



Colorado  
Legislative  
Council  
Staff

Room 029 State Capitol, Denver, CO 80203-1784  
(303) 866-3521 FAX: 866-3855 TDD: 866-3472

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**MEMORANDUM**

July 16, 2009

**TO:** Water Resources Review Committee

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

**SUBJECT:** Colorado Water Conservation Board — Water Project Financing Programs

This memorandum describes water project financing programs administered by the Colorado Water Conservation Board including the Colorado Water Conservation Board Construction Fund, the Perpetual Base Account of the Severance Tax Trust Fund, and the Water Supply Reserve Account. It also describes state laws that limit the ability of state agencies to issue bonds or other forms of debt to finance infrastructure development projects.

**Overview of the Colorado Water Conservation Board**

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. 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. Nine of its members are appointed by the governor for three-year terms to represent eight river basins and the City and County of 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.

**Operating budget.** For FY 2009-10, the General Assembly appropriated \$8.8 million and 47.7 FTE to the CWCB for operations, primarily from moneys in the CWCB Construction Fund. No General Fund moneys have been appropriated for the CWCB since FY 2000-01, when the legislature replaced these moneys with moneys from the CWCB Construction Fund. Table 1 summarizes the FY 2009-10 and FY 2008-09 appropriations for the CWCB operations.

**Table 1**  
**FY 2008-09 and FY 2009-10 Appropriations for CWCB Operations**  
(in millions)

Long Bill	Total Funds	General Fund	Cash Funds	Reappropriated Funds	Federal Funds	FTE
<b>FY 2008-09 Appropriations</b>						
SB 09-259	\$8.79	\$0	\$8.34	\$0.3	\$0.14	47.7
<b>FY 2008-09 Appropriations</b>						
HB 08-1375	\$8.67	\$0	\$8.24	\$0.23	\$0.14	47.7

### **CWCB Construction Fund**

**Loan criteria.** Created in 1971, this revolving loan program finances projects that increase the consumption of Colorado's undeveloped river entitlements and that repair and rehabilitate existing water storage and delivery facilities.<sup>1</sup> Moneys in the fund may also be used to pay for up to 50 percent of the cost of feasibility studies and water supply investigations. Loans *may not* be used for domestic water treatment and distribution systems. Loans for more than \$10 million must be approved by the General Assembly. Grants may not be made from the fund unless authorized by bill. The CWCB is authorized to adjust loan interest rates, which currently range from 2.75 percent for agricultural loans to 6.25 percent for commercial loans.

**Revenue for the CWCB Construction Fund.** Revenues for the construction fund come 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, and federal mineral lease (FML) fund distributions. FML revenue is the portion of revenue the state receives from the money the federal government collects for mineral production on federal lands. The CWCB Construction Fund receives a distribution of 10 percent of FML revenue, *excluding bonus payments*, up to \$14.0 million annually. Bonus moneys are paid by producers after being awarded a federal mineral lease through a competitive bidding process. The amount of FML revenue transferred to the construction fund is allowed to grow by 4 percent annually in succeeding years.<sup>2</sup>

**2009 appropriations from the CWCB Construction Fund.** The General Assembly appropriated \$5.88 million for FY 2009-10 from the CWCB Construction Fund for ongoing projects and studies.<sup>3</sup> There were no new loans for projects that increase the consumption of Colorado's undeveloped river entitlements or that rehabilitate existing water storage and

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<sup>1</sup>Section 37-60-121, C.R.S.

<sup>2</sup>Section 34-63-102 (5.4) (d), C.R.S.

<sup>3</sup>Senate Bill 09-125.

delivery facilities. For FY 2009-10, the CWCB was appropriated \$7.2 million from the construction fund for salaries and operating costs and \$2.2 million was transferred to the Litigation Fund. Moneys in the Litigation Fund are used to pay for expenses associated with interstate compact and other state water litigation. To address revenue shortfalls in FY 2008-09, \$10.25 million was transferred from the construction fund to the General Fund. Table 2 identifies transfers from the construction fund from FY 2007-08 through FY 2010-11.

