

# STATE OF COLORADO

## COLORADO WATER CONSERVATION BOARD

Department of Natural Resources

721 State Centennial Building  
1313 Sherman Street  
Denver, Colorado 80203  
Phone: (303) 866-3441



January 21, 1986

Richard D. Lamm  
Governor  
J. William McDonald  
Director  
David W. Walker  
Deputy Director

Senator Ted Strickland  
President of the Senate  
Colorado General Assembly  
State Capitol  
Denver, CO 80203

Representative Carl B. Bledsoe  
Speaker of the House of Representatives  
Colorado General Assembly  
State Capitol  
Denver, CO 80203

Gentlemen:

As required by section 37-60-122 (1)(a), CRS, please find enclosed the annual report from the Colorado Water Conservation Board.

Sincerely,

J. William McDonald  
Director

JWM/gl

Enclosure: as stated

cc: Secretary of the Senate  
Chief Clerk of the House  
Members, Senate Committee on Agriculture, Natural Resources,  
and Energy  
Members, House Committee on Agriculture, Livestock, and  
Natural Resources  
Members, Colorado Water Conservation Board  
Executive Director, Colorado Water Resources and  
Power Development Authority  
Executive Director, Legislative Council

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1986 ANNUAL REPORT TO THE  
COLORADO GENERAL ASSEMBLY  
FROM THE  
COLORADO WATER CONSERVATION BOARD  
January, 1986

Introduction

Section 37-60-122 (1)(a), CRS, directs the Colorado Water Conservation Board to submit an annual report to the General Assembly. The purpose of this annual report is twofold.

First, section 37-60-122 (1)(a), CRS, directs the Board to report on the proposed facilities which the Board recommends be constructed with moneys appropriated or otherwise credited to the construction fund created pursuant to section 37-60-121 (1), CRS. Section 37-60-122 (1)(a) also directs that the Board's report include suggested priorities for the funding of such proposed facilities.

Second, section 37-60-121 (1)(c), CRS, directs the Board to apprise the General Assembly of the steps taken to comply with the criteria which are set forth in section 37-60-121 (1)(b), CRS. In consideration of making expenditures from the construction fund, the Board is to be guided by the subject criteria.

Projects Recommended for Authorization

At its January 16-17, 1986, regular meeting, the Board voted to recommend that four projects be authorized, subject to the terms of financing set forth in Table 1. Brief summaries of each proposed project are enclosed. Three of the four recommendations pertain to already authorized projects for which the Board is recommending amended authorizations.

Project Recommended for De-Authorization

In 1984, funds in the amount of \$1,510,000 were authorized for the Fruitgrowers Reservoir. The money was to have been used to enlarge the existing dam in conjunction with a spillway enlargement by the U.S. Bureau of Reclamation. On May 3, 1984, a ballot vote was taken of all the landowners within the District. The project was turned down. Subsequently, the District requested that the project be deauthorized. At its January 16-17, 1986, regular meeting, the Board voted to recommend that this project be de-authorized.

Compliance with Construction Fund Criteria

Since the adoption in 1981 of the criteria set forth in section 37-60-121 (1)(b), CRS, all actions taken by the Board

concerning the construction fund program have been in compliance with those criteria. In particular, the Board has taken the following steps:

1. Over two-thirds of the Board's cost of the projects recommended since the adoption of the subject criteria have been for projects which will increase the beneficial consumptive use of Colorado's compact entitlements.
2. No applications for domestic water treatment and distribution systems or flood control projects have been accepted by the Board since March, 1981.
3. All feasibility studies initiated by the Board include the information required by criteria (IX).

#### Administrative Expenditures During FY 84-85

The following expenditures of construction fund moneys were made during FY 84-85 pursuant to section 37-60-121 (4), CRS, which moneys were appropriated by the long bill for FY 84-85.

Personal Services	\$439,624
Operating	20,343
Travel	13,976
Capital	<u>-0-</u>
Total	\$473,943

The Board would note that the amounts appropriated by the General Assembly substantially exceed the costs of administering the construction fund program. Thus, construction fund monies are necessarily being spent for activities not related to project construction.

#### Status of Construction Fund

Pursuant to H.B. 1320 (1983 Session), \$24.6 million was transferred from the construction fund to the fiscal emergency fund in FY 1982-83. About \$6.25 million was restored to the construction fund early in FY 1984-85 pursuant to H.B. 1441 (1984 Session). The balance of the moneys borrowed were restored on June 30, 1985, together with interest earned.

