, § 9. **C.R.S. 1963:** § 148-20-9. **L. 85:** Entire section amended, p. 1187, § 12, effective July 1. **L. 2003:** Entire section amended, p. 1680, § 10, effective May 14.

37-91-110. Basic principles and minimum standards. (1) The following basic principles, general in scope and fundamental in character, shall govern the construction, repair, or abandonment of any well and the installation or repair of any pumping equipment:

(a) Water wells shall be:

(I) Located in such manner that the well and its surroundings can be kept in a sanitary condition;

(II) Adequate in size to permit the installation of pumping equipment to produce the volume of water sought to be obtained in compliance with the well permit;

(III) Constructed or abandoned in such a manner as to maintain natural protection against pollution of water-bearing formations and to exclude known sources of contamination;

(b) The pumping equipment shall be:

(I) Located in such a manner that the pump and its surroundings can be kept in a sanitary condition;

(II) Selected, constructed, and installed: To meet the water yield and drawdown characteristic of the well; to be durable and reliable in character; of such material that no toxic or otherwise objectionable condition will be created in the water; in such a manner that continued operation without priming is assured at the time of installation; and to provide adequate protection against pollution of any character from any surface or subsurface source.

(2) The board shall adopt and may, from time to time, amend rules and regulations reasonably necessary to insure the proper construction or proper abandonment of wells and the proper installation of pumping equipment. The board has the authority to require the filing of information and reports relating to the construction or abandonment of wells and the installation of pumping equipment whenever it may deem such action to be necessary.

(3) All wells shall be constructed or abandoned and all pumping equipment shall be installed in compliance with this article and with the rules and regulations promulgated by the board.

Source: L. 67: p. 696, § 10. **C.R.S. 1963:** § 148-20-10. **L. 85:** IP(1), (1)(a)(II), (1)(a)(III), and (2) amended and (3) added, p. 1187, § 13, effective July 1.

37-91-111. Violations and penalties. (1) It is unlawful:

(a) For any person to represent himself as a well construction contractor or a pump installation contractor who is not licensed under this article or to so represent himself after his license has been suspended or revoked or has lapsed;

(b) For any person not licensed under this article to advertise or issue any sign, card, or other device which would indicate that he is a well construction contractor or a pump installation contractor;

(c) For any person not licensed or whose license is suspended to construct wells unless he is a private driller or directly employed by or under the supervision of a licensed well construction contractor;

(d) For any person not licensed or whose license is suspended to install pumping equipment unless he is a private pump installer or directly employed by or under the supervision of a licensed pump installation contractor, except as excluded pursuant to section 37-91-106 (4); or

(e) For any person to otherwise violate any of the provisions of this article.

(2) Any person who violates any provision of subsection (1) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

(3) Any person who violates any provision of subsection (1) of this section shall also be subject to a civil penalty assessed by the court of not less than one hundred dollars nor more than five thousand dollars for each such violation. All civil penalties collected under this subsection (3) shall be transmitted to the state treasurer, who shall credit the same to the well inspection cash fund created in section 37-80-111.5.

Source: L. 67: p. 697, § 11. **C.R.S. 1963:** § 148-20-11. **L. 85:** Entire section amended, p. 1188, § 14, effective July 1. **L. 2003:** (3) amended, p. 1681, § 11, effective May 14.

37-91-112. Injunctive proceedings. (1) The board may, through the attorney general of the state of Colorado, apply for civil penalties and for an injunction to enjoin any person from committing any act declared to be unlawful by this article. Such application shall be heard in the district court in which the grounds for the injunction arose.

(2) Such injunctive proceedings shall be in addition to and not in lieu of any other penalty or remedy provided in this article.

(3) In such proceedings, if the court enters a temporary restraining order, preliminary injunction, or permanent injunction or awards civil penalties, the person against whom such injunctive order was entered or against whom such civil penalties were awarded shall pay the costs of the proceeding, including reasonable attorney fees.

Source: L. 67: p. 697, § 12. **C.R.S. 1963:** § 148-20-12. **L. 85:** (1) amended and (3) added, p. 1188, § 15, effective July 1.

37-91-113. Well inspection program. (1) The state engineer shall monitor compliance with this article, including by inspecting water well construction and pump installation, and may employ inspectors for such purpose. The costs of such monitoring and inspection shall be paid from the well inspection cash fund created by section 37-80-111.5.

(2) Inspectors shall have the following qualifications, but need not be licensed pursuant to this article:

(a) Knowledge of proper well construction and pump installation techniques and practices;

(b) Drill site experience;

(c) Computer skills;

(d) Interpersonal skills; and

(e) Knowledge of all applicable statutes and rules.

(3) Inspectors shall annually spend a majority of their time conducting field inspections and a minority of their time preparing and evaluating reports and related office work. Duties shall include the following:

(a) Well construction and pump installation inspection and observation;

(b) Complaint investigation;

(c) Education and outreach;

(d) Inspection and observation of geotechnical wells, observation and monitoring wells, dewatering wells, and test holes;

(e) Field inspections of existing wells and pumps;

(f) Field inspections of well and hole plugging and abandonment; and

(g) Staff support for the state engineer and board.

Source: L. 2003: Entire section added, p. 1681, § 12, effective May 14.

Water Right Determination and Administration

ARTICLE 92

Water Right Determination and Administration

Cross references: For the Colorado Rules of Civil Procedure that govern proceedings under this article, see C.R.C.P. 87.

Law reviews: For article, "Representing a Developer Purchaser of Water and Water Rights", see 13 Colo. Law. 627 (1984); for article, "Conditions in a Water Rights Augmentation Plan or Change Case", see 13 Colo. Law. 2039 (1984); for article, "Plans and Studies: The Recent Quest for a Utopia in the Utilization of Colorado's Water Resources", see 55 U. Colo. L. Rev. 391 (1984); for article, "Principles and Law of Colorado's Nontributary Ground Water", see 62 Den. U. L. Rev 809 (1985); for article, "Indian Water Rights: Then and Now", see 15 Colo. Law. 1 (1986); for article, "Area-of-Origin Protection in Transbasin Water Diversions: An Evaluation of Alternative Approaches", see 57 U. Colo. L. Rev. 527 (1986); for article, "The Physical Solution in Western Water Law", see 57 U. Colo. L. Rev. 445 (1986); for article, "Constitutional Limits on Police Power Regulation Affecting the Exercise of Water Rights", see 16 Colo. Law. 1626 (1987); for article, "A Summary of Colorado Water Law", see 21 Colo. 63 (1992); for article, "Water Law Requirements Affecting Environmental Compliance and Remediation Activities", see 22 Colo. Law. 299 (1993); for article, "Absolute Ownership as a Prerequisite For a Change Decree", see 22 Colo. Law. 1915 (1993); for article, "Historical Water Use and the Protection of Vested Rights: A Challenge for Colorado Water Law", see 69 U. Colo. L. Rev. 503 (1998); for article, "Water Rights Title and Conveyancing", see 28 Colo. Law. 69 (May 1999); for comment, "Safeguarding Colorado's Water Supply: The New Confluence of Title Insurance and Water Rights Conveyances", see 77 U. Colo. L. Rev. 491 (2006); for article, "Reviving the Public Ownership, Antispeculation, and Beneficial Use Moorings of Prior Appropriation Water Law", see 84 U. Colo. L. Rev. 97 (2013); for article, "A Roundtable Discussion on the No-Injury Rule of Colorado Water Law", see 44 Colo. Law. 87 (July 2015); for article, "Water Law Basics for Real Estate Practitioners", see 44 Colo. Law. 63 (Nov. 2015); for article, "Abandonment as It Relates to Adverse Possession of Water Rights", see 45 Colo. Law. 39 (Feb. 2016).

PART 1

GENERAL

37-92-101. Short title. This article shall be known and may be cited as the "Water Right Determination and Administration Act of 1969".

Source: L. 69: p. 1200, § 1. **C.R.S. 1963:** § 148-21-1.

37-92-102. Legislative declaration - basic tenets of Colorado water law. (1) (a) It is hereby declared to be the policy of the state of Colorado that all water in or tributary to natural surface streams, not including nontributary groundwater as that term is defined in section 37-90-103, originating in or flowing into this state have always been and are hereby declared to be the property of the public, dedicated to the use of the people of the state, subject to appropriation and use in accordance with sections 5 and 6 of article XVI of the state constitution and this article. As incident thereto, it is the policy of this state to integrate the appropriation, use, and administration of underground water tributary to a stream with the use of surface water in such a way as to maximize the beneficial use of all of the waters of this state.

(b) A stream system which arises as a natural surface stream and, as a natural or man-induced phenomenon, terminates within the state of Colorado through naturally occurring

evaporation and transpiration of its waters, together with its underflow and tributary waters, is a natural surface stream subject to appropriation as provided in paragraph (a) of this subsection (1).

(2) Recognizing that previous and existing laws have given inadequate attention to the development and use of underground waters of the state, that the use of underground waters as an independent source or in conjunction with surface waters is necessary to the present and future welfare of the people of this state, and that the future welfare of the state depends upon a sound and flexible integrated use of all waters of the state, it is hereby declared to be the further policy of the state of Colorado that, in the determination of water rights, uses, and administration of water, the following principles shall apply:

(a) Water rights and uses vested prior to June 7, 1969, in any person by virtue of previous or existing laws, including an appropriation from a well, shall be protected subject to the provisions of this article.

(b) The existing use of groundwater, either independently or in conjunction with surface rights, shall be recognized to the fullest extent possible, subject to the preservation of other existing vested rights, but, at his own point of diversion on a natural watercourse, each diverter must establish some reasonable means of effectuating his diversion. He is not entitled to command the whole flow of the stream merely to facilitate his taking the fraction of the whole flow to which he is entitled.

(c) The use of groundwater may be considered as an alternate or supplemental source of supply for surface decrees entered prior to June 7, 1969, taking into consideration both previous usage and the necessity to protect the vested rights of others.

(d) No reduction of any lawful diversion because of the operation of the priority system shall be permitted unless such reduction would increase the amount of water available to and required by water rights having senior priorities.

(3) Further recognizing the need to correlate the activities of mankind with some reasonable preservation of the natural environment, the Colorado water conservation board is hereby vested with the exclusive authority, on behalf of the people of the state of Colorado, to appropriate in a manner consistent with sections 5 and 6 of article XVI of the state constitution, such waters of natural streams and lakes as the board determines may be required for minimum stream flows or for natural surface water levels or volumes for natural lakes to preserve the natural environment to a reasonable degree. In the adjudication of water rights pursuant to this article and other applicable law, no other person or entity shall be granted a decree adjudicating a right to water or interests in water for instream flows in a stream channel between specific points, or for natural surface water levels or volumes for natural lakes, for any purpose whatsoever. The board also may acquire, by grant, purchase, donation, bequest, devise, lease, exchange, or other contractual agreement, from or with any person, including any governmental entity, such water, water rights, or interests in water that are not on the division engineer's abandonment list in such amount as the board determines is appropriate for stream flows or for natural surface water levels or volumes for natural lakes to preserve or improve the natural environment to a reasonable degree. At the request of any person, including any governmental entity, the board shall determine in a timely manner, not to exceed one hundred twenty days unless further time is granted by the requesting person or entity, what terms and conditions it will accept in a contract or agreement for such acquisition. Any contract or agreement executed between the board and any person or governmental entity that provides water, water rights, or

interests in water to the board shall be enforceable by either party thereto as a water matter under this article, according to the terms of the contract or agreement. The board shall adopt criteria for evaluating proposed contracts or agreements for leases or loans of water, water rights, or interests in water under this subsection (3), including, but not limited to, criteria addressing public notice, the extent to which the leased or loaned water will benefit the natural environment to a reasonable degree, and calculation of the compensation paid to the lessor of the water based upon the use of the water after the term of the lease. As a condition of approval of a proposed contract or agreement for a lease or loan of water, water rights, or interests in water pursuant to this subsection (3), the board shall obtain confirmation from the division engineer that the proposal is administrable and is capable of meeting all applicable statutory requirements. All contracts or agreements entered into by the board for leases or loans of water, water rights, or interests in water pursuant to this subsection (3) shall require the board to maintain records of how much water the board uses under the contract or agreement each year it is in effect and to install any measuring devices deemed necessary by the division engineer to administer the contract or agreement and to measure and record how much water flows out of the reach after use by the board under the contract or agreement, unless a measuring device already exists on the stream that meets the division engineer's requirements. All contracts or agreements for water, water rights, or interests in water under this subsection (3) shall provide that, pursuant to the water court decree implementing the contract or agreement, the board or the lessor, lender, or donor of the water may bring about beneficial use of the historical consumptive use of the leased, loaned, or donated water right downstream of the instream flow reach as fully consumable reusable water. The board shall file a change of water right application or other application with the water court to obtain a decreed right to use water for instream flow purposes under a contract or agreement for a lease or loan of water, water rights, or interests in water pursuant to this subsection (3). The resulting water court decree shall quantify the historical consumptive use of the leased or loaned water right and determine the method by which the historical consumptive use should be quantified and credited during the term of the agreement for the lease or loan of the water right. Said method shall recognize the actual amount of consumptive use available under the leased or loaned water right and shall not result in a reduction of the historical consumptive use of that water right during the term of the lease or loan, except to the extent such reduction is based upon the actual amount of water available under said rights. All water rights under such decrees shall be administered in priority. The board may not accept a donation of water rights that either would require the removal of existing infrastructure without approval of the current owner of such infrastructure or that were acquired by condemnation. The board may use any funds available to it for acquisition of water rights and their conversion to instream flow rights. The board may initiate such applications as it determines are necessary or desirable for utilizing water, water rights, or interests in water appropriated, acquired, or held by the board, including applications for changes of water rights, exchanges, or augmentation plans. Prior to the initiation of any such appropriation or acquisition, the board shall request recommendations from the division of parks and wildlife. The board also shall request recommendations from the United States department of agriculture and the United States department of the interior. Nothing in this article shall be construed as authorizing any state agency to acquire water by eminent domain or to deprive the people of the state of Colorado of the beneficial use of those waters available by law and interstate compact. Nothing

in this subsection (3) shall impact section 37-60-121 (2.5). Any appropriation made pursuant to this subsection (3) shall be subject to the following principles and limitations:

(a) Any such appropriation which is based upon water imported from one water division to another by some other appropriator shall not, as against the appropriator of such imported water or his successor in interest, constitute a claim, bar, or use for any purpose whatsoever.

(b) Any such appropriation shall be subject to the present uses or exchanges of water being made by other water users pursuant to appropriation or practices in existence on the date of such appropriation, whether or not previously confirmed by court order or decree.

(c) Before initiating a water rights filing, the board shall determine that the natural environment will be preserved to a reasonable degree by the water available for the appropriation to be made; that there is a natural environment that can be preserved to a reasonable degree with the board's water right, if granted; and that such environment can exist without material injury to water rights.

(c.5) Notwithstanding section 37-92-103 (6), as to any application filed by the board on or after July 1, 1994, the board may not acquire conditional water rights or change conditional water rights to instream flow uses.

(d) Nothing in this section is intended or shall be construed to allow condemnation by this state or any person of easements or rights-of-way across private lands to gain access to a segment of a stream or lake where a water right decree has been awarded to the Colorado water conservation board.

(e) All recommendations, including those of the United States, which are transmitted to the board for water to be retained in streams or lakes to preserve the natural environment to a reasonable degree must be made with specificity and in writing in order that any appropriation made by the board may be integrated into the statewide system for the administration of water rights. Filings for appropriations by the board shall be consistent with other appropriations and with the requirements of this article.

(4) Any appropriation made pursuant to subsection (3) of this section shall also be subject to the following principles and limitations:

(a) Utilizing a public notice and comment procedure, the board, in its discretion, may determine whether or not to appropriate minimum stream flows or natural lake levels, or decrease such an appropriation, to preserve the natural environment to a reasonable degree. The board may adopt conditions attached to an appropriation or decreased appropriation, may file or withdraw statements of opposition in water court cases, and enter into stipulations for decrees or other forms of contractual agreements, including enforcement agreements, that it determines will preserve the natural environment to a reasonable degree. All contractual agreements and stipulations entered into by the board prior to May 23, 1996, regarding enforcement of its appropriations shall be given full force and effect. Any increase to an existing minimum stream flow or natural lake level appropriation or decree shall be made as a new appropriation.

(b) (I) Except as provided pursuant to paragraph (d) of this subsection (4), if the board determines that it is appropriate to consider decreasing an existing decreed appropriation, the board shall proceed through an adequate public notice and comment process to consider such decrease at a public meeting.

(II) For the purposes of this paragraph (b), "adequate public notice and comment process" shall include the following:

(A) Notice of the proposed decrease and the date of the public meeting at which it will first be considered shall be printed in the resume in the water court having jurisdiction over the decree that is the subject of the decrease. The first public meeting of the board at which the decrease is to be considered shall occur at least sixty-three days after the month in which the resume is published. Notice shall also be published in a newspaper of statewide distribution within thirty-five to forty-nine days prior to such first public meeting.

(B) If the board decides at such first public meeting to consider the proposed decrease, the board shall announce publicly the date of a subsequent public meeting for such purpose.

(C) On the written request of any person made within thirty-five days after the date of the first public meeting, the board shall delay the subsequent public meeting for up to one year to allow such person the opportunity for the collection of scientific data material to the proposed decrease. Such request may not be interposed solely for delay of the proceedings.

(D) On the written request of any person made within thirty-five days after the date of the first public meeting, the board shall, within sixty-three days after such request, establish fair and formal procedures for the subsequent public meeting, including the opportunity for reasonable disclosure, discovery, subpoenas, direct examination, and cross examination, and may promulgate rules that will assure orderly procedures. Subject to these rights and requirements, where a meeting will be expedited and the interests of the participants will not be substantially prejudiced thereby, the board may receive all or part of the evidence in written form.

(III) The board's final written determination regarding the decrease shall state its effective date, be mailed promptly to the persons who appeared by written or oral comment at the board's proceeding, and be filed promptly with the water court. Within thirty-five days after such effective date, any person who appeared by written or oral comment at the board's proceeding may file with the water court and serve the board a petition for judicial review of the board's determination that the decreed appropriation as decreased will preserve the natural environment to a reasonable degree, based on the administrative record and utilizing the criteria of section 24-4-106 (6) and (7), C.R.S. Any such person may request a stay in accordance with the criteria of section 24-4-106 (5), C.R.S., pending the review proceeding. If no petition is filed, the court shall promptly enter an order decreasing the board's appropriation decree in accordance with the board's written determination. If a petition is filed, the court shall promptly order briefing and oral argument and render its decision to affirm or set aside the board's determination. If the board's determination is affirmed, the court shall promptly enter an order decreasing the board's appropriation decree in accordance with the board's written determination. If the board's determination is set aside, the court shall enter its order of relief under the provisions of section 24-4-106 (7), C.R.S. Appellate review of the court's order shall be as allowed in other water matters.

(c) The board's determinations regarding the matters to be determined by the board under paragraph (c) of subsection (3) of this section and paragraph (d) of this subsection (4) for new appropriations shall be subject to judicial review in the water court application and decree proceedings initiated by the board, based on the board's administrative record and utilizing the criteria of section 24-4-106 (6) and (7), C.R.S. The board may file applications for changes of water rights and augmentation plans, and the water court shall determine matters that are within the scope of section 37-92-305.

(d) The board may participate in the recovery implementation program for endangered fish species in the upper Colorado river basin and appropriate and obtain decrees for minimum instream flows or natural lake levels, including decree provisions for modification and enforcement, the implementation of which shall not be subject to paragraph (b) of this subsection (4), as it determines will preserve the natural environment of the Colorado river endangered fish within Colorado to a reasonable degree while protecting existing uses within Colorado and not depriving the people of the state of Colorado of the beneficial use of those waters available by law and interstate compact.

(e) Sub-subparagraphs (A) and (C) of subparagraph (II) of paragraph (b) of this subsection (4) shall not apply to the board's consideration of any proposed decrease which was included in a meeting notice and agenda issued by the board prior to May 23, 1996, whether or not the board had scheduled or taken any action on the proposal by such date. Sub-subparagraph (D) of subparagraph (II) of paragraph (b) of this subsection (4) shall not apply to such a proposal so long as the board establishes fair and formal procedures pursuant to such sub-subparagraph (D) at or before the first public meeting thereon for any subsequent public meeting, including the opportunity for reasonable disclosure, discovery, subpoenas, direct examination, and cross examination of witnesses. All other provisions in paragraph (b) of this subsection (4) shall apply to any decrease after May 23, 1996.

(5) Within thirty-five days after initiating any water rights filing for the adjudication of a recreational in-channel diversion, any county, municipality, city and county, water district, water and sanitation district, water conservation district, or water conservancy district shall submit a copy of the water rights application to the board for review.

(6) (a) (Deleted by amendment, L. 2006, p. 906, § 1, effective May 11, 2006.)

(b) The board, after deliberation in a public meeting, shall consider the following factors and make written findings as to each:

(I) Whether the adjudication and administration of the recreational in-channel diversion would materially impair the ability of Colorado to fully develop and place to consumptive beneficial use its compact entitlements;

(II) and (III) (Deleted by amendment, L. 2006, p. 906, § 1, effective May 11, 2006.)

(IV) Whether exercise of the recreational in-channel diversion would cause material injury to instream flow water rights appropriated pursuant to subsections (3) and (4) of this section; and

(V) Whether adjudication and administration of the recreational in-channel diversion would promote maximum utilization of waters of the state.

(VI) (Deleted by amendment, L. 2006, p. 906, § 1, effective May 11, 2006.)

(c) Within ninety days after the filing of statements of opposition, the board shall report its findings to the water court for review pursuant to section 37-92-305 (13). The board may fully participate in the water court proceedings.

(d) Nothing in subsection (5) of this section or this subsection (6) shall apply in any way to any application for a water right or conditional water right for recreational in-channel diversion purposes that was filed prior to January 1, 2001.

(e) Nothing in subsection (5) of this section or this subsection (6) shall apply in any way to any water right or conditional water right for recreational in-channel diversion purposes for which a decree was entered prior to June 5, 2001, including any proceeding concerning diligence on such conditional water right or any proceeding to make such conditional water right absolute.

(7) Water users served by a provider of municipal or industrial water supplies may use graywater and install graywater treatment works, as those terms are defined in section 25-8-103 (8.3) and (8.4), C.R.S., if:

(a) The use of graywater is limited to the confines of the operation that generates the graywater;

(b) Graywater is used for purposes that are permissible under the municipality's or water district's water rights; and

(c) Graywater is used in compliance with the requirements of section 25-8-205 (1)(g), C.R.S.

(8) **Reservoir releases for fish and wildlife mitigation - definitions.** (a) The general assembly hereby finds, determines, and declares that:

(I) Allowing the owner of a water storage right that allows water to be stored in new reservoir capacity to contract with the board to dedicate to the board water stored under the water storage right for release from the new reservoir capacity to reasonably avoid, minimize, or mitigate impacts of the new reservoir capacity on fish and wildlife resources within an identified stream reach may enable the owner of the water storage right to comply with mitigation measures identified in a fish and wildlife mitigation plan approved under section 37-60-122.2;

(II) Accordingly, for the limited purpose of providing additional methods to comply with a fish and wildlife mitigation plan approved under section 37-60-122.2, it is appropriate to create a water court process to allow the owner of a water storage right that allows water to be stored in new reservoir capacity, a portion of which water will then be dedicated to the board, to:

(A) Obtain protection for water to be released from the new reservoir capacity, up to the amount of water that is appropriate for stream flows to preserve or improve the natural environment to a reasonable degree within the qualifying stream reach; and

(B) Maintain dominion and control over the released water through a qualifying stream reach;

(III) The released water subject to a protected mitigation release authorized under this subsection (8) must be rediverted at or below the downstream termination point of the qualifying stream reach, either directly at a surface point of diversion or by a decreed exchange as permitted in this subsection (8) for use by an owner for the decreed beneficial uses of that water storage right;

(IV) Except as otherwise provided in this subsection (8), the contractual dedication to the board must comply with the procedures and protections for other water rights specified in subsection (3) of this section;

(V) The water court process and resulting decree must ensure that:

(A) Protected mitigation releases do not expand the water storage right that is to provide the water for the protected mitigation releases or injure other water rights;

(B) The protected mitigation releases will be protected through the qualifying stream reach up to the amount of water that is appropriate for stream flows to preserve or improve the natural environment to a reasonable degree within the qualifying stream reach; and

(C) Diversions of the protected mitigation releases within the qualifying stream reach by exchanges, substitution plans, augmentation plans, or other means that cause a reduction in the protected mitigation releases within the qualifying stream reach, other than reductions caused by evaporation, transportation, and other losses, will be prevented; and

(VI) Through the dedication of the protected mitigation releases to the board under the procedures set forth in subsection (3) of this section, except as otherwise provided in this subsection (8), and through the water court decree approving the protected mitigation releases, the protected mitigation releases will serve a secondary instream beneficial use, specifically the preservation or improvement of the natural environment to a reasonable degree within the qualifying stream reach.

(b) As used in this subsection (8):

(I) "Board" means the Colorado water conservation board created in section 37-60-102.

(II) "Mitigation release" means:

(A) The release of water from a water storage right stored in new reservoir capacity into a qualifying stream reach to reasonably avoid, minimize, or mitigate the impacts of the new reservoir capacity on fish and wildlife resources within the qualifying stream reach in accordance with a fish and wildlife mitigation plan approved under section 37-60-122.2; and

(B) The rediversion of the released water at or below the downstream termination point of the qualifying stream reach, either directly at a surface point of diversion or by a decreed in-priority exchange to an exchange-to point identified in the decreed in-priority exchange that is outside of the qualifying stream reach, for use by an owner for the decreed beneficial uses of that water storage right.

(III) "New reservoir capacity" means additional water storage capacity resulting from the construction of a new reservoir or a physical enlargement of an existing reservoir if the construction or physical enlargement is completed on or after August 8, 2018.

(IV) "Owner" means the person that owns the water storage right that is to provide the water for a protected mitigation release, and, in the case of a water storage right owned by a water conservancy district, water conservation district, municipality, special district, or mutual ditch company, includes the residents, allottees, members, customers, shareholders, or member ditch companies of that entity; and, in the case of a water storage right owned by an irrigation district, includes the landowners within the district.

(V) "Protected mitigation release" means the amount of water to be released for a mitigation release that:

(A) The board determines is appropriate for stream flows to preserve or improve the natural environment to a reasonable degree within an identified qualifying stream reach;

(B) Is approved by a water court decree pursuant to this subsection (8); and

(C) Is protected from diversion, exchange, or use by holders of conditional or vested water rights or other persons that cause a reduction in the protected mitigation release at any location within the qualifying stream reach, other than any reductions caused by evaporation, transportation, and other losses.

(VI) "Qualifying stream reach" means all or a portion of a natural stream of the state that is identified in a fish and wildlife mitigation plan approved under section 37-60-122.2 and within which the board determines, and the water court decree approves in accordance with this subsection (8), that water from a protected mitigation release is appropriate for stream flows to preserve or improve the natural environment to a reasonable degree. A qualifying stream reach must be identified by an upstream point at which the protected mitigation release enters the natural stream and a downstream termination point.

(VII) "Surface point of diversion" means a structure that diverts surface water only. "Surface point of diversion" does not include:

(A) A structure that diverts groundwater, whether through a well, infiltration gallery, or other type of groundwater diversion structure; or

(B) Delivery into a facility used to recharge an alluvial aquifer.

(c) (I) An owner may, in accordance with and after complying with the requirements of this subsection (8), make a protected mitigation release.

(II) Holders of conditional or vested water rights or other persons shall not divert, exchange upon, or use a protected mitigation release within the qualifying stream reach unless the diversion, exchange, or use is fully augmented so that there is no reduction in the protected mitigation release at any location within the qualifying stream reach, other than reductions caused by evaporation, transportation, and other losses.

(III) The state engineer shall administer protected mitigation releases made in accordance with this subsection (8) and the terms and conditions of decrees approving protected mitigation releases.

(IV) (A) Except for reductions caused by evaporation, transportation, and other losses, and subject to subsections (8)(c)(IV)(B) and (8)(c)(IV)(C) of this section, an owner shall: Redivert all protected mitigation releases at or below the downstream termination point of the qualifying stream reach, either directly at a surface point of diversion or by a decreed in-priority exchange to an exchange-to point identified in the decreed in-priority exchange that is outside of the qualifying stream reach; and apply the water to the decreed beneficial uses of the water storage right that provides the water for the protected mitigation release.

(B) Except as provided in subsection (8)(c)(IV)(C) of this section, an owner may redivert water associated with protected mitigation releases in accordance with subsection (8)(c)(IV)(A) of this section by exchange into storage, which exchange shall be administered with a priority date no earlier than the date of approval of the fish and wildlife mitigation and enhancement plan pursuant to section 37-60-122.2, and subsequently apply the water to the decreed beneficial uses of the water storage right that provides the water for the protected mitigation release.

(C) An owner shall not redivert water associated with protected mitigation releases by exchange through all or a portion of the qualifying stream reach or to the reservoir of origin.

(V) Water present in the qualifying stream reach, other than the protected mitigation releases, remains available to other water users for beneficial uses and may be diverted and beneficially used by other water users in accordance with the priority system and any relevant decree.

(VI) The procedures set forth in this subsection (8) apply only to the adjudication of proposed protected mitigation releases from new reservoir capacity and do not alter the procedures or legal standards applicable to any other type of water court application.

(VII) An application for approval of a proposed protected mitigation release filed in accordance with this subsection (8) must not include, and shall not be consolidated or joined with, any other water court application.

(d) An owner that intends to make protected mitigation releases in accordance with this subsection (8) shall, before any such releases may be administered as protected mitigation releases:

(I) Dedicate the proposed protected mitigation releases to the board by grant, donation, or other contractual agreement in accordance with subsections (3) and (8)(e) of this section;

(II) Agree to make the proposed protected mitigation releases available to the board within the qualifying stream reach;

(III) With the board as a co-applicant, file an application in water court in the water division in which the new reservoir capacity is located, seeking approval of the proposed protected mitigation releases, by the last day of the twelfth month following the month in which the new reservoir capacity is certified for storage by the state engineer; except that an application must not include any other claim for relief; and

(IV) Obtain a final water court decree approving the protected mitigation releases.

(e) (I) Except as otherwise provided in this subsection (8)(e), a dedication to the board pursuant to subsection (8)(d)(I) of this section of an interest in water yielded from a water storage right that will be stored in new reservoir capacity is subject to subsection (3) of this section for the dedication of an interest in water to the board, including the requirement in subsection (3) of this section that the board make a determination that the proposed protected mitigation releases are appropriate for stream flows to preserve or improve the natural environment to a reasonable degree within the qualifying stream reach.

(II) The board's contractual interest in water acquired in accordance with this subsection (8) may be yielded from a water right that is either absolute or conditional at the time of acquisition.

(III) To obtain a decreed right to use proposed protected mitigation releases for instream flow purposes, the owner and the board need not file an application with the water court to change the water storage right from which the proposed protected mitigation releases are to be made.

(IV) The board need not hold a decreed appropriation for instream flows within the qualifying stream reach as a prerequisite for an owner to dedicate proposed protected mitigation releases to the board in accordance with this subsection (8).

(f) (I) To satisfy the requirements of subsections (8)(d)(III) and (8)(d)(IV) of this section, the board and the owner must file a water court application as co-applicants pursuant to subsection (8)(d)(III) of this section. The water court shall enter a decree approving the proposed protected mitigation releases if:

(A) The board demonstrates that it has duly determined in accordance with this subsection (8) and with subsection (3) of this section that the proposed protected mitigation releases are appropriate for stream flows to preserve or improve the natural environment to a reasonable degree within the qualifying stream reach. If a party challenges the board's determination in the water court proceeding, the board shall assemble and submit to the court the complete administrative record upon which the board made the determination. The court shall base its review of the board's determination on the administrative record, using the criteria set forth in section 24-4-106 (6) and (7).

(B) The owner proves that the proposed protected mitigation releases: Will not cause an expansion of use beyond the limits of use of the decreed water storage right from which the mitigation releases are to be made; will not cause injury to vested water rights, decreed conditional water rights, subsequently adjudicated water rights that are the subject of a pending water court application filed before August 8, 2018, or other water users' uses or exchanges of water being made pursuant to appropriation or practices in existence on the date of the filing of the application for approval of the proposed protected mitigation releases; are administrable by

the division engineer; and have been dedicated to and approved by the board in compliance with the requirements and procedures of subsection (8)(e) of this section.

(II) For purposes of determining injury pursuant to subsection (8)(f)(I)(B) of this section, the inability of other water users to divert, exchange upon, or use the proposed protected mitigation releases within the qualifying stream reach shall not be considered injury.

(III) The water court shall not requantify the water storage right from which the protected mitigation releases are proposed to be made.

(IV) A decree approving a protected mitigation release must contain the terms and conditions necessary to prevent injury to other water rights, prevent the expansion of use of the decreed water storage right from which the protected mitigation release is to be made, and ensure that the protected mitigation releases are administrable by the division engineer, including, if necessary, to prevent injury or expansion of use of the decreed water storage right from which the protected mitigation release is to be made, terms rejecting or decreasing the proposed flow rate of the protected mitigation releases or the qualifying stream reach. All such decrees must also specifically identify the timing and rate of the protected mitigation releases, the qualifying stream reach, and the flow rate that is appropriate to preserve or improve the natural environment to a reasonable degree within the qualifying stream reach. For protected mitigation releases that are to be exchanged into storage in accordance with subsection (8)(c)(IV)(B) of this section, the decree must specify that the exchange to storage be administered with a priority date that is no earlier than the date of the approval of the fish and wildlife mitigation and enhancement plan pursuant to section 37-60-122.2.

(V) An owner shall erect, maintain, and repair suitable and proper measuring devices as required by section 37-84-113 and by the decree approving the protected mitigation releases and as ordered by the state or division engineer. Additionally, the owner shall maintain records of the quantity and rate of release of the protected mitigation releases and the quantity and rate of diversion of the protected mitigation releases that are rediverted for subsequent application to beneficial use.

(g) If operation of a protected mitigation release under this subsection (8) requires the making of physical modifications to an existing water diversion structure within the qualifying stream reach to allow the protected mitigation release to bypass the existing water diversion structure, the owner of the water storage right used to make the protected mitigation release shall bear all reasonable construction costs associated with the physical modifications and all reasonable operational and maintenance costs incurred by the owner of the existing water diversion structure that would not have been incurred in the absence of the physical modifications to the structure.

(h) A determination under section 37-60-122.2 that releases of water from new reservoir capacity will help to reasonably avoid, minimize, or mitigate the impacts of the new reservoir capacity on fish and wildlife resources within the qualifying stream reach is evidence of the appropriateness of a protected mitigation release within the qualifying stream reach.

(i) A mitigation release shall not be protected or administered as a protected mitigation release:

(I) When the amount of the existing flow in the qualifying stream reach is such that addition of the protected mitigation release would exceed the stream flow rate set forth in the decree to be appropriate to preserve or improve the natural environment to a reasonable degree within the qualifying stream reach;

(II) Unless the owner is in compliance with:

(A) The measuring requirements of section 37-84-113;

(B) The terms and conditions in the decree approving the protected mitigation release regarding the operation, maintenance, or repair of proper measuring devices; and

(C) An order by the state or division engineer regarding the operation, maintenance, or repair of proper measuring devices;

(III) When the owner is incapable of rediverting the protected mitigation release at or below the downstream termination point of the qualifying stream reach for application to a decreed beneficial use of the water storage right that is to provide the water for the protected mitigation release;

(IV) When the released water is within the natural stream at a location outside of the qualifying stream reach, including when the released water is between the downstream termination point of the qualifying stream reach and the point of rediversion; or

(V) When the owner is not otherwise in compliance with the terms of the decree approving the protected mitigation release.

(j) This subsection (8):

(I) Does not impair or in any way affect any water court decree, administrative authorization, or agreement that allows water to be stored, released, and administered for environmental, piscatorial, water quality, recreational, municipal, or other in-channel purposes, including the maintenance of dominion and control over the water releases from a specified reservoir;

(II) Is not intended to be the exclusive means of authorizing water to be stored, released, and administered for environmental, piscatorial, water quality, recreational, municipal, or other in-channel purposes, including the maintenance of dominion and control over the water released from a specific reservoir; and

(III) Does not authorize, restrict, or preclude future water rights, appropriations, administrative authorizations, or other agreements for the purposes listed in subsection (8)(j)(I) of this section.

Source: L. 69: p. 1200, § 1. **C.R.S. 1963:** § 148-21-2. **L. 73:** p. 1521, § 2. **L. 79:** (1) amended, p. 1367, § 4, effective June 22. **L. 81:** (3) amended, p. 1784, § 1, effective June 23. **L. 85:** (1)(a) amended, p. 1166, § 5, effective July 1. **L. 86:** IP(3) amended and (3)(e) added, p. 1095, § 1, effective May 3. **L. 87:** (3) amended, p. 1305, § 2, effective June 20. **L. 94:** (3)(c.5) added, p. 766, § 1, effective April 20. **L. 96:** (4) added, p. 952, § 1, effective May 23. **L. 2000:** (3)(c.5) amended, p. 1443, § 1, effective June 1. **L. 2001:** (5) and (6) added, p. 1187, § 1, effective June 5. **L. 2002:** IP(3) amended, p. 445, § 1, effective August 7. **L. 2003:** (6)(c) amended, p. 2001, § 63, effective May 22. **L. 2006:** (6)(a), (6)(b), and (6)(c) amended, p. 906, § 1, effective May 11. **L. 2008:** IP(3) amended, p. 1573, § 27, effective May 29; IP(3) amended, p. 587, § 1, effective August 5. **L. 2012:** (4)(b)(II)(A), (4)(b)(II)(C), (4)(b)(II)(D), (4)(b)(III), and (5) amended, (SB 12-175), ch. 208, p. 886, § 161, effective July 1. **L. 2013:** (7) added, (HB 13-1044), ch. 228, p. 1091, § 9, effective May 15. **L. 2018:** (8) added, (SB 18-170), ch. 125, p. 835, § 1, effective August 8.

Editor's note: (1) Amendments to the introductory portion to subsection (3) by House Bill 08-1280 and House Bill 08-1346 were harmonized.

(2) Section 2 of chapter 125 (SB 18-170), Session Laws of Colorado 2018, provides that the act changing this section applies to reservoir release dedication applications filed in the water court on or after August 8, 2018.

Cross references: (1) For water of streams being public property, see § 5 of art. XVI, Colo. Const.; for diverting unappropriated water, see § 6 of art. XVI, Colo. Const.

(2) For the legislative declaration in the 2013 act adding subsection (7), see section 1 of chapter 228, Session Laws of Colorado 2013.

37-92-103. Definitions. As used in this article 92, unless the context otherwise requires:

(1) "Abandonment of a conditional water right" means the termination of a conditional water right as a result of the failure to develop with reasonable diligence the proposed appropriation upon which such water right is to be based.

(2) "Abandonment of a water right" means the termination of a water right in whole or in part as a result of the intent of the owner thereof to discontinue permanently the use of all or part of the water available thereunder. Any period of nonuse of any portion of a water right shall be tolled, and no intent to discontinue permanent use shall be found for purposes of determining an abandonment of a water right for the duration that:

(a) The land on which the water right has been historically applied is enrolled under a federal land conservation program; or

(b) The nonuse of a water right by its owner is a result of participation in:

(I) A water conservation program approved by a state agency, a water conservation district, or a water conservancy district;

(II) A water conservation program established through formal written action or ordinance by a municipality or its municipal water supplier;

(III) An approved land fallowing program as provided by law in order to conserve water;

(IV) A water banking program as provided by law;

(V) A loan of water to the Colorado water conservation board for instream flow use under section 37-83-105 (2); or

(VI) Any contract or agreement with the Colorado water conservation board that allows the board to use all or a part of a water right to preserve or improve the natural environment to a reasonable degree under section 37-92-102 (3).

(3) (a) "Appropriation" means the application of a specified portion of the waters of the state to a beneficial use pursuant to the procedures prescribed by law; but no appropriation of water, either absolute or conditional, shall be held to occur when the proposed appropriation is based upon the speculative sale or transfer of the appropriative rights to persons not parties to the proposed appropriation, as evidenced by either of the following:

(I) The purported appropriator of record does not have either a legally vested interest or a reasonable expectation of procuring such interest in the lands or facilities to be served by such appropriation, unless such appropriator is a governmental agency or an agent in fact for the persons proposed to be benefited by such appropriation.

(II) The purported appropriator of record does not have a specific plan and intent to divert, store, or otherwise capture, possess, and control a specific quantity of water for specific beneficial uses.

(b) Nothing in this subsection (3) shall affect appropriations by the state of Colorado for minimum streamflows as described in subsection (4) of this section.