**Table 2**  
**CWCB Construction Fund**

	FY 2007-08 Actual	FY 2008-09 Estimate	FY 2009-10 Estimate	FY 2010-11 Estimate
Cash Balance - Beginning of Year	\$8,775,717	\$13,282,580	\$2,049,393	\$1,313,874
Revenues	28,884,363	28,569,174	30,115,309	31,306,269
<i>CWCB Operations</i>	(5,914,121)	(6,744,815)	(7,220,828)	(7,532,484)
<i>Non-Reimbursable Investments</i>	(3,828,890)	(7,371,000)	(8,180,000)	(5,000,000)
<i>Loan Issuances</i>	(14,634,489)	(15,436,546)	(15,450,000)	(20,000,000)
<i>Total Expenditures</i>	<u>(24,377,500)</u>	<u>(29,552,361)</u>	<u>(30,850,828)</u>	<u>(32,532,484)</u>
Ending FY Balance Without Transfer	\$13,282,580	\$12,299,393	\$1,313,874	\$87,659
Transfer to the General Fund in S.B. 09-208	<u>0</u>	<u>-10,250,000</u>	<u>0</u>	<u>0</u>
Ending Balance after Transfer	\$13,282,580	\$2,049,393	\$1,313,874	\$87,659

Source: Joint Budget Committee FY 2009-10 Appropriations Report

### **Perpetual Base Account of the Severance Tax Trust Fund**

**Overview.** The Perpetual Base Account of Severance Tax Trust Fund was established in 1997 to capture growing Severance Tax Revenue to address the state's water supply needs. The severance tax is paid by producers of oil, gas, coal, and other minerals. The Perpetual Base Account moneys are used to provide loans for construction, rehabilitation, enlargement, or improvement of water projects.<sup>4</sup> Loans from the Perpetual Base Account are recommended by the CWCB and approved by the General Assembly in the annual CWCB Construction Fund bill. The law requires that payments on the principle and interest from the loans be credited to the Perpetual Base Account, which makes it a revolving loan fund. Unlike the CWCB Construction Fund, no permanent programs depend on moneys from the Perpetual Base Account.

**Revenue for the Perpetual Base Account.** The Perpetual Base Account receives half of the receipts to the Severance Tax Trust Fund which is one fourth of all severance tax revenue. The Perpetual Base Account is estimated to receive \$7.5 million in FY 2009-10 in severance tax revenue, down from \$58.6 million in FY 2008-09. This decline is due primarily to falling oil and gas prices and a local property tax offset. Table 2 identifies revenue from severance taxes, interest earnings, and loan repayments for the Perpetual Base Account of the Severance Tax Trust Fund from FY 2007-08 through FY 2010-11.

<sup>4</sup>Section 39-29-109 (2) (a), C.R.S.

**2009 appropriations from the Perpetual Base Account.** There were no new loans from the Perpetual Base Account. Instead, the General Assembly transferred \$35 million from the Perpetual Base Account to the General Fund in FY 2008-09 and transferred \$62 million to the General Fund in FY 2009-10. The General Assembly also extended the authorization for a \$60.6 million loan to the Southeastern Colorado Water Conservancy District for the construction of a 138-mile water supply pipeline extending from Pueblo Reservoir to the City of Lamar, called the Arkansas Valley Conduit, and an \$8.8 million loan to the Penrose Water District for the purchase of water rights and the construction of a pipeline. Table 3 identifies moneys in the Perpetual Base Account for FY 2007-08 through FY 2010-11.

**Table 3  
Perpetual Base Account of the Severance Tax Trust Fund**

	FY 2007-08 Actual	FY 2008-09 Estimate	FY 2009-10 Estimate	FY 2010-11 Estimate
Cash Balance - Beginning of Year	\$43,702,079	\$18,058,960	\$7,614,373	\$0
<i>Receivables/Interest Earnings</i>	10,507,640	8,531,145	7,871,920	8,767,050
<i>Severance Tax</i>	37,868,413	58,646,000	7,468,750	40,650,000
<i>Principal Repayment</i>	2,731,028	3,028,268	3,028,268	3,028,268
<i>Previously Obligated Loans*</i>	0	0	37,016,689	0
<i>Total Revenues</i>	51,107,081	70,205,413	55,385,627	52,445,318
Loan Issuances/Drought Grants	(76,750,200)	(45,650,000)	(1,000,000)	(50,000,000)
Ending FY Balance Without Transfer	\$18,058,960	\$42,614,373	\$62,000,000	\$2,445,318
General Fund Transfers in S.B. 09-208	0	(20,000,000)	0	0
General Fund transfers in S.B. 09-279	<u>0</u>	<u>(15,000,000)</u>	<u>(62,000,000)</u>	<u>0</u>
Ending Balance after transfer	\$18,058,960	\$7,614,373	\$0	\$2,445,318

Source: Joint Budget Committee FY 2009-10 Appropriations Report

\* Senate Bill 09-279 requires the transfer of \$62.0 million from the Perpetual Base Account of the Severance Tax Trust Fund to the General Fund in FY 2009-10. An estimated \$37.0 million will come from money set aside for authorized projects that are not yet under contract or have not yet been fully completed.