Table 2 gives details of the cumulative status of the construction fund from its inception through December 31, 1985.

gl

Encls: Table 1  
Table 2  
Project Summaries

Table 1

COLORADO WATER CONSERVATION BOARD  
RECOMMENDED PROJECTS  
for 1986

Priority	Project Name	Location (County)	Total Cost <sup>e/</sup>	Board Cost <sup>e/</sup>	Repayment Period (yrs.)	Annual Interest Rate	Annual Payment	Total Repayment <sup>e/</sup>
1	Rio Grande Reservoir	Hinsdale	\$ 700,000	\$ 700,000 <sup>a/</sup>	40	5%	\$ 0	\$ 0 <sup>a/</sup>
Amendment	Gt. Western Reservoir	Boulder	4,888,000	2,444,000 <sup>b/</sup>	40	5%	142,436	5,697,440
Amendment	Closed Basin	Alamosa Saguache	125,000	125,000 <sup>c/</sup>	NA	NA	0	0 <sup>c/</sup>
Amendment	Chatfield Channel Improvement	Arapahoe	0	0 <sup>d/</sup>	NA	NA	0	0 <sup>d/</sup>
Totals			\$ 5,713,000	\$3,269,000			\$142,436	\$ 5,697,440

Notes to Table 1

- a/ It is recommended that the total cost of the project be financed by the Board, with repayment to be made only if there is recovery against third parties for claims, if any, arising out of the previously performed work on this project.
- b/ The Board was previously authorized to expend \$2,156,000 on this project. The Board recommends that this be increased by \$2,444,000 to \$4.6 million to reflect the increased cost of a larger reservoir than was originally proposed. Total repayments on the \$4.6 million loan would be \$268,088 annually, aggregating \$10,723,520 over 40 years.
- c/ The Board was previously authorized to expend \$500,000 on a non-reimbursable basis. This needs to be increased by \$125,000 to reflect newer cost estimates, with the increase also being non-reimbursable.
- d/ The Board has previously been authorized to expend \$7.5 million on a non-reimbursable basis. The Board is recommending that it be authorized to expend money within this amount on recreational facilities associated with this channelization project.
- e/ Amounts shown are the increments of increase above previously authorized amounts for the Great Western Reservoir, Closed Basin, and Chatfield Channel Improvement projects.

Table 2

STATUS OF CWCB CONSTRUCTION FUND  
(from inception through 12/31/85)

<u>Total Appropriations and Revenues</u>		\$134,729,313 <sup>a/</sup>
<u>Transfers</u>		
Water Resources & Power Development Authority	\$30,099,000	
Reserved Rights Fund	5,000,000	
Colorado Water Resources Research Institute	<u>130,000</u>	
		- <u>\$ 35,229,000</u>
NET FUNDS AVAILABLE		\$ 99,500,313
<u>Expenditures and Obligations</u>		
Authorized Projects and Feasibility Studies	\$87,011,642 <sup>b/</sup>	
Emergency Disaster Projects	675,000 <sup>c/</sup>	
Administrative Expenses	<u>1,324,295<sup>d/</sup></u>	
		- <u>\$ 89,010,937</u>
BALANCE		\$ 10,489,376
<u>Proposed Projects</u>	\$ 9,269,000 <sup>e/</sup>	- <u>\$ 9,269,000</u>
FINAL BALANCE		\$ 2,220,376

[Footnotes attached]

ed  
con/fun

Notes to Table 2

<u>a/</u>	Revenue Sharing	\$ 300,000
	General Fund	600,000
	Oil Shale Trust Fund	3,300,000
	Sales & Use Tax (SB 537, 1980)	28,000,000
	Tax Relief (SB 149, 1981)	40,000,000
	Tax Relief (HB 1617, 1982)	10,000,000
	Mineral Lease Payments	24,665,124
	Interest	<u>21,901,103</u>
	Repayments	<u>5,963,085</u>
		\$134,729,313

- b/ This sum includes expenditures for feasibility studies and already completed projects, contract encumbrances for projects currently under construction and the sums authorized for projects on which construction has yet to be initiated.
- c/ This sum is the amount which has been expended on project construction pursuant to disaster emergency proclamations by the Governor. The projects involved met the criteria governing the construction fund, although they had not been authorized by the General Assembly.
- d/ Personal services, travel, operating expenses and legal services for the program have been appropriated from the construction fund in recent years.
- e/ Includes \$6 million for the Towaoc Pipeline project being recommended by the Attorney General as a part of the settlement of the Ute Mountain Ute Tribe's reserved water rights claims.