(4) "Beneficial use" means the use of that amount of water that is reasonable and appropriate under reasonably efficient practices to accomplish without waste the purpose for which the appropriation is lawfully made. Without limiting the generality of the previous sentence, "beneficial use" includes:

(a) The impoundment of water for firefighting or storage for any purpose for which an appropriation is lawfully made, including recreational, fishery, or wildlife purposes;

(b) The diversion of water by a county, municipality, city and county, water district, water and sanitation district, water conservation district, or water conservancy district for recreational in-channel diversion purposes; and

(c) For the benefit and enjoyment of present and future generations, the appropriation by the state of Colorado in the manner prescribed by law of such minimum flows between specific points or levels for and on natural streams and lakes as are required to preserve the natural environment to a reasonable degree.

(5) "Change of water right":

(a) Means a change in the type, place, or time of use, a change in the point of diversion except as specified in section 37-86-111 (2), a change from a fixed point of diversion to alternate or supplemental points of diversion, a change from alternate or supplemental points of diversion to a fixed point of diversion, a change in the means of diversion, a change in the place of storage except as specified in section 37-87-101 (3), a change from direct application to storage and subsequent application, a change from storage and subsequent application to direct application, a change from a fixed place of storage to alternate places of storage, a change from alternate places of storage to a fixed place of storage, or any combination of such changes; and

(b) Includes changes of conditional water rights as well as changes of water rights.

(5.5) "Coal bed methane well" means a well permitted by the Colorado oil and gas conservation commission or a well authorized by a federal or tribal entity and constructed for the primary purpose of producing methane gas from a coal bed.

(6) "Conditional water right" means a right to perfect a water right with a certain priority upon the completion with reasonable diligence of the appropriation upon which such water right is to be based.

(6.3) "Control structure" means a structure consisting of durable man-made or natural materials that has been placed with the intent to divert, capture, possess, and control water in its natural course for an appropriator's intended and specified recreational in-channel diversion. The control structure and its efficiency shall be designed by a professional engineer, as that term is defined in section 12-25-102, C.R.S., or under the direct supervision of a professional engineer, and constructed so that it will operate efficiently and without waste to produce the intended and specified reasonable recreation experience. Concentration of river flow by a control structure constitutes control of water for a recreational in-channel diversion.

(6.7) "County" means any county and any city and county established under Colorado law.

(7) "Diversion" or "divert" means removing water from its natural course or location, or controlling water in its natural course or location, by means of a control structure, ditch, canal, flume, reservoir, bypass, pipeline, conduit, well, pump, or other structure or device; except that, on and after January 1, 2001, only a county, municipality, city and county, water district, water

and sanitation district, water conservation district, or water conservancy district may file an application to control water in its natural course or location by means of a control structure for recreational in-channel diversions.

(8) "Person" means an individual, a partnership, a corporation, a municipality, the state of Colorado, the United States, or any other legal entity, public or private.

(9) "Plan for augmentation" means a detailed program, which may be either temporary or perpetual in duration, to increase the supply of water available for beneficial use in a division or portion thereof by the development of new or alternate means or points of diversion, by a pooling of water resources, by water exchange projects, by providing substitute supplies of water, by the development of new sources of water, or by any other appropriate means. "Plan for augmentation" does not include the salvage of tributary waters by the eradication of phreatophytes, nor does it include the use of tributary water collected from land surfaces that have been made impermeable, thereby increasing the runoff but not adding to the existing supply of tributary water.

(10) "Priority" means the seniority by date as of which a water right is entitled to use or conditional water right will be entitled to use and the relative seniority of a water right or a conditional water right in relation to other water rights and conditional water rights deriving their supply from a common source.

(10.1) "Reasonable recreation experience" means the use of a recreational in-channel diversion for, and limited to, nonmotorized boating. Other recreational activities may occur but may not serve as evidence of a reasonable recreation experience.

(10.3) "Recreational in-channel diversion" means the minimum amount of stream flow as it is diverted, captured, controlled, and placed to beneficial use between specific points defined by control structures pursuant to an application filed by a county, municipality, city and county, water district, water and sanitation district, water conservation district, or water conservancy district for a reasonable recreation experience in and on the water from April 1 to Labor Day of each year unless the applicant can demonstrate that there will be demand for the reasonable recreation experience on additional days. The recreational in-channel diversion shall be limited to one specified flow rate for each time period claimed by the applicant. Individual time periods shall not be shorter than fourteen days unless the applicant can demonstrate a need for a shorter time period. There shall be a presumption that there will not be material injury to a recreational in-channel diversion water right from subsequent appropriations or changes of water rights if the effect on the recreational in-channel diversion caused by such appropriations or changes does not exceed one-tenth of one percent of the lowest decreed rate of flow for the recreational in-channel diversion as measured at the recreational in-channel diversion and the cumulative effects on the recreational in-channel diversion caused by such appropriations or changes do not exceed two percent of the lowest decreed rate of flow for the recreational in-channel diversion measured at the recreational in-channel diversion. The owner of a water right for a recreational in-channel diversion may not call for water that has been lawfully stored by another appropriator.

(10.4) "Removal of water" means a change in the type and place of use of an absolute decreed agricultural water right from irrigated agricultural use in one county to a use not primarily related to agriculture in another county.

(10.5) "Revegetation" means the establishment of a ground cover of plant life demonstrated to be, without irrigation, reasonably capable of sustaining itself under the climatic

conditions, soils, precipitation, and terrain prevailing for the lands from which irrigation water is removed. Grasses or other plants used for the purpose of revegetation shall not be noxious as such plants are defined under the provisions of the "Colorado Noxious Weed Act", article 5.5 of title 35, C.R.S.

(10.6) "Rotational crop management contract" means a written contract in which the owner or groups of owners of irrigation water rights agree to implement a change of the rights to a new use by foregoing irrigation of a portion of the lands historically irrigated and that provides that the water rights owner or groups of owners may rotate the lands that will not be irrigated as long as there is no injurious effect as specified in section 37-92-305 (3). The contract shall also provide that in the change of water right proceeding the water rights owner or groups of owners shall seek water court approval to rotate the lands that will not be irrigated as long as there is no injurious effect as specified in section 37-92-305 (3).

(10.7) "Significant water development activity" means any removal of water that results in the transfer of more than one thousand acre-feet of consumptive use of water per year by a single applicant or an applicant's agents.

(10.8) "Storage" or "store" means the impoundment, possession, and control of water by means of a dam. Waters in underground aquifers are not in storage or stored except to the extent waters in such aquifers are placed there by other than natural means with water to which the person placing such water in the underground aquifer has a conditional or decreed right.

(11) "Underground water", as applied in this article for the purpose of defining the waters of a natural stream, means that water in the unconsolidated alluvial aquifer of sand, gravel, and other sedimentary materials and all other waters hydraulically connected thereto which can influence the rate or direction of movement of the water in that alluvial aquifer or natural stream. Such "underground water" is considered different from "designated groundwater" as defined in section 37-90-103 (6).

(12) "Water right" means a right to use in accordance with its priority a certain portion of the waters of the state by reason of the appropriation of the same.

(13) "Waters of the state" means all surface and underground water in or tributary to all natural streams within the state of Colorado, except waters referred to in section 37-90-103 (6).

(14) (a) "Well" means any structure or device used for the purpose or with the effect of obtaining groundwater for beneficial use from an aquifer. "Well" includes an augmentation well that diverts groundwater tributary to the South Platte river and delivers it to a surface stream, ditch, canal, reservoir or recharge facility to replace out-of-priority stream depletions, or to meet South Platte river compact obligations, either directly or by recharge accretions, as part of a plan for augmentation approved by the water judge for water division 1 or a substitute water supply plan approved pursuant to section 37-92-308.

(b) "Well" does not include a naturally flowing spring or springs where the natural spring discharge is captured or concentrated by installation of a near-surface structure or device less then ten feet in depth located at or within fifty feet of the spring or springs' natural discharge point and the water is conveyed directly by gravity flow or into a separate sump or storage, if the owner obtains a water right for such structure or device as a spring pursuant to article 92 of this title.

Source: L. 69: 1201, § 1. **C.R.S. 1963:** § 148-21-3. **L. 73:** p. 1521, § 1. **L. 75:** (9) amended, p. 1397, § 1, effective June 20. **L. 79:** (3) amended and (10.5) added, p. 1368, § 5,

effective June 22. **L. 86:** (2) amended, p. 1097, § 1, effective April 24. **L. 92:** (10.4) added, p. 2289, § 1, effective April 16. **L. 95:** (14) added, p. 141, § 4, effective April 7. **L. 96:** (9) amended, p. 125, § 1, effective March 25. **L. 2001:** (4) and (7) amended and (10.3) added, p. 1188 § 2, effective June 5. **L. 2003:** (14)(a) amended, p. 1453, § 3, effective April 30; (10.4) and (10.5) amended and (6.7), (10.6), and (10.7) added, p. 880, § 1, effective August 6. **L. 2005:** (2) amended, p. 232, § 1, effective April 14. **L. 2006:** (6.3) and (10.1) added and (7) and (10.3) amended, p. 907, § 2, effective May 11; (10.6) and (10.7) amended and (10.8) added, p. 999, § 1, effective May 25. **L. 2007:** (2)(b)(V) added, p. 48, § 2, effective August 3. **L. 2008:** IP(2)(b) amended and (2)(b)(VI) added, p. 589, § 2, effective August 5. **L. 2009:** (5.5) added, (HB 09-1303), ch. 390, p. 2110, § 5, effective June 2. **L. 2013:** (4) amended, (SB 13-041), ch. 111, p. 382, § 2, effective August 7. **L. 2014:** (5) amended, (HB 14-1005), ch. 198, p. 726, § 2, effective May 15. **L. 2017:** IP and (5) amended, (HB 17-1291), ch. 338, p. 1805, § 2, effective August 9.

Editor's note: Section 3 of chapter 2 (HB 14-1005), Session Laws of Colorado 2014, provides that changes to this section by the act apply to changes in points of diversion made before, on, or after May 15, 2014.

Cross references: For the legislative declaration in the 2013 act amending subsection (4), see section 1 of chapter 111, Session Laws of Colorado 2013.

PART 2

WATER DIVISIONS - COURTS

37-92-201. Water divisions. (1) For the purposes of this article, the following water divisions are hereby established:

(a) Division 1: Division 1 consists of all lands in the state of Colorado in the drainage basins of the South Platte river, the Big Laramie river, the Arikaree river, the north and south forks of the Republican river, the Smokey Hill river, Sandy and Frenchman creeks, and streams tributary to said rivers and creeks.

(b) Division 2: Division 2 consists of all lands in the state of Colorado in the drainage basins of the Arkansas river and the Dry Cimarron river, and streams tributary to said rivers.

(c) Division 3: Division 3 consists of all lands in the state of Colorado in the drainage basin of the Rio Grande and all of its tributaries, and all lands in the drainage basins of the San Luis creek, Saguache creek, Tuttle creek, Carnero creek, La Garita creek, Sand or Medano creek, Big Spring creek, Little Spring creek, Mosca creek, Sierra Blanca creek, and all of their tributaries, and all lands in the drainage basins of all other creeks between Trinchera creek and Sand or Medano creek, and lands in the drainage basins of all other creeks which have their sources of water supply in the La Garita mountains and flow eastward into the San Luis valley.

(d) Division 4: Division 4 consists of all lands in the state of Colorado in the drainage basins of the Gunnison river and all of its tributaries, the Little Dolores river, the San Miguel river, and that portion of the Dolores river and its tributaries north of the north township line of Township 45 North, New Mexico Principal Meridian.

(e) Division 5: Division 5 consists of all lands in the state of Colorado in the drainage basins of the Colorado river and all of its tributaries arising within Colorado, with the exception of the Gunnison river.

(f) Division 6: Division 6 consists of all lands in the state of Colorado in the drainage basins of the White river, the Yampa or Bear river, the Green river, the North Platte river, and all of their tributaries.

(g) Division 7: Division 7 consists of all lands located in the southwest corner of the state of Colorado and in the drainage basins of the San Juan river, Rio Piedra, Rio Las Animas, Los Pinos river, La Plata river, Rio Mancos and streams tributary to said rivers and creeks as well as that portion of the Dolores river and its tributaries lying south of the north line of Township 45 North, New Mexico Principal Meridian.

Source: L. 69: p. 1202, § 1. **C.R.S. 1963:** § 148-21-8. **L. 2009:** (1)(e) and (1)(f) amended, (SB 09-015), ch. 6, p. 57, § 1, effective August 5.

37-92-202. Division engineers. (1) (a) The state engineer, with the approval of the executive director of the department of natural resources, shall appoint one division engineer for each division. Each division engineer shall be a licensed professional engineer and shall have such additional qualifications as may be specified from time to time by the state engineer. The state engineer, with the approval of said executive director, may employ such assistants and staff members as are necessary to enable each division engineer to carry out his or her duties.

(b) Each division engineer shall reside in his division, and the offices of the various division engineers shall be maintained in the following locations:

Division 1	Greeley
Division 2	Pueblo
Division 3	Alamosa
Division 4	Montrose
Division 5	Glenwood Springs
Division 6	Steamboat Springs
Division 7	Durango

(2) The division engineers shall perform such functions as are specified in this article and other laws and such functions as may be specified in written instructions and orders issued to them or to any one of them from time to time by the state engineer.

(3) With the approval of the state engineer, each division engineer may establish one or more field offices within his division and may appoint as a member of his staff a water commissioner for each such office.

(4) The expenses of the offices and staffs of the division engineers shall be provided for out of state funds.

(5) To the extent required by the constitution and laws of Colorado, appointments under this section shall be subject and pursuant to the state personnel system.

Source: L. 69: p. 1203, § 1. **C.R.S. 1963:** § 148-21-9. **L. 2004:** (1)(a) amended, p. 1316, § 70, effective May 28.

37-92-203. Water judges - jurisdiction. (1) There is established in each water division the position of water judge of the district courts of all counties situated entirely or partly within the division. Said district courts collectively acting through the water judge have exclusive jurisdiction of water matters within the division, and no judge other than the one designated as a water judge shall act with respect to water matters in that division. Water matters shall include only those matters which this article and any other law shall specify to be heard by the water judge of the district courts. Water matters include determinations of rights to nontributary groundwater outside of designated groundwater basins. Judgments and decrees entered prior to July 1, 1985, in accordance with the procedures of sections 37-92-302 to 37-92-305 with respect to such groundwater shall be given full effect and enforced according to the terms of such decrees.

(2) On or before January 10 of each year, the supreme court shall designate or redesignate a water judge for each division to hear all pending and new water matters in that division for the year in which the designation is made, and any vacancy that occurs during such year shall be filled by designation of the supreme court. The services of the water judge shall be in addition to his regular duties as a district judge but shall take priority over such regular duties, and the schedules of the judges in the various divisions shall be arranged and adjusted so that the water judge shall be free to hear water matters. If it becomes necessary during any year for the proper handling of water matters in any division, the supreme court shall designate one or more additional water judges of the district courts in that division, and the term "water judge", as used in this article, refers to all water judges acting in a division. The water judge for a particular division shall be selected from among the judges of the district courts of the counties situated entirely or partly within the division; except that the chief justice may make temporary assignments of other judges.

(3) The water judge of a division shall normally sit in the county where the water clerk is located, but, at the discretion of the judge for convenience of parties, he may sit in other counties in the state, and he shall conduct hearings in other counties as specified in section 37-92-304 (4). Should the functions of the water judge require separate or additional facilities, the same shall be provided for by the state from funds appropriated to the supreme court.

(4) For the purpose of making investigations required by section 37-92-302 (4) and rulings required by section 37-92-303, the water judge of each division shall appoint such referees as may be necessary for that division. The term "referee", as used in this article, refers to all referees acting in a particular division.

(5) Each water referee authorized by this section shall be appointed by the water judge of the water division from a list of not less than three qualified persons to be submitted to the water judge by the executive director of the department of natural resources; but, in any water division, the water judge may elect to perform the functions which by this article would otherwise be vested in the water referee. When and if an extraordinary work load exists in any water division, additional referees may be appointed.

(6) Persons appointed as water referees shall possess such training and experience as to qualify them to render expert opinions and decisions on the complex matters of water rights and administration. The persons may, as the situation requires, be either full-time, part-time, or contractual court employees of the state of Colorado. All expenses in connection with the performance of the functions of water referees, including salaries and other compensation, office space, and clerical and technical assistance shall be paid from funds appropriated to the supreme

court. Each water referee shall execute such oath of office as may be prescribed by the supreme court.

(7) The water judge of each division by order shall refer promptly to a referee of that division all applications filed pursuant to section 37-92-302, and the water clerk of that division shall transmit promptly to such referee the order of referral and the duplicate application and thereafter shall transmit promptly to such referee duplicates of any statements of opposition that are filed.

Source: L. 69: p. 1204, § 1. **C.R.S. 1963:** § 148-21-10. **L. 70:** p. 430, § 1. **L. 83:** (1) amended, p. 2079, § 1, effective October 11. **L. 85:** (1) amended, p. 1167, § 6, effective July 1.

37-92-204. Water clerks - duties. (1) (a) There is established in each water division the office of water clerk, who shall be an associate clerk of the district court and shall be appointed in the same manner as clerks of the various district courts. The water clerk may be a part-time employee, or an existing clerk of the district court may be assigned additional duties as water clerk. Any reference in this article to a filing with the water clerk means a filing in the district court where such clerk serves.

(b) The water clerk shall maintain his office in the offices of the clerk of the district court of the county in each division as follows:

Division 1	Weld
Division 2	Pueblo
Division 3	Alamosa
Division 4	Montrose
Division 5	Garfield
Division 6	Routt
Division 7	La Plata

(2) The water clerk shall maintain the records of all proceedings related to appropriations, determinations of water rights and conditional water rights and the amount and priority thereof, changes of water rights, plans for augmentation, abandonment of water rights and conditional water rights, and the records of all proceedings of the water judge and of all rulings and actions of the referee required by this article to be filed with the water clerk. The clerks of the various district courts in each division, if requested by the water clerk of that division, shall transfer to the water clerk duplicate copies of any of the files, or parts thereof, of cases relating to water rights. The water clerk shall perform such other duties as may be prescribed by the water judge or the supreme court.

(3) Subject to the approval of the water judge, the water clerk in each division shall employ such assistants and deputies as may be necessary for him or her to carry out his or her duties. The water clerk, assistants, and deputies shall take an oath or affirmation in accordance with section 24-12-101 and file such bond as may be prescribed by the supreme court.

(4) The expense of the office and staff of the water clerk shall be provided for out of state funds appropriated to the supreme court, and each county in which a water clerk's office is located shall be reimbursed for the cost thereof to the county.

Source: L. 69: p. 1205, § 1. **C.R.S. 1963:** § 148-21-11. **L. 70:** p. 431, § 2. **L. 2018:** (3) amended, (HB 18-1138), ch. 88, p. 704, § 45, effective August 8.

Cross references: For the legislative declaration in HB 18-1138, see section 1 of chapter 88, Session Laws of Colorado 2018.

PART 3

DETERMINATION AND ADMINISTRATION OF WATER RIGHTS

Cross references: For the appointments and functions of water division engineers, see § 37-92-202.

37-92-301. Administration and distribution of waters. (1) The state engineer shall be responsible for the administration and distribution of the waters of the state, and, in each division, such administration and distribution shall be accomplished through the offices of the division engineer as specified in this article.

(2) In accordance with procedures specified in this article, the referee in each division shall in the first instance have the authority and duty to rule upon determinations of water rights and conditional water rights and the amount and priority thereof, including a determination that a conditional water right has become a water right by reason of completion of the appropriation, determinations with respect to changes of water rights, plans for augmentation, approvals of reasonable diligence in the development of appropriations under conditional water rights, and determinations of abandonment of a water rights or a conditional water rights; and he may include in any ruling for a determination of water right or conditional water right any use or combination of uses, any diversion or combination of points or methods of diversion, and any place or alternate places of storage and may approve any change of water right as defined in this article.

(3) In the distribution of water, the division engineer in each division and the state engineer shall be governed by the priorities for water rights and conditional water rights established by adjudication decrees entered in proceedings concluded or pending on June 7, 1969, and by the priorities for water rights and conditional water rights determined pursuant to the provisions of this article. All such priorities shall take precedence in their appropriate order over other diversions of waters of the state. Subject to section 37-92-502 (2), in determining and administering the use of water, judicial and administrative officers shall be governed by the following:

(a) In every case in which the owner of an appropriative right to divert water supplies his water needs by the use of a well, the water diverted by that well may be charged to its own appropriation; or it may be used to divert water under the provisions set forth in paragraph (b) of this subsection (3). This statutory statement is intended as a legislative acknowledgment of the long-held practice in Colorado under which various water rights may be carried through the same physical structure.

(b) In any case in which the owner of an appropriative right to divert water at the surface of a stream or to have water so diverted delivered for his use or benefit has a well so situated as to draw water from the same stream system, that owner may secure the right to have such well,

or more than one if he has more than one such well, made an alternate point of diversion to said surface right by procedures provided in this article for securing alternate points of diversion.

(c) Until July 1, 1972, all diversions by well to supply a water use for which there is a surface decree may be charged against and be considered as part of the exercise of said surface decree even if the owner has not secured the right to an alternate point of diversion at the well, but nothing in this article shall be construed to prevent regulation of the well in accordance with law and within the system of priorities established for regulation of diversions of water in Colorado.

(d) In authorizing alternate points of diversion for wells, the widest possible discretion to permit the use of wells shall prevail. In administering the waters of a watercourse, the withdrawal of water which will lower the water table shall be permitted but not to such a degree as will prevent the water source to be recharged or replenished under all predictable circumstances to the extent necessary to prevent injury to senior appropriators in the order of their priorities, and with due regard for daily, seasonal, and longer demands on the water supply.

(4) (a) (I) In every sixth calendar year after the calendar year in which a water right is conditionally decreed, or in which a finding of reasonable diligence has been decreed, the owner or user thereof, if such owner or user desires to maintain the same, shall file an application for a finding of reasonable diligence, or said conditional water right shall be considered abandoned.

(II) If a conditional underground water right requires construction of a well, the expiration of the permit issued for the construction of such well by the state engineer pursuant to section 37-90-137 (1) shall not be the sole basis for a determination of abandonment pursuant to subparagraph (I) of this paragraph (a).

(III) The judgment and decree of the court shall specify the month and calendar year in which a subsequent application for a finding of reasonable diligence shall be filed with the water clerk pursuant to section 37-92-302 (1). A subsequent application shall be filed during the same month as the previous decree was entered every six years after such entry of the decree until the right is made absolute or otherwise disposed of.

(IV) The provisions of this paragraph (a) shall supersede any contrary provision or requirement of a previous conditional decree or determination of reasonable diligence.

(b) The measure of reasonable diligence is the steady application of effort to complete the appropriation in a reasonably expedient and efficient manner under all the facts and circumstances. When a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system.

(c) Subject to the provisions of paragraph (b) of this subsection (4), neither current economic conditions beyond the control of the applicant which adversely affect the feasibility of perfecting a conditional water right or the proposed use of water from a conditional water right nor the fact that one or more governmental permits or approvals have not been obtained shall be considered sufficient to deny a diligence application, so long as other facts and circumstances which show diligence are present.

(d) In the case of a project or integrated system that contains more than one water storage feature, an applicant need not demonstrate that all existing absolute decreed water rights that are part of the project or integrated system have been utilized to their full extent in order to make absolute, in whole or in part, a conditional water storage right decreed for a separate feature of the project or integrated system.

(e) A decreed conditional water storage right shall be made absolute for all decreed purposes to the extent of the volume of the appropriation that has been captured, possessed, and controlled at the decreed storage structure.

(5) In all proceedings for a change of water right and for approval of reasonable diligence with respect to a conditional water right, it is appropriate for the referee and the courts to consider abandonment of all or any part of such water right or conditional water right; except that no conditional underground water right requiring the construction of a well shall be declared abandoned pursuant to this subsection (5) solely upon the ground that the permit issued for the construction of such well by the state engineer pursuant to section 37-90-137 (1) has expired. In all such proceedings, no water storage right shall be declared abandoned in whole or in part on account of carrying water over in storage from year to year.

Source: L. 69: p. 1205, § 1. **C.R.S. 1963:** § 148-21-17. **L. 71:** p. 1324, § 4. **L. 73:** p. 1523, § 1. **L. 74:** (2) amended, p. 442, § 2, effective May 7. **L. 77:** (2) amended, p. 1702, § 1, effective June 19. **L. 88:** (4) amended, p. 1239, § 1, effective July 1. **L. 90:** (4) amended, p. 1625, § 1, effective April 13. **L. 94:** (4)(a) and (5) amended, p. 1209, § 2, effective May 19. **L. 2013:** (4)(d) and (4)(e) added and (5) amended, (SB 13-041), ch. 111, p. 382, § 3, effective August 7.

Cross references: (1) For the division engineer ordering discontinuance of diversion, see § 37-92-502 (2).

(2) For the legislative declaration in the 2013 act adding subsections (4)(d) and (4)(e) and amending subsection (5), see section 1 of chapter 111, Session Laws of Colorado 2013.

37-92-302. Applications for water rights or changes of such rights - plans for augmentation. (1) (a) Any person who desires a determination of a water right or a conditional water right and the amount and priority thereof, including a determination that a conditional water right has become a water right by reason of the completion of the appropriation, a determination with respect to a change of a water right, approval of a plan for augmentation, finding of reasonable diligence, approval of a proposed or existing exchange of water under section 37-80-120 or 37-83-104, or approval to use water outside the state pursuant to section 37-81-101 shall file with the water clerk a verified application setting forth facts supporting the ruling sought, a copy of which shall be sent by the water clerk to the state engineer and the division engineer. The term "determination of a water right or conditional water right" includes any plan or change in plan under the provisions of section 37-45-118 (1)(b)(II) that is or has been incorporated into a decree.

(b) Any person, including the state engineer, who wishes to oppose the application may file with the water clerk a verified statement of opposition setting forth facts as to why the application should not be granted or why it should be granted only in part or on certain conditions. The statement of opposition may be filed on behalf of all owners of water rights who, by affixing their signatures to the statement of opposition, in person or by attorney, consent to being included in the statement and who may be detrimentally affected by granting of the application. The water clerk shall send a copy of the statement of opposition to the state engineer and the division engineer.

(c) Such statement of opposition must be filed by the last day of the second month following the month in which the application is filed.

(d) (I) The fee for filing an application, complaint, petition, or any other pleading initiating a water matter shall be the same as that for filing a civil complaint in district court, as provided in section 13-32-101, C.R.S.; except that, for any application seeking a determination of a change of water right or approval of a plan for augmentation, the filing fee shall be twice as much. For filing a statement of opposition, the fee shall be the same as that for filing an answer to a civil action in district court. A tax of one dollar must be included with every application, pursuant to section 2-5-119, C.R.S. No fee or tax shall be assessed to the state of Colorado or any agency of its executive department under this subsection (1) or subsection (3) of this section, but no other person or entity shall be exempt from such fee or tax.

(II) All fees collected under this paragraph (d) shall be transmitted to the state treasurer and be divided as provided in section 13-32-101, C.R.S.

(e) (Deleted by amendment, L. 2008, p. 2144, § 13, effective June 4, 2008.)

(2) (a) The water judges of the various divisions shall jointly prepare and supply to the water clerks standard forms which shall be used for such applications and statements of opposition. These forms shall designate the information to be supplied and may be modified from time to time. Supplemental material may be submitted with any form. In the case of applications for a determination of a water right or a conditional water right, the forms shall require, among other things, a legal description of the diversion or proposed diversion, a description of the source of the water, the date of the initiation of the appropriation or proposed appropriation, the amount of water claimed, and the use or proposed use of the water. In the case of applications for approval of a change of water right or plan for augmentation, the forms shall require a complete statement of such change or plan, including a description of all water rights to be established or changed by the plan, a map showing the approximate location of historic use of the rights, and records or summaries of records of actual diversions of each right the applicant intends to rely on to the extent such records exist. In the case of applications that will require construction of a well, other than applications for determinations of rights to groundwater from wells described in section 37-90-137 (4), no application shall be heard on its merits by the referee or water judge until a written consultation report, as required by subsection (4) of this section, has been submitted and considered. The consultation report shall be submitted within four months after the filing of the application and shall include findings as to whether the construction and use of any well proposed in the application will injuriously affect the owner of, or persons entitled to use, water under a vested water right or decreed conditional water right. In the case of applications for determinations of rights to groundwater from wells described in section 37-90-137 (4), the application shall be supplemented by evidence that the state engineer has issued or failed to issue, within four months of the filing of the application in water court, a determination as to the facts of such application. Such state engineer's determination shall be made by the state engineer upon receipt from the water clerk of a copy of the application, and no separate filing or docketing with the state engineer shall be required.

(b) The application shall be supplemented by evidence that the applicant has, within fourteen days after filing the application, given notice of the application by registered or certified mail, return receipt requested, to:

(I) In the case of applications for determinations of rights to groundwater from wells described in section 37-90-137 (4), every record owner of the overlying land and to every person

who has a lien or mortgage on, or deed of trust to, the overlying land recorded in the county in which the overlying land is located, and, for purposes of such notice, the term "person" shall have the same meaning as is set forth in section 37-90-137 (4)(b.5); and

(II) The owner of the land upon which any new diversion or storage structure or modification to any existing diversion or storage structure or existing storage pool is or will be constructed or upon which water is or will be stored. In determining the owner of potentially affected land for purposes of such notice, the applicant may rely upon the real estate records of the county assessor for the county or counties in which the land is located.

(c) The provisions of paragraph (b) of this subsection (2) do not apply to political subdivisions of the state of Colorado, special districts, municipalities, or quasi-municipal districts that have obtained consent to withdraw groundwater pursuant to section 37-90-137 (8) or by deed, assignment, or other written evidence of consent where the application concerns only such groundwater and, at the time of application, the overlying land is within the water service area of such entity.

(3) (a) Not later than the fifteenth day of each month, the water clerk shall prepare a resume of all applications in the water division which have been filed in his office during the preceding month. The resume shall give the name and address of the applicant, a description of the water right or conditional water right involved, and a description of the ruling sought. The resume may be provided by the applicant at the time of filing the application or at the time of any republication pursuant to paragraph (b) of this subsection (3), or, if no resume is provided, the water clerk shall prepare the resume for publication. The water clerk shall promptly submit to each applicant a bill for costs incurred by the water court in publishing the resume of the application. No ruling or decree shall be entered prior to payment of the charges.

(b) Not later than the end of such month, the water clerk shall cause such publication to be made of each resume or portion thereof in a newspaper or newspapers as is necessary to obtain general circulation once in every county affected, as determined by the water judge. If, at the request of or as the result of amendments made by an applicant, the resume of an application is republished, the applicant shall pay the cost of such republication. A newspaper in which the resume is published or republished shall directly bill the applicant rather than the water clerk for the costs of publication.

(c) (I) (A) to (C) Repealed.

(D) On and after January 1, 2006, not later than the end of each month, the water clerk shall post a copy of the resume on the water court's website. Not later than the end of such month, the referee or the water clerk shall send a copy of such resume by mail or electronic mail to any person who the referee has reason to believe would be affected. The water clerk shall notify each person who has requested a copy of the resume by submitting his or her name and electronic mail address to the water clerk of the availability of the resume on such website. The water clerk shall maintain an electronic mailing list of such names and addresses, and a person desiring to have his or her name and address retained on the list shall resubmit the information by January 5. A person who has not so resubmitted the information shall not be retained on the list, but such person may submit his or her name and electronic mail address at any time thereafter for inclusion on the list subject to the requirements of this section. In order to obtain an electronic mail notification of the availability of the resume for a particular month, a person's name and address shall be received not later than the fifth day of the month of publication of the

resume. A copy of the resume shall be furnished without charge to the state engineer and the appropriate division engineer.

(E) The water clerk shall provide a paper copy of the resume to a person upon payment of the fee required in section 13-32-104 (1)(a), C.R.S.

(II) Repealed.

(d) All publications provided for in paragraph (b) of this subsection (3) may be augmented, in the discretion of the water judge, by notices broadcast over any or all standard radio, FM radio, TV stations, and cable television. Such broadcast notices shall make reference to locations or publications wherein details of the subject matter of the notices are located.

(3.5) In addition to the resume notice required to be given by subsection (3) of this section, any notice of an application for a change of irrigation water rights that constitutes a significant water development activity shall include evidence that the applicant has given notice of the contents of such application by mail within ten days after filing to the:

(a) Board of county commissioners of the county from which the water is being removed;

(b) Board of the school district that encompasses the land from which the water is being removed;

(c) Offices of every water conservancy and water conservation district from which the water is to be removed;

(d) Secretary of every ditch company whose water is involved in the significant water development activity; and

(e) Governing body of every city, city and county, and town that encompasses land from which the water is being removed.

(4) The referee, without conducting a formal hearing, shall make such investigations as are necessary to determine whether or not the statements in the application and statements of opposition are true and to become fully advised with respect to the subject matter of the applications and statements of opposition. The referee shall consult with the appropriate division engineer or the state engineer or both. The engineer consulted shall file a report in writing within thirty-five days, unless such time is extended by the referee, which original report shall be filed in the proceedings, and a copy shall be sent by the division engineer to the applicant or the applicant's attorney, who shall then send copies to all parties of record if they have not otherwise been served and so certify before any ruling shall be entered or become effective. A water judge who is acting as a referee in the water judge's division shall have the same authority as provided for the referee in this subsection (4). If the application is rereferred to the water judge by the referee prior to consultation, the division engineer shall file a written recommendation in the proceedings within thirty-five days of rereferral, unless such time is extended by the court, and shall send a copy thereof to the applicant or the applicant's attorney, who shall send copies to the other parties, if they have not otherwise been served, before any decree shall be entered or become effective. The water judge may request such written report from the state engineer if the water judge desires.

(5) Persons alone or in concert may initiate and implement plans for augmentation including water exchange projects. Water conservancy districts, irrigation districts, mutual or public ditch and reservoir companies, municipalities, or other entities which are governed by a board of directors or similar body may initiate and implement plans for augmentation for the benefit of all water users within their boundaries.

(6) The general assembly hereby recognizes the authority of the Colorado supreme court to adopt rules for filing and service of documents and other case management procedures in water court proceedings. Any such rules that are adopted shall supplement the procedures set forth in this section.

Source: L. 69: p. 1207, § 1. **C.R.S. 1963:** § 148-21-18. **L. 70:** p. 431, § 3. **L. 71:** pp. 1321, 1323, 1326, 1330, §§ 1, 1, 1, 1. **L. 73:** pp. 1522, 1523, §§ 3, 2. **L. 77:** (1)(d) and (3)(b) amended, p. 1702, § 2, effective June 19. **L. 79:** (1)(b) amended, p. 1378, § 1, effective May 31. **L. 81:** (1)(a) amended, p. 1786, § 1, effective April 24; (3)(c) amended and (4) R&RE, p. 1788, §§ 1, 2, effective July 1. **L. 83:** (1)(a) amended, p. 1412, § 4, effective June 3; (1)(b), (1)(d), (2), (3)(a), (3)(c), and (4) amended, p. 1425, § 1, effective July 1. **L. 85:** (2) amended, p. 1167, § 7, effective July 1. **L. 88:** (1)(a) and (4) amended, p. 1239, § 2, effective May 17. **L. 90:** (1)(a) amended, p. 1626, § 2, effective April 13. **L. 92:** (2) amended, p. 2311, § 2, effective March 20. **L. 93:** (2) amended, p. 86, § 2, effective March 30. **L. 96:** (2)(a) amended, p. 326, § 2, effective April 16. **L. 98:** (3)(c) amended, p. 1345, § 75, effective June 1. **L. 2001:** (3)(c)(I) amended, p. 306, § 2, effective August 8. **L. 2003:** (3.5) added, p. 881, § 2, effective August 6. **L. 2004:** (3)(c)(I) amended, p. 268, § 1, effective August 4. **L. 2005:** (3)(c)(I)(A) amended and (3)(c)(I)(C), (3)(c)(I)(D), and (3)(c)(I)(E) added, p. 121, § 2, effective April 5; (2)(b), (2)(c), and (3)(b) amended, p. 120, § 1, effective January 1, 2006. **L. 2007:** (1)(e) added, p. 1269, § 7, effective May 25; (1)(d) amended, p. 1538, § 31, effective May 31. **L. 2008:** (1)(d) and (1)(e) amended, p. 2144, § 13, effective June 4. **L. 2009:** (1)(a), (1)(b), and (4) amended and (6) added, (HB 09-1185), ch. 85, p. 310, § 1, effective July 1. **L. 2012:** IP(2)(b) and (4) amended, (SB 12-175), ch. 208, p. 888, § 162, effective July 1.

Editor's note: Subsection (3)(c)(I)(C) provided for the repeal of subsections (3)(c)(I)(A), (3)(c)(I)(B), (3)(c)(I)(C), and (3)(c)(II), effective January 1, 2006. (See L. 2005, p. 121.)

Cross references: For the legislative declaration contained in the 2001 act amending subsection (3)(c)(I), see section 1 of chapter 114, Session Laws of Colorado 2001. For the legislative declaration contained in the 2008 act amending subsections (1)(d) and (1)(e), see section 1 of chapter 417, Session Laws of Colorado 2008.

37-92-303. Rulings by the referee. (1) Within sixty-three days after the last day on which statements of opposition may be filed with respect to a particular application, unless such time is extended by the water judge for good cause shown, the referee shall make a ruling on the application unless the referee determines to rerefer the matter to the water judge as specified in subsection (2) of this section. The ruling may disapprove the application in whole or in part in the discretion of the referee even though no statements of opposition have been filed. The ruling of the referee shall give the names of the applicants with respect to each water right or conditional water right involved, the location of the point of diversion or place of storage, the means of diversion, the type of use, the amount and priority, and other pertinent information. In the case of a plan for augmentation, such ruling shall include a complete statement of such plan as approved or disapproved. The ruling shall be filed with the water clerk, subject to judicial review. A copy of the ruling shall be sent by the water clerk by regular or electronic mail to the

applicant, to each person who has filed a statement of opposition, to the state engineer, and to the division engineer.

(2) The referee may determine not to make a ruling as specified in subsection (1) of this section and to rerefer the matter to the water judge for a decision as provided in this article. Such rereferral shall be accomplished by order of the referee, which shall be entered within sixty-three days following the last month in which statements of opposition may be filed with respect to the particular application, unless such time is extended by the water judge for good cause shown. The referee shall rerefer the matter to the water judge at any time before the referee's hearing upon a motion to rerefer by the applicant or any opposer certifying that party's intent to protest an adverse ruling of the referee. A motion to rerefer shall not be a prerequisite to a protest of the ruling of the referee. A copy of the order shall be sent by the water clerk to the applicant and to each person who has filed a statement of opposition and to the state engineer and the division engineer by regular or electronic mail.

Source: L. 69: p. 1208, § 1. **C.R.S. 1963:** § 148-21-19. **L. 71:** p. 1327, § 2. **L. 83:** Entire section amended, p. 1427, § 2, effective July 1. **L. 88:** (2) amended, p. 1240, § 3, effective July 1. **L. 2005:** Entire section amended, p. 122, § 3, effective April 5. **L. 2012:** Entire section amended, (SB 12-175), ch. 208, p. 888, § 163, effective July 1.

37-92-304. Proceedings by the water judge. (1) On the first Tuesday of March and September in division 1, the second Tuesday of March and September in division 2, the third Tuesday of March and September in division 3, the fourth Tuesday of March and September in division 4, the first Tuesday of April and October in division 5, the second Tuesday of April and October in division 6, and the third Tuesday of April and October in division 7, the water judge for the particular division may set for hearing matters in which protests have been filed or orders of rereferral entered by the referee during the preceding six calendar months. Such matters shall generally be considered by the water judge in chronological order; however, the dates and times of hearings shall be adjusted by the water judge at his discretion for the convenience of persons involved or for other reasonable cause.

(2) Within twenty-one days after the date of mailing thereof, any person, including the state engineer, who wishes to protest or support a ruling of the referee shall file in writing a pleading in quadruplicate with the water clerk and shall mail or deliver a copy to all parties and so certify. Such pleading shall clearly identify the matter and shall state the factual and legal grounds therefor. Upon filing of such a pleading, the party, except for the state engineer who shall pay no filing fee, shall pay a filing fee equal to that for filing an answer to a civil action in district court, as provided in section 13-32-101, C.R.S. No person who is already a party in the matter may be required to file any additional pleading or to pay any additional filing fee to maintain a party status in the case. All fees collected pursuant to this subsection (2) shall be transmitted to the state treasurer and be divided as provided in section 13-32-101, C.R.S.

