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## MEMORANDUM

September 25, 2013

**TO:** Members of the Water Resources Review Committee

**FROM:** David Beaujon, Senior Research Analyst, 303-866-4781

**SUBJECT:** Colorado Water Conservation Board Loan and Grant Programs

### Summary

This memorandum identifies the membership and duties of the Colorado Water Conservation Board. It also describes water project financing programs administered by the board including the:

- Colorado Water Conservation Board Construction Fund;
- Perpetual Base Fund of the Severance Tax Trust Fund;
- Water Supply Reserve Fund; and
- Water Efficiency Grant Fund.

This memorandum also discusses the loan and grant approval process for these funds.

### Overview of the Colorado Water Conservation Board

**Duties and membership.** The Colorado Water Conservation Board (CWCB) in the Department of Natural Resources is the state's primary water policy and planning agency. Its major programs include water supply protection, flood protection, conservation and drought planning, stream and lake protection (instream flow program), and water supply planning and finance.<sup>1</sup> The CWCB is governed by a 15-member board that is charged with conserving the state's waters to promote utilization and to prevent floods.<sup>2</sup> Nine of its members are appointed by the Governor for three-year terms to represent eight river basins and the City and County of

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<sup>1</sup>Section 37-60-106, C.R.S.

<sup>2</sup>Section 37-60-104, C.R.S.

Denver. Other members include the Executive Director of the Department of Natural Resources, the Commissioner of Agriculture, the State Engineer, the Colorado Attorney General, the Division of Wildlife director, and the CWCB director.

## **CWCB Construction Fund**

***Loan eligibility and terms.*** The CWCB Construction Fund is the state's largest revolving loan program to finance water diversion and storage projects. According to state law, the first priority for moneys in the fund must be for projects that increase the beneficial consumptive use of Colorado's undeveloped compact entitled waters. The balance of the moneys in the fund must be used for the repair and rehabilitation of existing water storage and delivery systems, controlled maintenance of the satellite monitoring system, and for investment in water management activities and studies.<sup>3</sup> Moneys in the fund may be used to pay for up to 50 percent of the cost of feasibility studies and water supply investigations. The board may issue loans to any private or public entity that may contract with the state including farmers, ditch and reservoir companies, public water districts, and municipalities. Eligible projects include new construction or rehabilitation of existing water storage and delivery facilities, including:

- reservoirs;
- ditches and canals;
- pipelines
- river diversion structures;
- groundwater wells;
- water rights purchases;
- flood control projects; and
- hydropower projects.

Loans *may not* be used for domestic water treatment and distribution systems. Grants may not be made from the fund unless authorized by bill. The CWCB is authorized to adjust loan interest rates that currently range from 1.75 percent for agricultural loans to 6 percent for commercial loans. The standard loan term is 30 years.

***Loan approval process.*** Loans for more than \$10 million must be approved by the General Assembly. The CWCB is authorized to issue loans for less than \$10 million without General Assembly approval.<sup>4</sup> For loans under \$10 million, the CWCB is required to submit a report by January 15th of each year to the Colorado General Assembly describing the basis for such loans, called the small project loan report. In 2012, the board reported that it loaned \$17.2 million for 18 small projects. Loans ranged from \$3.03 million for a water right purchase and storage project sponsored by the Central Colorado Water Conservancy District to \$44,000 for a check dam rehabilitation project sponsored by the Jackson Ditch Company.

***FY 2013-14 CWCB Construction Fund appropriation.*** In 2013, the General Assembly appropriated \$32.3 million from the CWCB Construction Fund for a variety of water-related projects that are identified in the following table.<sup>5</sup>

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<sup>3</sup>Section 37-60-121 (1)(b), C.R.S.

<sup>4</sup>Section 37-60-122 (1)(b), C.R.S.

<sup>5</sup>Senate Bill 13-181.