COLORADO WATER CONSERVATION BOARD  
721 State Centennial Building  
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Denver, Colorado  
January, 1986

Rio Grande Reservoir Project  
(San Luis Valley Irrigation District)

Introduction

In 1982, funds in the amount of \$1,134,500 were authorized for the repair and rehabilitation of the Rio Grande Reservoir, which reservoir is owned by the San Luis Valley Irrigation District. Of this amount, \$619,500 (54.6%) was stipulated to be nonreimbursable and the remaining \$515,000 (45.4%) was made available as a loan at 5 percent repayable over 40 years. The grant was made because of the importance of the reservoir in complying with the Rio Grande Compact, which results in benefits to all users of the Rio Grande.

Design engineering was subsequently completed by the District's engineer. The first of two contracts for the project was awarded by the District in August of 1982 to rehabilitate the gates and the outlet works of the dam. The first contract was substantially completed in March, 1984, and the engineer certified that the work complied with the plans and specifications. The second contract for raising the dam and improving the spillway was awarded by the District in 1983 and all work under that contract was completed and accepted in that same year.

Problem

Subsequent to the acceptance by the District's engineer of the rehabilitation work on the outlet works and gates, leakage around the gates increased greatly and a newly installed steel plate liner tore free from an outlet tunnel wall. In addition, it appears that the operating mechanisms for the gates are in need of additional adjustments and/or repairs.



## Project Review

As a result of the outlet works problems that have arisen since March, 1984, the Board has asked the District to require the contractor to extend its performance bond on the project through December, 1986, which has been done. The Board also asked the District to retain a new engineering firm specializing in gate rehabilitation to assess the problems which have arisen and to recommend solutions thereto. The new engineers have made field inspections for such an assessment and have informed the District of their findings. The information furnished by the new engineers is the basis for recommendations on this project.

The Board and the District have also had under investigation the circumstances concerning the problems which have been encountered. The Board has advised the District that it must take any and all steps necessary to protect all avenues of possible recovery which the District may have against the original engineer, the contractor, and the issuers of the surety bonds taken out by the contractor pending the results of the investigation. The District has expressed its willingness to do so and the Board has asked the Attorney General to work with the District's attorneys to assist in determining what steps should be taken to protect possible avenues of recovery against the original engineer and/or the contractor.

## Proposed Project

Unfortunately, the final determination of required work can only be made after a thorough inspection of the outlet works has been conducted under dry conditions, which will require dewatering the reservoir and constructing a cofferdam. It has not yet been possible to do this. Thus, the new engineer, based upon the inspections that he has been able to make, has addressed a range of possible corrective measures, from a temporary "fix" to an all inclusive permanent "fix" which would replace all of the gates (6) and their operating mechanisms with new gates and mechanisms.

It has been concluded that it would not be prudent or safe to operate on a long-term basis with only minor, temporary repairs. Of the remaining alternatives, the District's new engineer is of the opinion that, at a minimum, three of the six gates and their operating mechanisms must be replaced at an estimated cost of \$700,000. This work would be done in the winter of 1986-87, at which time the reservoir would also be dewatered and a final determination as to the needed corrective measures made. Appropriate claims, if any, against the first engineer and/or the contractor will continue to be evaluated.

### Proposed Financing

In light of the difficulties encountered with the previously performed repair work, the importance of this reservoir under the Rio Grande Compact, and the fact that the General Assembly provided a partial grant for the previously performed work in recognition of the reservoir's importance to all Rio Grande water users under the Compact, the Board believes that the additional authorization of \$700,000 now needed for the new gates should be made as a grant.

### Recommendation

The Board recommends that the General Assembly authorize a \$700,000 grant subject to the following conditions:

(1) Any funds recovered by the District in the event liability is fixed on a third party for failure to properly perform the initial work shall, less the District's expenses to prosecute any such claims, be immediately paid over by the District to the Board, and

(2) The State Engineer must certify to the Board that the previously agreed to operating agreement for the state's use of the reservoir for compact purposes under the Rio Grande Compact has been re-affirmed by the District to his satisfaction before the Board can expend any further money on the project.

FMA/bj

COLORADO WATER CONSERVATION BOARD  
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January, 1986

Great Western Dam Project  
(City of Broomfield)

Introduction

A loan in the amount of \$2,156,000 was authorized for this project under HB 1102 in the 1983 legislative session. Since that time the city has re-evaluated the project and concluded that it should be expanded from the 9,100 acre-foot capacity recommended in 1983 to a 12,000 acre-foot capacity.

Problem

The City of Broomfield must enlarge the spillway of the Great Western Dam to meet dam safety requirements. In addition, the reservoir's storage capacity needs to be increased so that the city's current water rights can be developed to meet the increasing demands of its water users. The increased water demands are due to the 3 percent growth per year that the city is currently experiencing.