(3) As to the rulings with respect to which a pleading has been filed and as to matters which have been rereferred to the water judge by the referee, there shall be de novo hearings. The court shall not be bound by findings of the referee. The division engineer shall appear to furnish pertinent information and may be examined by any party, and, if requested by the division engineer, the attorney general shall represent the division engineer. The applicant shall appear either in person or by counsel and shall have the burden of sustaining the application,

whether it has been granted or denied by the ruling or has been rereferred by the referee, and in the case of a change of water right or a plan for augmentation the burden of showing absence of any injurious effect. All parties of record shall remain parties in the proceedings before the water judge. Any person may move to intervene in proceedings before the water court upon payment of a fee, equal to that for filing an answer to a civil action in district court, except for the state engineer who shall pay no fee, and upon a showing of mistake, inadvertence, surprise, or excusable neglect or to support a referee's ruling. The water court shall grant the motion to intervene only if intervention is sought no less than thirty-five days before any pretrial conference or due date for trial data certificates and if intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. Service of copies of applications, written pleadings, or any other documents is not necessary for jurisdictional purposes, but the water judge may order service of copies of any documents on any persons and in any manner which he or she deems appropriate.

(3.5) In connection with a water adjudication proceeding to change the place of use of a water right from a mutual agricultural ditch or mutual agricultural ditch system or mutual agricultural reservoir company, the remaining owners of water rights in such ditch or ditch system or reservoir company, in the discretion of the court and where material injury has been demonstrated by the objector, may be awarded payment of their reasonable attorney fees and costs, including reasonable engineering and expert witness fees and the cost of any structures or measures necessary within the ditch or reservoir system to ensure the continuation of such owners' historically available surface water supply, under the remaining water rights which such owners continue to own, without injury or any increase in cost, unless the applicant seeking such change of water right shall have sought such change based on limitations, conditions, and structural changes necessary to prevent material injury to the exercise of such owners' water right. In cases where the objector fails to demonstrate material injury or the applicant has incorporated sufficient limitations, conditions, and structural changes to prevent material injury and such opposition has been maintained frivolously or for purposes of harassment, the applicant, in the discretion of the court, may be awarded payment of his reasonable attorney fees and costs, including reasonable engineering and expert witness fees. The provisions of this subsection (3.5) shall not apply to decrees which have been entered prior to May 17, 1988, or decrees pending before the referee as of May 17, 1988, and which are concluded before the referee without being protested to the water judge.

(3.6) Any decree entered for a water right requiring a well to be constructed on lands owned by other than the applicant shall specify that no person shall construct a well on property owned by another unless the right to construct such a well is obtained by consent of the landowner or the exercise of the power of eminent domain by a person having the power of eminent domain under law.

(4) If an applicant, a person who has filed a statement of opposition, or a protestant requests, the hearing shall be conducted by the water judge in the district court of the county in which is located the point of diversion of the water right or conditional water right involved. In case the hearing involves points of diversion located in more than one county, the hearing shall be conducted by the water judge in the district court of that county in which is located the major part, as determined by the water judge, of the diversions or proposed diversions involved.

(5) A decision of the water judge with respect to a protested ruling of the referee shall either confirm, modify, reverse, or reverse and remand such ruling, and, in the case of the

modification of a ruling, the decision may grant a different priority than that granted by the referee and may specify its own terms and conditions with respect to a change of water right or plan for augmentation. A decision of the water judge in regard to a matter which has been rereferred by the referee shall dispose fully of such matter and may contain such provisions as the water judge deems appropriate. The water judge shall confirm and approve by judgment and decree a ruling of the referee with respect to which no protest was filed, but the water judge may reverse, or reverse and remand, any such ruling which he deems to be contrary to law.

(6) Any decision of the water judge as specified in subsection (5) of this section dealing with a change of water right, implementation of a rotational crop management contract, or a plan for augmentation shall include the condition that the approval of such change, contract, or plan shall be subject to reconsideration by the water judge on the question of injury to the vested rights of others for such period after the entry of such decision as is necessary or desirable to preclude or remedy any such injury. Such condition setting forth the period allowed for reconsideration shall be determined by the water judge after making specific findings and conclusions including, when applicable, the historical use to which the water rights involved were put, if any, and the proposed future use of the water rights involved. The water judge shall specify such period in the decision, but the period may be extended upon further decision by the water judge that the nonoccurrence of injury shall not have been conclusively established. Any decision may contain any other provision that the water judge deems proper in determining the rights and interests of the persons involved. All decisions of the water judge, including decisions as to the period of reconsideration and extension thereof, shall become a judgment and decree as specified in this article and be appealable upon entry, notwithstanding conditions subjecting the decisions to reconsideration on the question of injury to the vested rights of others as provided in this subsection (6).

(6.5) Any decision of a water judge concerning a significant water development activity shall include, as a condition of the decree approving the change application, a provision in the decree for retained jurisdiction to ensure payment of any fees imposed pursuant to section 37-92-305 (4.5).

(7) Judgments and decrees shall be entered promptly with respect to matters that have been heard and matters in which no protest has been filed or order of rereferral entered. A judgment and decree may be confined to one matter or may include more than one matter at the discretion of the water judge. The judgment and decree shall give the names of the applicants with respect to each water right or conditional water right involved, the location of the point of diversion or place of storage, the means of diversion, the type of use, the amount and priority, and other pertinent information. In the case of a plan for augmentation, the judgment and decree shall contain a complete statement of the plan. In the case of applications for determination of water rights or conditional water rights, the judgment and decree shall state the date of the filing of the application.

(8) A copy of such judgment and decree shall be filed with the state engineer and the division engineer, and a copy thereof shall be provided by the water clerk to any other person requesting same upon payment of a fee of seventy-five cents per page; except that the state engineer by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the state engineer by rule or as otherwise provided by law may increase the

amount of the fee as provided in section 24-75-402 (4), C.R.S. Promptly after receiving a judgment and decree, the division engineer and the state engineer shall enter in their records the determinations therein made as to priority, location, and use of the water rights and conditional water rights, and they shall regulate the distribution of water accordingly.

(9) Appellate review shall be allowed to the judgment and decree, or any part thereof, as in other civil actions, but no appellate review shall be allowed with respect to that part of the judgment or decree which confirms a ruling with respect to which no protest was filed.

(10) Clerical mistakes in said judgment and decree may be corrected by the water judge on his own initiative or on the petition of any person, and substantive errors therein may be corrected by the water judge on the petition of any person whose rights have been adversely affected thereby and a showing satisfactory to the water judge that such person, due to mistake, inadvertence, or excusable neglect, failed to file a protest with the water clerk within the time specified in this section. Any petition referred to in the preceding sentence shall be filed with the water clerk within three years after the date of the entry of said judgment and decree. The water judge may order such notice of any such correction proceedings as he determines to be appropriate. Any order of the water judge making such corrections shall be subject to appellate review as in other civil actions.

(11) Repealed.

Source: L. 69: p. 1208, § 1. **C.R.S. 1963:** § 148-21-20. **L. 70:** p. 432, § 4. **L. 71:** pp. 1327, 1328, §§ 3, 4. **L. 73:** p. 1525, § 1. **L. 77:** (6) amended, p. 1703, § 3, effective June 19. **L. 81:** (6) amended, p. 1792, § 1, effective May 28. **L. 83:** (2), (3), and (8) amended and (11) repealed, pp. 1428, 1430, §§ 3, 6, effective July 1. **L. 88:** (1) to (3) amended and (3.5) and (3.6) added, p. 1241, § 4, effective May 17. **L. 98:** (8) amended, p. 1345, § 76, effective June 1. **L. 2003:** (6.5) added, p. 881, § 3, effective August 6. **L. 2006:** (6) amended, p. 1000, § 2, effective May 25. **L. 2008:** (2) amended, p. 2144, § 14, effective June 4. **L. 2012:** (2) and (3) amended, (SB 12-175), ch. 208, p. 889, § 164, effective July 1.

Cross references: For the legislative declaration contained in the 2008 act amending subsection (2), see section 1 of chapter 417, Session Laws of Colorado 2008.

37-92-305. Standards with respect to rulings of the referee and decisions of the water judge - definitions. (1) In the determination of a water right the priority date awarded shall be that date on which the appropriation was initiated if the appropriation was completed with reasonable diligence. If the appropriation was not completed with reasonable diligence following the initiation thereof, then the priority date thereof shall be that date from which the appropriation was completed with reasonable diligence.

(2) Subject to the provisions of this article, a particular means or point of diversion of a water right may also serve as a point or means of diversion for another water right.

(3) (a) A change of water right, implementation of a rotational crop management contract, or plan for augmentation, including water exchange project, shall be approved if such change, contract, or plan will not injuriously affect the owner of or persons entitled to use water under a vested water right or a decreed conditional water right. In cases in which a statement of opposition has been filed, the applicant shall provide to the referee or to the water judge, as the case may be, a proposed ruling or decree to prevent such injurious effect in advance of any

hearing on the merits of the application, and notice of such proposed ruling or decree shall be provided to all parties who have entered the proceedings. If it is determined that the proposed change, contract, or plan as presented in the application and the proposed ruling or decree would cause such injurious effect, the referee or the water judge, as the case may be, shall afford the applicant or any person opposed to the application an opportunity to propose terms or conditions that would prevent such injurious effect.

(b) Decrees for changes of water rights that implement a contract or agreement for a lease, loan, or donation of water, water rights, or interests in water to the Colorado water conservation board for instream flow use under section 37-92-102 (3)(b) shall provide that the board or the lessor, lender, or donor of the water may bring about beneficial use of the historical consumptive use of the changed water right downstream of the instream flow reach as fully consumable reusable water, subject to such terms and conditions as the water court deems necessary to prevent injury to vested water rights or decreed conditional water rights.

(c) In determining the amount of historical consumptive use for a water right in division 1, 2, 3, 4, 5, or 6, the water judge shall not consider any decrease in use resulting from the following:

(I) The land on which the water from the water right has been historically applied is enrolled under a federal land conservation program; or

(II) The nonuse or decrease in use of the water from the water right by its owner for a maximum of five years in any consecutive ten-year period as a result of participation in:

(A) A water conservation program, including a pilot program, approved in advance by a water conservation district, water district, water authority, or water conservancy district for lands that are within the entity's jurisdictional boundaries or by a state agency with explicit statutory jurisdiction over water conservation or water rights;

(B) A water conservation program, including a pilot program, established through formal written action or ordinance by a water district, water authority, or municipality or its municipal water supplier for lands that are within the entity's jurisdictional boundaries;

(C) An approved land fallowing program as provided by law in order to conserve water or to provide water for compact compliance; or

(D) A water banking program as provided by law.

(d) Quantification of the historical consumptive use of a water right must be based on an analysis of the actual historical use of the water right for its decreed purposes during a representative study period that includes wet years, dry years, and average years. The representative study period:

(I) Must not include undecreed use of the subject water right; and

(II) Need not include every year of the entire history of the subject water right.

(e) If an application is for a change of that portion of a water right for which a previous change of water right has been judicially approved and for which the historical consumptive use was previously quantified, the water judge shall not reconsider or requantify the historical consumptive use. However, the water judge may, without requantifying the historical consumptive use, impose such terms and conditions on the future use of that portion of the water right that is the subject of the change as needed to limit the future consumptive use of that portion of the water right to the previously quantified historical consumptive use.

(3.5) **Applications for a simple change in a surface point of diversion.** (a) For purposes of this subsection (3.5):

(I) "Intervening surface diversion point or inflow" means any ditch diversion or other point of diversion for a decreed surface water right, point of replacement or point of diversion by exchange that is part of an existing decreed exchange, well or well field that is decreed to operate as a surface diversion, or point of inflow from a tributary surface stream.

(II) "Simple change in a surface point of diversion" means a change in the point of diversion from a decreed surface diversion point to a new surface diversion point that is not combined with and does not include any other type of change of water right and for which there is no intervening surface diversion point or inflow between the new point of diversion and the diversion point from which a change is being made. "Simple change in a surface point of diversion" does not include a change of point of diversion from below or within a stream reach for which there is an intervening surface diversion point or inflow or decreed in-stream flow right to an upstream location within or above that reach.

(b) (I) An application for a simple change in a surface point of diversion is subject to all provisions of this article, including sections 37-92-302 to 37-92-305, except as specifically modified by this subsection (3.5).

(II) The procedures in this subsection (3.5) apply only to a simple change in a surface point of diversion and do not change the procedures or legal standards applicable to any other change of water right.

(III) An application for a simple change in a surface point of diversion may:

(A) Be made with respect to a change of point of diversion that has already been physically accomplished or with respect to a requested future change of point of diversion;

(B) Be made with respect to an absolute water right or a conditional water right; and

(C) Include one or more water rights that are to be diverted at the new point of diversion. The application must not include or be consolidated or joined with an action by the applicant seeking any other type of change of water right or diligence proceeding or application to make absolute with respect to the water right or rights included in the application.

(c) The applicant bears the initial burden in an application for a simple change in a surface point of diversion to prove, through the imposition of terms and conditions if necessary, that the simple change in a surface point of diversion will not:

(I) Result in diversion of a greater flow rate or amount of water than has been decreed to the water right and, without requantifying the water right, is physically and legally available at the diversion point from which a change is being made; or

(II) Injuriously affect the owner of or persons entitled to use water under a vested water right or a decreed conditional water right.

(d) If the applicant makes a prima facie showing with respect to the matters in paragraph (c) of this subsection (3.5), the case proceeds as a simple change in a surface point of diversion, the applicant has the burden of persuasion with respect to the elements of its case, including the matters in paragraph (c) of this subsection (3.5), and the standards of paragraph (e) of this subsection (3.5) apply. If the applicant does not make such a prima facie showing, the referee or water judge shall dismiss the application without prejudice to the applicant's filing an application for a change of water right that is not a simple change in a surface point of diversion.

(e) The following standards apply to a simple change in a surface point of diversion:

(I) There is a rebuttable presumption that a simple change in a surface point of diversion will not cause an enlargement of the historical use associated with the water rights being changed.

(II) The decree must not requantify the water rights for which the point of diversion is being changed.

(III) The applicant, in prosecuting the simple change in a surface point of diversion, is not required to:

(A) Prove that the water diverted at the new point of diversion can and will be diverted and put to use within a reasonable period of time;

(B) Prove compliance with the anti-speculation doctrine; or

(C) Provide or make a showing of future need imposed by the cases of *Pagosa Area Water and Sanitation District v. Trout Unlimited*, 219 P.3d 774 (Colo. 2009), or *City of Thornton v. Bijou Irrigation Co.*, 926 P.2d 1 (Colo. 1996); except that nothing in this subsection (3.5) relieves the applicant or its successors in any pending or future diligence application from any of the requirements for demonstrating diligence in the development of a conditional water right changed pursuant to this subsection (3.5).

(3.6) **Correction to an established but erroneously described point of diversion - definitions.** (a) As used in this subsection (3.6):

(I) "Diverter" means the owner or user of a decreed water right.

(II) "Established but erroneously described point of diversion" means a point of diversion of either surface water or groundwater:

(A) That has been at the same physical location since the applicable decree or decrees confirmed the water right, unless it was relocated pursuant to section 37-86-111 or, in the case of a well, relocated according to a valid well permit. A diversion that has been in the same physical location since the enactment of the "Adjudication Act of 1943", which was repealed in 1969, has a rebuttable presumption of having been located at the same physical location since its inception.

(B) That is not located at the location specified in the applicable decree or decrees confirming the water right; and

(C) From which the diverter has diverted water with the intent to divert pursuant to the decree or decrees confirming the water right.

(b) A water right is deemed to be diverted at its decreed location and is not erroneously described if:

(I) With respect to a surface water diversion:

(A) The physical location of the point of diversion is within five hundred feet of the decreed location; and

(B) Neither a natural surface stream that is tributary to the diverted stream nor another surface water right is located between the decreed location and its physical location;

(II) With respect to a groundwater diversion, the physical location of the point of diversion is within two hundred feet of the decreed location, unless the decree specifies a lesser distance for acceptable variation in location.

(c) To proceed with a correction in point of diversion under this subsection (3.6) for an established but erroneously described point of diversion that is due to a clerical mistake in the decree, but does not fall within the three-year period set forth in section 37-92-304 (10) for the water clerk to correct the mistake, the diverter of the established but erroneously described point of diversion may file a petition with the water clerk for correction of the clerical mistake within three years after the diverter became aware of the mistake. The same procedures set forth in section 37-92-304 (10) apply to corrections in point of diversion under this paragraph (c).

(d) (I) To proceed with a correction in point of diversion under this subsection (3.6) for an established but erroneously described point of diversion that is not due to a clerical mistake in the decree, a diverter has the burden to prove by a preponderance of the evidence that a point of diversion is an established but erroneously described point of diversion.

(II) Except as specifically modified by this subsection (3.6), an application for a correction in an established but erroneously described point of diversion is subject to all provisions of this article, including sections 37-92-302 to 37-92-305.

(III) The procedures in this subsection (3.6) apply only to a correction in an established but erroneously described point of diversion and do not alter the procedures or legal standards applicable to a change of water right.

(IV) A diverter may apply for a correction in an established but erroneously described point of diversion only:

(A) For a point of diversion that is already in place; and

(B) If one or more water rights are diverted at the corrected point of diversion.

(V) The application must not include or be consolidated or joined with an action by the applicant seeking any type of change of water right or diligence proceeding or application to make absolute with respect to the water right or rights included in the application.

(e) If an applicant proves the matters in paragraph (a) of this subsection (3.6) by a preponderance of the evidence, then there is a rebuttable presumption that a correction in an established but erroneously described point of diversion:

(I) Will not cause an enlargement of the historical use associated with a water right diverted at the point of diversion; and

(II) Does not injuriously affect the owner of or persons entitled to use water under a vested water right or a decreed conditional water right.

(f) If the applicant does not prove the matters in paragraph (a) of this subsection (3.6) or if the presumptions stated in this subsection (3.6) are successfully rebutted, the referee or water judge shall dismiss the application without prejudice to the applicant's filing an application for a change of water right.

(g) The following standards apply to a correction in an established but erroneously described point of diversion:

(I) The decree must not requantify the water rights for which the erroneously described point of diversion is being corrected;

(II) The applicant, in prosecuting the correction in the erroneously described point of diversion, is not required to:

(A) Prove that the water diverted at the corrected point of diversion can and will be diverted and put to use within a reasonable period of time;

(B) Prove compliance with the anti-speculation doctrine; or

(C) Provide or make a showing of future need imposed by the cases of *Pagosa Area Water and Sanitation District v. Trout Unlimited*, 219 P.3d 774 (Colo. 2009), or *City of Thornton v. Bijou Irrigation Co.*, 926 P.2d 1 (Colo. 1996);

(III) The state engineer shall not curtail a diversion based solely on the fact that the point of diversion is erroneously described; and

(IV) Nothing in this subsection (3.6) modifies the state engineer's authority to make determinations regarding the administration of water rights and the distribution of water.

(h) During a change of water right case or an abandonment proceeding, if a point of diversion qualifies as an established but erroneously described point of diversion pursuant to this subsection (3.6), full consideration of the historical consumptive use of the water right at its physical location shall not be denied due solely to the fact that the point of diversion is not at its decreed location.

(4) (a) Terms and conditions to prevent injury as specified in subsection (3) of this section may include:

(I) (A) A limitation on the use of the water that is subject to the change, taking into consideration the historical use and the flexibility required by annual climatic differences.

(B) For purposes of determining lawful historical use, if a decree entered before January 1, 1937, establishes an irrigation water right and does not expressly limit the number of acres that the appropriator may irrigate under the water right, the lawful maximum amount of irrigated acreage equals the maximum amount of acreage irrigated in compliance with all express provisions of the decree during the first fifty years after entry of the original decree, unless a court of competent jurisdiction has entered a final judgment to the contrary. Irrigated acreage not exceeding the lawful maximum amount and located within a reasonable proximity to the ditch, including extensions and lateral delivery infrastructure, as constructed within the first fifty-year period after entry of the original decree, may be included in the historical average in an historical consumptive use analysis supporting a change of water right application.

(II) The relinquishment of part of the decree for which the change is sought or the relinquishment of other decrees owned by the applicant that are used by the applicant in conjunction with the decree for which the change has been requested, if necessary to prevent an enlargement upon the historical use or diminution of return flow to the detriment of other appropriators;

(III) A time limitation on the diversion of water for which the change is sought in terms of months per year;

(IV) If the application is for the implementation of a rotational crop management contract, separate annual historical consumptive use limits for the parcels to be rotated according to the historical consumptive use of such lands. To the extent that some or all of the water that is the subject of the contract is not utilized at a new place of use in a given year, such water may be utilized on the originally irrigated lands if so provided in the decree and contract and if the election to irrigate is made prior to the beginning of the irrigation season and applies to the entire irrigation season. A failure of a party to a rotational crop management contract who is not the owner of the irrigation water rights that are subject to the contract to put to beneficial use the full amount of water that was decreed pursuant to the application for approval of the contract shall not be deemed to reduce the amount of historical consumptive use that the owner of the water rights has made of the rights.

(V) A term or condition that addresses decreases in water quality caused by a change in the type of use and permanent removal from irrigation of more than one thousand acre-feet of consumptive use per year that includes a change in the point of diversion, if the change would cause an exceedance or contribute to an existing exceedance of water quality standards established by the water quality control commission pursuant to section 25-8-204, C.R.S., in effect at the time of the application, or, if ordered by the court, subsequently adopted by the commission prior to the entry of the decree, for the stream segment at the original point of diversion. Under any such term or condition, the applicant shall be responsible for only that

portion of the exceedance attributable to the proposed change. Any such term or condition and any activity to be taken in fulfillment thereof shall not be inconsistent with the "Colorado Water Quality Control Act", article 8 of title 25, C.R.S., and rules promulgated pursuant to said act, and implementation of section 303 (d) of the "Federal Water Pollution Control Act" by the water quality control division. This subparagraph (V) shall not be interpreted to confer standing on any person to assert injury who would not otherwise have such standing.

(VI) Such other conditions as may be necessary to protect the vested rights of others.

(b) If the water judge approves the implementation of a rotational crop management contract, the rotational crop management contract shall be recorded with the clerk and recorder of the county in which the historically irrigated lands are located, and the water judge shall make affirmative findings that the implementation of the rotational crop management contract:

(I) Is capable of administration by the state and division engineers. In order to satisfy the requirement of this subparagraph (I), the water judge may require the applicant to provide signage and mapping of the lands not irrigated on an annual basis.

(II) Will neither expand the historical use of the original water rights nor change the return flow pattern from the historically irrigated land in a manner that will result in an injurious effect as specified in subsection (3) of this section; and

(III) Will comply with paragraph (a) of subsection (4.5) of this section with regard to potential soil erosion, revegetation, and weed management.

(c) With respect to a change-in-use application that seeks approval to change an absolute decreed irrigation water right used for agricultural purposes to an agricultural water protection water right, as described in subsection (19) of this section, the decree must:

(I) Quantify the historical diversions and historical consumptive use of the absolute decreed irrigation water right used for agricultural purposes pursuant to subsection (3) of this section;

(II) Quantify the return flows associated with the historical use of the water right in time, place, and amount;

(III) Provide terms and conditions, pursuant to paragraph (a) of this subsection (4), for a change in the use of the agricultural water protection water right pursuant to a substitute water supply plan, approved in accordance with sections 37-92-308 (12) and 37-80-123, including the return flow obligations in time, place, and amount that prevent material injury to other vested water rights and decreed conditional water rights;

(IV) In accordance with subparagraph (II) of paragraph (b) of subsection (19) of this section, allow an amount of the quantified historical consumptive portion of water subject to the changed agricultural water protection water right to be delivered to a point of diversion within the water division of historical use without designating the beneficial use to which the water will be applied. Delivery must be to a point of diversion that is approved by the state engineer in accordance with conditions:

(A) Set forth in section 37-92-308 (12); and

(B) Developed by the state engineer pursuant to section 37-80-123; and

(V) For a period that the water judge deems necessary and desirable to remedy or preclude injury and pursuant to section 37-92-304 (6), be subject to retained jurisdiction by the water judge on the question of injury to other vested water rights.

(4.5) (a) The terms and conditions applicable to changes of use of water rights from agricultural irrigation purposes to other beneficial uses shall include reasonable provisions

designed to accomplish the revegetation and noxious weed management of lands from which irrigation water is removed. The applicant may, at any time, request a final determination under the court's retained jurisdiction that no further application of water will be necessary in order to satisfy the revegetation provisions. Dry land agriculture may not be subject to revegetation order of the court.

(b) (I) If article 65.1 of title 24, C.R.S., is not applicable to a significant water development activity, the court may utilize the methods specified in this section to mitigate certain potential effects of such activity. Subject to the provisions of this article, a court may impose the following mitigation payments upon any person who files an application for removal of water as part of a significant water development activity:

(A) **Transition mitigation payment.** A transition mitigation payment shall equal the amount of the reduction in property tax revenues for property that is subject to taxation by an entity listed in section 37-92-302 (3.5) that is attributable to a significant water development activity. Such payment shall be made on an annual basis in accordance with the repayment schedule established by the court unless the applicant and the taxing entities mutually agree on an alternate payment schedule. The county shall certify, as appropriate, to the change applicant each year the amount of mitigation payment due under this subparagraph (I). Any moneys collected pursuant to this sub-subparagraph (A) shall be distributed by the board of county commissioners of the county from which water is removed among the entities in the county in proportion to the percentage of their share of the total of property taxes for nonbonded indebtedness purposes.

(B) **Bonded indebtedness payment.** A bonded indebtedness payment shall be made on an annual basis in the same manner as mitigation payments and shall be based on the bonded indebtedness on the property that is to be removed from irrigation at the time the decree is entered. The bonded indebtedness payment shall be equal to the reduction in bond repayment revenues that is attributable to the removal of water as part of a significant water development activity. The court may identify such mitigation payment as part of the decree. Whenever an application for determination with respect to a change of water rights requires a payment pursuant to this sub-subparagraph (B), the board of county commissioners of the county from which water is removed shall distribute any moneys collected among the entities in the county having bonded indebtedness in proportion to the percentage of their share of the total of such indebtedness.

(II) Unless the court determines that a greater or lesser period of time would be appropriate based upon the evidence of record, the amount of the transition mitigation and bonded indebtedness payments shall be equal to the total reduction in revenues for a period of thirty years commencing upon the date of initial reductions in such revenues as a consequence of the removal of water associated with the significant water development activity.

(III) To the extent that there is an increase in the property tax or bonded indebtedness revenues after the date of the commencement of the payment obligations identified under sub-subparagraphs (A) and (B) of subparagraph (I) of this paragraph (b) as a consequence of a change in land use and accompanying modification of the assessed valuation of the land, such payment obligations shall be correspondingly reduced.

(IV) When determining the amount to be paid pursuant to this paragraph (b), if any, the court shall take into consideration any evidence of a beneficial impact to the county from which the water is to be diverted and shall adjust the amount of the payment accordingly.

(c) Paragraph (b) of this subsection (4.5) shall not apply to:

(I) Any removal of water involving water rights owned by the applicant prior to August 6, 2003; any removal of water that was accomplished prior to August 6, 2003; any removal of water for which an application for a change of water rights was pending in the water court on such date; or any removal of water for which a decree has been entered that continues to be subject to the water court's retained jurisdiction;

(II) Any removal of water when:

(A) Such change is undertaken by a water conservancy district, water conservation district, special district, ditch company, other ditch organization, or municipality;

(B) The water was beneficially used within the boundaries or service area of such entity before the removal; and

(C) The water will continue to be beneficially used within such entity's boundaries or service area after the removal; or

(III) Any removal of water where the new place of use is within a twenty-mile radius of the historic place of use, even though such new place is located within a different county. For purposes of this subparagraph (III), the distance between the historic place of use and the proposed new place of use shall be measured between the most proximate points in the respective areas.

(5) In the case of plans for augmentation including exchange, the supplier may take an equivalent amount of water at his point of diversion or storage if such water is available without impairing the rights of others. Any substituted water shall be of a quality and quantity so as to meet the requirements for which the water of the senior appropriator has normally been used, and such substituted water shall be accepted by the senior appropriator in substitution for water derived by the exercise of his decreed rights.

(6) (a) In the case of an application for determination of a water right or a conditional water right, a determination with respect to a change of a water right or approval of a plan for augmentation, which requires construction of a well, other than a well described in section 37-90-137 (4), the referee or the water judge, as the case may be, shall consider the findings of the state engineer, made pursuant to section 37-90-137, which granted or denied the well permit and the consultation report of the state engineer or division engineer submitted pursuant to section 37-92-302 (2)(a). The referee or water judge may thereupon grant a final or conditional decree if the construction and use of any well proposed in the application will not injuriously affect the owner of, or persons entitled to use, water under a vested water right or decreed conditional water right. If the court grants a final or conditional decree, the state engineer shall issue a well permit. Except in cases in which the state engineer or division engineer is a party, all findings of fact contained in the consultation report concerning the presence or absence of injurious effect shall be presumptive as to such facts, subject to rebuttal by any party.

(b) In the case of wells described in section 37-90-137 (4), the referee or water judge shall consider the state engineer's determination as to such groundwater as described in section 37-92-302 (2) in lieu of findings made pursuant to section 37-90-137, and shall require evidence of compliance with the provisions of section 37-92-302 (2) regarding notice to persons with recorded interests in the overlying land. The state engineer's findings of fact contained within such determination shall be presumptive as to such facts, subject to rebuttal by any party.

(c) Any application in water division 3 that involves new withdrawals of groundwater that will affect the rate or direction of movement of water in the confined aquifer system shall be

permitted pursuant to a plan of augmentation that, in addition to all other lawful requirements for such plans, shall recognize that unappropriated water is not made available and injury is not prevented as a result of the reduction of water consumption by nonirrigated native vegetation. In any such augmentation plan decree, the court shall also retain jurisdiction for the purpose of revising such decree to comply with the rules and regulations promulgated by the state engineer pursuant to section 37-90-137 (12)(b)(I), as it existed prior to July 1, 2004.

(7) Prior to the cancellation or expiration of a conditional water right granted pursuant to a conditional decree, the court wherein such decree was granted shall give notice, within not less than sixty-three days nor more than ninety-one days, by certified or registered mail to all persons to whom such conditional right was granted, at the last-known address appearing on the records of such court.

(8) (a) Except as specified in paragraph (b) of this subsection (8), in reviewing a proposed plan for augmentation and in considering terms and conditions that may be necessary to avoid injury, the referee or the water judge shall consider the depletions from an applicant's use or proposed use of water, in quantity and in time, the amount and timing of augmentation water that would be provided by the applicant, and the existence, if any, of injury to any owner of or persons entitled to use water under a vested water right or a decreed conditional water right.

(b) As to decrees for plans for augmentation entered in water division 1 on or after August 5, 2009, the plan shall not require the replacement of out-of-priority depletions currently affecting the river caused by pumping that occurred prior to March 15, 1974. In the case of an amended plan for augmentation applied for pursuant to this paragraph (b), the water judge may review all of the terms and conditions of the plan.

(c) A plan for augmentation shall be sufficient to permit the continuation of diversions when curtailment would otherwise be required to meet a valid senior call for water, to the extent that the applicant shall provide replacement water necessary to meet the lawful requirements of a senior diverter at the time and location and to the extent the senior would be deprived of his or her lawful entitlement by the applicant's diversion. A proposed plan for augmentation that relies upon a supply of augmentation water that, by contract or otherwise, is limited in duration shall not be denied solely upon the ground that the supply of augmentation water is limited in duration, if the terms and conditions of the plan prevent injury to vested water rights. Said terms and conditions shall require replacement of out-of-priority depletions that occur after any groundwater diversions cease. Decrees approving plans for augmentation shall require that the state engineer curtail all out-of-priority diversions, the depletions from which are not so replaced as to prevent injury to vested water rights. A plan for augmentation may provide procedures to allow additional or alternative sources of replacement water, including water leased on a yearly or less frequent basis, to be used in the plan after the initial decree is entered if the use of said additional or alternative sources is part of a substitute water supply plan approved pursuant to section 37-92-308 or if such sources are decreed for such use.

(9) (a) No claim for a water right may be recognized or a decree therefor granted except to the extent that the waters have been diverted, stored, or otherwise captured, possessed, and controlled and have been applied to a beneficial use, but nothing in this section shall affect appropriations by the state of Colorado for minimum streamflows as described in section 37-92-103 (4).

(b) No claim for a conditional water right may be recognized or a decree therefor granted except to the extent that it is established that the waters can be and will be diverted, stored, or otherwise captured, possessed, and controlled and will be beneficially used and that the project can and will be completed with diligence and within a reasonable time.

(c) No water right or conditional water right for the storage of water in underground aquifers shall be recognized or decreed except to the extent water in such an aquifer has been placed there by other than natural means by a person having a conditional or decreed right to such water.

(10) If an application filed under section 37-92-302 for approval of an existing exchange of water is approved, the original priority date or priority dates of the exchange shall be recognized and preserved unless such recognition or preservation would be contrary to the manner in which such exchange has been administered.

(11) Nontributary groundwater shall not be administered in accordance with priority of appropriation, and determinations of rights to nontributary groundwater need not include a date of initiation of the withdrawal project. Such determinations shall not require subsequent showings or findings of reasonable diligence, and such determinations entered prior to July 1, 1985, which require such showings or findings shall not be enforced to the extent of such diligence requirements on or after said date. The water judge shall retain jurisdiction as to determinations of groundwater from wells described in section 37-90-137 (4) as necessary to provide for the adjustment of the annual amount of withdrawal allowed to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. Such decree shall then control the determination of the quantity of annual withdrawal allowed in the well permit as provided in section 37-90-137 (4). Rights to the use of groundwater from wells described in section 37-90-137 (4) pursuant to all such determinations shall be deemed to be vested property rights; except that nothing in this section shall preclude the general assembly from authorizing or imposing limitations on the exercise of such rights for preventing waste, promoting beneficial use, and requiring reasonable conservation of such groundwater.

(12) (a) In determining the quantity of water required in an augmentation plan to replace evaporation from groundwater exposed to the atmosphere in connection with the extraction of sand and gravel by open mining as defined in section 34-32-103 (9), C.R.S., there shall be no requirement to replace the amount of historic natural depletion to the waters of the state, if any, caused by the preexisting natural vegetative cover on the surface of the area which will be, or which has been, permanently replaced by an open water surface. The applicant shall bear the burden of proving the historic natural depletion.

(b) No person who obtains or operates a plan for augmentation or plan of substitute supply prior to July 1, 1989, shall be required to make replacement for the depletions from evaporation exempted in this subsection (12) or otherwise replace water for increased calls which may result therefrom.

(c) In determining the quantity of water required in an augmentation plan to replace stream depletions in connection with any mining operation as defined in section 34-32-103 (8), C.R.S., for which a reclamation permit has been obtained as set forth in section 34-32-109, C.R.S., there is no requirement to replace the amount of historic natural depletion to the waters of the state, if any, caused by the preexisting natural vegetative cover and evaporation on the surface of the area that will be, or that has been, eliminated or made impermeable as part of the

permitted mining operation. The applicant bears the burden of proving the historic natural depletion.

(13) (a) The water court shall consider the findings of fact made by the Colorado water conservation board pursuant to section 37-92-102 (6)(b) regarding a recreational in-channel diversion, which findings shall be presumptive as to such facts, subject to rebuttal by any party. In addition, the water court shall consider evidence and make affirmative findings that the recreational in-channel diversion will:

(I) Not materially impair the ability of Colorado to fully develop and place to consumptive beneficial use its compact entitlements;

(II) Promote maximum utilization of waters of the state;

(III) Include only that reach of stream that is appropriate for the intended use;

(IV) Be accessible to the public for the recreational in-channel use proposed; and

(V) Not cause material injury to instream flow water rights appropriated pursuant to section 37-92-102 (3) and (4).

(b) In determining whether the intended recreation experience is reasonable and the claimed amount is the appropriate flow for any period, the water court shall consider all of the factors that bear on the reasonableness of the claim, including the flow needed to accomplish the claimed recreational use, benefits to the community, the intent of the appropriator, stream size and characteristics, and total streamflow available at the control structures during the period or any subperiods for which the application is made.

(c) If a water court determines that a proposed recreational in-channel diversion would materially impair the ability of Colorado to fully develop and place to consumptive beneficial use its compact entitlements, the court shall deny the application.

(d) In addition to determining the minimum amount of stream flow to serve the applicant's intended and specified reasonable recreation experience, the water court shall make a finding in the decree as to the flow rate below which there is no longer any beneficial use of the water at the control structures for the decreed purposes.

(e) If the other elements of the appropriation are satisfied, the decree shall specify the total volume of water represented by the flow rates decreed for the recreational in-channel diversion. For purposes of this subsection (13), the "total volume of water represented by the flow rates decreed for the recreational in-channel diversion" means the sum of the flow rates claimed in cubic feet per second for each day on which a claim is made multiplied by 1.98.

(f) If the court determines that the total volume of water represented by the flow rates decreed for the recreational in-channel diversion exceeds fifty percent of the sum of the total average historical volume of water for the stream segment where the recreational in-channel diversion is located for each day on which a claim is made, the decree shall:

(I) Specify that the state engineer shall not administer a call for the recreational in-channel diversion unless the call would result in at least eighty-five percent of the decreed flow rate for the applicable time period;

(II) Limit the recreational in-channel diversion to no more than three time periods; and

(III) Specify that each time period is limited to one flow rate.

(14) No decree shall be entered adjudicating a change of conditional water rights to a recreational in-channel diversion.

(15) Water rights for recreational in-channel diversions, when held by a municipality or others, shall not constitute a use of water for domestic purposes as described in section 6 of article XVI of the state constitution.

(16) In the case of an application for recreational in-channel diversions filed by a county, municipality, city and county, water district, water and sanitation district, water conservation district, or water conservancy district filed on or after January 1, 2001, the applicant shall retain its original priority date for such a right, but shall submit a copy of the application to the Colorado water conservation board for review and recommendation as provided in section 37-92-102 (6). The board's recommendation shall become a part of the record to be considered by the water court as provided in subsection (13) of this section.

(17) (a) Applicants for approval of a rotational crop management contract shall pay the state engineer the following fees:

(I) An application fee of one thousand seven hundred thirty-four dollars;

(II) A fee of six hundred seventeen dollars that is due annually beginning one year after submittal of the application until the application has been decreed by the water judge pursuant to section 37-92-308 (4); and

(III) An annual fee of three hundred dollars per year after the application has been decreed.

(b) The state engineer shall transmit the fees to the state treasurer, who shall deposit them in the water resources cash fund created in section 37-80-111.7 (1).

(18) In the case of an augmentation plan that includes the construction of a recharge structure, the division engineer shall provide, as part of the summary of consultation report described in section 37-92-302 (4), an analysis of potential changes in the groundwater levels downgradient of the proposed recharge structure resulting from the operation of the recharge structure, and the court and referee shall consider the division engineer's analysis.

(19) **Agricultural water protection - definitions.** (a) (I) After the state engineer's proposed rules promulgated under section 37-80-123 are reviewed and finalized pursuant to section 37-80-123 (1)(c) and after the Colorado water conservation board has finalized the criteria and guidelines developed pursuant to section 37-60-133, the owner of an absolute decreed irrigation water right in water division 1 or 2 used for agricultural purposes may apply in water court to change the use of the water right to an agricultural water protection water right. A water right decreed in water division 3, 4, 5, 6, or 7 is not eligible for a change in water right to an agricultural water protection water right. As used in this section, an "agricultural water protection water right" means a water right decreed to allow the lease, loan, or trade of up to fifty percent of the water subject to the water right.

(II) After a person has obtained a decreed agricultural water protection water right, the person may apply for substitute water supply plan approval pursuant to section 37-92-308 (12).

(b) If the owner of a decreed agricultural water protection water right obtains a substitute water supply plan pursuant to section 37-92-308 (12), the agricultural water protection water right is subject to the following conditions:

(I) The owner of a decreed agricultural water protection water right must comply with the terms of the decree governing the point of diversion where the leased, loaned, or traded water is being delivered;

(II) The owner may lease, loan, or trade up to fifty percent of the quantified historical consumptive use portion of the agricultural water protection water right;

(III) Any amount of water not being leased, loaned, or traded must continue to be used for agricultural purposes:

(A) On the property historically decreed to be served by the original absolute decreed irrigation water right; or

(B) For as long as the other portion of water is being leased, loaned, or exchanged, on another property served by the same ditch system;

(IV) The owner of the agricultural water protection water right is required to participate in one or more of the following programs:

(A) As established by the federal government, the state, a subdivision of the state, or a nonprofit organization, conservation programs that conserve the land historically served by the irrigation water right, which programs include Colorado's conservation easement program established in article 30.5 of title 38, C.R.S., the United States fish and wildlife service easement program, the Natural Resources Conservation Services easement program, the Colorado division of parks and wildlife easement program, and a county open space easement program; or

(B) An agricultural water protection program designed to assure compliance with the terms of subparagraph (III) of this paragraph (b). The program must be sponsored and operated by an eligible entity through a formal action or ordinance and in compliance with minimum criteria and guidelines established by the Colorado water conservation board pursuant to section 37-60-133. An eligible entity may enroll agricultural water protection water rights only from a water right historically decreed within the entity's geographic boundary.

