

**37-60-121. Colorado water conservation board construction fund - creation of - nature of fund - funds for investigations - contributions - use for augmenting the general fund - funds created.**

(1) (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 systems, controlled maintenance of the satellite monitoring system authorized pursuant to section 37-80-102 (10), 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.

(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) 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 moneys from the litigation fund created in paragraph (a) of this subsection (2.5).

(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.

(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.

**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:** (1)(b)(VII) amended, p. 1532, § 11, effective May 31; (2.5) added and (6)(d) to (6)(f) amended, p. 1371, § 1, effective May 25. **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.

**Editor's note:** (1) Section 12 of chapter 325, Session Laws of Colorado 1991, includes a legislative acknowledgment recognizing the importance of the Colorado water conservation board construction fund, reaffirming its commitment to the funding provided to the Colorado water conservation board construction fund, and stating that the delay in funding provided by Senate Bill 91-179 is not to be construed in any way to affect negatively or to diminish that resolve.

(2) Subsection (1)(d)(II) provided for the repeal of subsection (1)(d), effective July 1, 1994. (See L. 93, p. 11.)

(3) Amendments to subsections (2.5)(c) and (2.5)(e) by Senate Bill 01-138 and Senate Bill 01-157 were harmonized.

(4) Amendments to subsection (2.5)(d) by Senate Bill 03-110 and House Bill 03-1344 were harmonized.

**Cross references:** For the legislative declaration contained in the 1996 act repealing subsection (1)(c), see section 1 of chapter 237, Session Laws of Colorado 1996.