Project Study

Subsequent to the Board action taken on this proposed project in 1983, the City of Broomfield fully funded an amended feasibility study which was prepared by Rocky Mountain Consultants, Inc. That amended study is the basis for the recommendation on this project.

Proposed Project

The amended study determined that the City of Broomfield should construct a new spillway at the Great Western Dam which would pass the probable maximum flood and enlarge the reservoir to a capacity of 12,000 acre-feet. Such an enlargement would require raising the existing dam embankment by 34 feet. It is anticipated that these improvements will satisfy Broomfield's raw water storage requirements until about the year 2015.

Proposed Financing

The total estimated cost of the project is now \$9,200,000. This includes \$1,281,000 for the acquisition of 414 acres of land for right-of-way around the reservoir. The proposed financing for the project is as follows:

City of Broomfield funds	\$4,600,000
CWCB loans (already authorized by HB 1102)	\$2,156,000
Additional CWCB loan (to be repaid by user charges)	<u>\$2,444,000</u>
Total	\$9,200,000

Under this financing arrangement Broomfield would have to repay the CWCB, at five percent interest, \$268,088 per year for 40 years for a total of \$10,723,520.

Recommendation

The Board recommends that the General Assembly amend the authorization for the project to reflect the terms of the proposed financing specified above.

FMA/bj

COLORADO WATER CONSERVATION BOARD  
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January, 1986

Closed Basin Project

Introduction

The Board's role in the development of the federal Closed Basin Project has been to acquire the land owned by the State Land Board which is needed for project purposes and to contribute funds for recreation enhancement. With the preparation of a master plan for recreation and for fish and wildlife by the Divisions of Wildlife and of Parks and Outdoor Recreation, it has become clear that initial estimates of costs (made in the late 1970s) are below the current projected costs.

Proposed Funding

The current proposal for recreation facilities is at a reduced but fully satisfactory level of development. The estimated cost to the state is \$380,250, which amount the federal government will match.

The authorized expenditure for the Closed Basin Project in SB 537 (1979) is \$500,000. With recreational costs of \$380,250, the authorization would be exceeded as follows:

Land acquisition for project area	\$195,840
State share of recreational development	<u>380,250</u>
	\$576,090

Since the recreational costs are based on preliminary estimates and land acquisition has not yet been completed, it is recommended that the authorization be increased to \$625,000.

Recommendation

The Board recommends to the General Assembly that the authorized expenditure for the Closed Basin Project be increased to \$625,000. Further, the Board recommends that the authorizing legislation be amended at this time to clearly state that the Board's expenditures are non-reimbursable pursuant to section 37-60-119, CRS, this having been originally intended and the basis upon which the Board has been proceeding since 1979.

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COLORADO WATER CONSERVATION BOARD  
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January, 1986

Chatfield Project Channel Improvement

Introduction

Last spring, during the unusually high runoff and during construction of a new weir at Union Avenue, two individuals were drowned while boating on the river. They both apparently attempted to go over the new weir while it was still under construction.

As a result, strong and sustained calls to provide safer boating conditions have arisen. Specifically, some are urging that the Union Avenue weir be rebuilt and that there be a safer design constructed at a second location, the Brown Ditch, where a similar structure with about a ten-foot fall is scheduled.

Proposed Project

The issue of specific provisions for boating bypass in this federal channelization project is not new. Boating interests have asked the Corps of Engineers to modify the design or add a bypass channel for boats over the past several years. That interest stems in part from provision for boating in the recreational improvements which have already been made in the South Platte River downstream through Denver.

The Corps' position has been and remains that it is not authorized to provide recreational boating facilities. Corps officials in the Omaha District have expressed a willingness to include any special facilities if nonfederal interests would pay for their cost. However, the Board has been unable over the last two years to find any local interests or governments who are willing to contribute any funds. The Board did ask the Corps to make provision for a boating bypass channel at the Union Avenue weir in the future.

At the same time the Board was authorized to participate in this federal project through the acquisition of the necessary lands and rights-of-way, the construction fund statutes were amended to include flood control projects and recreational facilities as authorized purposes of the construction fund. However, the authorization for the "Chatfield Project Channel Improvement" in S.B. 537 (1979 session) does not itself explicitly state that it includes recreational elements along with the flood control improvements.

The Board's acquisition of lands for the channelization project downstream from Chatfield Reservoir is nearly complete. It appears that sufficient funds remain within the project authorization of \$7.5 million to undertake boating improvements at the two weirs. Rough cost estimates are \$500,000 to \$750,000 at Brown Ditch (if included at the time of the weir's construction) and about \$750,000 to add a boating bypass channel at Union Avenue.