(V) If the owner's participation in a conservation program pursuant to subparagraph (IV) of this paragraph (b) ceases, the owner's eligibility to transfer water subject to the agricultural water protection water right by lease, loan, or trade or to obtain a substitute water supply plan pursuant to section 37-92-308 (12) is suspended, and the water must be used only for agricultural irrigation purposes on the property historically decreed to be served by the original absolute decreed irrigation water right until the owner participates in one of the conservation programs again; and

(VI) The owner shall not lease, loan, or trade water subject to the agricultural water protection water right outside of the water division where the historical consumptive use was located.

(c) As used in this subsection (19), an "eligible entity" means an entity in water division 1 or 2 that:

(I) Has geographic boundaries that are located entirely within the water division of the water right's historical place of use and are defined in an original or amended document governing the entity; and

(II) Is a water conservation district, water conservancy district, irrigation district, ditch or reservoir company, nonprofit water provider, or municipality.

(20) **Limited applicability of *St. Jude's Co.* case - legislative declaration.** The provisions in the Colorado supreme court's decision in *St. Jude's Co. v. Roaring Fork Club, LLC,* 351 P.3d 442 (Colo. 2015), interpreting section 37-92-103 (4), do not apply to absolute and conditional water rights for which a decree was entered as of July 15, 2015. Rights which would be subject to the Colorado supreme court's interpretation of section 37-92-103 (4) in the *St. Jude's Co.* case but for this subsection (20) are valid and shall be given full force and effect. Such rights may be maintained through findings of reasonable diligence and made absolute, and augmentation plans related to such rights may be approved, in accordance with Colorado law.

Changes of such rights must be limited to changes in points of diversion made in accordance with the provisions of this section.

Source: L. 69: p. 1211, § 1. **C.R.S. 1963:** § 148-21-21. **L. 71:** p. 1324, § 2. **L. 75:** (7) added, p. 1398, § 1, effective June 20. **L. 77:** (8) added, p. 1703, § 4, effective June 19. **L. 79:** (9) added, p. 1368, § 6, effective June 22. **L. 81:** (10) added, p. 1786, § 2, effective April 24. **L. 85:** (6) amended and (11) added, p. 1168, § 8, effective July 1. **L. 89:** (3) amended, p. 1431, § 1, effective April 20; (12) added, p. 1425, § 5, effective July 15. **L. 92:** (6) amended, p. 2312, § 3, effective March 20; (4.5) added, p. 2289, § 2, effective April 16. **L. 96:** (8) amended, p. 125, § 2, effective March 25; (6) amended, p. 327, § 3, effective April 16. **L. 98:** (6)(c) added, p. 853, § 3, effective May 26. **L. 2001:** (13), (14), (15), and (16) added, p. 1189, § 3, effective June 5. **L. 2003:** (8) amended, p. 1454, § 5, effective April 30; (4.5) amended, p. 882, § 4, effective August 6. **L. 2006:** (13) amended, p. 908, § 3, effective May 11; (3) and (4) amended and (17) added, p. 1000, § 3, effective May 25. **L. 2007:** (4)(a)(V) amended and (4)(a)(VI) added, p. 44, § 1, effective March 12. **L. 2008:** (3) amended, p. 589, § 3, effective August 5. **L. 2009:** (8) amended, (HB 09-1174), ch. 69, p. 237, § 1, effective August 5. **L. 2012:** (3.5) added, (SB 12-097), ch. 54, p. 199, § 1, effective March 22; (7) amended, (SB 12-175), ch. 208, p. 890, § 165, effective July 1; (17)(b) amended, (SB 12-009), ch. 197, p. 793, § 8, effective July 1; (12)(c) added, (HB 12-1022), ch. 15, p. 38, § 2, effective August 8. **L. 2013:** (3)(c) added, (SB 13-019), ch. 242, p. 1171, § 2, effective May 18; (3.6) added, (SB 13-078), ch. 55, p. 181, § 2, effective August 7; (4)(a)(I) amended, (SB 13-074), ch. 107, p. 372, § 1, effective August 7; (6)(c) amended, (HB 13-1300), ch. 316, p. 1699, § 114, effective August 7. **L. 2015:** (3)(d) and (3)(e) added, (SB 15-183), ch. 157, p. 469, § 1, effective May 4; (18) added, (HB 15-1013), ch. 235, p. 872, § 2, effective August 5. **L. 2016:** (4)(c) and (19) added, (HB 16-1228), ch. 175, p. 600, § 3, effective August 10. **L. 2017:** (3)(c) amended, (HB 17-1233), ch. 189, p. 687, § 1, effective May 3; (20) added, (HB 17-1190), ch. 266, p. 1435, § 1, effective August 9.

Cross references: (1) For section 303(d) of the "Federal Water Pollution Control Act", see 33 U.S.C. § 1313.

(2) For the legislative declaration in the 2013 act adding subsection (3)(c), see section 1 of chapter 242, Session Laws of Colorado 2013. For the legislative declaration in the 2013 act adding subsection (3.6), see section 1 of chapter 55, Session Laws of Colorado 2013.

37-92-306. Priorities junior to prior awards - when. With respect to each division described in section 37-92-201, the priority date awarded for water rights or conditional water rights adjudged and decreed on applications for a determination of the amount and priority thereof filed in such division during each calendar year shall establish the relative priority among other water rights or conditional water rights awarded on such applications filed in that calendar year; but such water rights or conditional water rights shall be junior to all water rights or conditional water rights awarded on such applications filed in any previous calendar year and shall also be junior to all priorities awarded in decrees entered prior to June 7, 1969, or decrees entered in proceedings which were pending on such date; except that, with respect to water rights which are diverted by means of wells, the priorities for which have not been established or sought in any such decree or proceeding, if the person claiming such a water right files an application for determination of water right and priority not later than July 1, 1972, and such

application is approved and confirmed, such water right, subject to the provisions of section 37-92-305 (1), shall be given a priority date as of the date of actual appropriation and shall not be junior to other priorities by reason of the foregoing provision.

Source: L. 69: p. 1212, § 1. **C.R.S. 1963:** § 148-21-22. **L. 71:** p. 1333, § 1.

37-92-306.1. Relation back of priority date. (1) Except in the case of applications for adjudication of groundwater, notwithstanding the provisions of section 37-92-306, the filing date of an application for a water right or conditional water right involving the same source of water and derived from the same point of diversion from the same stream as a prior application for a water right or conditional water right filed in the preceding year by a different applicant may relate back to the date of filing of that prior application if:

(a) The subsequent applicant timely filed a statement of opposition to the prior application; and

(b) The subsequent application was made within sixty days of the prior application.

Source: L. 81: Entire section added, p. 1789, § 3, effective July 1.

37-92-307. Special procedures with respect to plans for augmentation. (Repealed)

Source: L. 69: p. 1212, § 1. **C.R.S. 1963:** § 148-21-23. **L. 71:** p. 1334, §§ 1, 2. **L. 74:** Entire section R&RE, p. 440, § 1, effective May 7. **L. 77:** Entire section repealed, p. 1704, § 6, effective June 19.

37-92-308. Substitute water supply plans - special procedures for review - water adjudication cash fund - legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) There are certain circumstances under which the time required to go through the water court adjudication process can be problematic for some water users. Prior to January 1, 2002, substitute water supply plans had come into common usage for a number of water users, and based on this precedent, it appears desirable to establish some additional authority for the state engineer to approve substitute water supply plans.

(b) Prior to January 1, 2002, the general assembly gave the state engineer certain authority to approve exchanges and substitute water supply plans, including substitute water supply plans involving sand and gravel mines approved pursuant to sections 37-90-137 (11) and 37-80-120 (5); exchanges pursuant to sections 37-80-120, 37-83-104, and 37-83-106, and other statutes authorizing exchanges; and water uses that are part of the Arkansas river water bank pilot program approved pursuant to article 80.5 of this title; and this section shall not apply to such plans and exchanges.

(c) (I) Prior to January 1, 2003, the general assembly gave the state engineer administrative authority to regulate wells upon promulgation of rules for a river basin or aquifer, subject to the review of the water judge as provided in section 37-92-501 (3). The general assembly hereby ratifies the amended rules governing the diversion and use of tributary groundwater in the Arkansas river basin of Colorado, as approved by the water judge for water division 2, that became effective on June 1, 1996.

(II) On and after January 1, 2003, the state engineer shall have the authority in water division 2 to promulgate and amend well administration rules pursuant to sections 37-80-104 and 37-92-501 that include the authority to approve replacement plans that allow the continuing operation of wells causing out-of-priority depletions without requiring a plan for augmentation approved by the water judge.

(III) On and after January 1, 2003, the state engineer shall not have any authority in water division 1 to approve plans for, or to otherwise allow, the operation of wells, including augmentation wells, that cause out-of-priority depletions unless the wells are operated in accordance with plans for augmentation approved by the water judge or as allowed in this section.

(2) In addition to the authority previously granted to the state engineer, listed in subsection (1) of this section, the state engineer is authorized to review and approve substitute water supply plans only under the circumstances and pursuant to the procedures set forth in this section.

(3) (a) To provide sufficient time to fully integrate certain wells into the water court adjudication process for augmentation plans, during 2003, 2004, and 2005, the state engineer may approve annual substitute water supply plans for wells operating in the South Platte river basin that have been operating pursuant to substitute water supply plans approved before 2003, or for augmentation wells, using the procedures and standards set forth in this subsection (3). After December 31, 2005, all such wells shall comply with the provisions of subsection (4) of this section in order to continue operation under a substitute water supply plan. The general assembly finds that this three-year period is a sufficient amount of time to develop augmentation plan applications for these wells, and there shall be no subsequent extensions of this deadline. Beginning January 1, 2006, groundwater diversions from all such wells shall be continuously curtailed unless the wells are included in a plan for augmentation approved by the water judge for water division 1, are included in a substitute water supply plan approved pursuant to subsection (4) of this section, or can be operated under their own priorities without augmentation.

(b) Beginning January 1, 2003, the state engineer may approve the operation of a well described in paragraph (a) of this subsection (3) under a substitute water supply plan if the following conditions are met:

(I) The well is tributary to the South Platte river, has been included in a substitute water supply plan previously approved by the state engineer or is an augmentation well, and is included in a new written request for approval of a substitute water supply plan filed with the state engineer after January 1 of each calendar year from 2003 to 2005. The written request shall be signed by a person with legal authority to represent all of the owners of the wells subject to the request and shall contain acknowledgments that the operation of all wells in the substitute water supply plan pursuant to this subsection (3) shall cease no later than December 31, 2005, and that the wells shall be included in an application for approval of a plan for augmentation filed in the district court for water division 1 no later than December 31, 2005, in order to continue subsequent pumping, unless the wells can be operated under their own priorities without augmentation. The request shall also identify for each well, including any augmentation wells: The permit number and location; the projected use and volume of pumping; for all wells using the modified Blaney-Criddle method to determine consumptive use, the projected number of acres and crops to be irrigated; the anticipated stream depletions that affect the river after

October 31, 2002, until eighteen months after the date of the request in time, location, and amount, including a detailed description of how such depletions were calculated, and shall list the identity, priority, location, and amount of all replacement water sources to be used to replace stream depletions, including both accretions and depletions attributable to any augmentation wells. Upon the request of any party who has subscribed to the substitute water supply plan notification list for water division 1, the applicant for a substitute water supply plan shall also provide the model used to calculate stream depletions and the assumptions, input data, and output data used by the applicant in such model.

(II) The applicant has provided written notice of the request for approval of the substitute water supply plan by first-class mail or electronic mail to all parties who have subscribed to the substitute water supply plan notification list for water division 1, and proof of such notice is filed with the state engineer. The applicant shall also provide a complete copy of the request and all accompanying information by e-mail to all parties that have provided e-mail addresses for said notification list.

(III) The state engineer has given the owners of water rights and decreed conditional water rights thirty-five days after the date of mailing of such notice to file comments on the substitute water supply plan. Such comments shall include any claim of injury, any terms and conditions that should be imposed upon the plan to prevent injury to a party's water rights or decreed conditional water rights, and any other information the opposer wishes the state engineer to consider in reviewing the substitute water supply plan request.

(IV) The state engineer, after consideration of the comments, has determined that the operation and administration of such plan will replace all out-of-priority stream depletions in time, location, and amount in a manner that will prevent injury to other water rights and decreed conditional water rights, including water quality and continuity to meet the requirements of use to which the senior appropriation has normally been put pursuant to section 37-80-120 (3), and will not impair compliance with the South Platte river compact. The state engineer shall impose such terms and conditions as are necessary to ensure that these standards are met. In making the determinations specified in this subparagraph (IV), the state engineer shall hold a public hearing to address the issues. The public hearing shall be held no sooner than thirty-five days and no later than forty-nine days after the date of mailing of notice of the request for approval of the substitute water supply plan. Notice of the time and place of the hearing shall be provided no later than twenty-one days prior to the hearing to all parties who have subscribed to the substitute water supply plan notification list for water division 1. At the hearing, every party shall be allotted a reasonable amount of time by the state engineer to present its case or defense by oral and documentary evidence and to conduct cross examination. At its own expense, any party may cause the hearing to be recorded by a court reporter or by an electronic recording device. Additionally, in making the determinations specified in this subparagraph (IV), the state engineer shall use the standards listed in paragraph (c) of this subsection (3) for evaluating such plans. It is the legislative intent that the adoption of these standards is only an interim compromise, to give greater certainty to senior surface water users in Colorado than past practices of the state engineer have given, until augmentation plans for these wells have been approved by the water judge for water division 1 and final determinations about the methodologies for calculating the amount and timing of stream depletions have been made by the water judge. These interim standards shall not create any presumptions, shift the burden of proof, or serve as a defense in any application for approval of a plan for augmentation.

(c) (I) For those irrigation wells where diversions are actually measured using water meters or verified power conversion measurements, the presumed amount of consumptive use from wells used for flood irrigation shall not be less than fifty percent of diversions, and the presumed amount of consumptive use from wells used for sprinkler irrigation shall not be less than seventy-five percent of diversions. For those irrigation wells where diversions are not actually measured, the state engineer shall determine the amount of stream depletions using actual data for the crops grown, acres irrigated, surface water deliveries, and the modified Blaney-Criddle method.

(II) The state engineer shall determine the timing of all stream depletions caused by pumping wells included in the plan using the United States geological survey stream depletion factor method for all areas covered by such factors. In other areas, the state engineer shall use appropriate groundwater models or other methods acceptable to the state engineer, based on the location of the well, the rate of pumping, the use being made of the groundwater, and the aquifer characteristics.

(III) A substitute water supply plan approved pursuant to this subsection (3) shall require replacement of the following out-of-priority stream depletions that result from the pumping of wells in the plan: Out-of-priority stream depletions that affect the river after October 31, 2002, from pumping that took place after January 1, 1974, but before the date of the request; and those out-of-priority stream depletions that will affect the river for the eighteen months after the date of the request; except that out-of-priority stream depletions affecting the river from November 1, 2002, through June 15, 2003, may be remedied pursuant to agreements with all injured parties that are noticed in the request and approved as a part of the substitute water supply plan or an amendment thereto. The amount of such depletions shall be separately set forth in any plan approval issued by the state engineer. A substitute water supply plan approved pursuant to this subsection (3) shall require that the state engineer curtail all diversions, the out-of-priority depletions from which are not replaced as required by the plan.

(IV) Existing surface water rights may be used as a replacement water source in plans requested pursuant to this subsection (3), even if such rights have not been decreed for such use, but the substitute water supply plan shall prevent expanded use of such rights by imposing appropriate limitations, including, where appropriate, volumetric limitations on direct flow rights and shall require replacement of the historical return flows, including ditch seepage losses, from the use of such surface water rights in the time, location, and amount in which they occurred so that other water rights will not be injured. A request seeking to use existing surface water rights that have not been decreed for augmentation use shall include a calculation of the historical diversions and return flows, including estimated ditch seepage losses, attributable to such rights. The presumed amount of on-farm consumptive use from irrigation water rights shall not be more than fifty percent of the amount delivered to the farms; except that if a water court application has been filed and the proposed change of water right is approved as a separate substitute water supply plan pursuant to this section, such water rights shall be used in accordance with their own substitute water supply plan.

(V) Replacement water deliveries required by the substitute water supply plan shall be provided at the time and location necessary to satisfy the lawful requirements of a senior diverter. In determining the adequacy of the substitute water supply plan to prevent injury to water rights and decreed conditional water rights, the state engineer shall determine the amount

of replacement water required for and available to the plan based upon current and projected hydrologic conditions.

(VI) If a substitute water supply plan covers wells, including augmentation wells, that are also covered by a decreed plan for augmentation or a separate substitute water supply plan, the accounting methodologies required by the decree or the separate plan shall control.

(VII) Substitute water supply plans that include or allow the use of augmentation wells shall include the terms and conditions needed to account for and replace all out-of-priority stream depletions that will result from their use, including post-pumping depletions. Beginning January 1, 2006, groundwater diversions from all such augmentation wells shall be continuously curtailed unless the wells are included in a plan for augmentation approved by the water judge for water division 1, a substitute water supply plan approved pursuant to subsection (4) of this section, or can be operated under their own priorities without augmentation.

(VIII) If amendments, including but not limited to the addition of more wells or the addition of different replacement water sources, are proposed to a substitute water supply plan after the initial written notice of the plan was given, the notice, comment, and hearing process described in this paragraph (c) shall be repeated for such amendments. If, in the opinion of the state engineer, an amendment is necessary to prevent immediate injury to other water rights that will occur prior to the expiration of the thirty-five-day comment period provided in subparagraph (III) of paragraph (b) of this subsection (3), the thirty-five-day comment period shall be shortened to fourteen days, the public hearing shall be held no later than twenty-eight days after the date of the mailing of notice of the request for the amendment, and the amendment may be implemented before the comment deadline and the public hearing. For amendments implemented prior to a public hearing, the state engineer shall issue a decision approving or denying the amendment no later than seven days after the conclusion of the public hearing. The state engineer may revoke or further condition the approval of any amendment after the comment and hearing process.

(IX) A substitute water supply plan approved pursuant to this subsection (3) shall include a requirement for monthly accounting to be compiled for every month of each year. Such accounting shall state the amount and location of the calculated depletions from all wells included in the plan, the amount, location, and source of all replacement water actually provided, and shall describe any other plan operations for that month. After the end of the water year, and no later than December 31 of each calendar year of plan operation, an annual accounting of all actual plan operations for the previous water year shall be compiled. Copies of both the monthly and annual accounting shall be provided to all parties that filed written comments concerning the plan pursuant to subparagraph (II) of paragraph (b) of this subsection (3).

(d) A substitute water supply plan approved pursuant to this subsection (3) shall not be approved for a period of more than one year; except that an applicant may request the renewal of a plan by repeating the application process described in this subsection (3); except that in no case shall a plan approved pursuant to this subsection (3) be renewed beyond December 31, 2005.

(e) When the state engineer approves or denies a substitute water supply plan, the state engineer shall serve a copy of the decision on all parties to the application by first-class mail or, if such parties have so elected, by electronic mail. Every decision of the state engineer shall provide a detailed statement of the basis and rationale for the decision, including a complete explanation of how all stream depletions were calculated, the location where they occur, how all replacement water sources were quantified, and what terms and conditions were imposed to

prevent injury to other water rights and why they were imposed. The decision shall also include a description of the consideration given to any written comments that were filed by other parties. Neither the approval nor the denial by the state engineer shall create any presumptions, shift the burden of proof, or serve as a defense in any legal action that may be initiated concerning the substitute water supply plan. Any appeal of a decision made by the state engineer concerning a substitute water supply plan pursuant to this subsection (3) shall be made to the water judge in water division 1 within thirty-five days after the date of service of the decision. The water judge shall hear and determine such appeal using the procedures and standards set forth in sections 37-92-304 and 37-92-305 for determination of matters rereferred to the water judge by the referee. The proponent of the substitute water supply plan shall be deemed to be the applicant for purposes of application of such procedures and standards. The filing fee for the appeal shall be two hundred seventy-one dollars for the proponent of the substitute water supply plan and seventy dollars for any other party to the appeal. Moneys from such fee shall be transmitted to the state treasurer and deposited in the water adjudication cash fund, which fund is hereby created in the state treasury. The general assembly shall appropriate moneys in the fund for the judicial department's adjudications pursuant to this subsection (3).

(f) The state engineer may accept for filing and consideration a written request for approval of a substitute water supply plan prior to April 30, 2003, subject to such request meeting all requirements of this subsection (3) prior to the date of approval. No approval of such request may be issued prior to April 30, 2003.

(g) Repealed.

(4) (a) Beginning January 1, 2002, if an application for approval of a plan for augmentation, rotational crop management contract, or change of water right has been filed with a water court and the court has not issued a decree, the state engineer may approve the temporary operation of such plan, contract, or change of water right as a substitute water supply plan if the following conditions are met:

(I) The water court applicant has filed a request for approval of the substitute water supply plan with the state engineer;

(II) The applicant has provided written notice of the request for approval of the substitute water supply plan by first-class mail or electronic mail to all parties who have filed a statement of opposition to the plan in water court and proof of such notice is filed with the state engineer, or, if the deadline for filing a statement of opposition has not passed, the applicant has provided written notice of the request for approval of the substitute water supply plan by first-class mail or electronic mail to all parties who have subscribed to the substitute water supply plan notification list for the water division in which the proposed plan is located and proof of such notice is filed with the state engineer;

(III) The state engineer has given those to whom notice was provided thirty-five days after the date of mailing of the notice to file comments on the substitute water supply plan. The comments must include any claim of injury, any terms and conditions that should be imposed upon the plan to prevent injury to an opposer's water rights or decreed conditional water rights, and any other information an opposer wishes the state engineer to consider in reviewing the substitute water supply plan request.

(IV) (A) The state engineer, after consideration of the comments received, has determined that the operation and administration of such plan will replace all out-of-priority depletions in time, location, and amount and will otherwise prevent injury to other water rights

and decreed conditional water rights, including water quality and continuity to meet the requirements of use to which the senior appropriation has normally been put, pursuant to section 37-80-120 (3), and will not impair compliance with any interstate compacts.

(B) Notwithstanding any limitations regarding phreatophytes or impermeable surfaces that would otherwise apply pursuant to section 37-92-103 (9) or 37-92-501 (4)(b)(III), for any precipitation harvesting pilot project selected pursuant to section 37-60-115 (6) that has filed an application for a permanent augmentation plan in water court, the applicant shall fully augment any precipitation captured out of priority; except that, in determining the quantity of water required for the substitute water supply plan to replace out-of-priority stream depletions, there is no requirement to replace the amount of historic natural depletion to the waters of the state, if any, caused by preexisting natural vegetative cover evapotranspiration for the surface areas made impermeable and associated with the pilot project. The applicant may use applicable regional factors established pursuant to section 37-60-115 (6)(b)(VI). As a condition of approving a substitute water supply plan for a pilot project pursuant to this subsection (4), the state engineer shall have the authority to require the project sponsor to replace any ongoing delayed depletions after the water use plan associated with a precipitation harvesting pilot project has ceased.

(C) The state engineer shall impose such terms and conditions as are necessary to ensure that these standards are met. In making such determinations, the state engineer shall not be required to hold any formal hearings or conduct any other formal proceedings, but may conduct a hearing or formal proceeding if the state engineer finds it necessary to address the issues.

(b) A substitute water supply plan approved pursuant to this subsection (4) shall not be approved for a period of more than one year; except that an applicant may request the renewal of a plan by repeating the application process described in this subsection (4). If an applicant requests a renewal of a plan that would extend the plan past three years from the initial date of approval, the applicant shall demonstrate to the state engineer that the delay in obtaining a water court decree is justifiable and that not being able to continue operating under a substitute water supply plan until a decree is entered will cause undue hardship to the applicant. A project sponsor for a precipitation harvesting pilot project selected pursuant to section 37-60-115 (6) shall demonstrate to the state engineer that an additional year of operation under the plan is necessary to obtain sufficient data to meet the Colorado water conservation board's criteria for evaluating the pilot project. If an applicant requests renewal of a plan that would extend the plan past five years from the initial date of approval, the applicant shall demonstrate to the water judge in the applicable water division that the delay in obtaining a decree has been justifiable and that not being able to continue operating under a substitute water supply plan until a decree is entered will cause undue hardship to the applicant. Approval of a plan pursuant to subsection (5) of this section shall be deemed to be approval under this subsection (4) for purposes of calculating the number of years since the initial date of approval.

(c) When the state engineer approves or denies a substitute water supply plan, the state engineer shall serve a copy of the decision on all parties to the pending water court application by electronic mail, or, if a party has elected, by first-class mail. Neither the approval nor the denial by the state engineer shall create any presumptions, shift the burden of proof, or serve as a defense in the pending water court case or any other legal action that may be initiated concerning the substitute water supply plan. Any appeal of a decision made by the state engineer concerning a substitute water supply plan pursuant to this subsection (4) shall be to the water judge of the

applicable water division within thirty days and shall be consolidated with the application for approval of the plan for augmentation.

(5) (a) Beginning January 1, 2002, for new water use plans involving out-of-priority diversions or a change of water right, if no application for approval of a plan for augmentation or a change of water right has been filed with a water court and the water use plan or change proposed and the depletions associated with such water use plan or change will be for a limited duration not to exceed five years, except as otherwise provided in subparagraph (II) of paragraph (b) of this subsection (5), the state engineer may approve such plan or change as a substitute water supply plan if the following conditions are met:

(I) The applicant has filed a request for approval of the substitute water supply plan with the state engineer;

(II) The applicant has provided written notice of the request for approval of the substitute water supply plan by first-class mail or electronic mail to all parties who have subscribed to the substitute water supply plan notification list for the water division in which the proposed plan is located and proof of such notice is filed with the state engineer;

(III) The state engineer has given the owners of water rights and decreed conditional water rights thirty-five days after the date of mailing of such notice to file comments on the substitute water supply plan. Such comments shall include any claim of injury or any terms and conditions that should be imposed upon the plan to prevent injury to a party's water rights or decreed conditional water rights and any other information the opposer wishes the state engineer to consider in reviewing the substitute water supply plan request.

(IV) (A) The state engineer, after consideration of the comments received, has determined that the operation and administration of such plan will replace all out-of-priority depletions in time, location, and amount and will otherwise prevent injury to other water rights and decreed conditional water rights, including water quality and continuity to meet the requirements of use to which the senior appropriation has normally been put, pursuant to section 37-80-120 (3), and will not impair compliance with any interstate compacts.

(B) Notwithstanding any limitations regarding phreatophytes or impermeable surfaces that would otherwise apply pursuant to section 37-92-103 (9) or 37-92-501 (4)(b)(III), for any precipitation harvesting pilot project selected pursuant to section 37-60-115 (6), the applicant shall fully augment any precipitation captured out of priority; except that, in determining the quantity of water required for the substitute water supply plan to replace out-of-priority stream depletions, there is no requirement to replace the amount of historic natural depletion to the waters of the state, if any, caused by preexisting natural vegetative cover evapotranspiration for the surface areas made impermeable and associated with the pilot project. The applicant may use applicable regional factors established pursuant to section 37-60-115 (6)(b)(VI).

(C) The state engineer shall impose such terms and conditions as are necessary to ensure that these standards are met. In making the determinations specified in this subparagraph (IV), the state engineer shall not be required to hold any formal hearings or conduct any other formal proceedings, but may conduct a hearing or formal proceeding if the state engineer finds it necessary to address the issues.

(b) (I) Except as otherwise provided in subparagraph (II) of this paragraph (b), a substitute water supply plan approved pursuant to this subsection (5) shall not be approved for a period of more than one year; except that an applicant may request the renewal of a plan by repeating the application process described in this subsection (5). However, in no event shall any

plan approved pursuant to this subsection (5) or any water use included in such plan be approved or renewed for more than five years.

(II) A project sponsor for a precipitation harvesting pilot project selected pursuant to section 37-60-115 (6) may request renewal of a plan that would extend the plan past five years from the initial date of approval if the project sponsor demonstrates to the state engineer that an additional year of operation under the plan is necessary to obtain sufficient data to meet the Colorado water conservation board's criteria for evaluating the pilot project or an application for a permanent augmentation plan is pending before the water court. As a condition of approving a substitute water supply plan for a pilot project pursuant to this subsection (5), the state engineer shall have the authority to require the project sponsor to replace any ongoing delayed depletions after the water use plan associated with a precipitation harvesting pilot project has ceased.

(c) When the state engineer approves or denies a substitute water supply plan, the state engineer shall serve a copy of the decision on all parties to the application by electronic mail, or if a party has elected, by first-class mail. Neither the approval nor the denial by the state engineer shall create any presumptions, shift the burden of proof, or serve as a defense in any legal action that may be initiated concerning the substitute water supply plan. Any appeal of a decision made by the state engineer concerning a substitute water supply plan pursuant to this subsection (5) shall be made to the water judge in the applicable water division within thirty days, who shall hear such appeal on an expedited basis.

(6) The state engineer shall establish a substitute water supply plan notification list for each water division for the purposes of notifying interested parties pursuant to subparagraph (II) of paragraph (b) of subsection (3) of this section and subparagraph (II) of paragraph (a) of subsection (5) of this section. Beginning in July 2002, and in January of each year thereafter, in order to establish the notification list, the water clerks in each division shall include in the water court resume an invitation to be included on the notification list for the applicable water division. Persons on the substitute water supply plan notification list shall receive notice of all substitute water supply plans filed in that water division pursuant to subsections (3) and (5) of this section by electronic mail or, if a person has elected, by first-class mail. Persons may be required to pay a fee, not to exceed twelve dollars per year, to be placed on the notification list.

(7) Beginning January 1, 2002, the state engineer may approve a substitute water supply plan if the state engineer determines such plan is needed to address an emergency situation and that the plan will not cause injury to the vested water rights or decreed conditional water rights of others or impair compliance with any interstate compact. Such plan shall not be implemented for more than ninety-one days. For purposes of this section, "emergency situation" means a situation affecting public health or safety where a substitute water supply plan needs to be implemented more quickly than the other procedures set forth in this section allow. For 2003, an "emergency situation" may also mean an immediate need for the use of augmentation wells necessitated by extreme drought conditions if such augmentation wells are also included in a request filed previously, or filed simultaneously with a request under this subsection (7), for approval of a substitute water supply plan under subsection (3) or (4) of this section. Approval pursuant to this section of the use of augmentation wells shall include the terms and conditions needed to account for and replace all out-of-priority stream depletions that will result from such use, including post-pumping depletions. Within seven days after the date of approval of the use of an augmentation well under this subsection (7), the state engineer shall give notice of the approval to all parties who have subscribed to the substitute water supply plan notification list

for water division 1. In all other situations, notice to other water users shall not be required. Neither the approval nor the denial by the state engineer shall create any presumptions, shift the burden of proof, or be a defense in any legal action that may be initiated concerning an emergency substitute water supply plan or in any proceedings under subsection (3) or (4) of this section.

(8) After July 1, 2002, water users requesting approval of a new plan or a substitute water supply plan pursuant to this section shall pay a fee of three hundred dollars. The state engineer shall collect the fees and transmit them to the state treasurer, who shall deposit them in the water resources cash fund created in section 37-80-111.7 (1).

(9) If an entity pays for repairs, maintenance, dredging, or other improvements, including capital improvements, that are necessary and effective in removing a storage restriction imposed by the state engineer pursuant to section 37-87-107 on a dam or reservoir owned by a third party, such entity may apply to the state engineer pursuant to subsection (5) of this section for approval of the use of some or all of such newly unrestricted storage as a substitute water supply plan, if the entity has a written agreement concerning such use with all the owners of the dam or reservoir and the associated water rights.

(10) Repealed.

(11) (a) (I) To provide sufficient time to integrate coal bed methane wells into the water court adjudication process for augmentation plans, during 2010, 2011, and 2012 the state engineer may approve annual substitute water supply plans for such wells using the procedures and standards set forth in this subsection (11). Until July 31, 2010, coal bed methane wells may continue to operate without a substitute water supply plan if the oil and gas operator submits a request for approval of a substitute water supply plan pursuant to this subsection (11) by April 30, 2010. Beginning August 1, 2010, and ending December 31, 2012, no coal bed methane well that withdraws tributary groundwater and impacts an over-appropriated stream shall operate unless:

(A) Operation of the well is authorized pursuant to this section;

(B) The well is included in a plan for augmentation approved by a water judge; or

(C) The well is included in a substitute water supply plan approved pursuant to subsection (4) of this section.

(II) Beginning January 1, 2013, any coal bed methane well that withdraws tributary groundwater from a geologic formation in conjunction with the mining of minerals shall be continuously curtailed unless the well:

(A) Is included in a plan for augmentation approved by a water judge;

(B) Is included in a substitute water supply plan approved pursuant to subsection (4) of this section; or

(C) Can be operated in priority without augmentation.

(III) The general assembly finds that the time period established in subparagraph (II) of paragraph (b) of this subsection (11) is sufficient to develop augmentation plan applications for these wells, and there shall be no subsequent extensions of this deadline.

(b) For a substitute water supply plan pursuant to this subsection (11), the state engineer may approve the temporary operation of a coal bed methane well that withdraws tributary groundwater only if the following conditions are met:

(I) The applicant has provided written notice of the request for approval of the substitute water supply plan by first-class mail or electronic mail to all parties who have subscribed to the

substitute water supply plan notification list for the water division in which the proposed plan is located and proof of such notice is filed with the state engineer;

(II) All parties who have subscribed to the substitute water supply plan notification list for the water division in which the proposed plan is located have thirty-five days after the date of mailing of such notice to file comments on the substitute water supply plan. Such comments shall include any claim of injury, any terms and conditions that should be imposed upon the plan to prevent injury to a party's water rights or decreed conditional water rights, and any other information a party wishes the state engineer to consider in reviewing the substitute water supply plan request.

(III) The state engineer, after consideration of the comments received, has determined that the operation and administration of such plan will: Replace all out-of-priority depletions occurring on or after June 2, 2009, in time, location, and amount, including delayed out-of-priority depletions that affect the stream system after expiration of the plan; otherwise prevent injury occurring on or after June 2, 2009, to other water rights and decreed conditional water rights, including water quality and continuity to meet the requirements of use to which the senior appropriation has normally been put pursuant to section 37-80-120 (3); and not impair compliance with any interstate compacts. The state engineer shall impose such terms and conditions as are necessary to ensure that these standards are met, which may include terms and conditions that remain in effect after expiration of the plan so as to require the proponent of the plan to replace delayed out-of-priority depletions occurring on or after June 2, 2009. In making such determinations, the state engineer shall not be required to hold any formal hearings or conduct any other formal proceedings, but may conduct a hearing or formal proceeding if the state engineer finds it necessary to address the issues.

(c) A substitute water supply plan approved pursuant to this subsection (11) shall not be approved for a period of more than one year; except that an applicant may request the renewal of a plan by repeating the application process described in this subsection (11). In no case shall a plan approved pursuant to this subsection (11) be renewed beyond December 31, 2012.

(d) When the state engineer approves or denies a substitute water supply plan, the state engineer shall serve a copy of the decision on all parties to the substitute water supply plan notification list for the water division in which the proposed plan is located by first-class mail or by electronic mail. Every decision of the state engineer shall provide a detailed statement of how all stream depletions were calculated, the location where they occur, how all replacement water sources were quantified, and what terms and conditions were imposed to prevent injury to other water rights and why they were imposed.

(e) Neither the approval nor the denial by the state engineer shall create any presumptions, shift the burden of proof, or serve as a defense in any legal action that may be initiated concerning the substitute water supply plan. Any appeal of a decision made by the state engineer concerning a substitute water supply plan pursuant to this subsection (11) shall be to the water judge of the applicable water division within thirty-five days after the date of service of the decision. The water judge shall hear and determine such appeal on an expedited basis using the procedures and standards set forth in sections 37-92-304 and 37-92-305 for determination of matters referred to the water judge by the referee.

(12) **Agricultural water protection.** (a) After a person has obtained a decreed agricultural water protection water right pursuant to section 37-92-305 (19), which water right is

available only in water division 1 or 2, the person may apply for a substitute water supply plan pursuant to this subsection (12).

(b) (I) The state engineer may approve the lease, loan, or trade of water under a substitute water supply plan pursuant to this subsection (12) if the applicant has:

(A) Provided written notice of the request for approval of the substitute water supply plan by electronic mail or first-class mail to all parties who have subscribed to the substitute water supply plan notification list for the water division in which the proposed plan is located; and

(B) Filed proof of the notice with the state engineer.

(II) A person who receives written notice of the request for approval of a substitute water supply plan pursuant to subparagraph (I) of this paragraph (b) has thirty-five days after the date that the notice was mailed to file comments with the state engineer on the substitute water supply plan application. A party filing a comment with the state engineer must include the following in the comment:

(A) Any claim of injury;

(B) Any terms and conditions that the party believes should be imposed on the plan to prevent injury to a party's water rights or decreed conditional water rights; and

(C) Any other information the party wishes the state engineer to consider in reviewing the substitute water supply plan request.

(c) If, after consideration of the application and any comments received on the application, the state engineer approves a substitute water supply plan pursuant to this subsection (12), the approval must:

(I) Comply with conditions:

(A) Set forth in section 37-92-305 (19); and

(B) Developed by the state engineer pursuant to section 37-80-123;

(II) Comply with the terms and conditions of the applicant's decreed agricultural water protection water right, as recognized by the case number of the decree;

(III) Identify the associated water right as an agricultural water protection water right;

(IV) Quantify the portion of the historical consumptive use of the water right to be leased, loaned, or traded;

(V) Quantify the portion of the return flows associated with the historical use of the water to be leased, loaned, or traded in time, place, and amount;

(VI) Provide terms and conditions for the use of the water right, including the return flow obligations in time, place, and amount, that prevent material injury to other vested water rights and decreed conditional water rights; and

(VII) In accordance with section 37-92-305 (19)(b)(I), allow delivery of an amount of the quantified historical consumptive portion of the agricultural water protection water right. Delivery must be to a point of diversion that is subject to an existing water court decree.

(d) A substitute water supply plan approved pursuant to this subsection (12) is valid for one year. If the terms and conditions of the plan remain unchanged, the holder of the plan may renew the plan two times without reapplying by notifying the state engineer by electronic mail or first-class mail that the terms and conditions remain unchanged. To maintain the substitute water supply plan, the holder of the plan must file a new application every three years. Any change in the terms and conditions immediately nullifies the substitute water supply plan, and a new

application must be applied for and approved by the state engineer pursuant to this subsection (12).

(e) When the state engineer approves or denies a substitute water supply plan, the state engineer shall serve a copy of the decision on all parties to the application and the water court application by first-class mail or, if a party has so elected, by electronic mail.

(f) The state engineer must provide a detailed statement of the basis and rationale for the decision. For a decision approving the application, the statement of the basis and rationale must include a complete explanation of the terms and conditions imposed to prevent injury to other water rights and why they are imposed. The decision must include a description of the consideration given to any written comments that were filed by other parties.

(g) Neither the state engineer's approval nor denial of an application creates any presumptions, shifts the burden of proof, or serves as a defense in any legal action that may be initiated concerning the substitute water supply plan.

(h) Any appeal of a decision made by the state engineer concerning a substitute water supply plan approved or denied pursuant to this subsection (12) must be made within thirty-five days after the date of service of the decision. Any appeal must be filed under the same case number as the decreed agricultural water protection water right and shall be heard using the procedures and standards set forth in sections 37-92-304 and 37-92-305 for determination of the matters referred to the water judge by the referee. The water judge shall hear and determine any appeal on an expedited basis.

Source: L. 2002: Entire section added, p. 459, § 1, effective May 23. **L. 2003:** IP(4)(a), (4)(a)(II), (4)(a)(III), (4)(a)(IV), (4)(b), IP(5)(a), (5)(a)(IV), and (5)(b) amended and (9) added, p. 1368, § 5, effective April 25; (1)(c), (2), (3), (6), and (7) amended, p. 1446, § 1, effective April 30; (1)(b) amended, p. 2002, § 64, effective May 22. **L. 2004:** (3)(a) amended, p. 1205, § 80, effective August 4. **L. 2006:** IP(4)(a) amended, p. 1002, § 4, effective May 25. **L. 2008:** (3)(g) repealed, p. 1913, § 128, effective August 5. **L. 2009:** (10) added, (SB 09-147), ch. 108, p. 449, § 1, effective April 9; (4)(a)(IV), (4)(b), IP(5)(a), and (5)(b) amended, (HB 09-1129), ch. 389, p. 2104, § 2, effective June 2; (11) added, (HB 09-1303), ch. 390, p. 2110, § 6, effective June 2. **L. 2010:** IP(11)(a)(I) amended, (SB 10-165), ch. 31, p. 113, § 3, effective March 22. **L. 2012:** (3)(b)(III), (3)(b)(IV), (3)(c)(VIII), (3)(e), (5)(a)(III), (7), (10)(d), (11)(b)(II), and (11)(e) amended, (SB 12-175), ch. 208, p. 890, § 166, effective July 1; (8) amended, (SB 12-009), ch. 197, p. 793, § 9, effective July 1. **L. 2014:** (4)(c), (5)(c), (6), and (10)(d) amended, (SB 14-026), ch. 4, p. 83, § 3, effective August 6. **L. 2015:** (4)(a)(IV) and (5)(a)(IV) amended, (HB 15-1016), ch. 236, p. 876, § 2, effective August 5. **L. 2016:** (12) added, (HB 16-1228), ch. 175, p. 602, § 4, effective August 10. **L. 2017:** (4)(a)(III) amended, (SB 17-026), ch. 47, p. 147, § 16, effective August 9.