<b>CWCB Construction Fund Projects — FY 2013-14</b>	<b>Amount</b>
Chatfield Reservoir Reallocation Project	\$28,000,000
Windy Gap Reservoir Bypass Channel Project	2,000,000
Floodplain Map Modernization Program	500,000
Watershed Restoration Program	500,000
South Platte Ground Water Study	500,000
Satellite Monitoring System Maintenance (Division of Water Resources)	300,000
Arkansas River Decision Support System	250,000
Statewide Water Supply Initiative	225,000
Weather Modification Program	175,000
Continuation of the Colorado River Water Availability Study	75,000
Rio Grande Basin Forecasting Development	215,000
Colorado's Decision Support System	100,000
<b>Total</b>	<b>\$32,340,000</b>

**CWCB Construction Fund balance.** The CWCB Construction Fund receives revenues from the return of principal and interest on outstanding loans, interest earned on the cash balance of the fund through investments by the State Treasurer, transfers from the Severance Tax Perpetual Base Fund, and federal mineral lease (FML) fund distributions (10.0 percent of non-bonus FML revenue, up to a statutory cap that grows by four percent annually).<sup>6</sup> As of June 30, 2013, the CWCB Construction Fund's value was \$420 million, including \$226 million in outstanding loans, \$38 million in authorized projects under contract, \$94 million in authorized projects not yet under contract, \$35 million reserved for the Animas-La Plata water rights acquisition and the Chatfield Reallocation Project, and \$27 million available for new loans.

**CWCB Construction Fund and General Fund transfers.** According to the September 2013 Legislative Council Revenue Forecast, the FY 2013-14 revenue is expected to be \$610.1 million higher than the amount budgeted to be spent or retained in the reserve. Of this amount, \$30 million will be transferred to the Colorado Water Conservation Board Construction Fund in FY 2014-15.<sup>7</sup> To address revenue shortfalls in FY 2008-09, \$10.25 million was transferred from the construction fund to the General Fund.

### **Severance Tax Revenue for Water Projects**

The severance tax is paid by producers of oil, gas, coal, and other minerals. State law provides that 50 percent of severance tax revenues are credited to the Severance Tax Trust Fund and 50 percent of the revenues are credited to the Department of Local Affairs for grants and distributions to local governments impacted by mining activities.<sup>8</sup> Of the revenue credited to the Severance Tax Trust Fund, 50 percent is allocated to the Perpetual Base Fund of the Severance Tax Trust Fund (or 25 percent of total severance tax revenues) for use by the CWCB to build

<sup>6</sup>Section 34-63-102 (5.4) (d) (II), C.R.S.

<sup>7</sup>Senate Bill 13-236

<sup>8</sup>Section 39-29-108 (2), C.R.S.

water projects. The other 50 percent of Severance Tax Trust Fund revenues (or 25 percent of total severance tax revenues) are allocated to the Operational Fund to fund programs that "promote and encourage sound natural resource planning, management, and development related to minerals, energy, geology, and water."<sup>9</sup>

**Perpetual Base Fund balance.** The CWCB is authorized to issue loans for water projects from moneys in the Severance Tax Trust Fund Perpetual Base Fund.<sup>10</sup> As of June 30, 2013, the fund's value was \$312 million, including \$150 million in outstanding loans, \$19 million for projects under contract, \$83 million for projects not yet under contract, and \$60 million available for new loans. Since 2009, the General Assembly has authorized the transfer of \$181.1 million from the Perpetual Base Fund of the Severance Tax Trust Fund to the General Fund to address budget shortfalls.

**Recent loans from the Perpetual Base Fund.** Since 2008, the General Assembly appropriated over \$120 million from the Perpetual Base Fund for several larger projects including:

- \$60.6 for a loan to build a pipeline that will deliver water to the Republican River and help Colorado comply with its water delivery obligations to downstream states under the Republican River Compact;
- \$36 million for the purchase of 10,460 acre-feet of water from the Animas-La Plata Project in southwest Colorado; and
- \$30 million for the Rio Grande Cooperative Project to rehabilitate the Rio Grande Reservoir and the Beaver Park Reservoir.

**Perpetual Base Fund transfers to the Small Communities Water and Wastewater Grant Fund.** In 2009, the General Assembly capped the amount of severance tax revenues that may be transferred annually to the Perpetual Base Fund at \$50 million. If this cap is exceeded, up to \$10 million may be transferred annually from the Perpetual Base Fund to the Small Communities Water and Wastewater Grant Fund.<sup>11</sup> However, the \$50 million cap has not been reached since the law was enacted, and is not expected to be exceeded in the near future. If available, these moneys are to be used as grants for drinking and domestic wastewater projects to communities with fewer than 5,000 residents.