#### Recommendation

The Board recommends to the General Assembly that the project authorization be amended to provide for related recreational facilities, with all Board costs to be non-reimbursable as provided for by section 37-60-119, CRS, this having been originally intended and the basis upon which the Board has proceeded since 1979.

bj

# STATE OF COLORADO

## COLORADO WATER CONSERVATION BOARD

Department of Natural Resources

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Phone: (303) 866-3441



Richard D. Lamm  
Governor

J. William McDonald  
Director

David W. Walker  
Deputy Director

### M E M O R A N D U M

TO: Members, CWCB

FROM: Bill McDonald

DATE: October 25, 1985

SUBJECT: Agenda Item 12, November 7-8, 1985, Board Meeting--  
Annual Projects Authorization Bill

#### Introduction

I have already taken the liberty of requesting Representative Younglund and Senator Brandon to sponsor, as they have in recent years, the Board's annual projects authorization bill. Both have agreed to do so.

The deadline for the pre-filing of bills by legislators is December 1st. Under the circumstances, the Board needs to recommend to Representative Younglund and Senator Brandon the bill which it would propose for pre-filing. In this regard, please find enclosed a draft bill, section 1 of which is identical to last year's projects authorization bill. Please note that the material in section 2 of the draft bill pertains to agenda item 13.

#### Recommendation

I recommend that the Board recommend the draft bill to Representative Younglund and Senator Brandon for pre-filing. The specific projects which the Board will recommend to the General Assembly will be considered at the Board's January meeting. Those recommendations are then acted upon when the Agriculture Committee takes up the bill in the chamber in which it originates.

JWM/gl

Enclosure: as stated

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A BILL  
CONCERNING PROJECTS FUNDED BY THE COLORADO WATER CONSERVATION BOARD  
CONSTRUCTION FUND, AND RELATING TO THE ACTIVITIES OF THE COLORADO  
WATER CONSERVATION BOARD IN CONNECTION THEREWITH

Be in enacted by the General Assembly of the State of Colorado:

SECTION 1. Project authorizations. (1) Pursuant to section 37-60-122 (1)(b), Colorado Revised Statutes, the Colorado water conservation board is hereby authorized to loan monies to enable the construction of the following water resources projects:

<u>Priority</u>	<u>Project Name</u>	<u>Board Loan</u>	<u>Repayment Period (yrs.)</u>	<u>Total Repayment</u>
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(2) The Colorado water conservation board may make loans for the construction of each project specified in subsection (1) of this section from such monies as are or may hereafter become available to the Colorado water conservation board construction fund, said loans to be in the amounts listed in said subsection (1) plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by the engineering costs indices applicable to the

types of construction involved for such projects or as may be justified by reason of changes made in the plans for a project if those changes are required by final engineering drawings and specifications or by federal or state requirements. The board's loan for any project specified in subsection (1) shall not exceed 50 percentum of the total cost of constructing a project.

(3) Contracts entered into by the Colorado water conservation board pursuant to section 37-60-119 (2), Colorado Revised Statutes, for loans to enable the construction of the projects specified in subsection (1) of this section shall be subject to the repayment periods and total repayments set forth therein; except that total repayments shall be adjusted to reflect any changes in the amount loaned by reason of subsection (2) of this section.

SECTION 2. 37-60-119, Colorado Revised Statutes, as amended, is amended to read:

**37-60-119. Construction of water and power facilities - contracts with and charges against users.** (1) In order to promote the general welfare and safety of the citizens of this state, the board may, subject to the provisions in section 37-60-122, construct, rehabilitate, enlarge, or improve, or loan moneys to enable the construction, rehabilitation, enlargement or improvement of, such flood control, water supply, and hydroelectric energy facilities, EXCLUDING DOMESTIC WATER

TREATMENT AND DISTRIBUTION SYSTEMS, 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. In carrying out such program, the board is directed to place special emphasis upon the adoption and incorporation of measures which will encourage the conservation and more efficient use of water, including the installation of water meters or such other measuring and control devices as the board deems appropriate in each particular case.