Editor's note: (1) Section 4 of chapter 236 (HB 15-1016), Session Laws of Colorado 2015, provides that changes to this section by the act apply to precipitation harvesting pilot project applications submitted before, on, or after August 5, 2015.

(2) Subsection (10)(f)(I) provided for the repeal of subsection (10), effective July 1, 2018. (See L. 2009, p. 449.)

37-92-309. Interruptible water supply agreements - special review procedures - rules - water adjudication cash fund - legislative declaration - definitions. (1) The general assembly hereby finds, determines, and declares that there are certain circumstances under which administrative approval of the use of interruptible water supply agreements can maximize the beneficial use of Colorado water resources without the need for an adjudication and without injury to vested water rights or decreed conditional water rights. This section is intended to enable water users to transfer the historical consumptive use of an absolute water right for application to another type or place of use on a temporary basis without permanently changing the water right.

(2) For purposes of this section:

(a) "Interruptible water supply agreement" means an option agreement between two or more water right owners whereby:

(I) The owner of the loaned water right agrees that, during the term of the agreement, it will stop its use of the loaned water right for a specified length of time if the option is exercised by the borrowing water right owner in accordance with the agreement; and

(II) The borrowing water right owner may divert the loaned water right for such owner's purposes, subject to the priority system and subject to temporary approval by the state engineer in accordance with this section.

(b) "Loaned water right" means any identified water right, or identified portion of a water right, specifically described in the interruptible water supply agreement.

(3) The state engineer is authorized to approve and administer interruptible water supply agreements that permit a temporary change in the point of diversion, location of use, and type of use of an absolute water right without the need for an adjudication pursuant to this article, subject to the following:

(a) The applicant for approval of an interruptible water supply agreement shall provide written notice of the application by first-class mail or electronic mail to all parties who have subscribed to the substitute water supply plan notification list, as described in section 37-92-308 (6), for the division or divisions in which the water right is located and in which it will be used, and proof of such notice shall be filed with the state engineer. The application shall be accompanied by a detailed written report, prepared by a professional engineer or other professional acceptable to the state engineer, that evaluates the historical consumptive use, return flows, and the potential for material injury to other water rights relating to the interruptible water supply agreement and that proposes conditions to prevent such injury. The state engineer shall give the owners of water rights thirty-five days after the date of mailing of such notice to file comments on the operation of the interruptible water supply agreement. Such comments shall include any claim of injury or any terms and conditions that should be imposed upon the agreement so that it will not cause injury to a party's water rights or decreed conditional water rights, if such conditional rights will be exercised during operation of the interruptible water supply agreement, and any other information the party wishes the state engineer to consider in reviewing the application.

(b) The state engineer, after consideration of the comments from any party submitting comments, shall make a determination of the operation and administration of the interruptible water supply agreement to assure that such operation and administration will effect only a temporary change in the historical consumptive use of the water right in a manner that will not cause injury to other water rights and decreed conditional water rights, if such conditional rights

will be exercised during operation of the interruptible water supply agreement, and will not impair compliance with any interstate compact. The interruptible water supply agreement shall include, but shall not be limited to, a quantification of the historical consumptive use of the water right, an accurate description of the land where the water is decreed for use, and, if the loaned water right is being used for irrigation, a plan to prevent erosion and blowing soils and a description of compliance with local county noxious weed regulations and other land use provisions. The state engineer shall impose such terms and conditions as are necessary to ensure that these standards are met. In making the determinations specified in this paragraph (b), the state engineer shall not be required to hold any formal hearing or conduct any other formal proceedings, but may conduct a hearing or formal proceeding if the state engineer finds it necessary to address the issues.

(c) An interruptible water supply agreement approved pursuant to this section cannot be exercised for more than three years in a ten-year period, for which only a single approval is required. The ten-year period begins with the granting of the approval. A water right subject to the agreement under this section cannot use section 37-92-308 (5). The state engineer shall not approve an interruptible water supply agreement pursuant to this subsection (3) for another ten-year period, except:

(I) If the agreement has not been exercised during the term of the agreement, an applicant may reapply one time by repeating the application process pursuant to this subsection (3); and

(II) As specified in subsection (6) of this section.

(d) The applicant shall give notice by March 1 of any year that the option is to be exercised to all parties who filed comments with the state engineer pursuant to this section, unless earlier required in the agreement; except that the option may be exercised at any time during 2003.

(4) (a) When the state engineer approves or denies an interruptible water supply agreement, the state engineer shall serve a copy of the decision upon all parties to the application by electronic mail or, if a party has elected, by first-class mail. Neither the approval nor the denial of the agreement by the state engineer creates any presumptions, shifts the burden of proof, or serves as a defense in any legal action that may be initiated concerning the interruptible water supply agreement. Any appeal of a decision made by the state engineer concerning the operation of an interruptible water supply agreement pursuant to this section must be expedited, limited to the issue of injury, and made within thirty-five days after mailing of the decision to the water judge in the applicable water division. All parties to the appeal shall pay to the water clerk a fee to cover the direct costs associated with the expedited appeal. The water judge shall hear and determine the appeal using the procedures and standards set forth in sections 37-92-304 and 37-92-305 for determination of matters rereferred to the water judge by the referee; except that the water judge shall not deem any failure to appeal all or any part of the decision of the state engineer or failure to state any grounds for appeal to preclude any party from raising any claims of injury in a future proceeding before the water judge. The proponent of the interruptible water supply agreement is deemed to be the applicant for purposes of application of such procedures and standards. Moneys from the fee shall be transmitted to the state treasurer and deposited in the water adjudication cash fund, which fund is hereby created in the state treasury. The general assembly shall appropriate moneys in the fund for the judicial department's expedited adjudications pursuant to this section.

(b) A party to the original application may file comments concerning potential injury to such party's water rights or decreed conditional water rights due to the operation of the interruptible water supply agreement with the state engineer by January 1 of the year following the first year that the interruptible water supply agreement has been exercised. The procedures of subsection (3) of this section regarding notice, opportunity to comment, and the state engineer's decision, and the procedures of this subsection (4) regarding an appeal of such decision, shall again be followed with regard to such party's comments.

(5) Applicants for approval of an interruptible water supply agreement pursuant to this section shall pay a fee established by the state engineer, pursuant to rules promulgated by the state engineer. The state engineer shall collect the fees and transmit them to the state treasurer, who shall deposit them in the water resources cash fund created in section 37-80-111.7 (1).

(6) (a) (I) All of the substantive and procedural requirements of subsections (2) to (5) of this section apply to a subsequent approval of an interruptible water supply agreement except as specifically provided otherwise in this subsection (6).

(II) This subsection (6) applies only to a subsequent approval of an interruptible water supply agreement.

(b) A person may apply for no more than two subsequent approvals of the same interruptible water supply agreement.

(c) An applicant for subsequent approval of an interruptible water supply agreement must:

(I) Submit to the water clerk in each water division in which a loaned water right is located a resume of the application for approval of an interruptible water supply agreement submitted to the state engineer, and the water clerk shall publish the resumes in the manner set forth in section 37-92-302 (3)(a) and (3)(b), notwithstanding the fact that the applications were filed with the state engineer;

(II) File proof of the submission of the resume to the water clerk with the state engineer not later than ten days after the submission; and

(III) File proof of the notice to all parties who have subscribed to the substitute water supply plan notification list, as described in section 37-92-308 (6), with the state engineer within ten days after providing the notice.

(d) Owners of water rights have until the last day of the fourth month following the month in which the resume was submitted to the water clerk to file comments on the operation of the interruptible water supply agreement.

(e) The state engineer shall not approve an application for subsequent approval that would transfer or facilitate the transfer of water across the continental divide by direct diversion, exchange, or otherwise.

(f) The state engineer may approve a subsequent application for interruptible water supply agreement under this subsection (6) only:

(I) After making a determination of the operation and administration of the interruptible water supply agreement to assure that such operation and administration will not permit a borrowing water right user to rely on the exercise of multiple interruptible water supply agreements as its primary source of supply;

(II) If the terms and conditions imposed pursuant to paragraph (b) of subsection (3) of this section are no less restrictive than those imposed upon previously approved applications;

(III) If the agreement does not include a loaned water right that has already been approved as a loaned water right in a separate, unexpired interruptible water supply agreement; and

(IV) If the loaned water right subject to the agreement is not subject to more than two subsequent approvals regardless of the applicant, and any such subsequent approval cannot take effect until after any prior ten-year approval period has expired.

(g) The state engineer's approval or disapproval of a subsequent application for an interruptible water supply agreement under this subsection (6) constitutes final agency action subject to appeal in the water court in the water division in which the loaned water rights are located.

(h) The water judge shall expedite an appeal of the state engineer's decision only upon the request of any party to the appeal.

(i) For purposes of determining filing fees, the applicant or commenter that initiates the appeal shall pay fees established for water court change applicants, and all others shall pay fees established for persons filing statements of opposition.

Source: L. 2003: Entire section added, p. 2400, § 1, effective June 5. **L. 2004:** (3)(c) and (4) amended, p. 1362, § 1, effective August 4. **L. 2012:** (3)(a) and (4)(a) amended, (SB 12-175), ch. 208, p. 893, § 167, effective July 1; (5) amended, (SB 12-009), ch. 197, p. 793, § 10, effective July 1. **L. 2013:** (2) and (3)(c) amended and (6) added, (HB 13-1130), ch. 415, p. 2458, § 1, effective August 7. **L. 2014:** (4)(a) amended, (SB 14-026), ch. 4, p. 84, § 4, effective August 6.

37-92-310. Colorado water rights protection act - short title - legislative declaration - limitation on actions. (1) **Short title.** The short title of this section is the "Colorado Water Rights Protection Act".

(2) **Legislative declaration.** (a) The general assembly recognizes that:

(I) Water rights appropriated under section 6 of article XVI of the Colorado constitution are usufructuary property rights to use water and are protected under amendment V of the United States constitution and section 15 of article II of the Colorado constitution;

(II) The primary economic value of a water right stems from its priority date and the amount of water that it allows the owner of the water right to divert and place to beneficial use within the priority system and in accordance with terms of the water right decree;

(III) The right to sell a water right is an essential element of the water right; and

(IV) A water right is a usufructuary property right that may exist separate and apart from any interest in land.

(b) The general assembly further recognizes that:

(I) The history between the federal government and the states in the reclamation of the arid lands of the western states is both long and involved. Throughout that history, congress has maintained a purposeful and continued deference to state water law.

(II) Pursuant to 43 U.S.C. sec. 666, commonly known as the "McCarran Amendment", congress waived the sovereign immunity of the United States for lawsuits in state courts regarding the adjudication or administration of water rights; and

(III) In Colorado, water rights are established by making an appropriation and are confirmed by state water courts.

(c) Therefore, pursuant to federal and Colorado law, the general assembly determines and declares that:

(I) The United States forest service and the bureau of land management are subject to the jurisdiction of Colorado water courts for their water right claims in Colorado; and

(II) Nothing in this subsection (2) prevents the federal government from:

(A) Participating in water court proceedings in Colorado; or

(B) Seeking terms and conditions in water court to protect its water rights.

(3) **Limitation on actions.** (a) The state engineer and the division engineers shall not enforce or administer efforts by the United States forest service or bureau of land management that:

(I) Require full or partial transfer of title to water rights to the United States forest service or bureau of land management;

(II) Restrict the use or alienability of the water right as a condition to a right-of-way, special use permit, or other authorization by the United States forest service or bureau of land management to use federally owned lands; or

(III) Require a third party supplying water to a United States forest service or bureau of land management special use permittee to supply the water for a set period of time or in a set amount.

(b) Nothing in this subsection (3) impacts the state engineer's or a division engineer's authority to enforce and administer the terms and conditions of a water court decree or other judicial decree.

(4) This section does not grant, confirm, deny, or impact any legal authority of the federal government to impose bypass flow requirements in connection with a special use permit or other authorization.

(5) This section does not grant, expand, contract, or limit the legal authority of any state or local government related to permitting or regulatory actions in connection with land use or other permitting approvals or authorizations.

Source: L. 2016: Entire section added, (HB 16-1109), ch. 125, p. 355, § 1, effective August 10.

37-92-311. Industrial hemp cultivation allowed under an agricultural water right. A person with an absolute or conditional water right decreed for agricultural use may use the water subject to the agricultural water right for any product authorized for growth and cultivation by title 35.

Source: L. 2017: Entire section added, (SB 17-117), ch. 221, p. 857, § 2, effective May 21; entire section amended, (SB 17-294), ch. 264, p. 1418, § 120, effective May 25.

Cross references: For the legislative declaration in SB 17-117, see section 1 of chapter 221, Session Laws of Colorado 2017.

PART 4

PUBLICATION OF WATER RIGHTS PRIORITIES

Cross references: For the appointments and functions of water division engineers, see § 37-92-202.

37-92-401. Tabulations of priorities and decennial abandonment lists. (1) (a) The division engineer of each division with the approval of the state engineer shall maintain a tabulation in order of seniority of all decreed water rights and conditional water rights in his or her division. The tabulations must describe each water right and conditional water right by some appropriate means and must set forth the priority and amount thereof as established by court decrees. In making the tabulations, the division engineer may use such system of numbering and listing water rights and conditional water rights in order of seniority as is suited to the administrative needs of the particular division or portion thereof. He or she shall also prepare decennially, no later than July 1, 1990, and each tenth anniversary thereafter, a separate abandonment list comprising all absolute water rights that he or she has determined to have been abandoned in whole or in part and that previously have not been adjudged to have been abandoned.

(a.5) In preparing the tabulations required by this section, the division engineer shall include judgments and decrees determining, changing, or otherwise affecting water rights and conditional water rights, which judgments and decrees have been entered more than six months before the date of review. The division engineer must also include in the tabulations, as appropriate, any changes in earlier abandonment lists that the water judge or the supreme court have ordered.

(b) In determining the priority of a water right in relation to other water rights deriving their supply from the same common source, the following procedures and definitions apply:

(I) A common source means and includes all of those waters in a water division, either surface or underground, that if left in their natural state would join together to form a single natural watercourse before exiting the water division.

(II) As among water rights decreed in the same water district in the same adjudication suit, the historic date of initiation of appropriation determines the relative priorities, beginning with the earliest right.

(III) As among water rights decreed in the same water district in different adjudication suits, all water rights decreed in an adjudication suit are senior to all water rights decreed in any subsequent adjudication suit.

(IV) As among water rights decreed in the various original adjudication suits in the various water districts of the same water division, the decreed date of initiation of appropriation determines the relative priorities in numbered sequence, beginning with the earliest right.

(V) As among water rights decreed in the various supplemental adjudication suits in the various water districts of the same water division, the actual priority date of any decree in any district does not extend back further than the day following the entry of the final decree in the preceding adjudication suit in the district.

(VI) If, in the preparation of the tabulations provided for in this section, the application of the preceding principles would cause in any particular case a substantial change in the priority of a particular water right to the extent the right was lawfully enjoyed for a period of not less than eighteen years, then the division engineer shall designate the priority for that water right in accordance with historic practice. In no event does this subsection (1)(b)(VI) entitle a water right

to a priority senior to its actual date of initial appropriation or to freedom from regulation and administration in the priority system.

(c) In making his or her determinations with respect to abandonment, the division engineer shall investigate the circumstances relating to each water right for which the available water has not been fully applied to a beneficial use and shall be guided by the criteria set out in section 37-92-402 (11). The decennial abandonment list, when concluded by judgment and decree as provided in this section, is conclusive as to absolute water rights or portions thereof determined to have been abandoned.

(2) (a) The state engineer and the respective division engineer shall make a copy of the tabulation available for inspection in their offices at any time during regular office hours, as well as on the state engineer's website, and shall provide a copy of the tabulation for a fee as set forth in section 24-72-205 (5).

(b) No later than July 31, 1990, and every tenth anniversary thereafter, the division engineer shall mail a copy of the respective decennial abandonment list by certified mail, return receipt requested, to the owner or last-known owner or claimant, if known, of every absolute water right that the division engineer has found to have been abandoned in whole or in part. The division engineer shall make an appropriate examination to determine the owner or claimant of such absolute water rights. The division engineer shall also publish the respective portion of the decennial abandonment list in each county in which the points of diversion of any absolute water rights on the list are located. The publication shall be continued for four successive weeks and shall be published, if possible, in a newspaper published in the county where the decreed point of diversion of the water right is located. The publication and mailing requirements of this subsection (2)(b) apply only to absolute water rights or portions of absolute water rights that previously have not been adjudged to have been abandoned.

(3) Any person wishing to object to the manner in which a water right or conditional water right is listed in the tabulation or to the omission of a water right or conditional water right from the tabulation, and not later than July 1, 1991, and every tenth anniversary thereafter, any person wishing to object to the inclusion of any absolute water right or portion thereof in the decennial abandonment list must file a statement of objection in writing with the division engineer.

(4) (a) Not later than December 31, 1991, and every tenth anniversary thereafter, the division engineer shall make any revisions he or she deems proper to the decennial abandonment list. In considering the matters raised by statements of objection, the division engineer may consult with any interested person. The division engineer shall consult with the state engineer and shall make any revisions in the decennial abandonment list determined by the state engineer to be necessary or advisable.

(b) Repealed.

(c) The division engineer shall file the decennial abandonment list, together with any revisions, signed by the division engineer and the state engineer or his or her duly authorized deputy, with the water clerk as promptly as possible, but not later than December 31, 1991, and every tenth anniversary thereafter. Each respective division engineer, water clerk, and the state engineer shall make a copy of the decennial abandonment list, together with any revisions, available for inspection in their offices at any time during regular office hours, as well as on the state engineer's website, and the division engineer shall furnish or mail a copy to anyone

requesting a copy upon payment of a fee in an amount set in accordance with section 24-72-205 (1)(b) and (5).

(d) If the decennial abandonment list is revised, the water clerk, in cooperation with the division engineer, not later than January 31, 1992, and every tenth anniversary thereafter, shall provide notice of the revision in the resume described in section 37-92-302 (3) of cases filed in the respective water divisions during the month of December stating that the revision may be inspected or a copy thereof obtained as specified in subsection (4)(c) of this section. In addition, the water clerk shall publish the notice as is necessary to obtain general circulation once in each county or the portion of the county that is in the division.

(5) (a) Any person who wishes to protest the inclusion of any water right in a decennial abandonment list after its revision by the division engineer shall file a written protest with the water clerk and with the division engineer. All such protests to the decennial abandonment list shall be filed not later than June 30, 1992, or the respective tenth anniversary thereafter. Such protest shall set forth in detail the factual and legal basis therefor. Service of a copy of the protest or any other documents is not necessary for jurisdictional purposes, but the water judge may order service of a copy of the protest or any other document on any person and in any manner which he or she may deem appropriate. The fee for filing such protest with the water clerk shall be forty-five dollars.

(b) Fees collected pursuant to paragraph (a) of this subsection (5) shall be transmitted to the state treasurer and divided as follows:

(I) Twenty dollars shall be deposited in the general fund;

(II) Fifteen dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6), C.R.S.; and

(III) Ten dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a), C.R.S.

(6) Commencing on the September or October term-day of 1992, as provided in section 37-92-304 (1), and every tenth anniversary thereafter, and continuing for as long as may be necessary, the water judge of each division shall conduct hearings on the decennial abandonment list filed by the division engineer and any protests that have been filed with respect thereto. The hearings shall be conducted in accordance with the Colorado rules of civil procedure, the Colorado rules of evidence, and any applicable local rules of court; except that no pleadings other than the protest shall be required. The protestant shall appear either in person or by counsel in support of the protest. The division engineer shall appear in support of the decennial abandonment list, and, if requested by the division engineer, the attorney general shall represent the division engineer. The water judges of the various divisions shall arrange their hearings, if necessary in their discretion, to accommodate counsel and other persons who may be involved in hearings in more than one division. Any person who may be affected by the subject matter of a protest or by any ruling thereon shall be permitted to participate in the hearings, either in person or by counsel, upon timely entry of appearance. Such entry of appearance shall identify the portion of the decennial abandonment list with respect to which the appearance is being made. The water judge may continue the hearings as required to insure that all parties may be heard and their interests adequately protected, and, in this connection, the water judge shall permit such additional protests and order such service of notice and such additional publication of the decennial abandonment list or portions thereof as will serve the ends of justice, it being the intent of the general assembly that the water judge shall have wide discretion in the conduct of such

hearings so that the owners of water rights will be protected. After the hearings are concluded, the water judge shall enter a judgment and decree which shall either incorporate the abandonment list of the division engineer as filed or incorporate such list with such modifications and conditions as the water judge may determine proper after the hearings.

(7) If no protests have been filed, then promptly after July 1, 1992, and every tenth anniversary thereafter, the water judge shall enter a judgment and decree incorporating and confirming the decennial abandonment list of the division engineer without modification.

(8) A copy of the judgment and decree entered under subsection (6) or (7) of this section shall be filed with the state engineer and the division engineer and shall be provided by the water clerk to any other person requesting same upon payment of a fee of seventy-five cents per page. Promptly after receiving such judgment and decree, the division engineer and the state engineer shall enter in their records the determinations therein made as to the absolute water rights or portions thereof adjudged to have been abandoned and shall regulate the distribution of water accordingly.

(9) Appellate review shall be allowed to the judgment and decree entered under subsection (6) or (7) of this section or any part thereof as in other water matters, but no appellate review shall be allowed with respect to that part of such judgment or decree which confirms a portion of the decennial abandonment list with respect to which no protest was filed.

(10) Clerical mistakes in the judgment and decree entered under subsection (6) or (7) of this section may be corrected by the water judge on his own initiative or on the petition of any person, and substantive errors therein may be corrected by the water judge on the petition of any person whose rights have been adversely affected thereby and a showing satisfactory to the water judge that such person, due to mistake, inadvertence, or excusable neglect, failed to file a protest to the decennial abandonment list with the water clerk within the time specified in this section. Any such petition under this subsection (10) shall be filed with the water clerk within four years after the date of the entry of such judgment and decree. The water judge shall order such notice of any such correction proceedings as he determines to be appropriate to advise all persons who may be affected thereby. Any order of the water judge making such corrections shall be subject to appellate review as specified in subsection (9) of this section.

(11) The tabulations provided for in this part 4, and any revisions thereto, may be used by the division engineers, the state engineer, and their staffs for administrative purposes. The listing of the water rights in a tabulation shall not create any presumption against abandonment, and the relative listing of water rights in a tabulation shall not create any presumption of seniority. A tabulation shall not be construed to modify special provisions of court decrees adjudicating, changing, or otherwise affecting such water rights or to modify contractual arrangements governing the interrelationship of such water rights. For the purpose of identification and description only, the tabulation may include additional information regarding the water rights listed, but this additional information shall be neither conclusive nor presumptive of the truth or accuracy of the matters contained therein. Nothing in this section or in section 37-92-402, other than those specific provisions relating to the abandonment lists of the division engineers, shall ever be construed to have enhanced or diminished any cause of action or defense which might otherwise exist concerning the administration of water rights in any water division.

(12) Notwithstanding the amount specified for any fee in this section, the state engineer by rule or as otherwise provided by law may reduce the amount of one or more of the fees if

necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the state engineer by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

Source: L. 69: p. 1212, § 1. **C.R.S. 1963:** § 148-21-27. **L. 71:** p. 1335, § 1. **L. 73:** p. 1527, §§ 1, 2. **L. 75:** (5) amended, p. 1399, § 1, effective July 1. **L. 79:** (1)(b)(VI) amended, p. 1379, § 1, effective June 19. **L. 83:** (1)(a), (2), (3), (4)(a), (4)(c), and (4)(d) amended, (1)(a.5), (1)(c), (6) to (11) added, (5) R&RE, and (4)(b) repealed, pp. 1431, 1432, 1434, 1440, §§ 1, 2, 3, 4, 8, effective June 16. **L. 93:** (1)(a), (1)(a.5), (2)(a), (3), and (4) amended, p. 397, § 1, effective April 19. **L. 98:** (12) added, p. 1346, § 77, effective June 1. **L. 2003:** (5) amended, p. 574, § 7, effective March 18. **L. 2007:** (5) amended, p. 1539, § 32, effective May 31. **L. 2008:** (5) amended, p. 2145, § 15, effective June 4. **L. 2014:** (1)(a), (1)(a.5), (2)(a), (3), and (4)(c) amended, (SB 14-026), ch. 4, p. 81, § 2, effective August 6. **L. 2017:** (1)(b), (1)(c), (2), and (4) amended, (SB 17-026), ch. 47, p. 148, § 17, effective August 9.

Cross references: (1) For water clerk preparing resume of applications for water rights each month, see § 37-92-302 (3).

(2) For the legislative declaration contained in the 2008 act amending subsection (5), see section 1 of chapter 417, Session Laws of Colorado 2008.

37-92-402. Special procedures for the 1978 tabulation and abandonment list. (1) (a) No later than July 1, 1978, the division engineer, with the approval of the state engineer, shall prepare a new tabulation of all water rights and conditional water rights in his division. The 1978 tabulation shall reflect any changes in the 1974 tabulation previously authorized by statute which the division engineer and the state engineer determine to be advisable based on the principles set forth in section 37-92-401 (1) to reflect correctly the priority of water rights. The 1978 tabulation shall reflect judgments and decrees determining, changing, or otherwise affecting water rights and conditional water rights, which judgments and decrees have been entered subsequent to those reflected in the 1974 tabulation and prior to January 1, 1978, shall modify any water rights or conditional water rights which the division engineer determines to have been abandoned in part, and shall omit any water rights or conditional water rights which the division engineer determines have been totally abandoned. Except as specified in the preceding sentence, the tabulation pursuant to this section shall make no changes in the listings in the 1974 tabulation other than changes to correct clerical errors. The division engineer shall prepare a separate list tabulating the water rights which he determines to have been abandoned in whole or in part. In making his determination with respect to abandonment, the division engineer shall investigate the circumstances relating to each water right, the water available under which has not been fully applied to a beneficial use, and in such cases shall be guided by the criteria set forth in subsection (11) of this section. In making such 1978 tabulation, the division engineer shall apply the criteria set forth in section 37-92-401 (1).

(b) The abandonment list provided for in this section, when concluded by judgment and decree, shall be conclusive as to water rights determined to have been abandoned. The listing of the water rights in the 1978 tabulation shall not create any presumption against abandonment,

and the relative listing of water rights in the 1978 tabulation shall not create any presumption of seniority. The tabulation shall not be construed to modify special provisions of court decrees adjudicating, changing, or otherwise affecting such water rights or to modify contractual arrangements governing the interrelationship of such water rights. For the purpose of identification and description only, the tabulation may include additional information regarding the water rights listed, but this additional information shall neither be conclusive nor be presumptive of the truth or accuracy of the matters contained therein.

(2) No later than July 10, 1978, the division engineer shall publish a notice that the 1978 tabulation has been made and that such tabulation may be inspected or a copy obtained as specified in this subsection (2), and the division engineer shall mail a copy of such tabulation to each person whose name is on the list specified in section 37-92-302 (3)(c) and shall mail a copy of such tabulation by registered mail to the owner or last-known owner or claimant, if known, of every water right or conditional water right which the division engineer has found to have been abandoned in whole or in part or which has been changed adversely and shall publish the 1978 abandonment list. The division engineer shall make such examination as is reasonably appropriate to determine the owner or claimant of such water rights. The aforementioned publication shall be such as is necessary to obtain general circulation once in each county or portion thereof which is in the division by means of one or more newspapers which, if possible, are published in the division. A copy of such 1978 tabulation and abandonment list, together with any revisions, shall be available in the office of each division engineer and the offices of each water commissioner and each county clerk and recorder for inspection at any time during regular office hours, and the division engineer shall furnish or mail a copy to anyone requesting the same upon payment of a fee of five dollars.

(3) Not later than July 1, 1980, any person who wishes to object to the manner in which a water right or conditional water right is listed in the 1978 tabulation or abandonment list or to the omission of a water right or conditional water right from such tabulation shall file a statement of objection in writing with the division engineer. A fee of ten dollars shall be paid with such filing; except that no fee shall be required for any such filing to correct any clerical error.

(4) On or before July 1, 1984, the division engineer shall make such revisions, if any, as he deems proper in the 1978 tabulation and abandonment list. In considering the matters raised by statements of objections, the division engineer may consult with interested persons. The division engineer shall consult with the state engineer and shall make any revisions in the 1978 tabulation and abandonment list determined by the state engineer to be necessary or advisable. If the division engineer determines such to be advisable or if requested by the objector in the statement of objection, the division engineer shall hold an informal hearing on the subject matter contained in said statement of objection. The revised 1978 tabulation and abandonment list or, if there are no revisions, the original 1978 tabulation and abandonment list, signed by the division engineer and by the state engineer, shall be filed on or before July 1, 1984, with the water clerk. A copy of such 1978 tabulation and such abandonment list, together with any revisions, shall be available in the office of each division engineer and the offices of each water commissioner and each county clerk and recorder for inspection at any time during regular office hours, and the division engineer shall furnish or mail a copy to anyone requesting the same upon payment of a fee of five dollars. If the 1978 tabulation or the abandonment list is revised, the division engineer, on or before August 31, 1984, shall cause notice of such revisions to be included in the

resume described in section 37-92-302 (3) of cases filed in the respective water divisions during the month of July, 1984, specifying that the revisions may be inspected or a copy thereof obtained as specified in this subsection (4). Such publication shall be made as is necessary to obtain general circulation once in each county or portion thereof which is in the division.

(5) The division engineer shall mail a copy of the abandonment list and any revisions thereto by registered mail to the owner or last-known owner or claimant, if known, of every water right which the division engineer has found to have been abandoned in whole or in part. The division engineer shall make such examination as is reasonably appropriate to determine the owner or claimant of such water rights. He shall also cause publication to be made of the abandonment list and any revisions thereto in each county in which water rights on the list are located. Such publication shall be made for four successive weeks and shall be published, if possible, in a newspaper published in the county where the water right is located. Any person who wishes to protest the inclusion of any water right on the abandonment list and any revisions thereto shall file a written protest in accordance with the procedures of section 37-92-401 (5); except that such protests shall be filed with the water clerk not later than December 31, 1984.

(6) Commencing on the March or April term-day of 1985, as the case may be in the respective divisions, pursuant to section 37-92-304 (1), and continuing for as long as may be necessary, the water judge of each division shall conduct hearings on the abandonment list and any revisions thereto filed by the division engineer and any protests that have been filed with respect thereto. The hearings shall be conducted in accordance with the provisions of section 37-92-401 (6).

(7) If no protests have been filed, then not later than July 1, 1985, the water judge shall enter a judgment and decree incorporating and confirming the abandonment list and any revisions thereto of the division engineer without modification.

(8) A copy of the judgment and decree entered pursuant to subsection (6) or (7) of this section shall be filed with the state engineer and the division engineer and shall be provided by the water clerk to any other person requesting same upon payment of a fee of seventy-five cents per page. Promptly after receiving such judgment and decree, the division engineer and the state engineer shall enter in their records the determinations therein made as to date of priority, date of adjudication, and volume and amount of the water rights and conditional water rights adjudged to have been abandoned and shall regulate the distribution of water accordingly.

(9) Appellate review shall be allowed to the judgment and decree entered pursuant to subsection (6) or (7) of this section or any part thereof as in other water matters, but no appellate review shall be allowed with respect to that part of such judgment or decree which confirms a portion of the abandonment list and any revisions thereto with respect to which no protest was filed.

(10) Clerical mistakes in the judgment and decree entered pursuant to subsection (6) or (7) of this section may be corrected by the water judge on his own initiative or on the petition of any person, and substantive errors therein may be corrected by the water judge on the petition of any person whose rights have been adversely affected thereby and a showing satisfactory to the water judge that such person, due to mistake, inadvertence, or excusable neglect, failed to file a protest to the abandonment list and any revisions thereto with the water clerk within the time specified in this section. Any petition referred to in the preceding sentence shall be filed with the water clerk within four years after the date of the entry of said judgment and decree. The water judge shall order such notice of any such correction proceedings as he determines to be

appropriate to advise all persons who may be affected thereby. Any order of the water judge making such corrections shall be subject to appellate review as specified in subsection (9) of this section.

(11) For the purpose of procedures under this section, failure for a period of ten years or more to apply to a beneficial use the water available under a water right when needed by the person entitled to use same shall create a rebuttable presumption of abandonment of a water right with respect to the amount of such available water which has not been so used; except that such presumption may be waived by the division engineer or the state engineer if special circumstances negate an intent to abandon.

(12) No proceeding previously initiated before the water judge pertaining to the 1974 tabulation referred to in previous statutes shall be maintained; except that the dismissal of any such proceeding shall be without prejudice with respect to any substantive matters alleged therein.

(13) The use and effect of the 1978 tabulation, as distinguished from the abandonment list, shall be governed by the provisions of section 37-92-401 (11).

(14) The provisions of this section shall apply only to the 1978 tabulation and abandonment list authorized by this section.

(15) Notwithstanding the amount specified for any fee in this section, the state engineer by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the state engineer by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

Source: L. 69: p. 1214, § 1. **C.R.S. 1963:** § 148-21-28. **L. 73:** p. 1528, §§ 3, 4. **L. 75:** Entire section amended, p. 1399, § 2, effective July 1. **L. 79:** (1)(b) amended, p. 1380, § 1, effective May 18. **L. 81:** (4) to (7) amended, p. 1789, § 4, effective July 1. **L. 83:** (1) to (4) and (6) to (10) amended, (13) and (14) added, and (5) R&RE, pp. 1436, 1438, 1439, §§ 5-7, effective June 16; (8) amended, p. 1429, § 4, effective July 1. **L. 98:** (15) added, p. 1346, § 78, effective June 1.

Editor's note: Amendments to subsection (8) by Senate Bill 83-90 and House Bill 83-1255 were harmonized.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24; for water clerk preparing resume of applications for water rights each month, see § 37-92-302 (3).

PART 5

REGULATION OF WATER - VIOLATIONS

Cross references: For the appointments and functions of water division engineers, see § 37-92-202.

37-92-501. Jurisdiction over water - rules and regulations. (1) The state engineer and the division engineers shall administer, distribute, and regulate the waters of the state in accordance with the constitution of the state of Colorado, the provisions of this article and other applicable laws, and written instructions and orders of the state engineer, in conformity with such constitution and laws, and no other official, board, commission, department, or agency, except as provided in this article and article 8 of title 25, C.R.S., has jurisdiction and authority with respect to said administration, distribution, and regulation. It is the legislative intent that the operation of this section shall not be used to allow groundwater withdrawal which would deprive senior surface rights of the amount of water to which said surface rights would have been entitled in the absence of such groundwater withdrawal and that groundwater diversions shall not be curtailed nor required to replace water withdrawn, for the benefit of surface right priorities, even though such surface right priorities be senior in priority date, when, assuming the absence of groundwater withdrawal by junior priorities, water would not have been available for diversion by such surface right under the priority system. The state engineer may adopt rules and regulations to assist in, but not as a prerequisite to, the performance of the foregoing duties.

(2) In the adoption of such rules and regulations the state engineer shall be guided by the principles set forth in section 37-92-502 (2) and by the following:

(a) Recognition that each water basin is a separate entity, that aquifers are geologic entities and different aquifers possess different hydraulic characteristics even though such aquifers be on the same river in the same division, and that rules applicable to one type of aquifer need not apply to another type. All other factors being the same, aquifers of the same type in the same water division shall be governed by the same rules regardless of where situate.

(b) Consideration of all the particular qualities and conditions of the aquifer;

(c) Consideration of the relative priorities and quantities of all water rights and the anticipated times of year when demands will be made by the owners of such rights for waters to supply the same;

(d) Recognition that one owner may own both surface and subsurface water rights;

(e) That all rules and regulations shall have as their objective the optimum use of water consistent with preservation of the priority system of water rights;

(f) That rules and regulations may be amended or changed from time to time within the same aquifer dependent upon the then existing and forecast conditions, facts and conditions as then known, and as knowledge of the aquifer is enlarged by operating experience;

(g) That time being of the essence, rules and regulations and changes thereof proposed for an aquifer shall be published once in the county or counties where such aquifer exists not less than sixty days prior to the proposed adoption of such rules and regulations, and copies shall be mailed by the water clerk of the division to all persons who are on the mailing list of such division. Copies of such proposed regulations shall be available without charge to any owner of a water right at the office of the water clerk.

(3) (a) Any person desiring to protest a proposed rule and regulation may do so in the same manner as provided in section 37-92-304 for the protest of a ruling of a referee, and the water judge shall hear and dispose of the same as promptly as possible.

(b) Any such protest must be filed by the end of the month following the month in which such proposed rules and regulations are published.

(4) (a) In addition to the provisions of subsection (2) of this section, when adopting rules governing the use of underground water in division 3, and in recognition of the unique geologic

and hydrologic conditions and the conjunctive use practices prevailing in division 3, the state engineer shall have wide discretion to permit the continued use of underground water consistent with preventing material injury to senior surface water rights. Any reduction in underground water usage required by such rules shall be the minimum necessary to meet the standards of this subsection (4). In regulating an aquifer or system of aquifers in division 3, the state engineer shall apply the following principles:

(I) Use of the confined and unconfined aquifers shall be regulated so as to maintain a sustainable water supply in each aquifer system, with due regard for the daily, seasonal, and long-term demand for underground water;

(II) Unconfined aquifers serve as valuable underground water storage reservoirs with water levels that fluctuate in response to climatic conditions, water supply, and water demands, and such fluctuations shall be allowed to continue;

(III) Fluctuations in the artesian pressure in the confined aquifer system have occurred and will continue to occur in response to climatic conditions, water supply, and water demands. Subject to subparagraph (IV) of this paragraph (a), such pressure fluctuations shall be allowed with the ranges that occurred during the period of 1978 through 2000. Artesian pressures shall be allowed to increase in periods of greater water supply and shall be allowed to decline in periods of lower water supply in much the same manner and within the same ranges of fluctuation as occurred during the period of 1978 through 2000, while maintaining average levels similar to those that occurred in 1978 through 2000.

(IV) Nothing in subparagraph (I) or (II) of this paragraph (a) shall be construed either to relieve wells from the obligation to replace injurious stream depletions in accordance with the rules adopted by the state engineer or to permit the expanded use of underground water; and

(V) Underground water use shall not unreasonably interfere with the state's ability to fulfill its obligations under the Rio Grande compact, codified in article 66 of this title, with due regard for the right to accrue credits and debits under the compact.

(b) In adopting rules pursuant to paragraph (a) of this subsection (4), the state engineer shall:

(I) Recognize contractual arrangements among water users, water user associations, water conservancy districts, ground water management subdistricts, and the Rio Grande water conservation district, pursuant to which:

(A) Water is added to the stream system to assist in meeting the Rio Grande compact delivery schedules or to replace depletions to stream flows resulting from the use of underground water; or

(B) Subject to subparagraphs (I), (II), and (III) of paragraph (a) of this subsection (4), injury to senior surface water rights resulting from the use of underground water is remedied by means other than providing water to replace stream depletions;

(II) Establish criteria for the beginning and end of the division 3 irrigation season for all irrigation water rights;

(III) Not recognize the reduction of water consumption by phreatophytes as a source of replacement water for new water uses or to replace existing depletions, or as a means to prevent injury from new water uses; and

(IV) Not require senior surface water right holders with reasonable means of surface diversions to rely on underground water to satisfy their appropriative water right.

(c) The state engineer shall not curtail underground water withdrawals from aquifers in division 3 that are included in a ground water management subdistrict created pursuant to section 37-45-120 or 37-48-108 if the withdrawals are made pursuant to a groundwater management plan adopted by the subdistrict that meets the requirements of paragraphs (a) and (b) of this subsection (4). The state engineer shall publish notice of the approval of any groundwater management plan in the same manner as provided for rules under paragraph (g) of subsection (2) of this section, and judicial review of such approval shall be pursuant to paragraph (a) of subsection (3) of this section. The water judge shall retain jurisdiction over the water management plan for the purpose of ensuring the plan is operated, and injury is prevented, in conformity with the terms of the court's decree approving the water management plan.

Source: L. 69: p. 1216, § 1. **C.R.S. 1963:** § 148-21-34. **L. 71:** p. 1331, § 2. **L. 2004:** (4) added, p. 777, § 1, effective May 20.