**Tier 1 and Tier 2 programs in the Operational Account.** A law enacted in 2008 divides programs funded from the Operational Account of the Severance Tax Trust Fund into two tiers. The tier 1 programs support the operations of the Colorado Department of Natural Resources, including paying salaries for employees.<sup>12</sup> The tier 2 programs support grants, loans, research, and construction. Tier 2 programs are subject to proportional reduction if mid-year revenue projections indicate there are insufficient funds. The distribution of funding for tier 2 programs is staggered over the course of the fiscal year with 40 percent released July 1, 30 percent released January 4, and the final 30 percent released April 1.<sup>13</sup>

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<sup>9</sup>Section 39-29-109 (2)(b), C.R.S.

<sup>10</sup>Section 39-29-109, C.R.S.

<sup>11</sup>Section 39-29-109 (2)(a) (III), C.R.S.

<sup>12</sup>Section 39-29-109.3 (1), C.R.S.

<sup>13</sup>Section 39-29-109.3 (4)(a), C.R.S.

**Water Supply Reserve Fund.** The Water Supply Reserve Fund (WSRF) — part of tier 2 of the Operational Account of the State Severance Tax Trust Fund — was created in 2006 to help address Colorado's water needs and support the Interbasin Compact Committee process.<sup>14</sup> Since FY 2006-07, \$48.9 million has been transferred from the Severance Tax Trust Fund to the WSRF. Moneys in the fund may be used for grants or loans. Spending from the WSRF does not require legislative approval. The WSRF criteria and guidelines split the WSRF into basin and statewide funds. Once a request for funding from the WSRF is approved by a basin roundtable, the request is forwarded to the CWCB for funding evaluation and final authorization. Eligible activities include:

- competitive grants for environmental compliance and feasibility studies;
- technical assistance regarding permitting, feasibility studies, and environmental compliance;
- studies or analyses of structural and nonstructural water projects or activities; and
- structural and nonstructural water projects or activities.

Since 2006, each basin fund has received \$1.9 million as of June 30, 2013. The statewide account has received \$34.2 million, with \$29.6 million in approved grants. For example, in 2011, the CWCB approved a grant of \$50,000 from the statewide fund to study a water diversion project from the Flaming Gorge Reservoir in Wyoming to Colorado. It also awarded \$22,000 from seven of the nine basin accounts to help pay for the study.

In 2009, the legislature passed a law that transfers \$10 million annually from the Operational Account of the Severance Tax Trust Fund to the WSRF and continues these transfers indefinitely thereafter. However, the transfers will be reduced according to a statutory formula if appropriations exceed available severance tax revenue. For example, in FY 2012-13, \$7.1 million was transferred, and in FY 2013-14, the transfer is expected to be \$10.0 million. This law also prohibits the CWCB from allocating moneys by grant or loan from the account to "covered entities," unless they have adopted a water conservation plan. Covered entities are defined as a municipality, agency, or utility with a legal obligation to provide retail water to a customer base with a total annual demand of at least 2,000 acre-feet. Repayments of principal and interest on loans from the account are credited to the account.

**Water Efficiency Grant Program.** The Water Efficiency Grant Program — also part of the Operational Account — is administered by the CWCB's Office of Water Conservation and Drought Planning. The program provides financial assistance to communities, water providers, and eligible agencies for water conservation-related activities and projects.<sup>15</sup> Eligible entities, state and local governments, and agencies can receive funding to develop water conservation and drought plans, to implement water conservation goals outlined in a water conservation plan, and for public education and outreach regarding water conservation. In 2010, the General Assembly extended the Water Efficiency Grant Program to 2020 and authorized annual appropriations of up to \$550,000 from the Water Efficiency Grant Program beginning on July 1, 2010. However, because of anticipated reductions of severance tax revenue available for tier 2 programs, actual expenditures are expected to be below the authorized funding for at least the current fiscal year. In FY 2012-13, the CWCB issued \$431,111 in grants for 13 projects. Spending from the grant programs does not require legislative approval.

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<sup>14</sup>Section 39-29-109 (2)(c), C.R.S.

<sup>15</sup>Section 37-60-126 (12), C.R.S.