(2) The board may, subject to the provisions in section 37-60-122, enter into contracts for the use of, or to loan moneys to enable the construction, rehabilitation, enlargement, or improvement of, said flood control, water, power, and any related recreational facilities, EXCLUDING DOMESTIC WATER TREATMENT AND DISTRIBUTION SYSTEMS, with any agency or political subdivision of this state or the federal government, with individuals, with corporations, or with organizations composed of citizens of this state. Any such contracts may provide for such charges to the using entity as, in the opinion of the board, are necessary and reasonable to recover the board's capital investment, together with operational, maintenance, and interest charges over the term of years agreed upon by contract. Interest charges shall be assessed at no less than five percent. Any such charges so collected shall be credited to and made a part of the Colorado

water conservation board construction fund. All or any portion of the costs attributable to flood control and recreation may be considered MADE nonreimbursable in the discretion of the board, but only to the extent approved by the general assembly as specified in section 37-60-122.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

# STATE OF COLORADO

COLORADO WATER CONSERVATION BOARD  
Department of Natural Resources  
721 State Centennial Building  
1313 Sherman Street  
Denver, Colorado 80203  
Phone: (303) 866-3441

ROY ROMER, GOVERNOR



## M E M O R A N D U M

TO: Members, CWCB

FROM: Bill McDonald

DATE: December 1, 1987

SUBJECT: Agenda Item 9, December 10-11, 1987, Board Meeting--  
Towaoc Pipeline Project

*[Handwritten signatures]*

J. William McDonald  
Director  
David W. Walker  
Deputy Director

### Introduction

The state is obligated to construct the Towaoc Pipeline for the Ute Mountain Ute Indian Tribe as a part of the Colorado Ute Indian Water Rights Final Settlement Agreement. As you are aware, the Board was authorized by section 1 of chapter 230, Session Laws of Colorado 1986, to construct the pipeline. The cost of the pipeline project is non-reimbursable in recognition of the fact that its construction is a component of the final settlement agreement.

### Discussion

The design of and engineering for the project, including the routing of the pipeline, have been completed. In the course of preparing for construction, two issues have arisen which need the Board's attention.

First, it has become apparent that we will need to obtain easements across many parcels of land, including private property. However, neither the Tribe nor the Board has the power of condemnation. Although the Tribe could apparently form one or more kinds of entities under Colorado law, such as a pipeline company, which would have the power of condemnation, they have indicated that they are unwilling to do this.

While I do not know at this time that the power of condemnation will even be needed since we have not yet begun to approach landowners along the preferred pipeline route, it seems reasonable to assume that negotiated acquisitions of the necessary easements will not be possible in all cases. Given the Tribe's reluctance to form an entity with the power of condemnation, I believe that it is incumbent upon the Board to seek such power from the General Assembly for this one project.

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The other issue which has arisen is that the authorizing legislation is silent as to who shall hold title to the completed project. It certainly has been the intent, however, that title to the completed pipeline and the associated easements would be in the Tribe. In order to make it perfectly clear that this is the case, despite the fact that the Tribe is not repaying any of the cost of the pipeline, I believe that the authorizing legislation should be amended.

#### Recommendations

I recommend that the Board recommend to the General Assembly that section 1(4), chapter 230, Session Laws of Colorado 1986, be amended to:

- (1) Empower the Board to acquire by eminent domain for this project and only this project any real property or interests therein necessary for the pipeline, and
- (2) Make it clear that the Board is authorized to convey all right and title to the pipeline and the associated easements to the Ute Mountain Ute Indian Tribe upon the completion of the construction of the project, all operation, maintenance, and replacement costs to thereafter be the responsibility of the Tribe.

JWM/gl

cc: Ernest House, Chairman  
Joe Keck, Planner  
Ute Mountain Ute Indian Tribe

Members, Senate Committee on Agriculture,  
Natural Resources, and Energy  
Members, House Committee on Agriculture,  
Livestock, and Natural Resources  
January 21, 1986  
Page two

the tribe took the position that these costs should be made non-reimbursable by an act of Congress. However, the federal representatives to the negotiations objected to the tribe's position on the grounds that greater, not lesser, amounts of nonfederal financing and repayment must be contributed towards the construction of the two projects and the settlement of both tribes' claims.

Under the circumstances, Colorado has offered to bear the cost of constructing the pipeline to the Town of Towaoc and of constructing the necessary distribution facilities and improvements for Towaoc and Mancos Creek. This offer is obviously contingent upon the authorization of the General Assembly and upon all other elements of the settlement negotiations falling into place.

I am writing to you at this time to recommend that the General Assembly authorize the expenditure of \$6 million from the Colorado Water Conservation Board construction fund for the purpose of constructing, on a non-reimbursable basis, the aforementioned facilities, said authorization to be contingent upon a satisfactory settlement of the tribes' reserved water rights claims being reached. I am authorized to state to you that the Colorado Water Conservation Board concurs in my recommendation.

We urge you to take action during the current session of the General Assembly. To this end, it is my recommendation that the authorization for the Board be reflected in S.B. 27, which is the Board's annual projects authorization bill. Attached is the language which I recommend be added to S.B. 27 in this regard.