Cross references: For the "Colorado Water Quality Control Act", see article 8 of title 25; for the proceedings by the water judge, see § 37-92-304.

37-92-501.5. Special procedures with respect to plans for augmentation. Consistent with the decisions of the water judges establishing the basis for approval for plans for augmentation and for the administration of groundwater, the state engineer and division engineers shall exercise the broadest latitude possible in the administration of waters under their jurisdiction to encourage and develop augmentation plans and voluntary exchanges of water and may make such rules and regulations and shall take such other reasonable action as may be necessary in order to allow continuance of existing uses and to assure maximum beneficial utilization of the waters of this state. In so doing, the state engineer shall curtail all out-of-priority diversions, the depletions from which are not so replaced as to prevent injury to vested water rights.

Source: L. 77: Entire section added, p. 1704, § 5, effective June 19.

37-92-502. Orders as to waste, diversions, distribution of water. (1) The state engineer or the division engineers shall issue to the owners or users of water rights and to the users of waters of the state such orders as are necessary to implement the provisions of section 37-92-501, including, but not limited to, the orders specified in subsections (2) to (7) of this section. If such orders are given orally, they shall be confirmed promptly in writing.

(2) (a) Each division engineer shall order the total or partial discontinuance of any diversion in his division to the extent that the water being diverted is not necessary for application to a beneficial use; and he shall also order the total or partial discontinuance of any diversion in his division to the extent that the water being diverted is required by persons entitled to use water under water rights having senior priorities, but no such discontinuance shall be ordered unless the diversion is causing or will cause material injury to such water rights having senior priorities. In making his decision as to the discontinuance of a diversion to satisfy senior priorities, the division engineer shall be governed by the following: The materiality of injury depends on all factors which will determine in each case the amount of water such discontinuance will make available to such senior priorities at the time and place of their need.

Such factors include the current and prospective volumes of water in and tributary to the stream from which the diversion is being made; distance and type of stream bed between the diversion points; the various velocities of this water, both surface and underground; the probable duration of the available flow; and the predictable return flow to the affected stream. Each diversion shall be evaluated and administered on the basis of the circumstances relating to it and in accordance with provisions of this article and the court decrees adjudicating and confirming water rights. In the event that a discontinuance has been ordered pursuant to the provisions of this paragraph (a), and nevertheless such discontinuance does not cause water to become available to such senior priorities at the time and place of their need, then such discontinuance order shall be rescinded. If a well has been approved as an alternate means of diversion for a water right for which a surface means of diversion is decreed, such well and such surface means must be utilized to the extent feasible and permissible under this article to satisfy said water right before diversions under junior water rights are ordered discontinued. In addition to any other methods of giving notice, the posting of a written order, in plain sight, at the place of diversion shall be considered sufficient notice of the order of the division engineer; and, when so posted, such order shall be effective from the time of posting.

(b) If any groundwater was exposed to the atmosphere in connection with the extraction of sand and gravel by open mining as defined in section 34-32-103 (9), C.R.S., prior to January 1, 1981, the division engineer shall not order the curtailment of diversions which were attributable solely to evaporation from such exposed groundwater.

(3) Each division engineer shall order the release from storage of any water he finds to have been illegally or improperly stored and shall make such orders as are necessary to insure that such released waters are delivered to those owners or users of water rights who are entitled to the same and to insure that the release will not cause damage.

(4) Each division engineer with the approval of the state engineer shall administer the movement of water involved in any plan for augmentation or water use project which is in effect in his division. If any such plan or project involves the movement of water from one division to another, then the administration of such movement shall be the direct responsibility of the state engineer, but he may act through the appropriate division engineers. In such administration the division engineers and the state engineer shall issue such orders as are necessary and appropriate and may utilize any funds, public or private, and any other resources made available to them. Each plan for augmentation shall be administered to accomplish the maximum economic use of and benefit from the water which may be available or developed for such administration if persons owning, or entitled to use water under, water rights or conditional water rights will not be injuriously affected thereby.

(5) (a) The state engineer and the division engineers have authority to order any owner or user of a water right to install and maintain at such owner's or user's expense necessary meters, gauges, or other measuring devices and to report at reasonable times to the appropriate division engineer the readings of such meters, gauges, or other measuring devices.

(b) The state engineer and the division engineers have authority to order any person or company supplying energy used to pump groundwater to provide, at reasonable times to the appropriate division engineer, records of energy used to pump groundwater. Nothing contained in this paragraph (b) shall affect any reporting requirements of the public utilities commission pursuant to section 40-3-110, C.R.S.

(c) By June 30, 2004, the state engineer and the division engineers shall refund all amounts collected through assessment of the water administration fee established in section 37-80-121. The amount refunded shall not include interest, legal fees, or costs incurred by water users in protests or appeals of such assessment or any other costs associated with section 37-80-121.

(6) The state engineer and the division engineers and their duly authorized assistants and staff have the authority and duty to enter upon, and to order any person to permit the entry upon, private property at any reasonable time to inspect the various means or proposed means of diversion, transportation, and storage and the uses to which water is being, or is proposed to be, put and to read meters, gauges, and other measuring devices.

(7) The state engineer, division engineer, and their duly authorized assistants have the power and duty to issue orders so that the streams of the state may be kept clear of unnecessary dams or other obstructions which may restrict or impede the flow of water to the water users of the state.

Source: L. 69: p. 1217, § 1. **C.R.S. 1963:** § 148-21-35. **L. 71:** p. 1337, § 1. **L. 83:** (2) amended, p. 1430, § 5, effective July 1. **L. 89:** (2) amended, p. 1426, § 6, effective July 15. **L. 96:** (5) amended, p. 21, § 3, effective March 1. **L. 2003:** (5)(c) added, p. 1511, § 2, effective May 1. **L. 2004:** (5)(c) amended, p. 361, § 3, effective April 7.

37-92-503. Enforcement - injunction. (1) (a) In the event an order of a division engineer or the state engineer issued pursuant to section 37-92-502 is not complied with, the state engineer and the particular division engineer in the name of the people of the state of Colorado, through the attorney general, shall apply to the water judge of the particular division for an injunction enjoining the person to whom such order was directed from continuing to violate same. The term "injunction" includes mandatory relief.

(b) In such proceeding, if the court upholds the order of the state engineer, the person against whom such order was issued shall pay the costs of the proceeding, including the allowance of reasonable attorney fees.

(c) Any proceeding brought by the state engineer or a division engineer to enforce an order to curtail the diversion of surface water or groundwater to comply with an interstate compact shall be accelerated on the court's calendar pursuant to section 37-92-203 (2), shall take priority over other water matters, and shall be determined immediately upon the conclusion of such proceeding.

(2) In the case of an order with respect to the diversion of water or the release of water from reservoirs, the water judge in ruling upon such injunction shall consider, depending on the basis for the order, whether or not the water is being applied to a beneficial use; whether or not the diversion is causing or will cause injury to persons owning, or entitled to use water under, water rights having senior decreed priorities; and whether or not the release of improperly stored water would benefit other water users.

(3) Any person who has an interest in the subject matter of such proceedings may intervene, if such intervention is timely and will not cause undue delay.

(4) In the case of a violation of an injunction issued under the provisions of this section, the water judge shall try and punish the offender for contempt of court.

(5) Such proceedings shall be in addition to, and not in lieu of, any other penalties and remedies, public or private, provided by law.

(6) (a) (I) Any person who diverts groundwater contrary to a valid order of the state engineer or a division engineer issued pursuant to section 37-92-502, in violation of a plan approved pursuant to rules adopted by the state engineer, or otherwise in violation of rules adopted by the state engineer to regulate or measure diversions of groundwater shall forfeit and pay a sum not to exceed five hundred dollars for each day such violation continues.

(II) Any person who diverts surface water contrary to a valid order of the state engineer or a division engineer issued pursuant to section 37-92-502 shall forfeit and pay a sum not to exceed five hundred dollars for each day such violation continues.

(b) Any person who, when required to do so by rules and regulations adopted by the state engineer, fails to submit data as to amounts of water pumped from a well, makes a false or fictitious report of the amounts of water pumped from a well, falsifies any data as to amounts pumped from a well, makes a false or fictitious report of a power coefficient for a well, or falsifies any power coefficient test shall forfeit and pay a sum not to exceed five hundred dollars for each violation.

(c) It is unlawful for any person not authorized by the well owner or the state engineer to willfully interfere with any power meter, totalizing flow meter, or other device used to measure groundwater diversions. Any person who willfully injures or destroys a power meter, totalizing flow meter, or other device used to measure groundwater diversions or who tampers with or falsifies any record made or being made by any such power meter, totalizing flow meter, or other device shall forfeit and pay a sum not to exceed five hundred dollars for each violation.

(d) Any fine collected for violations of the provisions of this subsection (6) shall be transmitted to the state treasurer, who shall credit the same to the general fund.

(e) The state engineer and the particular division engineer in the name of the people of the state of Colorado, through the attorney general, shall apply to the water judge of the particular division to recover the civil penalties specified in paragraphs (a), (b), and (c) of this subsection (6) or for a temporary restraining order, preliminary injunction, or permanent injunction, as appropriate, enjoining further violations of this subsection (6). If the state engineer and the division engineer prevail, the court shall also award the costs of the proceeding including the allowance of reasonable attorney fees.

(7) Any person required by a valid order of the state engineer or division engineer, or by existing rules of the state engineer, to replace depletions caused by diversions of groundwater or surface water and whose failure to replace such depletions results in the violation of an interstate compact shall be liable for all direct, actual, and necessary expenses incurred by the state of Colorado in performing any action, including the purchase of water or payment of damages, necessary for the state of Colorado to remedy the violation of such compact. The state engineer and the particular division engineer in the name of the people of the state of Colorado, through the attorney general, shall apply to the water judge of the particular division to recover such expenses. If the state engineer and the division engineer prevail, the court shall also award the costs of the proceeding including the allowance of reasonable attorney fees.

(8) Repealed.

(9) In the case of an action initiated by the state engineer or another person alleging expanded or unlawful use of a water right decreed for irrigation, the lawful maximum amount of irrigated acreage for a decree entered before January 1, 1937, that establishes an irrigation water

right and does not expressly limit the number of acres that the appropriator may irrigate under the water right equals the maximum amount of acreage irrigated in compliance with the express provisions of the decree during the first fifty years after the entry of the original decree, unless a court of competent jurisdiction has entered a final judgment to the contrary. Irrigation of acreage not exceeding the lawful maximum amount and located within a reasonable proximity to the ditch, including extensions and lateral delivery infrastructure, as constructed within the first fifty-year period after entry of the original decree is deemed lawful for continued irrigation under the water right.

Source: L. 69: p. 1218, § 1. **C.R.S. 1963:** § 148-21-36. **L. 71:** p. 1337, § 2. **L. 96:** (1)(c), (6), and (7) added, p. 21, §§ 4, 5, effective March 1. **L. 2003:** (8) added, p. 1511, § 3, effective May 1. **L. 2004:** (8) repealed, p. 362, § 4, effective April 7. **L. 2010:** (6)(a) amended, (SB 10-027), ch. 86, p. 289, § 1, effective April 14. **L. 2013:** (9) added, (SB 13-074), ch. 107, p. 373, § 2, effective August 7.

37-92-504. Treble damages. Any person who is damaged in his business or property by reason of the violation of an order issued pursuant to section 37-92-502, the violation of which has been properly enjoined pursuant to section 37-92-503, may bring an action against any person who has violated said order in any district court of competent jurisdiction and recover threefold the damages sustained and the cost of suit, including reasonable attorney fees.

Source: L. 69: p. 1218, § 1. **C.R.S. 1963:** § 148-21-37.

PART 6

APPLICATION OF ARTICLE

Cross references: For the appointments and functions of water division engineers, see § 37-92-202.

37-92-601. Disposition of pending proceedings - showings of reasonable diligence. All proceedings pending on June 7, 1969, for the adjudication of water rights, for a change of water rights, or for the disposition of other matters which are of the type to be handled by proceedings provided for in this article shall be concluded by June 1, 1972, in accordance with the provisions of the statute under which they are instituted, and priorities and changes of water rights which are determined in such pending proceedings shall be integrated by the various division engineers in their current records and shall be included in tabulations prepared by the division engineers pursuant to the provisions of this article. Any such proceedings which are not concluded by June 1, 1972, shall be heard from that time on to completion by the water judge for the division in which the proceedings are pending, under procedures provided for in this article; except that the chief justice of the supreme court may provide that a judge, other than the water judge, shall complete proceedings in specific cases. Persons who have filed statements of claim in such pending proceedings may withdraw therefrom at any time and file applications or otherwise proceed in accordance with this article. Showings of reasonable diligence under existing conditional decrees or conditional decrees entered in such pending proceedings shall be

made in accordance with the provisions of this article, but the time shall be tolled during any period in which the water judge finds the applicant was prevented from filing by reason of conditions beyond his control. Applications for findings of reasonable diligence shall be filed with the water clerk pursuant to the terms of this article. When and if a conditional water right awarded in any such conditional decree becomes a water right pursuant to the procedures in this article, the priority awarded such water right shall be the same as if the proceedings in which the conditional decree was entered had remained open until the final determination with respect to such water right.

Source: L. 69: p. 1218, § 1. **C.R.S. 1963:** § 148-21-44. **L. 70:** p. 433, § 5. **L. 71:** p. 1339, § 1. **L. 73:** p. 1523, § 3. **L. 90:** Entire section amended, p. 1626, § 3, effective April 13.

Cross references: For making application for the determination of a water right, see § 37-92-302 (1).

37-92-602. Exemptions - presumptions - legislative declaration - definitions. (1) This article, except for sections 37-92-201 and 37-92-202, does not apply to:

(a) Designated groundwater basins as defined and established by article 90 of this title;

(b) Wells not exceeding fifteen gallons per minute of production and used for ordinary household purposes, fire protection, the watering of poultry, domestic animals, and livestock on farms and ranches and for the irrigation of not over one acre of home gardens and lawns but not used for more than three single-family dwellings;

(c) Wells not exceeding fifteen gallons per minute of production and used for drinking and sanitary facilities in individual commercial businesses;

(d) Wells to be used exclusively for fire-fighting purposes if said wells are capped, locked, and available for use only in fighting fires;

(e) Wells not exceeding fifty gallons per minute that are in production as of May 22, 1971, and were and are used for ordinary household purposes for not more than three single-family dwellings, fire protection, the watering of poultry, domestic animals, and livestock on farms and ranches, and for the irrigation of not over one acre of gardens and lawns;

(f) Wells to be used exclusively for monitoring and observation purposes if said wells are capped and locked and used only to monitor water levels or for water quality sampling; and

(g) (I) Any system or method of collecting precipitation from the roof of a building that is used primarily as a residence and is not served by, whether or not connected to, a domestic water system that serves more than three single-family dwellings, but only if the use of the water thus collected is limited to one or more of the following:

(A) Ordinary household purposes;

(B) Fire protection;

(C) The watering of poultry, domestic animals, and livestock on farms and ranches; or

(D) The irrigation of not more than one acre of gardens and lawns.

(II) As used in subparagraph (I) of this paragraph (g), "a building that is used primarily as a residence" may include, but is not limited to, any structure used for habitation, regardless of whether the structure is operated commercially or inhabited intermittently.

(III) On and after July 1, 2009, any person wishing to use a system or method of rooftop precipitation capture that qualifies as exempt under subparagraph (I) of this paragraph (g) shall

comply with one of the following provisions of sub-subparagraph (A), (B), or (C) of this subparagraph (III):

(A) A person who has a well permit issued or recorded pursuant to this section and who intends to use a system or method of rooftop precipitation capture that qualifies as exempt under subparagraph (I) of this paragraph (g) shall file, on a form prescribed by the state engineer and consistent with this section, a notice and description of the system or method of rooftop precipitation capture to be used in conjunction with the well. No fee shall be charged for the filing of this form.

(B) A person who applies for a new well permit pursuant to this section and who intends to use a system or method of rooftop precipitation capture that qualifies as exempt under subparagraph (I) of this paragraph (g) shall include on the well permit application a description of the system or method of rooftop precipitation capture to be used in conjunction with the well. An applicant under this sub-subparagraph (B) shall pay the well permit application fee pursuant to subparagraph (II) of paragraph (a) of subsection (3) of this section; however, such applicant shall not be required to pay any additional application fee for the rooftop precipitation collection system.

(C) A person who does not intend to construct and use a well, but would otherwise be entitled to the issuance of a well permit pursuant to this section, including the provisions of subsection (6) of this section, shall submit an application in the form and manner designated by the state engineer for a permit to install and use a system or method of rooftop precipitation capture and pay a fee in an amount to be determined by the state engineer. If the state engineer determines that the proposed system or method of rooftop precipitation capture meets the requirements of this paragraph (g), the state engineer shall issue a permit for the system or method, but not otherwise. The state engineer shall enforce the provisions of the permit in the same manner as the enforcement of any well permit issued under this section.

(IV) A person using or legally entitled to use a well pursuant to this section, including the provisions of subsection (6) of this section, shall be allowed to collect rooftop precipitation pursuant to this paragraph (g) only for use by the same dwellings that are or would be served by the well and subject to all of the limitations on use contained in the well permit or, in the absence of a well permit, the well permit to which the person would be legally entitled, as determined by the state engineer.

(V) (A) The state engineer or the division engineers may issue, to the users of methods or systems of rooftop precipitation collection, orders necessary to implement the provisions of this paragraph (g). If such orders are given orally, they shall be confirmed promptly in writing.

(B) In the event that an order of a division engineer or the state engineer issued pursuant to sub-subparagraph (A) of this subparagraph (V) is not complied with, the state engineer, in the name of the people of the state of Colorado, through the attorney general, shall apply to the water judge of the particular division for an injunction enjoining the person from committing the violation. In such proceeding, if the court upholds the order of the state engineer, the person against whom such order was issued shall pay the costs of the proceeding, including reasonable attorney fees.

(C) Any person who violates an order issued by the state engineer pursuant to sub-subparagraph (A) of this subparagraph (V) shall forfeit and pay a sum not to exceed five hundred dollars for each violation. Any fine collected for violations of this paragraph (g) shall be

transmitted to the state treasurer, who shall credit the same to the water resources cash fund created in section 37-80-111.7 (1).

(1.5) A person withdrawing water from a well pursuant to this section may use graywater through use of a graywater treatment works, as those terms are defined in section 25-8-103 (8.3) and (8.4), C.R.S., in compliance with the requirements of section 25-8-205 (1)(g), C.R.S. Any limitations on use set forth in the well permit apply to the use of graywater.

(2) With respect to applications filed prior to May 8, 1972, the state engineer shall issue a permit for the construction of wells specified in subsection (1) of this section without regard to the provisions of section 37-90-137 (2) and (3) upon submission of an application which shall be accompanied by a fee of five dollars. It is the legislative intent that the exemption in subsection (1) of this section is for an applicant to obtain a water supply for his own use.

(3) (a) (I) Repealed.

(II) Effective July 1, 2006, wells of the type described in paragraphs (b) to (d) of subsection (1) of this section may be constructed only upon the issuance of a permit in accordance with the provisions of this subsection (3). A person desiring to use such a well shall submit an application for a permit accompanied by a fee of sixty dollars for an application under paragraph (c) of this subsection (3) and a fee of one hundred dollars for an application under paragraph (b) of this subsection (3).

(b) (I) With respect to applications filed on and after May 8, 1972, the state engineer shall first make a determination as to whether or not the exercise of the requested permit will materially injure the vested water rights of others or any other existing well, subject to the provisions of subparagraph (II) of this paragraph (b). If the state engineer finds that the vested water rights of others or any other existing well will be materially injured, he shall deny the permit. Otherwise, the permit shall be issued, and it shall set forth such conditions for drilling, casing, equipping, and using the well as are reasonably necessary to prevent waste, pollution, or material injury to existing rights. The state engineer shall endorse upon the application the date of its receipt, file and preserve such application, and make a record of such receipt and the issuance of the permit in his office, so indexed as to be useful in determining the extent of the uses made from various groundwater sources.

(II) (A) If a permit is sought by a user for a well exempted under paragraph (b) of subsection (1) of this section which will be the only well on a residential site, which well will be used solely for ordinary household purposes inside a single-family dwelling and will not be used for irrigation or will be the only well on a tract of land of thirty-five acres or more or will be the only well on a cluster development lot, serving one single-family residence, where the ratio of water usage in the cluster development does not exceed one acre-foot of annual withdrawals for each thirty-five acres within the cluster development and will be used solely for the purposes specified in paragraph (b) of subsection (1) of this section, and the return flow from such uses shall be returned to the same stream system in which the well is located, there shall be a presumption that there will not be material injury to the vested water rights of others or to any other existing well resulting from such well, which presumption may be rebutted by evidence sufficient to show such material injury.

(B) and (C) (Deleted by amendment, L. 93, p. 2100, § 1, effective July 1, 1993.)

(D) Nothing in this section shall be construed to preclude the state engineer from requiring metering of withdrawals, periodic reporting of such withdrawals, and cessation of

withdrawals that exceed one acre-foot of water for each thirty-five acres within a cluster development.

(III) If the application is for a well, as defined in subparagraph (II) of this paragraph (b), which will be located in a subdivision, as defined in section 30-28-101 (10), C.R.S., and approved on or after June 1, 1972, pursuant to article 28 of title 30, C.R.S., for which the water supply plan has not been recommended for approval by the state engineer, the cumulative effect of all such wells in the subdivision shall be considered in determining material injury.

(c) (I) If any person wishes to relocate an existing well of the type specified in paragraphs (b) to (e) of subsection (1) of this section, such person shall file an application pursuant to this subsection (3) for the construction of a well and shall state in such application such person's intent to abandon the existing well which is to be relocated.

(II) (A) If such relocated well will not change substantially the usage of water which can lawfully be made by means of the existing well, a permit to construct and use the relocated well shall be issued, and the existing well shall be abandoned within ninety-one days after the completion of the relocated well.

(B) For purposes of this subparagraph (II), absent a showing by a preponderance of the evidence, a relocated well will be presumed not to change substantially the usage of water if the existing well was constructed pursuant to a permit issued by the state engineer, the location of the relocated well will be within two hundred feet of the existing well, the well will be constructed into the same aquifer, the historical use of water from the well will not change, the annual volume of use of the relocated well will be the same as or less than the annual permitted volume of use of the existing well, and the gallons per minute flow of the relocated well will be the same as or less than the permitted gallons per minute flow of the existing well.

(d) (I) Repealed.

(II) Effective July 1, 2006, wells for which permits have been granted or may be granted shall be constructed within two years after the permit is issued, which time may be extended for successive years at the discretion of the state engineer for good cause shown.

(e) The state engineer shall act upon an application filed under this subsection (3) within forty-nine days after such filing and shall support his or her ruling with a written statement of the basis therefor, and the provisions of article 4 of title 24, C.R.S., shall apply.

(f) Any person aggrieved by a decision of the state engineer granting or denying an application filed under this subsection (3) may within thirty-five days after such decision file a petition for review with the water clerk of the water division in which the well is located. Upon receipt of such petition, the water judge of said water division shall promptly conduct such hearings as are necessary to determine whether or not the decision of the state engineer shall be upheld. In any case in which the state engineer's decision is reversed, the water judge shall order the state engineer to grant or to deny the application, as such reversal may require, and may specify such terms and conditions as are appropriate. Appeals from any decision of the water judge shall be made as in other civil actions.

(4) Notwithstanding the provisions of the introductory portion of subsection (1) of this section, water rights for wells of the type specified in paragraphs (b) to (e) of said subsection (1) may be determined pursuant to sections 37-92-302 to 37-92-306; except that the original priority date of any such well may be awarded regardless of the date of application therefor.

(5) (a) Repealed.

(b) Effective July 1, 2006, any wells exempted by this section that were put to beneficial use prior to May 8, 1972, and any wells that were used exclusively for monitoring and observation purposes prior to August 1, 1988, not of record in the office of the state engineer may be recorded in that office upon written application, payment of a processing fee of one hundred dollars, and permit approval. The record shall include the date the water is claimed to have been appropriated or first put to beneficial use.

(6) It is hereby declared to be the policy of the state of Colorado that the exemptions set forth in this section are intended to allow citizens to obtain a water supply in less densely populated areas for in-house and domestic animal uses where other water supplies are not available. It is not the intent that these wells be used to cause material injury to prior vested water rights, and, wherever possible, persons seeking the use of such individual wells may be required to develop plans for augmentation pursuant to section 37-92-302 or to develop other replacement plans acceptable to the state engineer.

(7) Notwithstanding the amount specified for any fee in this section, the state engineer by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the state engineer by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

(8) (a) The general assembly hereby declares that storm water detention and infiltration facilities and post-wildland fire facilities are essential for the protection of public safety and welfare, property, and the environment.

(b) For the purposes of this subsection (8):

(I) A "storm water detention and infiltration facility" means a facility that is operated solely for storm water management and:

(A) Is owned or operated by a governmental entity or is subject to oversight by a governmental entity;

(B) Continuously releases or infiltrates at least ninety-seven percent of all of the water from a rainfall event that is equal to or less than a five-year storm within seventy-two hours after the end of the rainfall event;

(C) Continuously releases or infiltrates all of the water from a rainfall event greater than a five-year storm as quickly as practicable, but in all cases releases or infiltrates at least ninety-nine percent of all of the water from the rainfall event within one hundred twenty hours after the end of the rainfall event; and

(D) Operates passively and does not subject the storm water runoff to any active treatment process.

(II) A "post-wildland fire facility" means a facility that is:

(A) Not permanent;

(B) Located on, in, or adjacent to a nonperennial stream;

(C) Designed and operated solely for the mitigation of the impacts of wildland fire events; and

(D) Designed and operated to minimize the quantity of water detained and the duration of the detention of water to the levels necessitated by public safety and welfare.

(c) (I) Storm water detention and infiltration facilities in existence on August 5, 2015, that are operated in compliance with paragraphs (b) and (e) of this subsection (8) and post-wildland fire facilities that are operated in compliance with paragraphs (b) and (e) of this subsection (8) do not cause material injury to vested water rights.

(II) (A) The holder of a vested water right may bring an action in a court of competent jurisdiction to determine whether the operation of a storm water detention and infiltration facility constructed after August 5, 2015, has caused material injury to that water right. Operation of the facility in compliance with paragraphs (b) and (e) of this subsection (8) creates a rebuttable presumption that the facility does not cause material injury to vested water rights if the operation of the facility approximates and does not cause a material reduction in the natural hydrograph with respect to peak flows that would have existed without the upstream urban development that results in the storm water being managed by the storm water detention and infiltration facility.

(B) The holder of a vested water right who brings an action under sub-subparagraph (A) of this subparagraph (II) may rebut the presumption established by sub-subparagraph (A) of this subparagraph (II) with evidence sufficient to show that the operation of the storm water detention and infiltration facility has caused material injury to the water right by modifying the amount or timing of water that would have been available for diversion by the water right absent the operation of the facility under hydrologic conditions that existed as of the water right's priority date, excluding flows resulting from development of impervious surfaces within the drainage that created the need for the storm water detention and infiltration facility.

(d) An entity that owns, operates, or has oversight for a storm water detention and infiltration facility constructed after August 5, 2015, shall, prior to operation of the facility, provide notice of the location and approximate surface area at design volume of the facility and the data that demonstrates that the facility has been designed to comply with sub-subparagraphs (B) and (C) of subparagraph (I) of paragraph (b) of this subsection (8) to all parties on the substitute water supply plan notification list maintained by the state engineer pursuant to section 37-92-308 (6) for the water division in which the facility is located.

(e) (I) Water detained or released by a storm water detention and infiltration facility or post-wildland fire facility shall not be used for any purpose, including, without limitation, by substitution or exchange, by the entity that owns, operates, or has oversight over the facility or that entity's assignees, and is available for diversion in priority after release or infiltration.

(II) An entity shall not release water detained by a storm water detention and infiltration facility or post-wildland fire facility for the subsequent diversion or storage by the person that owns, operates, or has oversight over the facility or that entity's assignees.

(III) The operation of a storm water detention and infiltration facility or post-wildland fire facility is not the basis for a water right, credit, or other right to or for the use of water.

(f) A person who installed or operated a post-wildland fire facility shall ensure that the facility is removed or rendered inoperable after the emergency conditions created by the wildfire no longer exist.

(g) Nothing in this subsection (8) alters, amends, or affects any otherwise applicable requirement to obtain a state or local permit for a storm water management facility or post-wildland fire facility constructed on or after August 5, 2015.

(h) The provisions of this subsection (8) relating to storm water detention and infiltration facilities do not apply to Fountain creek and its tributaries, except for facilities required by or operated in compliance with a Colorado discharge permit system municipal separate storm sewer

system permit issued by the department of public health and environment pursuant to article 8 of title 25, C.R.S.

Source: L. 69: p. 1219, § 1. **C.R.S. 1963;** § 148-21-45. **L. 71:** p. 1341, § 1. **L. 72:** pp. 629-631, §§ 1, 2. **L. 73:** p. 1530, § 1. **L. 75:** (3)(b)(III) added, p. 1003, § 2, effective July 18. **L. 87:** (3)(a), (3)(e), and (5) amended, p. 1303, § 8, effective July 2. **L. 88:** (3)(b)(II) amended and (6) added, pp. 1243, 1244, §§ 1, 2, 3, effective May 17. **L. 90:** (3)(b)(II) amended, p. 1628, § 1, effective April 10. **L. 91:** (3)(b)(II) amended, p. 2021, § 1, effective March 27. **L. 92:** (1)(f) added and (5) amended, pp. 2300, 2301, §§ 7, 8, effective March 19. **L. 93:** (3)(b)(II) amended, p. 2100, § 1, effective July 1. **L. 94:** (3)(c) amended, p. 336, § 1, effective March 29. **L. 96:** (3)(b)(II)(A) amended and (3)(b)(II)(D) added, p. 1882, § 3, effective June 6. **L. 98:** (7) added, p. 1346, § 79, effective June 1; (5) amended, p. 1224, § 15, effective August 5. **L. 2003:** (3)(a), (3)(d), and (5) amended, p. 47, § 8, effective (see editor's note); (3)(a)(I)(A), (3)(a)(II), (5)(a)(I), and (5)(b) amended, p. 1685, § 18, effective May 14. **L. 2009:** (1)(e) and (1)(f) amended and (1)(g) added, (SB 09-080), ch. 179, p. 791, § 3, effective July 1. **L. 2012:** IP(1) and (1)(g)(V)(C) amended, (SB 12-009), ch. 197, p. 793, § 11, effective July 1; (3)(c)(II)(A), (3)(e), and (3)(f) amended, (SB 12-175), ch. 208, p. 894, § 168, effective July 1. **L. 2013:** (1.5) added, (HB 13-1044), ch. 228, p. 1091, § 10, effective May 15. **L. 2015:** (8) added, (SB 15-212), ch. 256, p. 930, § 1, effective August 5.

Editor's note: (1) Section 10 of chapter 7, Session Laws of Colorado 2003, provides for an effective date of March 1, 2003; however, the Governor did not sign the act until March 5, 2003.

(2) Subsection (3)(a)(I)(B) provided for the repeal of subsection (3)(a)(I), subsection (3)(d)(I)(B) provided for the repeal of subsection (3)(d)(I), and subsection (5)(a)(II) provided for the repeal of subsection (5)(a), effective July 1, 2006. (See L. 2003, p. 47.)

Cross references: (1) For rule-making and licensing procedures of state agencies, see article 4 of title 24; for the "Colorado Groundwater Management Act", see article 90 of this title; for water divisions, see § 37-92-201; for division engineers, see § 37-92-202; for applications for water rights, see § 37-92-302; for rulings by the referee, see § 37-92-303; for proceedings by the water judge, see § 37-92-304; for standards with respect to rulings of the referee and decisions of the water judge, see § 37-92-305; for when priorities junior to prior awards, see § 37-92-306.

(2) For the legislative declaration contained in the 2003 act amending subsections (3)(a), (3)(d), and (5), see section 1 of chapter 7, Session Laws of Colorado 2003. For the legislative declaration in the 2013 act adding subsection (1.5), see section 1 of chapter 228, Session Laws of Colorado 2013.

River Basin Authorities

ARTICLE 93

River Basin Authorities

37-93-101 to 37-93-108. (Repealed)

Source: L. 87: Entire article repealed, p. 1307, § 1, effective May 20.

Editor's note: This article was numbered as article 22 of chapter 148, C.R.S. 1963. For amendments to this article prior to its repeal in 1987, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

WATER RESOURCES AND POWER DEVELOPMENT

ARTICLE 95

Colorado Water Resources and
Power Development Authority

37-95-101. Short title. This article shall be known and may be cited as the "Colorado Water Resources and Power Development Authority Act".

Source: L. 81: Entire article added, p. 1794, § 1, effective July 1.

37-95-102. Legislative declaration. (1) It is hereby declared to be the public policy of the state to preserve, protect, upgrade, conserve, develop, utilize, and manage the water resources of the state, to promote the beneficial use of waters of the state for the protection and preservation of the public health, safety, convenience, and welfare, to create or preserve jobs and employment opportunities or to improve the economic welfare of the people of the state, and to assist and cooperate with governmental agencies in achieving such purposes. In furtherance of such public policy, the Colorado water resources and power development authority is created in this article to initiate, acquire, construct, maintain, repair, and operate projects or cause the same to be operated pursuant to a lease, sublease, or other agreement with any person or governmental agency and may issue its bonds and notes payable solely from revenues to pay the cost of such projects.

(2) The general assembly finds and declares that the authority and powers conferred under this article and the expenditures of public moneys pursuant thereto constitute a serving of a valid public purpose and that the enactment of the provisions set forth in this article is in the public interest and is hereby so declared to be such as a matter of express legislative determination.

Source: L. 81: Entire article added, p. 1794, § 1, effective July 1.

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

(1) "Authority" means the Colorado water resources and power development authority created by this article.

(2) "Beneficial use" means a use of water, including the method of diversion, storage, transportation, treatment, and application, that is reasonable and consistent with the public interest in the proper utilization of water resources, including, but not limited to, domestic, agricultural, industrial, power, municipal navigational, fish and wildlife, and recreational uses.

(3) "Board" means the board of directors of the authority.

(4) "Bonds" means bonds, notes, or other obligations issued by the authority pursuant to this article.

(4.5) "Clean water act" means the "Federal Water Pollution Control Act Amendments of 1972", Pub.L. 92-500, as amended.

(4.7) (Deleted by amendment, L. 2003, p. 2410, § 4, effective June 5, 2003.)

(4.8) "Drinking water project eligibility list" means the list of projects eligible for financial assistance from the authority through the drinking water revolving fund or its other bonding capabilities, as adopted and from time to time modified in accordance with section 37-95-107.8 (4). The list shall consist of new or existing water management facilities that extend, protect, improve, or replace domestic drinking water supplies in the state of Colorado and may include any domestic drinking water supply projects eligible for financial assistance through a state revolving fund pursuant to the terms of the "Safe Drinking Water Act", as defined in subsection (12.2) of this section.

(4.9) "Forest health project" means:

(a) An undertaking that improves the health of a forest, including, but not limited to:

(I) Reducing the threat of uncharacteristically large or intense insect diseases and epidemics;

(II) Reducing the impact of uncharacteristically large or high-intensity wildfires;

(III) Reducing the impact of undesirable nonnative species;

(IV) Replanting trees in deforested areas; or

(V) Improving the use of, or adding value to, small diameter trees; and

(b) A project to harvest woody vegetation for, or use woody vegetation in, the production of energy, fuels, forest products, or other applications. The project may, but need not, constitute all or part of a plan adopted by a community under section 23-31-312 (3.5), C.R.S.

(5) (a) "Governmental agencies" means departments, divisions, or other units of state government, special districts, water conservation districts, metropolitan water districts, conservancy districts, irrigation districts, municipal corporations, counties, cities, and other political subdivisions, and the United States or any agency thereof.

(b) "Governmental agencies" also includes enterprises and any entity, agency, commission, or authority established by any governmental agency specified in paragraph (a) of this subsection (5), including, without limitation, those established pursuant to an interstate compact or other intergovernmental compact or agreement.

(6) "Hydroelectric facilities" means facilities for the hydrogeneration or transmission of electric power and energy.

(7) "Notes" means notes issued by the authority pursuant to this article.

(8) "Owner" includes all individuals, copartnerships, associations, corporations, or governmental agencies having any title or interest in any property rights, easements, and interests authorized to be acquired by this article.

(9) "Person" means any individual, firm, partnership, association, or corporation, or two or more or any combination thereof.

(10) "Project" means any water management facility or hydroelectric facility, including undivided or other interests therein, acquired or constructed or to be acquired or constructed by the authority under this article, including all buildings and facilities that the authority deems necessary for the operation of the project, together with all property rights, water rights,

easements, and interests, including gathering, storage, treatment, and transmission facilities, unless adequate transmission capacity is available from any existing public utility, which may be required for such operation. "Project" also includes any water management facility, hydroelectric facility, or watershed protection projects and forest health projects financed in whole or in part by the authority.

(10.5) (Deleted by amendment, L. 2005, p. 38, § 1, effective March 23, 2005.)

(11) "Public roads" includes all public highways, roads, railroads, and streets in the state, whether maintained by the state, a county, a city, or any other political subdivision.

(12) "Public utility facilities" includes tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances of any public utility.

(12.2) "Safe drinking water act" means the federal "Safe Drinking Water Act", 42 U.S.C. sec. 300f et seq., as amended or supplemented.

(12.5) (a) (I) "Small water resources project" means any water management facility or hydroelectric facility that is or will be financed in whole or in part by the authority and in which the total amount of financing provided by the authority to any participating governmental agency does not exceed five hundred million dollars.

(II) (Deleted by amendment, L. 2002, p. 78, § 1, effective March 22, 2002.)

(b) and (c) (Deleted by amendment, L. 98, p. 142, § 1, effective April 2, 1998.)

(13) "Water management facilities" means facilities for the purpose of the development, use, and protection of water resources, including, without limiting the generality of the foregoing, facilities for water supply and treatment, facilities for streamflow improvement, dams, reservoirs, and other impoundments, water transmission lines, sewerage facilities, water wells and well fields, pumping stations and works for underground water recharge, stream-monitoring systems, and facilities for the stabilization of stream and river banks.

(13.5) "Water pollution control project eligibility list" means the list of projects eligible for financial assistance from the authority through the water pollution control revolving fund or its other bonding capabilities, as adopted and from time to time modified in accordance with section 37-95-107.6 (4). The list shall consist of a project or projects from the project priority list for federal funds adopted by the Colorado water quality control commission for publicly owned treatment works as defined in section 212 of the clean water act and nonpoint source management program projects pursuant to section 319 of the clean water act.

(14) "Water resources" means all waters in or arising from rivers, streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, underground aquifers, and other bodies, geologic formations, or accumulations of water, either natural or artificial, which are situated wholly or partly within, or which border upon, this state.

(15) "Watershed protection project" means an undertaking to improve or protect a domestic or agricultural supply watershed, including, but not limited to, activities to achieve fire prevention or wildfire hazard reduction or post-fire remediation, soil stabilization, water supply continuance, or water quality maintenance or improvement within the watershed. A watershed protection project does not include undertakings where the purpose is to materially increase water quantity.

Source: L. 81: Entire article added, p. 1795, § 1, effective July 1. **L. 82:** (4) amended, p. 542, § 1, effective April 2. **L. 83:** (10) amended, p. 1441, § 1, effective June 10. **L. 88:** (4.5) and (10.5) added, p. 1246, § 2, effective April 4. **L. 89:** (12.5) added, p. 1432, § 2, effective April 18.

L. 94: (4.7) added, p. 1373, § 2, effective May 25. **L. 95:** (4.8) and (12.2) added, p. 937, § 1, effective May 25. **L. 98:** (5), (6), and (12.5) amended, p. 142, § 1, effective April 2. **L. 2002:** (12.5)(a) and (13) amended, p. 78, § 1, effective March 22. **L. 2003:** (4.7) and (12.5)(a)(I) amended, p. 2410, § 4, effective June 5. **L. 2005:** (10.5) amended and (13.5) added, p. 38, § 1, effective March 23. **L. 2008:** (4.9) and (15) added and (10) amended, p. 1537, § 1, effective July 1. **L. 2013:** (4.9) amended, (SB 13-273), ch. 406, p. 2375, § 5, effective June 5. **L. 2018:** IP and (4.5) amended, (SB 18-019), ch. 6, p. 37, § 1, effective August 8.

Editor's note: Section 4 of chapter 6 (SB 18-019), Session Laws of Colorado 2018, provides that the act changing this section applies to loans made on or after August 8, 2018.

Cross references: For the legislative declaration in the 2013 act amending subsection (4.9), see section 1 of chapter 406, Session Laws of Colorado 2013.

37-95-104. Establishment of authority - board of directors - removal - organization - compensation - dissolution. (1) There is hereby created the Colorado water resources and power development authority, which shall be a body corporate and a political subdivision of the state. The authority shall not be an agency of state government, nor shall it be subject to administrative direction by any department, commission, board, bureau, or agency of the state, except to the extent provided by this article.

(2) (a) The powers of the authority shall be vested in the governing body of the authority which shall be a board of directors consisting of nine members who shall be appointed by the governor, with the consent of the senate, as follows:

(I) One member from the Rio Grande drainage basin;

(II) One member from the North Platte drainage basin;

(III) One member from the Arkansas drainage basin;

(IV) One member from the South Platte drainage basin outside the city and county of Denver;

(V) One member from the city and county of Denver who is familiar with its water problems;

(VI) One member from the Yampa-White drainage basins;

(VII) One member from the main Colorado drainage basin;

(VIII) One member from the Gunnison-Uncompahgre drainage basins;

(IX) One member from the San Miguel-Dolores-San Juan drainage basins.

(b) Appointments to the board shall be made so as to include one member who shall be experienced in water project financing, one member who shall be experienced in the engineering aspects of water projects, one member who shall be experienced in the planning and developing of water projects, one member who shall be experienced in public health issues related to drinking water or water quality matters, and one member who shall be experienced in water law. Members of the board shall be representative of the water districts from which they are appointed.

(c) No more than five members of the board shall be members of the same major political party.

(3) Members of the board shall be appointed for terms of four years; except that, of the original terms commencing October 1, 1981, three members shall be appointed for terms of one

year, two members shall be appointed for terms of two years, two members for terms of three years, and two members for terms of four years, at the governor's discretion. Each member shall hold office for the term of his appointment and until his successor has been appointed and has qualified. A member shall be eligible for reappointment. Any vacancy in the membership occurring other than by expiration of term shall be filled in the same manner as the original appointment but for the unexpired term only.

(4) Each member may be removed from office by the governor for cause, after a public hearing, and may be suspended by the governor pending the completion of such hearing. Each member shall take an oath or affirmation in accordance with section 24-12-101.

(5) The members of the board shall elect a chairman and a vice-chairman. The members of the board shall also elect a secretary and a treasurer who need not be members, and the same person may be elected to serve as both secretary and treasurer. The powers of the board shall be vested in the members thereof in office from time to time, and five members of the board shall constitute a quorum at any meeting thereof. Action may be taken and motions and resolutions adopted by the board at any meeting thereof by the affirmative vote of at least five members of the authority. No vacancy in the membership of the board shall impair the right of a quorum of the members to exercise all the powers and perform all the duties of the board.

(6) Each member of the board not otherwise in full-time employment of the state shall receive a per diem of one hundred dollars for each day actually and necessarily spent in the discharge of official duties, and all members shall receive traveling and other necessary expenses actually incurred in the performance of official duties.

(7) The authority may be dissolved by an act passed by the general assembly on condition that the authority has no debts or obligations outstanding or that provision has been made for the payment or retirement of such debts or obligations. Upon any such dissolution of the authority, all property, funds, and assets thereof shall be vested in the state.

Source: L. 81: Entire article added, p. 1796, § 1, effective July 1. **L. 2006:** (2)(b) amended, p. 151, § 1, effective March 31. **L. 2008:** (6) amended, p. 43, § 1, effective August 5. **L. 2018:** (4) amended, (HB 18-1138), ch. 88, p. 704, § 46, effective August 8.

Cross references: (1) For the provisions that designate the Colorado water resources and power development authority as a "special purpose authority" for the purposes of section 20 of article X of the Colorado constitution, see § 24-77-102 (15).

(2) For the legislative declaration in HB 18-1138, see section 1 of chapter 88, Session Laws of Colorado 2018.

37-95-105. Records and meetings of board - disclosure of interests required. (1) All resolutions and orders shall be recorded and authenticated by the signature of the chairman and the secretary of the board. Every legislative act of the board of a general or permanent nature shall be by resolution. The book of resolutions, corporate acts, and orders shall be a public record. A public record shall also be made of all other proceedings of the board, minutes of the meetings, annual reports, certificates, contracts, and bonds given by officers, employees, and any other agents of the authority. The account of all moneys received by and disbursed on behalf of the authority shall also be a public record. Any public record of the authority shall be open for

inspection by any citizen. All records shall be subject to uniform budget and audit laws, as set forth in article 1 of title 29, C.R.S., and shall be subject to regular audits, as provided therein.

(2) All meetings of the board shall be open to the public. No business of the board shall be transacted except at a regular or special meeting at which a quorum is present. One or more members of the board may participate in any meeting and may vote through the use of telecommunications devices, including, but not limited to, a conference telephone or similar communications equipment. Such participation through telecommunications devices shall constitute presence in person at such meeting. Such use of telecommunications shall not supersede any requirements for public hearing otherwise provided by law.

(3) Any board member, employee, or other agent or adviser of the board who has a direct or indirect interest in any contract or transaction with the authority shall disclose this interest to the board. This interest shall be set forth in the minutes of the board, and no board member, employee, or other agent or adviser having such interest shall participate on behalf of the board in the authentication of any such contract or transaction.

Source: L. 81: Entire article added, p. 1797, § 1, effective July 1. **L. 91:** (2) amended, p. 902, § 3, effective April 19. **L. 2008:** (2) amended, p. 43, § 2, effective August 5.

37-95-106. Authority - powers. (1) Except as otherwise limited by this article, the authority, acting through the board, has the power:

(a) To have the duties, privileges, immunities, rights, liabilities, and disabilities of a body corporate and political subdivision of the state;

(b) To sue and be sued;

(c) To have an official seal and to alter the same at pleasure;

(d) To make and alter bylaws for its organization and internal management and for the conduct of its affairs and business;

(e) To maintain an office at such place or places within the state as it may determine;

(f) To acquire, hold, use, and dispose of its income, revenues, funds, and moneys;

(g) To charge, alter, and collect rentals or other charges for the use or services of any project, to contract in the manner provided in this article with one or more persons or governmental agencies or combinations thereof desiring the use or services thereof, and to fix the terms, conditions, rentals, or other charges for such use or services;

(h) To acquire, lease as lessee or lessor, rent, hold, use, and dispose of real or personal property, including water rights, for its purposes; except that the acquisition by the authority of existing decreed water rights of a governmental agency shall not occur without the consent of the affected governmental agency and that negotiation by the authority for the purchase of water rights shall not proceed without first notifying any affected agency when an existing governmental agency has initiated negotiations for the purchase of such rights. The submission of a bona fide offer by a governmental agency for the purchase of such water rights shall be deemed evidence of such initiated negotiations.

(i) To deposit any moneys of the authority in any banking institution within or outside the state;

(j) To fix the time and place or places at which its regular and special meetings are to be held;

(k) (I) To plan, design, develop, acquire, construct, reconstruct, enlarge, extend, improve, furnish, equip, maintain, repair, manage, operate, dispose of, and participate in one or more projects within or without the state and to appropriate water for said projects;

(II) To designate the Colorado water conservation board or, with said board's permission, one or more other persons or governmental agencies participating in a project to act as its agent, in connection with the planning, designing, development, acquisition, construction, reconstruction, enlargement, extension, improvement, furnishing, equipping, maintenance, repair, management, operation, disposition of, or participation in such projects;

(III) To establish rules and regulations for the use of such projects; and

(IV) To finance or participate in the financing of a project, or any interest therein, acquired or constructed or to be acquired or constructed by any governmental agency;

(l) To make available the use or services of any project to one or more persons, one or more governmental agencies, or any combination thereof;

(m) To borrow money and to issue its negotiable bonds or notes in furtherance of its purposes and to provide for the rights of the holders thereof;

(n) To have and exercise the power of eminent domain and, in general, to have and exercise rights and powers of eminent domain conferred upon other agencies as provided in articles 1 to 7 of title 38, C.R.S.; but the authority shall neither have nor exercise the power of eminent domain against the state nor acquire thereby any electric generation facilities, electric distribution lines, or any conditional or absolute water rights;

(o) To contract with any person or governmental agency within or without the state for the construction of any project, or for the sale of the output of any project, or for any interest therein or any right to capacity thereof, on such terms and for such period of time as the board shall determine;

(p) To purchase, sell, exchange, transmit, or distribute the power generated by any project within or without the state, in such amounts as it shall determine to be necessary and appropriate to make the most effective use of its powers and to meet its responsibilities, and to enter into agreements with any person or governmental agency with respect to such purchase, sale, exchange, transmission, or distribution on such terms and for such period of time as the board shall determine;

(q) To purchase, sell, exchange, transmit, or distribute the water of any project within or without the state, subject to the limitation that the waters of the project shall not be delivered outside of the state for purposes other than meeting Colorado compact commitments, in such amounts as it shall determine to be necessary and appropriate to make the most effective use of its powers and to meet its responsibilities, and to enter into agreements with any person or governmental agency with respect to such purchase, sale, exchange, transmission, or distribution on such terms and for such period of time as the board shall determine; except that such action shall not interrupt the development, completion, or operation of existing water projects, nor shall the action adversely affect the ability of a district or governmental agency from fulfilling its contractual commitments associated with such projects;

(r) (I) To make loans to any governmental agency for the planning, designing, acquiring, constructing, reconstructing, improving, equipping, and furnishing of a project, which loans may be secured by loan and security agreements, leases, or any other instruments, upon such terms and conditions as the board shall deem reasonable, including provisions for the establishment and maintenance of reserve and insurance funds, and to require the inclusion, in any lease,

contract, loan and security agreement, or other instrument, of such provisions for the construction, use, operation, maintenance, and financing of a project as the board may deem necessary or desirable. For purposes of a forest health project, the authority may also make a loan as described in this paragraph (r) to a private entity. Any liens filed by the authority shall have priority in the order filed.

(II) As used in this paragraph (r), "private entity" means any person, as defined in section 37-95-103 (9).

(s) To make and enter into all contracts, leases, and agreements which are necessary or incidental to the performance of its duties and the exercise of its powers under this article;

(t) To sell, convey, or lease to any person or governmental agency all or any portion of a project for such consideration and upon such terms as the board may determine to be reasonable;

(u) To make or cause to be made surveys, maps, and plans for, and estimates of the cost of, any project;

(v) (I) To acquire, in the name of the authority:

(A) Any land or other real or personal property, including water rights, which the authority determines is reasonably necessary for a project or for the relocation or reconstruction of any public road by the authority;

(B) Any and all right, title, and interest to and in such land and other real or personal property, including public lands, reservations, public roads, or parkways owned by or in which the state or any county, municipality, city and county, public corporation, or other political subdivision of the state has any right, title, or interest;

(C) Any fee simple absolute or any lesser interest in private property; and

(D) Any fee simple absolute in, or easements upon, or the benefit of restrictions upon abutting property to preserve and protect the project; except that the authority shall not acquire by purchase or condemnation land, an interest in land, or a right-of-way for the change of location of any portion of any public road, railroad, point of diversion, or public utility facility which is not needed for the construction of a project pursuant to this article.

(II) Acquisitions by the authority pursuant to this paragraph (v) may be made by purchase or otherwise, on such terms and conditions, and in such manner as the authority deems appropriate or may be made through the exercise of the power of eminent domain pursuant to, and subject to the limitations of, paragraph (n) of this subsection (1).

(w) To adopt rules and regulations for the use, management, and operation of the hydroelectric facilities and water management facilities financed by the authority;

(x) Subject to any agreement with bondholders or noteholders, to invest moneys of the authority not required for immediate use, including proceeds from the sale of any bonds or notes, in such obligations, securities, and other investments as the authority deems prudent;

(y) To contract for and to accept any gifts or grants or loans of funds or property or financial or other aid in any form from the United States or any agency or instrumentality thereof, or from the state or any governmental agency thereof, or from any other source and to comply, subject to the provisions of this article, with the terms and conditions thereof;

(z) Subject to any agreements with bondholders or noteholders, to purchase bonds or notes of the authority out of any funds or moneys of the authority available therefor and to hold, cancel, or resell such bonds or notes;

(aa) To employ accountants, attorneys, financial advisers, underwriters, and other experts and such other persons to act as agents and employees as may be required and to

determine their qualifications, terms of office, duties, and compensation, all without regard to the provisions of the state personnel system; except that the authority may utilize the services of the officers, personnel, and consultants of the Colorado water conservation board to perform any or all activities specified in paragraphs (k) and (u) of this subsection (1);

(bb) To do and perform any acts authorized by this article under, through, or by means of its officers, agents, or employees or by contracts with any person, firm, or corporation;

(cc) To procure insurance against any losses in connection with its property, operations, personal liability, or assets in such amounts and from such insurers as it deems desirable;

(dd) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this article;

(ee) To purchase or refinance all or any portion of principal and interest on, and to purchase insurance or other credit-enhancement for the payment of, bonds, notes, or other obligations issued by the authority or any governmental agency to finance any project;

(ff) To charge to and collect from governmental agencies and persons fees and charges in connection with the authority's loans or other services, including, but not limited to, fees and charges sufficient to reimburse the authority for all reasonable costs necessarily incurred by the authority in connection with its financing and administration thereof and the establishment and maintenance of reserves or other funds, as the authority may determine to be reasonable;

(gg) Repealed.

(hh) To enter into one or more agreements with the Colorado water conservation board and any other governmental agencies to assist in the development of the water resources of the state.

Source: L. 81: Entire article added, p. 1798, § 1, effective July 1. **L. 83:** (1)(k) amended, p. 1441, § 2, effective June 10. **L. 89:** (1)(ee) and (1)(ff) added, p. 1433, § 3, effective April 18. **L. 98:** (1)(gg) added, p. 1003, § 2, effective May 27. **L. 2003:** (1)(hh) added, p. 2410, § 3, effective June 5. **L. 2014:** (1)(r) amended, (HB 14-1008), ch. 174, p. 640, § 1, effective May 12.

Editor's note: Subsection (1)(gg)(II) provided for the repeal of subsection (1)(gg), effective July 1, 1999. (See L. 98, p. 1003.)

37-95-107. Feasibility studies - repayment of costs. (1) (a) (I) Before any proposed project can receive consideration for construction funding by the authority, the Colorado water conservation board must first review the feasibility study of any such proposed project, and the general assembly must authorize the authority to proceed to consider the construction of any proposed project.

(II) (A) Upon receipt of a feasibility study by the Colorado water conservation board, said board shall review such study and forward the study to the general assembly together with its recommendation as to whether or not the proposed project should be authorized by the general assembly.

(B) Upon receipt of a feasibility study from the Colorado water conservation board, the general assembly may authorize the authority, by means of a joint resolution signed by the governor, to proceed with the consideration of any project that the general assembly deems to be in the interests of and to the advantage of the people of this state. However, such joint resolution shall in no way require or compel the authority to fund or in any way finance and proceed with

the development, acquisition, construction, reconstruction, enlargement, extension, improvement, furnishing, equipping, maintenance, repair, management, operation, or disposition of, or participation in any proposed project. A decision to proceed, when made subsequent to such joint resolution, shall be entirely within the discretion of the authority.

(C) Should the authority choose to proceed with a project, then the authority shall make, or cause to be made, the necessary final designs and specifications for such project; except that the final project location, operation, and purposes must be in substantial compliance with the feasibility study for a project that was reviewed by the Colorado water conservation board. The authority shall also develop and implement detailed plans for the financing of projects with which it chooses to proceed. The terms and conditions of such financing shall be at the sole discretion of the authority.

(III) The provisions of this subsection (1) shall not apply to any small water resources project; except that, in the case of any small water resources project that consists of or includes raw water diversion or storage facilities, the board shall promptly forward a copy of the project loan application to the Colorado water conservation board for informational purposes.

(b) The state engineer shall not issue a permit or license or approve plans, pursuant to any law or rule governing such actions, for construction of any water management facility or hydroelectric power facility for which the authority has paid in whole or in part for a feasibility study or an environmental assessment or environmental impact study without a written resolution or written statement by the authority notifying the state engineer that the applicant has reimbursed the authority for its expenditures for the conduct of such studies.

(2) If the Colorado water conservation board enters into a contract for the performance of a feasibility study for a proposed raw water project with a governmental agency and incurs expenses in performing such feasibility study, then the authority shall provide for the reimbursement of such expenses out of its financing contract with the governmental agency for such project prior to the start of construction only when:

(a) The Colorado water conservation board's contract with the governmental agency sponsoring the project unconditionally requires the repayment of all of the expenses associated with the feasibility study prior to the start of construction, regardless of the funding source for such construction; and

(b) Such governmental agency obtains financing from the authority.

(3) The reimbursement obligation of the authority pursuant to subsection (2) of this section shall not apply:

(a) To the expenses of any feasibility study commenced or initiated by the Colorado water conservation board prior to June 5, 2003;

(b) To the expenses of any full or partial stream-wide, basin-wide, or statewide feasibility study that is not focused on a single discrete raw water supply project;

(c) To the expenses of any feasibility study identified and authorized or directed by law to be performed by the Colorado water conservation board without a contract with another governmental agency for such study;

(d) To the study of any domestic water supply project;

(e) If the Colorado water conservation board waives the obligation of the governmental agency to make such repayment or if the Colorado water conservation board releases, in whole or in part, such governmental agency from its obligation to make such repayment; and

(f) If otherwise agreed to by the authority and the Colorado water conservation board in an agreement entered into pursuant to section 37-60-106 (1)(t).

Source: L. 81: Entire article added, p. 1801, § 1, effective July 1. **L. 83:** (1) and (7) amended, p. 1442, § 3, effective June 10. **L. 85:** (5) amended, p. 1191, § 2, effective June 13. **L. 89:** (8) added, p. 1433, § 4, effective April 18. **L. 98:** (8) amended, p. 143, § 2, effective April 2. **L. 2003:** Entire section R&RE, p. 2411, § 5, effective June 5.

37-95-107.5. Legislative declaration - specific project authorizations. (1) It is hereby declared to be the policy of the general assembly to protect and foster the full utilization of Colorado's limited surface water resources by allocation thereof through the operation of the appropriation system as provided by sections 5 and 6 of article XVI of the state constitution. Any judicial interpretation or other law to the contrary notwithstanding, the water rights appropriation and adjudication system of the state of Colorado shall continue to be utilized to establish priority of right to the use of the natural streams within the state which include groundwater tributary thereto.

(2) It is the recognition and intent of the general assembly that investment in the state's water resources for future generations must be made from state funds, from private capital, or from other moneys available to the authority. Major Colorado water projects should be developed as soon as possible in anticipation of demand and revenues.

(3) Several compacts relating to interstate streams have been entered into by the state on behalf of the people of the state of Colorado to reserve for the people the right to the use of such waters under the appropriation doctrine. It is hereby declared to be the policy of the general assembly to fully utilize, for the maximum benefit of all the people, said natural stream resources. To achieve such utilization, the general assembly hereby directs the authority to proceed with project development and financing in accordance with agreements between the project sponsor and the authority, and consistent with the provisions of this article, such projects as the Colorado water conservation board identifies in statewide water supply initiatives and associated feasibility studies and other projects identified by the authority.

(4) (Deleted by amendment, L. 2003, p. 2412, § 6, effective June 5, 2003.)

(5) The provisions of this section shall not be applicable to the financing of any small water resources project.

Source: L. 85: Entire section added, p. 1190, § 1, effective June 13. **L. 89:** (5) added, p. 1433, § 5, effective April 18. **L. 2003:** (2), (3), and (4) amended, p. 2412, § 6, effective June 5.

37-95-107.6. Creation and administration of water pollution control revolving fund. (1) There is hereby created in the authority the water pollution control revolving fund, which shall be maintained and administered by the authority and be available in perpetuity for the purposes stated in this section. The authority is authorized to establish such procedures as may be required to administer the water pollution control revolving fund in accordance with the clean water act and state law. The authority may create separate accounts in the water pollution control revolving fund, which accounts may be pledged and assigned as security for the payment of the bonds of the authority.

(2) (a) Subject to the provisions of the clean water act and agreements with the holders of bonds of the authority, the authority shall deposit in the water pollution control revolving fund grants from the federal government or its agencies allocated to the state for deposit in said fund; state matching funds where required; loan principal, interest, and penalty payments; and other moneys determined by the authority to be deposited therein.

(b) Moneys in the water pollution control revolving fund shall be expended in a manner consistent with terms and conditions of the clean water act and may be used to provide assistance to governmental agencies for the construction of publicly owned wastewater treatment plants that appear on the priority list under section 216 of the clean water act and as are defined in section 212 of the clean water act; for implementation of a nonpoint source pollution management program under section 319 of the clean water act; and for any other purposes permitted by the clean water act.

(c) Moneys on deposit in the water pollution control revolving fund may be used by the authority for wastewater treatment facilities through the making of loans to governmental agencies; purchasing or refinancing debt obligations of governmental agencies where the debt obligations were incurred after March 7, 1985; purchasing insurance for debt obligations of governmental agencies; securing or providing revenues for payment of the principal and interest on bonds of the authority; providing for the costs of administering the water pollution control revolving fund, including the administrative costs of state agencies; and providing for any other expenditure consistent with the clean water act and state law. Money not currently needed for the operation of the water pollution control revolving fund may be invested, and all interest earned on such investments shall be credited to the specific account, if any, in the water pollution control revolving fund.

(3) (a) The authority may make and contract to make loans to governmental agencies in accordance with and subject to the provisions of this section to finance the cost of wastewater treatment system projects that are on the water pollution control project eligibility list established pursuant to subsection (4) of this section and any other projects authorized under the clean water act and that the governmental agencies may lawfully undertake or acquire under state law, including applicable provisions of the "Colorado Water Quality Control Act", article 8 of title 25, and for which the governmental agencies are authorized by law to borrow money. The loans may be made subject to such terms and conditions as the authority shall determine to be consistent with the purposes of the loans. Each loan by the authority and the terms and conditions of the loan is subject to financial analysis by the division of local government of the department of local affairs. The financial analysis must include an analysis of the capacity to repay a loan and the need for financial assistance. Each loan to a local governmental agency must be evidenced by notes, bonds, or other obligations issued by the local governmental agency to the authority. In the case of each governmental agency, notes and bonds to be issued to the authority by the local governmental agency shall be authorized and issued as provided by law for the issuance of notes and bonds by the governmental agency, may be sold at private sale to the authority at any price, whether or not less than par value, and must be subject to redemption prior to maturity at such times and at such prices as the authority and governmental agency may agree. Each loan to a local governmental agency and the notes, bonds, or other obligations thereby issued must bear interest at a rate or rates per annum at or below the market interest rate and must be for terms that are agreed upon by the authority and the governmental agency and are in compliance with the clean water act.

(b) The authority is authorized, from moneys in the water pollution control revolving fund, to purchase or refinance or purchase insurance for the payment of all or any portion of the principal and interest on bonds, notes, or other obligations issued by a governmental agency to finance the cost of any wastewater treatment system project which the governmental agency may lawfully undertake or acquire under state law, including, but not limited to, applicable provisions of the "Colorado Water Quality Control Act", article 8 of title 25, C.R.S., and for which the governmental agency is authorized by law to borrow money. Each purchase or refinancing or purchase of insurance by the authority shall be subject to financial analysis by the division of local government in the department of local affairs. Such financial analysis shall include an analysis of the capacity to repay a loan and the need for financial assistance.

(c) The authority may charge to and collect from governmental agencies fees and charges in connection with the authority's loans or other services, including, but not limited to, fees and charges sufficient to reimburse the authority for all reasonable costs necessarily incurred by it in connection with its financing and the establishment and maintenance of reserves or other funds, as the authority may determine to be reasonable.

(4) (a) The initial water pollution control project eligibility list shall consist of those projects ranked one through thirty on the construction grant project priority list for federal funds adopted by the water quality control commission effective January 30, 1988.

(b) Additions or modifications to the water pollution control project eligibility list that have been developed by the water quality control commission shall be submitted to the general assembly on or before January 15 of each year. The additions and modifications shall be in conformance with applicable provisions of the clean water act and state law. On or before April 1 of each year, the additions or modifications shall be approved by a joint resolution presented to the governor in accordance with section 39 of article V of the state constitution.

(c) No funds may be expended from the water pollution control revolving fund or bonds issued by the authority pursuant to subsection (6) of this section for any wastewater treatment system project unless the wastewater treatment system project is on the water pollution control project eligibility list approved by the general assembly or is an emergency project in accordance with paragraph (d) of this subsection (4). Financial assistance for a project pursuant to this section may be provided regardless of the rank of such project on the eligibility list.

(d) The Colorado water quality control commission may amend the water pollution control project eligibility list at any time, in accordance with its regular procedures, to include wastewater treatment system projects that it determines and declares to be emergency projects needed to prevent or address threats to the public health or environment. No later than January 15 of each year, the authority shall provide to the general assembly a listing of all emergency projects for which moneys from the water pollution control revolving fund have been expended in the preceding calendar year.

(5) The division of local government in the department of local affairs, the division of administration in the department of health, and the authority shall develop an intended use plan in compliance with the clean water act.

(6) In order to finance the cost of making loans to governmental agencies and provide reserves therefor pursuant to paragraph (a) of subsection (3) of this section, the authority is authorized to issue bonds pursuant to the provisions of this article.

(7) The authority, on behalf of the state, with the written approval of the department of health, is authorized to enter into such agreements with the United States as may be necessary to

comply with the provisions of the federal "Water Quality Act of 1987" (Pub.L. 100-4) and as otherwise may be required to provide for the capitalization of the water pollution control revolving fund from federal grant moneys.

(8) The provisions of sections 37-95-107 and 37-95-107.5 shall not be applicable to any wastewater treatment system project on the project eligibility list approved by the general assembly pursuant to subsection (4) of this section.

(9) Notwithstanding anything to the contrary in any other provision of this article, moneys on deposit in the water pollution control revolving fund may, if permitted by applicable federal law and the terms of any agreement between the state and the United States relating to the water pollution control revolving fund, be deposited by the authority, in its discretion, into one or more funds or accounts created or pledged to secure the payments of bonds issued by the authority in connection with the drinking water revolving fund created and administered under section 37-95-107.8. Any moneys transferred under this subsection (9) from the water pollution control revolving fund into or for the benefit of the drinking water revolving fund shall be repaid into the water pollution control revolving fund as soon as practicable.

(10) The authority may, acting in its discretion and with the approval of the governor, transfer moneys from the water pollution control revolving fund to the drinking water revolving fund created and administered pursuant to section 37-95-107.8, if the transfer of such moneys is permitted by applicable federal law and the terms of any agreement between the state and the United States relating to the water pollution control revolving fund.

Source: L. 88: Entire section added, p. 1246, § 3, effective April 4. **L. 95:** (9) added, p. 942, § 3, effective May 25. **L. 2002:** (4)(c) amended and (4)(d) and (10) added, p. 79, §§ 2, 3, effective March 22. **L. 2004:** (4)(b) amended, p. 691, § 1, effective April 28. **L. 2005:** (3)(a), (4), and (5) amended, p. 39, § 2, effective March 23; (4)(b) amended, p. 306, § 1, effective January 1, 2006. **L. 2018:** (3)(a) amended, (SB 18-019), ch. 6, p. 37, § 2, effective August 8.

Editor's note: (1) Amendments to subsection (4)(b) by Senate Bill 05-033 and Senate Bill 05-011 were harmonized.

(2) Section 4 of chapter 6 (SB 18-019), Session Laws of Colorado 2018, provides that the act changing this section applies to loans made on or after August 8, 2018.

37-95-107.7. Creation and administration of domestic water supply project revolving fund - repeal. (Repealed)

Source: L. 94: Entire section added, p. 1374, § 3, effective May 25; (3)(b) amended, p. 2620, § 34, effective July 1. **L. 95:** (5) and (6) added, p. 942, § 4, effective May 25.

Editor's note: Subsection (6)(b) provided for the repeal of this section effective on the date the revisor of statutes receives notice that the domestic water supply project revolving fund has been depleted. (See L. 95, p. 942.) The state treasurer sent such notice in a letter dated April 24, 1999.

37-95-107.8. Creation and administration of drinking water revolving fund. (1) There is hereby created in the authority the drinking water revolving fund that the authority shall maintain and administer for the purposes stated in this section. The authority may:

(a) Establish procedures to administer the drinking water revolving fund in accordance with the safe drinking water act and state law;

(b) Create separate accounts in the drinking water revolving fund and pledge and assign the accounts as security for the payment of the bonds of the authority;

(c) To the extent permitted by the safe drinking water act, transfer moneys to and divide moneys between the drinking water revolving fund and the water pollution control revolving fund created in section 37-95-107.6.

(2) (a) Subject to any applicable provisions of the safe drinking water act and agreements with the holders of bonds of the authority, the authority shall deposit in the drinking water revolving fund:

(I) Any grants from the federal government or its agencies allocated to the state for deposit in said fund;

(II) State matching funds, if required;

(III) Loan principal, interest, and penalty payments received with respect to loans made from the drinking water revolving fund; and

(IV) and (V) (Deleted by amendment, L. 2001, p. 1279, § 52, effective June 5, 2001.)

(VI) Any other moneys as determined by the authority.

(b) Moneys in the drinking water revolving fund shall be spent in a manner consistent with the terms and conditions of any state revolving program fund established by the safe drinking water act and may be used:

(I) To provide assistance to governmental agencies and private nonprofit entities for projects that appear on the drinking water project eligibility list, referred to in this section as "eligible projects"; and

(II) For any other purposes permitted by the safe drinking water act.

(c) The authority may spend moneys in the drinking water revolving fund for financial assistance to governmental agencies and private nonprofit entities for eligible projects, including expenditures by any of the following means:

(I) Any means specified in the safe drinking water act;

(II) Making loans to governmental agencies and private nonprofit entities;

(III) Purchasing or refinancing obligations of governmental agencies and private nonprofit entities if the debt obligations were incurred after October 14, 1993, or for a project to comply with amendments to regulations enacted by the 1986 amendments to the safe drinking water act;

(IV) Securing or purchasing insurance for debt obligations;

(V) Securing or providing moneys for payment of the principal and interest on bonds of the authority;

(VI) Securing or providing moneys for payment of the principal and interest on other bonds issued to finance eligible projects;

(VII) Providing for the costs of administering the drinking water revolving fund, including the administrative costs of state agencies;

(VIII) Investing money that is not currently needed for the operation of the drinking water revolving fund in the manner determined by the authority. All interest earned on these

investments shall be credited to the specified account, if any, in the drinking water revolving fund.

(IX) Providing for any other expenditure that is consistent with the safe drinking water act and state law.

(3) (a) (I) The authority may make and contract to make loans to governmental agencies and private nonprofit entities in accordance with and subject to this section to finance the cost of eligible projects that the governmental agency or private nonprofit entity may lawfully undertake or acquire under state law and for which the governmental agency or private nonprofit entity is entitled by law to borrow money. The authority may make the loans subject to terms and conditions determined by the authority to be consistent with the purposes of the loans, and, to the extent that moneys originating in grants from the federal government are the source of the loans, consistent with the provisions of the safe drinking water act.

(II) Loans by the authority and the terms and conditions of the loans are subject to financial analysis by the division of local government in the department of local affairs. The financial analysis must include an analysis of the capacity to repay a loan and the need for financial assistance. The loans must be evidenced by notes, bonds, or other obligations of the borrower that are issued to the authority. In the case of a governmental agency or private nonprofit entity, notes and bonds to be issued to the authority must be authorized and issued pursuant to this paragraph (a).

(III) All notes, bonds, or other obligations evidencing a loan from the authority may be sold at private sale to the authority at any price, whether or not less than par value. The denominations, the times for payment of principal and interest, and the provisions for redemption prior to maturity of the notes, bonds, or other obligations are as agreed by the authority and the borrower. Each loan to a governmental agency or private nonprofit entity and the notes, bonds, or other obligations thereby issued must bear interest at a rate or rates per annum at or below the market interest rate and be for terms that are agreed upon by the authority and the borrower and are in compliance with the safe drinking water act.

(b) From moneys in the drinking water revolving fund, the authority may purchase or refinance or purchase insurance for the payment of all or any portion of the principal and interest on bonds, notes, or other obligations issued by a governmental agency to finance an eligible project that the governmental agency may lawfully undertake or acquire under state law and for which the governmental agency is authorized by law to borrow money. The purchase or refinancing or purchase of insurance by the authority is subject to financial analysis by the division of local government in the department of local affairs. The financial analysis shall include an analysis of the capacity to repay a loan and the need for financial assistance.

(c) The authority may charge to and collect from governmental agencies provided financial assistance from the drinking water revolving fund fees and charges in connection with the authority's loans or other services, including, but not limited to, fees and charges sufficient to reimburse the authority for all reasonable costs it necessarily incurred in providing financial assistance from the drinking water revolving fund, including, but not limited to, costs of financing and the establishment and maintenance of reserves or other funds as the authority may determine is reasonable.

(4) (a) The initial drinking water project eligibility list shall be developed by the division of administration in the department of public health and environment.

(b) Additions or modifications to the drinking water project eligibility list shall be developed by the water quality control commission and shall be submitted to the general assembly on or before January 15 of each year. The additions or modifications shall conform to applicable provisions of the safe drinking water act and state law. On or before April 1 of each year, the additions or modifications shall be adopted by the passage of a joint resolution that is approved by a majority vote of both houses of the general assembly and that is presented to the governor in accordance with section 39 of article V of the state constitution.

(c) Moneys shall not be spent from the drinking water revolving fund or bonds issued by the authority pursuant to subsection (6) of this section for any project unless the project is on the drinking water project eligibility list approved in accordance with this subsection (4) or is an emergency project in accordance with paragraph (d) of this subsection (4). Financial assistance for a project pursuant to this section may be provided regardless of the rank, if any, of the project on the eligibility list; except that any priority for eligible projects established or required by the safe drinking water act shall apply in the issuance of financial assistance if the source of the financial assistance is grant moneys from the federal government.

(d) The water quality control commission may amend the drinking water project eligibility list at any time, pursuant to its regular procedures, to include drinking water projects that it determines and declares to be emergency projects needed to prevent or address threats to the public health or environment. No later than January 15 of each year, the authority shall provide to the general assembly a listing of all emergency projects for which moneys from the drinking water revolving fund have been expended in the preceding calendar year.

(5) (a) The division of local government in the department of local affairs, the division of administration in the department of public health and environment, and the authority shall develop an intended use plan that complies with the safe drinking water act.

(b) (Deleted by amendment, L. 2005, p. 40, § 3, effective March 23, 2005.)

(6) The authority may issue bonds pursuant to this article to finance the cost of providing financial assistance from the drinking water revolving fund and to provide reserves therefor pursuant to subsection (3) of this section.

(7) On behalf of the state and with the written approval of the water quality control commission, the authority may enter into any agreements with the federal government as necessary to comply with any provisions of the safe drinking water act and if otherwise required to provide for any capitalization of the drinking water revolving fund from federal grant moneys.

(8) Sections 37-95-107 and 37-95-107.5 shall not apply to any project on the drinking water project eligibility list approved in accordance with subsection (4) of this section.

(9) The authority may, acting in its discretion and with the approval of the governor, transfer moneys from the drinking water revolving fund to the water pollution control revolving fund created and administered pursuant to section 37-95-107.6, if the transfer of such moneys is permitted by applicable federal law and the terms of any agreement between the state and the United States relating to the drinking water revolving fund.

Source: L. 95: Entire section added, p. 938, § 2, effective May 25. **L. 96:** (4)(a) amended, p. 1224, § 29, effective August 7. **L. 2001:** (2)(a)(III), (2)(a)(IV), and (2)(a)(V) amended, p. 1279, § 52, effective June 5. **L. 2002:** (4)(c) amended and (4)(d) and (9) added, p. 80, §§ 4, 5, effective March 22. **L. 2004:** (4)(b) amended, p. 691, § 2, effective April 28. **L. 2005:** (5) amended, p. 40, § 3, effective March 23; (4)(b) amended, p. 306, § 2, effective January

1, 2006. **L. 2006:** (4)(b), (4)(d), and (7) amended, p. 1137, § 24, effective July 1. **L. 2015:** (2)(b)(I), IP(2)(c), (2)(c)(II), (2)(c)(III), and (3)(a) amended, (SB 15-121), ch. 202, p. 697, § 1, effective August 5. **L. 2018:** (3)(a)(III) amended, (SB 18-019), ch. 6, p. 38, § 3, effective August 8.

Editor's note: Section 4 of chapter 6 (SB 18-019), Session Laws of Colorado 2018, provides that the act changing this section applies to loans made on or after August 8, 2018.

Cross references: For the legislative declaration contained in the 1996 act amending subsection (4)(a), see section 1 of chapter 237, Session Laws of Colorado 1996.

37-95-108. Acquisition and disposition of property - change of location of highways, railroad, or public utilities - regulation of public utility facilities on a project. (1) When the authority, or the person or governmental agency with which the authority contracts, finds it necessary to change the location of any portion of any public road, state highway, railroad, point of diversion, or public utility facility in connection with the construction of a project, it shall cause the same to be reconstructed at such location as the other person owning or the unit of government having jurisdiction over such road, highway, railroad, or public utility facility deems most favorable. Such construction shall be of substantially the same type and in as good condition as the original road, highway, railroad, or public utility facility. The cost of such reconstruction, relocation, or removal and any damage incurred in changing the location of any such road, highway, railroad, or public utility facility shall be paid by the authority, or the person or governmental agency responsible to the authority for repayment of bonds or notes in conjunction with any project authorized by the authority, as a part of the cost of such project.

(2) If the authority finds it necessary in connection with the undertaking of any project to change the location of any portion of any public highway or road, it may contract with any governmental agency or any public or private corporation which may have jurisdiction over said public highway or road to cause said public highway or road to be constructed. The cost of such reconstruction and any damage incurred in changing the location of any such highway shall be ascertained and paid by the authority, or the person or governmental agency with which the authority contracts, as a part of the cost of the project. Any public highway affected by the construction of the project may be vacated or relocated by the authority in the manner now provided by law for the vacation or relocation of public roads, and any damages awarded on account thereof shall be paid by the authority as a part of the cost of the project. In all undertakings authorized by this subsection (2), the authority shall consult with and obtain the approval of the department of transportation.

(3) The authority and its authorized agents and employees may enter upon any lands and premises for the purpose of making such surveys, soundings, drillings, and examinations as it may deem necessary or convenient for the purposes of this section, all in accordance with due process of law, and such entry shall not be deemed a trespass nor shall an entry for such purpose be deemed an entry under any condemnation proceedings which may be then pending. The authority shall make reimbursement for any actual damages resulting to such lands and premises as a result of such activities.

(4) The authority also has the power to make reasonable regulations for the installation, construction, maintenance, repair, renewal, relocation, and removal of railroad and public utility

facilities in, on, along, over, or under any of its projects. Whenever the authority determines that it is necessary that any such public utility and railroad facilities which now are, or hereafter may be, located in, on, along, over, or under any project be relocated in any project or should be removed therefrom, the public utility or railroad owning or operating such facilities shall relocate or remove the same in accordance with the order of the authority, but the cost and expenses of such relocation or removal, including the cost of installing such facilities in a new location, and the cost of any lands, or any rights or interests in lands, and any other rights acquired to accomplish such relocation or removal shall be ascertained and paid by the authority, or the person or governmental agency with which the authority contracts, as a part of the cost of the project. In the case of any such relocation or removal of facilities, the public utility or railroad owning or operating the same or its successors or assigns may maintain and operate such facilities, with the necessary appurtenances, in the new location for as long a period and upon the same terms and conditions as it had to maintain and operate such facilities in their former location.

Source: L. 81: Entire article added, p. 1802, § 1, effective July 1. **L. 91:** (2) amended, p. 1075, § 59, effective July 1.

37-95-109. Bonds or notes - issuance - terms. (1) The authority has the power and is hereby authorized from time to time to issue its bonds or notes in such principal amounts as in the opinion of the board are necessary to provide sufficient funds for any of its corporate purposes, including the payment, funding, or refunding of the principal of, or interest or redemption premiums on, any bonds or notes issued by it, whether the bonds or notes or interest to be funded or refunded have or have not become due, and including the establishment or increase of such reserves to secure or to pay such bonds or notes or interest thereon and all other costs or expenses of the authority incident to and necessary to carry out its corporate purposes and powers. The authority shall subsidize some or all of the cost of issuance of bonds and notes pursuant to this article for projects, including small water resources projects, to build water management facilities that are raw water diversion or storage projects that are jointly sponsored by two or more governmental agencies that do not share the same governing body.

(2) Except as may be otherwise expressly provided in this article or by the authority, every issue of bonds or notes shall be special obligations payable out of any revenues or funds of the authority, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues or funds. The authority may issue such types of bonds or notes as it may determine, including, without limiting the generality of the foregoing, bonds or notes as to which the principal and interest are payable:

(a) Exclusively from the revenues and receipts of the part of the project financed with the proceeds of such bonds or notes;

(b) Exclusively from the revenues and receipts of certain designated parts of the project, whether or not the same are financed in whole or in part from the proceeds of such bonds or notes; or

(c) From its revenues and receipts generally.