Your consideration of this request is greatly appreciated. If this office can provide any additional information to you about this matter, please do not hesitate to call upon me.

Sincerely,

Duane Woodard  
Attorney General

Enclosure: as stated

cc: Governor Lamm - *hand carried 1-23-86*

Members, CWCB *mailed U.S. 1-22-86*

Ernest House, Chairman, Ute Mountain Ute Tribe - *me D*

Senator Dan Noble

Ival Goslin

*mailed 1-22-86*

*mailed 1-22-86*



and to  
✓ Indian Rights  
4-23-86

Duane Woodard  
Attorney General  
Charles B. Howe  
Chief Deputy Attorney General  
Richard H. Forman  
Solicitor General

The State of Colorado  
DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL

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January 21, 1986

Members, Senate Committee on Agriculture,  
Natural Resources, and Energy  
Members, House Committee on Agriculture,  
Livestock, and Natural Resources  
Colorado General Assembly  
State Capitol  
Denver, CO 80203

mad

1-23-86 = handcarried  
to Younglund's  
office

Re: S.B. 27

Dear Ladies and Gentlemen:

As you are aware, the State of Colorado has initiated negotiations with the Southern Ute and Ute Mountain Ute Indian Tribes concerning the settlement of their reserved water right claims to the waters of the San Juan River and its tributaries in southwestern Colorado. Those negotiations are ongoing and we are optimistic that a negotiated settlement can be achieved.

One of the principles which is central to the negotiations is the acceptance by the tribes of project water from the Dolores Project (the construction of which is nearing completion) and the Animas-La Plata Project (the construction of which has yet to be initiated) in satisfaction of part of each tribe's reserved water rights claims. Insofar as the Dolores Project is concerned, the Ute Mountain Ute Tribe is to receive an allocation of project water both for irrigation purposes and for domestic use. However, about 22 miles of 15-inch and/or 12-inch pipeline must be built from the City of Cortez treatment plant to the Town of Towaoc and appropriate storage and distribution facilities constructed in Towaoc and Mancos Creek before the tribe can make use of its project allocation for domestic purposes.

Under current federal law, the construction of the pipeline to Towaoc is part of the Dolores Project, but the costs thereof must be repaid to the federal government with interest rates which reflect current market conditions. The distribution facilities are not part of the project and must be constructed at the tribe's expense. In the initial stages of the negotiations,



Proposed Amendment to S.B. 27

Amended printed bill, page 2, after line 3, insert the following:

"1. Towaoc pipeline           \$6,000,000           0           \$0"

Page 3, after line 4, insert the following:

"(4) Notwithstanding the provisions of section 37-60-121 (1)(b)(IV), Colorado Revised Statutes, the total amount of the Board's cost for the Towaoc pipeline project shall be non-reimbursable in recognition of the fact that the construction of the said project by the state is a component of the proposed settlement of the Ute Mountain Ute tribe's reserved water rights claims on certain tributaries of the San Juan river. The board may not proceed with the design and construction of the said project, nor expend any moneys therefor, until the attorney general certifies to the board that the Ute Mountain Ute Tribe has entered into a binding settlement concerning its reserved water rights claims which is satisfactory to the attorney general."

# STATE OF COLORADO

## COLORADO WATER CONSERVATION BOARD

Department of Natural Resources

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Richard D. Lamm  
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### M E M O R A N D U M

TO: Members, CWCB

FROM: Bill McDonald

DATE: October 25, 1985

SUBJECT: Agenda Item 13, November 7-8, 1985, Board Meeting--  
Possible Amendments to the Construction Fund Statutes

#### Introduction

Through the Legislative Council staff, I have been advised that Senator Bishop believes that the provisions of sections 37-60-119 and 121, Colorado Revised Statutes (enclosed), may be inconsistent in certain respects. The staff has asked for the Board's advice in this regard.

#### Discussion

The inconsistency which Senator Bishop has apparently noted stems from the language in section 37-60-119 and the criteria in section 37-60-121 (1)(b). The former speaks in broad terms about "flood control, water supply, and hydroelectric energy facilities," while the criteria set forth in section 37-60-121 (1)(b), which criteria were amended into the statute in 1981 upon the Board's recommendation, exclude "domestic water treatment and distribution systems" (see criteria VI) and "projects specifically for flood control" (see criteria VII) from the projects which the Board can consider. The latter criteria excludes Board consideration of single-purpose flood control projects, but it permits the Board to handle multi-purpose projects which include flood control as a project purpose.