(3) Any such bonds or notes may be additionally secured by a pledge of any grant, subsidy, or contribution from the United States or any agency or instrumentality thereof, or the

state or any governmental agency thereof, or any person, firm, or corporation or by a pledge of any income or revenues, funds, or moneys of the authority from any source whatsoever.

(4) Whether or not the bonds and notes are of such form and character as to be negotiable instruments under the terms of the "Uniform Commercial Code", title 4, C.R.S., the bonds and notes are hereby made negotiable instruments within the meaning of and for all the purposes of said title 4, subject only to the provisions of the bonds and notes for registration.

(5) Bonds or notes of the authority shall be authorized by a resolution or resolutions of the board, and may be issued in one or more series, and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates of interest per annum, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable from such sources in such medium of payment at such place or places within or without the state, and be subject to such terms of redemption (with or without premium) as such resolution or resolutions may provide.

(6) Bonds or notes of the authority may be sold at public or private sale at such price or prices and in such manner as the board shall determine.

(7) Bonds or notes may be issued under the provisions of this article without obtaining the consent of any department, division, commission, board, bureau, or agency of the state and without any other proceeding or the happening of any other conditions or other things than those proceedings, conditions, or things which are specifically required by this article.

(8) Bonds and notes of the authority issued under the provisions of this article shall not be in any way a debt or liability of the state or of any political subdivision thereof other than the authority and shall not create or constitute any indebtedness, liability, or obligation of the state or of any such political subdivision or be or constitute a pledge of the faith and credit of the state or of any such political subdivision, but all such bonds and notes, unless funded or refunded by bonds or notes of the authority, shall be payable solely from revenues or funds pledged or available for their payment as authorized in this article. Each bond and note shall contain on its face a statement to the effect that the authority is obligated to pay the principal thereof or the interest thereon only from revenues or funds of the authority and that neither the state nor any political subdivision thereof is obligated to pay such principal or interest and that neither the faith and credit nor the taxing power of the state or any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds or notes.

(9) All expenses incurred in carrying out the provisions of this article shall be payable solely from revenues or funds provided or to be provided under the provisions of this article, and nothing in this article shall be construed to authorize the authority to incur any indebtedness or liability on behalf of or payable by the state or any political subdivision thereof.

Source: L. 81: Entire article added, p. 1803, § 1, effective July 1. **L. 2003:** (1) amended, p. 1367, § 1, effective April 25.

37-95-110. Power to make covenants to secure payment. (1) In any resolution of the board authorizing or relating to the issuance of any bonds or notes, the authority, in order to secure the payment of such bonds or notes and in addition to its other powers, has the power by provisions therein which shall constitute covenants by the authority and contracts with the holders of such bonds or notes:

(a) To pledge all or any part of its rents, fees, revenues, or receipts to which its right then exists or may thereafter come into existence, and the moneys derived therefrom, and the proceeds of any bonds or notes;

(b) To pledge any lease or other agreement or the rents or other revenues thereunder and the proceeds thereof;

(c) To covenant against pledging all or any part of its rents, fees, revenues, or receipts, or its leases or agreements or rents or other revenues thereunder, or the proceeds thereof; or against mortgaging all or any part of its real or personal property then owned or thereafter acquired; or against permitting or suffering any lien on any of the foregoing;

(d) To covenant with respect to limitations on any right to sell, lease, or otherwise dispose of any project or any part thereof or any property of any kind;

(e) To covenant as to any bonds and notes to be issued and the limitations thereon and the terms and conditions thereof and as to the custody, application, investment, and disposition of the proceeds thereof;

(f) To covenant as to the issuance of additional bonds or notes or as to limitations on the issuance of additional bonds or notes and on the incurring of other debts by it;

(g) To covenant as to the payment of the principal of or interest on the bonds or notes, or any other obligations, as to the courses and methods of such payment, as to the rank or priority of any such bonds, notes, or obligations with respect to any lien or security, or as to the acceleration of the maturity of any such bonds, notes, or obligations;

(h) To provide for the replacement of lost, stolen, destroyed, or mutilated bonds or notes;

(i) To covenant against extending the time for the payment of bonds or notes or interest thereon;

(j) To covenant as to the redemption of bonds or notes and privileges of exchange thereof for other bonds or notes of the authority;

(k) To covenant as to the rates to be established and charged and the amount to be raised each year or other period of time by such charges and as to the use and disposition to be made thereof;

(l) To covenant to create or authorize the creation of special funds or moneys to be held in pledge or otherwise for construction, operating expenses, payment or redemption of bonds or notes, reserves, or other purposes and as to the use, investment, and disposition of the moneys held in such funds;

(m) To establish the procedure, if any, by which the terms of any contract or covenant with or for the benefit of the holders of bonds or notes may be amended or abrogated, the amount of bonds or notes the holders of which must consent thereto, and the manner in which such consent may be given;

(n) To covenant as to the construction, improvement, operation, or maintenance of its real and personal property, the replacement thereof, the insurance to be carried thereon, and the use and disposition of insurance moneys;

(o) To provide for the release of property, leases, or other agreements;

(p) To provide for the rights and liabilities and the powers and duties arising upon the breach of any covenant, condition, or obligation and to prescribe the events of default and the terms and conditions upon which any or all of the bonds, notes, or other obligations of the authority shall become or may be declared due and payable before maturity and the terms and conditions upon which any such declaration and its consequences may be waived;

(q) To vest in a trustee or trustees within or without the state such property, rights, powers, and duties in trust as the authority may determine, including the right to foreclose any mortgage, and to limit the rights, duties, and powers of such trustee;

(r) To execute all bills of sale, conveyances, deeds of trust, and other instruments necessary or convenient in the exercise of its powers or in the performance of its covenants or duties;

(s) To pay the costs or expenses incident to the enforcement of such bonds or notes or of the provisions of such resolution or of any covenant or agreement of the authority with the holders of its bonds or notes;

(t) To limit the powers of the authority to construct, acquire, or operate any structures, facilities, or properties which may compete or tend to compete with the project;

(u) To limit the rights of the holders of any bonds or notes to enforce any pledge or covenant securing bonds or notes; and

(v) To make covenants other than those expressly authorized in this section, of like or different character, and to make such covenants to do or refrain from doing such acts and things as may be necessary, or convenient and desirable, in order to better secure bonds or notes or which, in the absolute discretion of the authority, will tend to make bonds or notes more marketable, notwithstanding that such covenants, acts, or things may not be enumerated in this section.

Source: L. 81: Entire article added, p. 1805, § 1, effective July 1.

37-95-111. Pledge of revenues, moneys, funds, or other property - lien. Any pledge of revenues, moneys, funds, or other property made by the authority shall be valid and binding from the time when the pledge is made; the revenues, moneys, funds, or other property so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge of revenues, moneys, or funds is created need be filed or recorded, except in the records of the authority.

Source: L. 81: Entire article added, p. 1807, § 1, effective July 1.

37-95-112. Personal liability. Neither the members of the board nor any person executing bonds or notes issued pursuant to this article shall be liable personally on such bonds or notes by reason of the issuance thereof.

Source: L. 81: Entire article added, p. 1807, § 1, effective July 1.

37-95-112.5. Watershed protection and forest health projects - repeal. (1) The authority is hereby authorized to issue bonds, in an amount not to exceed fifty million dollars, for the purposes of funding watershed protection projects and forest health projects of governmental agencies.

(2) The authority may make and contract to make loans with the proceeds of the bonds authorized by this section to governmental agencies pursuant to this section to finance the cost of watershed protection projects and forest health projects if the authority or the governmental agency has entered into an agreement with the Colorado clean energy development authority, as it existed prior to July 1, 2012, or the Colorado state forest service with respect to the application of proceeds of such bonds. The authority may make the loans subject to terms and conditions that are determined by the authority to be consistent with the purposes of the loans. The loans shall be evidenced by notes, bonds, or other obligations of the governmental agency that are issued to the authority, and the governmental agencies are authorized to issue such notes, bonds, or other obligations for such purposes. All notes, bonds, or other obligations evidencing a loan from the authority may be sold at a private sale to the authority at any price, whether or not less than par value. The denominations, times for payment of principal and interest, and provisions for redemption prior to maturity of such bonds, notes, or other obligations shall be as the authority and the governmental agency agree. Each loan to a governmental agency and the notes, bonds, or other obligations issued to evidence the same shall bear interest at the rate or rates and have the maturities as the authority and the governmental agency agree. The authority may charge and collect from governmental agencies fees and charges in connection with the loans or other services from the authority, including, but not limited to, fees and charges sufficient to reimburse the authority for all reasonable costs that it necessarily incurred in providing such loans. All watershed protection projects and forest health projects funded with moneys made available pursuant to this section shall comply with all applicable federal and state laws, such as best management practices for water quality established by the Colorado state forest service pursuant to section 24-33-201, C.R.S.

(3) Governmental agencies participating in watershed protection projects and forest health projects shall specify how the moneys made available pursuant to financing by the authority are to be allocated in a memorandum of understanding with the authority, subject to the following limitations:

(a) Up to twenty percent of the proceeds of bonds issued by the authority may be distributed for watershed protection projects and forest health projects, including the establishment of incentives for use of beetle-infested lumber.

(b) The remaining proceeds shall be applied to watershed protection projects and forest health projects identified, in consultation with the governmental agencies participating in such projects, by the Colorado state forest service pursuant to section 23-31-311, C.R.S.

(4) For purposes of this section, "governmental agencies" means:

(a) Any political subdivision of the state, including, but not limited to, cities, counties, cities and counties, municipalities, water conservation districts, water conservancy districts, special districts, water authorities, government-owned public utilities, and state agencies;

(b) The United States and any agency thereof, including the United States forest service and the bureau of land management; and

(c) Any enterprise, entity, agency, commission, or authority established by a governmental agency, including, without limitation, those established pursuant to an interstate compact or other intergovernmental compact or agreement.

(5) This section is repealed, effective July 1, 2023. Such repeal shall not nullify, abrogate, alter, or otherwise affect any extant obligations under this article at the time of the repeal.

Source: L. 2008: Entire section added, p. 1538, § 2, effective July 1. **L. 2012:** (2) and (3)(a) amended, (HB 12-1315), ch. 224, p. 976, § 42, effective July 1. **L. 2013:** (5) amended, (HB 13-1012), ch. 91, p. 294, § 2, effective April 4.

37-95-113. Debt service reserve funds for watershed protection projects and forest health projects. (1) In addition to any other funds it may establish, the board may, by resolution, establish one or more special funds pursuant to this section, referred to in this section as "debt service reserve funds", for bonds issued to finance watershed protection projects and forest health projects pursuant to section 37-95-112.5, and may pay into such debt service reserve funds:

(a) Any moneys appropriated and made available by the state for the purposes of such debt service reserve funds;

(b) Any proceeds from the sale of bonds to the extent provided in the resolutions of the board authorizing the issuance thereof; and

(c) Any moneys that may be made available to the authority from any other sources for the purposes of such debt service reserve funds.

(2) So long as there are bonds outstanding secured by a debt service reserve fund created by this section, all moneys held in any debt service reserve fund, except as otherwise required in this section, shall be used solely for the payment of the principal of the bonds or of the sinking fund payments referred to in this section with respect to such bonds, the purchase or redemption of such bonds, the payment of interest on such bonds, or the payment of any redemption premium required to be paid when such bonds are redeemed prior to maturity; except that moneys in any such fund shall not be withdrawn at any time in such amount as would reduce such fund to less than the debt service reserve fund requirement, except for the purpose of making, with respect to such bonds, principal, interest, redemption premium, and sinking fund payments for the payment of which other moneys of the authority are not available. So long as there are no bonds issued and outstanding secured by a debt service reserve fund created by this section, the amounts on deposit in such debt service reserve fund shall be used for watershed protection projects and forest health projects funded pursuant to section 37-95-112.5.

(3) Any income or interest earned by, or increment to, any debt service reserve fund due to the investment thereof may be transferred to other funds or accounts of the authority to the extent it does not reduce the amount of such debt service reserve fund below the debt service reserve fund requirement.

(4) The authority may provide by resolution for the establishment of a debt service reserve fund requirement for any debt service reserve fund established pursuant to this section.

(5) The chair of the authority shall, on or before January 1 of each year, make and deliver to the governor a certificate, stating the sum, if any, required to restore each debt service reserve fund to the debt service reserve fund requirement. The governor may transmit to the general assembly a request for the amount, if any, required to restore each debt service reserve fund to the debt service reserve fund requirement. The general assembly may, but shall not be required to, make any such appropriations so requested. All sums appropriated and paid by the general assembly for such restoration shall be deposited by the authority in each such debt service reserve fund. If, in its sole discretion, the general assembly appropriates any moneys for such purpose, the aggregate outstanding principal amount of bonds for which moneys may be

appropriated shall not exceed fifty million dollars. Nothing in this section shall create or constitute a debt or liability of the state.

(6) Any moneys appropriated by the general assembly for the purposes of any of the debt service reserve funds established pursuant to this section shall not revert to the general fund of the state at the end of any fiscal year.

(7) If, by virtue of a decision of the Colorado supreme court or any federal court, portions of this article are held unconstitutional and the authority is thereby rendered incapable of performing all of the purposes for which it is hereby created, then, subject to the provisions of section 37-95-114, any moneys appropriated by the general assembly for the purposes of any of the debt service reserve funds established by the authority remaining on deposit therein shall be transferred to the Colorado water conservation board construction fund established pursuant to section 37-60-121, such transfer to take effect on the day after such decision becomes final and no longer appealable.

Source: L. 81: Entire article added, p. 1807, § 1, effective July 1. **L. 82:** IP(1), (2), (8), and (10) amended, (4) R&RE, and (5) and (6) repealed, pp. 542, 543, §§ 2-4, effective April 2. **L. 2002:** Entire section repealed, p. 80, § 6, effective March 22. **L. 2008:** Entire section RC&RE, p. 1539, § 3, effective July 1.

37-95-114. Guarantee by state not to limit or alter rights or powers vested in authority. The state of Colorado does hereby pledge to and covenant and agree with the holders of any bonds or notes issued pursuant to the powers set forth in this article that the state will not limit or alter the rights or powers vested by this article in the authority to acquire, construct, maintain, improve, repair, and operate the project in any way that would jeopardize the interest of such holders, or to perform and fulfill the terms of any agreement made with the holders of such bonds or notes, or to fix, establish, charge, and collect such rents, fees, rates, or other charges as may be convenient or necessary to produce sufficient revenues to meet all expenses of the authority and fulfill the terms of any agreement made with the holders of such bonds and notes, together with interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of such holders, until the bonds, together with interest thereon, are fully met and discharged or provided for.

Source: L. 81: Entire article added, p. 1809, § 1, effective July 1.

37-95-115. Exemption of bonds from taxation. Any bonds issued by the authority under the provisions of this article, their transfer, and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation by the state or any political subdivision or other instrumentality of the state.

Source: L. 81: Entire article added, p. 1809, § 1, effective July 1.

37-95-116. Annual report - annual audit - annual budget. (1) Notwithstanding section 24-1-136 (11)(a)(I), on or before April 30 of each year, the authority shall make an annual report of its activities for the preceding fiscal year to the governor and the joint agriculture and natural resources committee of the house of representatives and the senate. Each

such report shall set forth a complete operating and financial statement covering its operations during the year. Included within such report shall be detailed financial data setting forth the manner in which any previously appropriated state funds have been used. The authority, no later than November 30 of each year, shall report to the governor any requests for state funds for the upcoming state fiscal year, detailing the purposes for which said funds are to be utilized.

(2) The authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants, and the cost thereof shall be considered as expenses of the authority, and a copy thereof shall be filed with the state treasurer.

(3) The authority shall develop and adopt an annual administrative operating budget and submit such budget on a timely basis to each district, governmental entity, and other entity participating in projects, so as to permit such districts and entities to make necessary adjustments in their respective budgets, fees, and charges.

Source: L. 81: Entire article added, p. 1809, § 1, effective July 1. **L. 83:** Entire section amended, p. 1442, § 4, effective June 10. **L. 98:** (1) amended, p. 144, § 3, effective April 2. **L. 2001:** (1) amended, p. 1181, § 22, effective August 8. **L. 2003:** (1) amended, p. 2413, § 7, effective June 5. **L. 2017:** (1) amended, (HB 17-1257), ch. 254, p. 1067, § 15, effective August 9.

37-95-117. Services by state officers, departments, boards, agencies, divisions, and commissions. All officers, departments, boards, agencies, divisions, and commissions of the state are hereby authorized and empowered to render any and all of such services to the authority as may be within the area of their respective governmental functions as fixed or established by law and as may be requested by the authority. The cost and expense of any such services shall be met and provided for by the authority.

Source: L. 81: Entire article added, p. 1809, § 1, effective July 1.

37-95-118. Bonds eligible for investment. Bonds issued under the provisions of this article are hereby made securities in which all insurance companies, trust companies, banking associations, savings and loan associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital, in their control or belonging to them. Public entities, as defined in section 24-75-601 (1), C.R.S., may invest public funds in such bonds only if said bonds satisfy the investment requirements established in part 6 of article 75 of title 24, C.R.S. Such bonds are hereby made securities which may properly and legally be deposited with and received by any public entity for any purpose for which the deposit of bonds, notes, or obligations of the state is authorized by law.

Source: L. 81: Entire article added, p. 1810, § 1, effective July 1. **L. 89:** Entire section amended, p. 1132, § 75, effective July 1.

37-95-119. Charges for use of service of projects. Rentals or other charges with respect to a project shall not be subject to supervision or regulation by any other authority, commission, board, bureau, or agency of the state, and such contract with respect to a project may provide for acquisition by such person or governmental agency of all or any part of such

project for such consideration, payable over the period of the contract or otherwise, as the authority in its sole discretion determines to be appropriate, but subject to the provisions of any resolution authorizing the issuance of bonds or notes of the authority or any trust agreement securing the same.

Source: L. 81: Entire article added, p. 1810, § 1, effective July 1.

37-95-120. Agreements with governmental agencies or persons. (1) Governmental agencies or persons may enter into lease, sale, or loan agreements with the authority with respect to any project, and governmental agencies or persons may also enter into purchase agreements with the authority for the purchase of the capacity use or service of any project. Such lease, sale, loan, or purchase agreements may be for a term covering the life of a project, or for any other term, or for an indefinite period. Pursuant to any such agreements, such governmental agencies or persons may obligate themselves to make payments in amounts which shall be sufficient to enable the authority to meet its expenses, the interest and principal payments (whether at maturity or upon sinking fund redemption) for its bonds, its reasonable reserves for debt service, operation and maintenance, and renewals and replacements, and the requirements of any rate covenant with respect to debt service coverage contained in any resolution, trust indenture, or other security instrument.

(2) Purchase agreements between the authority and any governmental agency or persons may contain such other terms and conditions as the authority and the purchasers may determine, including provisions whereby the purchaser is obligated to pay for the output, capacity, or use of any project irrespective of whether such output, capacity, or use is produced or delivered to the purchaser or whether any water development project contemplated by any such agreement is completed, operable, or operating, and notwithstanding suspension, interruption, interference, reduction, or curtailment of the output, use, or service of such project. Subject to local charter and state constitutional limitations, such purchase agreements may also provide that if one or more of the purchasers defaults in the payment of its obligations under any such purchase agreement, the remaining purchasers which also have such agreements shall be required to accept and pay for, and shall be entitled proportionately to use or otherwise dispose of, the output, capacity, or use of the project contracted for by the defaulting purchaser.

(3) The obligations of a governmental agency or persons under an agreement with the authority or arising out of the default by any other purchaser with respect to such an agreement shall not, unless otherwise lawful, be construed to constitute a debt of the governmental agency or persons. To the extent provided in agreements with the authority, such obligations shall constitute special obligations of the governmental agency or persons, payable solely from the revenues and other moneys derived by the governmental agency or persons from their utility systems, and shall be treated as expenses of operating such systems.

Source: L. 81: Entire article added, p. 1810, § 1, effective July 1. **L. 83:** (3) amended, p. 1443, § 5, effective June 10.

37-95-121. Effect on inconsistent acts and rules and regulations adopted thereunder. It is the intent of the general assembly that, in the event of any conflict or inconsistency in the provisions of this article and any other statutes pertaining to matters

established or provided for in this article or in any rules and regulations adopted under this article or under said other statutes, to the extent of such conflict or inconsistency, the provisions of this article and the rules and regulations adopted under this article shall be enforced, and the provisions of such other statutes and rules and regulations adopted thereunder shall be of no force and effect; except that nothing in this article shall be construed to amend or affect any existing water law.

Source: L. 81: Entire article added, p. 1811, § 1, effective July 1.

37-95-122. Severability. If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

Source: L. 81: Entire article added, p. 1811, § 1, effective July 1.

37-95-123. Construction of article. This article shall be construed liberally to effectuate the legislative intent and the purposes of this article as the complete and independent authority for the performance of each and every act and thing authorized in this article, and all the powers granted in this article shall be broadly interpreted to effectuate such intent and purposes and shall not be interpreted as a limitation of such powers; except that it is hereby recognized that the primary purpose of this article relates to the development of water resources of the state of Colorado as set forth in section 37-95-102 (1), and that the only generation of electric energy authorized hereunder is generation from hydroelectric facilities. This article shall not be construed to authorize the board to generate electric energy by fossil fuel or other nonhydroelectric methods.

Source: L. 81: Entire article added, p. 1811, § 1, effective July 1. **L. 98:** Entire section amended, p. 144, § 4, effective April 2.

WATER CONSERVATION

ARTICLE 96

Water Conservation in State Landscaping

37-96-101. Short title. This article shall be known and may be cited as the "State Projects Water Conservation in Landscaping Act".

Source: L. 89: Entire article added, p. 1435, § 1, effective April 19.

37-96-102. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) The waters of the state are of limited supply and are subject to ever increasing demands;

(b) The continuation of Colorado's economic prosperity is dependent on adequate supplies of water being available for future uses;

(c) It is the policy of the state to promote the conservation and efficient use of water and to prevent the waste of this valuable resource;

(d) It is further the policy of the state to conserve water used for public projects;

(e) Landscaping with plants that conserve water has an additional benefit of reducing ongoing maintenance of public projects or facilities and costs associated therewith.

Source: L. 89: Entire article added, p. 1435, § 1, effective April 19.

37-96-103. Requirement of water conservation in landscaping for certain public projects. (1) For purposes of this article, unless the context otherwise requires:

(a) (I) "Public project or facility" means any new construction or renovation financed wholly or in part by the state, including, but not limited to, any road or highway construction project and facility connected therewith, any public building or facility constructed or renovated by a public entity, and any project, building, or facility constructed or renovated by a public entity with funding from the Colorado lottery.

(II) "Public entity" means any governmental or quasi-governmental agency of the state as well as any political subdivision of the state if that political subdivision receives financing from the state for a public project or facility, as defined in this subsection (1).

(b) "Public project or facility" does not include any public project or facility which disturbs less than two hundred square feet of ground space or any project or facility which is not irrigated; except that any public project or facility which is subsequently irrigated shall comply with this article.

(c) "Renovation" includes external improvements to the project or facility that affect at least thirty-five percent of the covered landscaped area.

(2) On and after January 1, 1990, when the public entity responsible for landscaping and maintaining any public project or facility constructed or renovated by the public entity develops a landscaping plan, the plan shall seek to conserve water in the landscaping of such public project or facility. Any such landscaping plan shall consider, but need not be limited to:

(a) Depending upon the use of the public project or facility, limiting the area on which frequently irrigated and mowed turf is to be maintained to functional areas or areas proximal to entryways and restricting turf use from median strip plantings;

(b) Insuring the use of efficient irrigation techniques, including, but not limited to, water reuse, wherever possible and the use of seasonally variable irrigation schedules which match the evapotranspiration needs of the plants being irrigated;

(c) Analyzing and improving soil on the site to maximize moisture availability for plant intake and to increase soil moisture penetration and retention;

(d) Using mulches to reduce water needs and weed growth and to check soil erosion;

(e) Using lower-water demand plants, ground cover, and grass species to conserve water; and

(f) Planning for routine maintenance such as weed control, pruning, and irrigation system adjustments to reduce water usage.

(3) Any public entity which constructs or renovates a public project or facility to which the provisions of this article apply may develop a water use analysis, a water use projection, and

a landscaping water plan to guide and regulate water used for maintenance of any such landscaping.

(4) The state of Colorado shall develop and implement a plan to enhance water use efficiency with respect to any state project or facility the construction or renovation of which commences after January 1, 1993.

(5) If the state facility or project involves landscaping or maintenance of existing landscaping to enhance water use efficiency, a landscaping plan shall be developed and implemented using best management practices which shall include, but not be limited to:

(a) Limiting to functional areas of heavy pedestrian traffic, such as ballfields or areas proximal to entryways, the locations on which frequently irrigated and mowed turf such as bluegrass is to be maintained, and restricting the use of turf in median strips;

(b) Ensuring the use of efficient irrigation techniques and systems, including prohibiting landscape irrigation between the hours of 11 a.m. and 3 p.m.; employing the use of nonpotable water supplies and water reuse, where such supplies and water reuse are available, for irrigation of areas exceeding ten acres; and using seasonally variable irrigation schedules which match the evapotranspiration needs of the plants being irrigated;

(c) Analyzing and improving soil on the site to maximize moisture availability for plant intake and to increase soil moisture penetration and retention;

(d) Using mulches to reduce water needs and weed growth and to check soil erosion;

(e) Using lower water-demand plants, ground cover, and grass species to reduce water usage;

(f) Planning for routine maintenance such as weed control, pruning, and irrigation system adjustments so as to reduce water usage; and

(g) Using evapotranspiration data, when available, to determine water needs.

(6) After January 1, 1992, the state of Colorado shall subject all state buildings to evaluation through water audits in those areas in which such audits are available from the local water supply entity.

(7) and (7.1) Repealed.

(8) Repealed.

Source: L. 89: Entire article added, p. 1436, § 1, effective April 19. **L. 91:** (4) to (8) added, p. 2028, § 5, effective June 4. **L. 99:** (8) repealed, p. 26, § 5, effective March 5. **L. 2014:** (7.1) added by revision, (SB 14-103), ch. 384, pp. 1877, 1880, §§ 2, 6.

Editor's note: Subsection (7.1) provided for the repeal of subsections (7) and (7.1), effective September 1, 2016. (See L. 2014, pp. 1877, 1880.)

Cross references: In 1991, subsections (4), (5), (6), (7), and (8) were added by the "Water Conservation Act of 1991". For the short title and the legislative declaration, see sections 1 and 2 of chapter 328, Session Laws of Colorado 1991.

ARTICLE 96.5

Rooftop Precipitation Collection

37-96.5-101. Legislative declaration. (1) The general assembly hereby finds and determines that, pursuant to sections 5 and 6 of article XVI of the state constitution, water is considered the property of the public, is dedicated to the use of the people, is subject to the doctrine of prior appropriation, and must be administered in accordance with the priority system established in article 92 of this title.

(2) The general assembly declares that nothing in this article is intended to infringe upon or impair the doctrine of prior appropriation.

(3) The general assembly further declares that the use of a rain barrel does not constitute a water right.

Source: L. 2016: Entire article added, (HB 16-1005), ch. 161, p. 509, § 1, effective August 10.

37-96.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Rain barrel" means a storage container with a sealable lid that is:

(a) Located aboveground outside of a residential home; and

(b) Used for collecting precipitation from a downspout of a rooftop.

(2) "Single-family residence" means a private residence that is a separate building or an individual residence that is part of a row of residences joined by common sidewalls.

Source: L. 2016: Entire article added, (HB 16-1005), ch. 161, p. 509, § 1, effective August 10.

37-96.5-103. Small-capacity rooftop precipitation collection permitted. (1) Precipitation from a rooftop may be collected if:

(a) No more than two rain barrels with a combined storage capacity of one hundred ten gallons or less are utilized;

(b) Precipitation is collected from the rooftop of a building that is used primarily as a single-family residence or a multi-family residence with four or fewer units;

(c) The collected precipitation is used for outdoor purposes including irrigation of lawns and gardens; and

(d) The collected precipitation is used on the residential property on which the precipitation is collected.

(2) A person shall not use precipitation collected under this article for drinking water or indoor household purposes.

(3) The state engineer may curtail rain barrel usage pursuant to section 37-92-502 (2)(a).

Source: L. 2016: Entire article added, (HB 16-1005), ch. 161, p. 510, § 1, effective August 10.

37-96.5-104. Information on state engineer's website. (1) The state engineer, to the extent practicable within existing resources, shall provide information on the state engineer's website on the permitted use of rain barrels to collect precipitation from residential rooftops, including a description of the limitations set forth in section 37-96.5-103.

(2) If the department of public health and environment informs the state engineer that it has developed best practices in accordance with section 25-1.5-210, C.R.S., the state engineer shall, to the extent practicable within existing resources, post or link to the department's best practices on the state engineer's website.

Source: L. 2016: Entire article added, (HB 16-1005), ch. 161, p. 510, § 1, effective August 10.

37-96.5-105. Reporting. (1) On or before March 1, 2019, and on or before March 1, 2022, the state engineer shall report to the committees of reference in each house of the general assembly with jurisdiction over agriculture on whether the allowance of small-scale residential precipitation collection pursuant to this article has caused any discernible injury to downstream water rights. The state engineer's report may contain the following:

(a) Data received from water providers, water users, or other stakeholders;

(b) Data resulting from a precipitation collection pilot project or other research; or

(c) Any complaint or report of injury.

Source: L. 2016: Entire article added, (HB 16-1005), ch. 161, p. 510, § 1, effective August 10.

ARTICLE 97

Water Metering Act

37-97-101. Short title. This article shall be known and may be cited as the "Water Metering Act".

Source: L. 90: Entire article added, p. 1630, § 1, effective July 1.

37-97-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Water service supplier" means any person who, for compensation, provides water for human consumption or for household use through a system of pipes, structures, or other facilities if such system has at least six hundred unmetered taps.

Source: L. 90: Entire article added, p. 1630, § 1, effective July 1.

37-97-102.5. Exemptions. (1) Communities receiving their water supply from free-flowing springs shall be exempt from this article.

(2) Raw water piped irrigation systems in communities that have separate raw water piped irrigation systems and domestic water systems shall be exempt from this article.

(3) Communities under sanction by the department of public health and environment for water quality standards shall be exempt from this article.

Source: L. 90: Entire article added, p. 1630, § 1, effective July 1. **L. 94:** (3) amended, p. 2805, § 576, effective July 1.

Cross references: For an additional exemption, see § 37-97-103 (6).

37-97-103. Mandatory use of metered water delivery and billing systems. (1) Every water service supplier providing water in this state shall provide a metered water delivery and billing service to its customers according to the following schedule:

(a) For any new construction serviced by such water service supplier, including but not limited to construction for residential, commercial, or industrial use, meters shall be installed at the time of such construction.

(b) For any existing construction with unmetered taps, meters shall be installed on fifty percent of such taps on or before January 1, 2000. For any taps remaining unmetered as of January 1, 2000, meters shall be installed on fifty percent of such taps on or before January 1, 2005, and on all remaining unmetered taps on or before January 1, 2009.

(2) Billing of such water services based on the metered service shall begin no later than ninety days from the date of the installation of the meter.

(3) Any increase in the rates charged for such water service attributed to such installation and billing service requirements shall be based upon the actual costs of such installation and billing service. Such increase may recover the total cost of providing such service to the customers of the water service provider.

(4) Nothing in this section shall preclude a water service supplier from providing such metered water delivery and billing service prior to the dates specified in subsections (1) and (2) of this section or from seeking a corresponding rate increase necessitated by the provision of such service prior to those dates.

(5) Within an industrial customer operation, multiple water uses shall not be considered separate service connections. Deliveries to any customer other than a detached single family residential customer who may be subject to this article may be metered by the use of a single meter for the entire customer or operation.

(6) A mobile home park, as defined in section 38-12-201.5 (3), C.R.S., which makes water service available to tenants but does not bill such tenants for water as a separate item is exempt from the provisions of this article.

Source: L. 90: Entire article added, p. 1630, § 1, effective July 1.

Cross references: For additional exemptions, see § 37-97-102.5.

ARTICLE 98

Water Resources Review Committee

37-98-101. Legislative declaration. (1) The general assembly finds, determines, and declares that the purpose of this article is to provide an interim committee as a forum through which the general assembly shall review the statewide planning, administration, and monitoring of Colorado's water resources. The general assembly recognizes its mandate to vigorously protect and defend Colorado's finite supply of water. The general assembly further recognizes the need to ensure that water issues receive sufficient legislative scrutiny and public input:

(a) To maximize the benefit derived from Colorado's surface water and groundwater resources;

(b) To evaluate the present and future water needs of the state;

(c) To ensure effective water rights administration;

(d) To protect water quality and water quantity;

(e) To ensure that Colorado's interstate water compact agreements are met and, in relation thereto, that Colorado's water resources are protected against unwarranted claims; and

(f) To continue the studies of the special water committee pursuant to Senate Bill 96-074.

Source: L. 2001: Entire article added, p. 725, § 1, effective July 1. **L. 2014:** IP(1) amended, (SB 14-115), ch. 187, p. 699, § 2, effective May 15.

37-98-102. Water resources review committee - creation. (1) (a) For the purposes of contributing to and monitoring the conservation, use, development, and financing of the water resources of Colorado for the general welfare of its inhabitants and to review and propose water resources legislation, there is hereby created the water resources review committee, referred to in this article as the committee. The committee shall meet at the call of the chair as often as six times during even-numbered years and eight times during odd-numbered years to review and to propose water resources legislation and matters relating thereto. No more than two of such meetings may occur during periods other than the interim period; except that the committee shall not meet during the 2010 interim period. In connection with such review, except during the 2010 interim period, the committee may take up to two field trips per year in connection with its mandate and shall consult with experts in the field of water conservation, quality, use, finance, and development. The department of natural resources, the state engineer, and the attorney general, together with the members and staff of the Colorado water conservation board, the Colorado water resources and power development authority, the Colorado water quality control commission, the department of public health and environment, the department of agriculture, and the great outdoors Colorado program, shall cooperate with the committee and with any persons assisting the committee in pursuing its responsibilities pursuant to this section. Further, the committee may utilize the legislative council staff to assist its members in researching any matters.

(b) (Deleted by amendment, L. 2003, p. 718, § 2, effective March 20, 2003.)

(2) (a) The committee shall consist of ten members of the general assembly to be selected as follows:

(I) Five members of the committee shall be from the senate, three appointed by the president of the senate and two appointed by the minority party leader; and

(II) Five members of the committee shall be from the house of representatives, appointed by the speaker of the house of representatives after consultation with the minority leader of the house of representatives.

(b) At least four members of the committee shall either:

(I) Reside in that portion of the state that is west of the continental divide; or

(II) Represent a legislative district the majority of the population of which lies west of the continental divide.

(c) To the extent possible, the members shall be selected so as to achieve representation from each water division as defined in section 37-92-201.

(d) (I) Except as provided in subparagraph (II) of this paragraph (d), members' terms shall extend from January 1 of an odd-numbered year to December 31 of the following even-numbered year.

(II) The terms of the members appointed by the speaker of the house of representatives, the president of the senate, and the minority leader of the senate and who are serving on March 22, 2007, shall be extended to and expire on or shall terminate on the convening date of the first regular session of the sixty-seventh general assembly. As soon as practicable after such convening date, the speaker, the president, and the minority leader of the senate shall appoint or reappoint members in the same manner as provided in paragraph (a) of this subsection (2). Thereafter, the terms of members appointed or reappointed by the speaker, the president, and the minority leader of the senate shall expire on the convening date of the first regular session of each general assembly, and all subsequent appointments and reappointments by the speaker, the president, and the minority leader of the senate shall be made as soon as practicable after such convening date. The person making the original appointment or reappointment shall fill any vacancy by appointment for the remainder of an unexpired term. Members shall serve at the pleasure of the appointing authority and shall continue in office until the member's successor is appointed.

(3) The president of the senate and the speaker of the house of representatives shall coordinate their appointments to the extent practicable.

(4) Members of the committee shall serve without compensation; except that each member shall receive the sums specified in section 2-2-307 (3)(a) and (3)(b), C.R.S., for attendance at meetings of the committee when the general assembly is in recess for more than three days or is not in session.

(5) During odd-numbered years, the president of the senate shall appoint the chair and the speaker of the house of representatives shall appoint the vice-chair, and during even-numbered years, the speaker of the house of representatives shall appoint the chair and the president of the senate shall appoint the vice-chair.

(6) (Deleted by amendment, L. 2002, p. 1099, § 1, effective June 3, 2002.)

Source: L. 2001: Entire article added, p. 726, § 1, effective July 1. **L. 2002:** (1), (2)(b), and (6) amended, p. 1099, § 1, effective June 3. **L. 2003:** (1) and (5) amended, p. 718, § 2, effective March 20. **L. 2004:** (2)(d) added, p. 162, § 1, effective March 17. **L. 2007:** (2)(d) amended, p. 190, § 28, effective March 22. **L. 2010:** (1)(a) amended, (SB 10-213), ch. 375, p. 1764, § 11, effective June 7.

37-98-103. Annual recommendations - bill limitation - deadlines for introduction. (1) The committee may report no more than three bills or other measures to the legislative council created in section 2-3-301, C.R.S., unless a two-thirds majority of the members of the committee vote to report a greater number; except that the committee shall not report any bills to the legislative council in 2010. No bill shall be reported to the legislative council unless a two-thirds majority of the appointed members of the committee vote to report such bill to the legislative council. Such greater number shall not exceed one bill or other measure per member. These bills shall be exempt from any applicable bill limit imposed on the individual committee

members sponsoring such bills if the bills have been approved by the legislative council no later than October 15 in even-numbered years and November 15 in odd-numbered years.

(2) to (5) Repealed.

(6) (a) When the Colorado water conservation board submits the scope, fundamental approach, and basic elements of a draft state water plan to the committee as specified in section 37-60-106 (1)(u)(III)(B), the committee shall hold at least one public hearing on the scope, fundamental approach, and basic elements of the draft plan in each geographic region associated with the basin roundtables, as created in section 37-75-104 (3)(b), for the purpose of receiving the public's feedback. The committee shall provide a summary of the public's feedback, as well as the committee's own feedback, to the board by November 1, 2014.

(b) When the Colorado water conservation board submits a draft state water plan to the committee as specified in section 37-60-106 (1)(u)(III)(D), the committee shall hold at least one public hearing on the draft plan in each geographic region associated with the basin roundtables for the purpose of receiving the public's feedback. The committee shall provide a summary of the public's feedback, as well as the committee's own feedback, to the board by November 1, 2015.

(c) When the Colorado water conservation board submits a significant amendment to the state water plan to the committee as specified in section 37-60-106 (1)(u)(III)(F), the committee may hold at least one public hearing on the amendment in each geographic region associated with the basin roundtables for the purpose of receiving the public's feedback. If the committee holds the hearings, the committee shall provide a summary of the public's feedback, as well as the committee's own feedback, to the board by November 1 of the year in which the hearings are held.

(d) Hearings held pursuant to this subsection (6):

(I) Do not count against the number of meetings or field trips allowed by section 37-98-102 (1)(a); and

(II) May be held before the Colorado water conservation board submits the documents specified in section 37-60-106 (1)(u)(III)(B) or (1)(u)(III)(D) if deemed appropriate by the chair of the committee.

(7) No later than November 1, 2017, and no later than every five years thereafter, the committee shall prepare a list of specific topics that it deems necessary to be addressed in the state water plan, as updated or amended pursuant to section 37-60-106 (1)(u). The Colorado water conservation board shall provide its recommendations, including suggestions for potential legislation, for the committee's consideration within eight months after receipt of the list of specific topics.

Source: L. 2001: Entire article added, p. 727, § 1, effective July 1. **L. 2002:** Entire section amended, p. 1100, § 2, effective June 3. **L. 2003:** (2) repealed, p. 718, § 1, effective March 20. **L. 2008:** (4) added, p. 1638, § 1, effective May 29; (3) added, p. 1038, § 1, effective August 5. **L. 2010:** (1) amended, (SB 10-213), ch. 375, p. 1764, § 12, effective June 7. **L. 2014:** (5) added, (SB 14-017), ch. 111, p. 403, § 2, effective April 11; (6) and (7) added, (SB 14-115), ch. 187, p. 699, § 3, effective May 15.

Editor's note: (1) Subsections (3)(b) and (4)(b) provided for the repeal of subsections (3) and (4), respectively, effective July 1, 2009. (See L. 2008, pp. 1038, 1638.)

(2) Subsection (5)(b) provided for the repeal of subsection (5), effective September 1, 2015. (See L. 2014, p. 403.)

Cross references: For the legislative declaration in SB 14-017, see section 1 of chapter 111, Session Laws of Colorado 2014.

37-98-104. Repeal of article. (Repealed)

Source: L. 2001: Entire article added, p. 727, § 1, effective July 1. **L. 2002:** Entire section repealed, p. 1100, § 3, effective June 3.