To resolve this inconsistency, one of two things could be done: (1) section 37-60-119 could be amended to reflect the narrower language now found in section 37-60-121 (1)(b), or (2) section 37-60-119 could be amended to remove the references that tie it specifically to the construction fund program, thereby

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making that section a stand alone, generic authorization for the Board to construct water projects. Section 37-60-119 was originated as a part of the construction fund program and is clearly tied to it by the references to section 37-60-122. Furthermore, the latter approach would precipitate the need to amend other sections of the statute. Therefore, I believe that the more desirable way to proceed is with the first alternative. Section 2 of the draft bill enclosed with the memo for agenda item 12 would accomplish this.

Recommendation

I recommend that the Board recommend the amendment of section 37-60-119 as set forth in section 2 of the proposed draft bill.

JWM/gl

Enclosure: as stated

CWCB Construction Fund Statutes

**37-60-119. Construction of water and power facilities - contracts with and charges against users.** (1) In order to promote the general welfare and safety of the citizens of this state, the board may, subject to the provisions in section 37-60-122, construct, rehabilitate, enlarge, or improve, or loan moneys to enable the construction, rehabilitation, enlargement or improvement of, such flood control, water supply, and hydroelectric energy 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. In carrying out such program, the board is directed to place special emphasis upon the adoption and incorporation of measures which will encourage the conservation and more efficient use of water, including the installation of water meters or such other measuring and control devices as the board deems appropriate in each particular case.

(2) The board may, subject to the provisions in section 37-60-122, enter into contracts for the use of, or to loan moneys to enable the construction, rehabilitation, enlargement, or improvement of, said flood control, water, power, and any related recreational facilities, with any agency or political subdivision of this state or the federal government, with individuals, with corporations, or with organizations composed of citizens of this state. Any such contracts may provide for such charges to the using entity as, in the opinion of the board, are necessary and reasonable to recover the board's capital investment, together with operational, maintenance, and interest charges over the term of years agreed upon by contract. Interest charges shall be assessed at no less than five percent. Any such charges so collected shall be credited to and made a part of the Colorado water conservation board construction fund. All or any portion of the costs attributable to flood control and recreation may be considered nonreimbursable in the discretion of the board, but only to the extent approved by the general assembly as specified in section 37-60-122.

**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. The board is empowered to enter into contracts which are, in its opinion, necessary for the maintenance and continued operation of such projects.

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(2) The sponsor of a project may not initiate or incur costs for final designs and specifications for a project, nor award a contract for, proceed with, or in any manner incur costs for construction of a project, until such sponsor has complied with all procedures and requirements of the board. 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 extend the authorized repayment period for any project and defer one or more annual payments if, in the board's opinion, the entity requesting such 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.

**37-60-121. Colorado water conservation board construction fund - creation of - nature of fund - funds for investigations - contributions.**

(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) Approximately two-thirds of the moneys available to the fund shall be devoted to projects which will increase the beneficial consumptive use of Colorado's 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;

(III) The board's participation in the construction cost of a project shall generally be limited to fifty percent of a project's total cost 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 which can repay the board's investment. Grants shall not be made. Service charges and other terms of repayment shall be established by the board;

(V) All other means of financing shall be thoroughly explored before use is made of fund moneys;

(VI) After July 1, 1981, domestic water treatment and distribution systems shall not be recommended by the board to the general assembly;

(VII) After July 1, 1981, projects specifically for flood control shall not be recommended by the board to the general assembly;

(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 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) The board shall also apprise the general assembly of steps taken to comply with the criteria in paragraph (b) of this subsection (1) in the annual report which is required by section 37-60-122.

(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.

(3) Contributions of money, property, or equipment may be received from any county, municipality, federal agency, water conservation district, metropolitan water district, conservancy district, water users' association, person, or corporation for use in making investigations, contracting projects, or otherwise carrying out the purposes of sections 37-60-119 to 37-60-123.

(4) 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 L. 85, p. 1151, Section 5, effective June 6, 1985.

**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) 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.

**37-60-122. General assembly approval.** (1)(a) The board shall submit annually to the general assembly a report containing proposed facilities and contracts as described in section 37-60-119, together with an analysis of said facilities and contracts proposed by the board. Said report shall also include a list of said proposed facilities and contracts in order of priority suggested by the board; the proposed contract terms between the state and the federal government, any political subdivision of the state, any person, or any corporation; and a comment by the board as to how the proposed project will carry out the state water policy.

(b) The general assembly may authorize such 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 construction of said projects in the priorities established by the general assembly under terms approved by the general assembly.

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

(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.

**37-60-123. Conformity with state water plan.**  
Repealed, L. 83, p. 1404, section 7, effective June 15, 1983.