## Water Supply Reserve Account

In 2005, the General Assembly enacted the Colorado Water for the 21st Century Act, which established a process to address the state's growing water demand.<sup>5</sup> This law created nine basin roundtables that are charged with identifying water needs within each of the state's major river basins and conducting discussions with other basins to address interbasin water issues. The law also created a 27-member Interbasin Compact Committee (IBCC) to facilitate negotiations between the roundtables.

***Water Supply Reserve Account.*** The Water Supply Reserve Account was created in 2006 to help address Colorado's water needs and support the IBCC process.<sup>6</sup> From FY 2006-07 to FY 2008-09, the General Assembly has appropriated \$23 million from the Operational Account of the Severance Tax Trust Fund for water activities approved by CWCB including water diversion projects and nonstructural activities. Moneys in the account may be used for grants or loans. Spending from the Water Supply Reserve Account does not require legislative approval.

Each roundtable has its own process and criteria for approving funding from the Water Supply Reserve Account. Once a request for funding from the Water Supply Reserve Account 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.

***2009 legislation.*** In 2009, the legislature reduced scheduled transfers from the Operational Account of the Severance Tax Trust Fund to the Water Supply Reserve Account for FY 2008-09 and FY 2009-10 by over \$7 million.<sup>7</sup> Another law stipulates that the unencumbered and unexpended balance of the Water Supply Reserve Account is to remain in the account. This law also transfers \$10 million annually, starting in FY 2010-11, from the Operational Account of the Severance Tax Trust Fund to the Water Supply Reserve Account and continues these transfers indefinitely thereafter.<sup>8</sup> 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 demand of at least 2,000 acre-feet. Repayments of principal

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<sup>5</sup>Section 37-75-101, C.R.S., et seq.

<sup>6</sup>Senate Bill 06-179.

<sup>7</sup>Senate Bill 09-293

<sup>8</sup>Senate Bill 09-106

and interest on loans from the account will be credited to the account. The CWCB is required to report annually to the General Assembly on how the moneys in the Water Supply Reserve Account are expended.

**Allocation to statewide and basin accounts.** CWCB allocates money in the Water Supply Reserve Account between the Statewide Account and nine basin accounts. Moneys in the Statewide Account are awarded on a competitive basis to the roundtables. Moneys in the basin accounts are allocated by the CWCB for projects and studies within each basin. According to CWCB policy, 73 percent of the moneys appropriated by the General Assembly to the Water Supply Reserve Account for FY 2009-10 will be allocated to the Statewide Account (\$4.2 million) and 27 percent of the appropriation will be allocated between each of the nine basin roundtables (\$1.6 million or \$173,000 for each basin).<sup>9</sup> Table 4 identifies appropriations to the Water Supply Reserve Account from FY 2006-07 through FY 2010-11 and the amount transferred by the CWCB to the Statewide and Basin accounts.

**Table 4  
Water Supply Reserve Account**

<b>Fiscal Year</b>	<b>Appropriation</b>	<b>Statewide Account</b>	<b>Basin Account</b>
<b>2006-07</b>	\$10,000,000	\$5,500,000	\$4,500,000
<b>2007-08</b>	\$6,000,000	\$4,200,000	\$1,800,000
<b>2008-09</b>	\$7,000,000	\$4,300,000	\$2,700,000
<b>2009-10</b>	\$5,775,000	\$4,215,750	\$1,559,250
<b>2010-11</b>	\$10,000,000	TBD	TBD
<b>TOTAL</b>	<b>\$38,775,000</b>	<b>\$18,215,750</b>	<b>\$10,559,250</b>

### **Limits on State Debt to Finance Infrastructure Development**

Several laws limit the ability of the CWCB and other state agencies to issue debt to finance infrastructure development projects. The following section summarizes the constitutional prohibition on general obligation debt and the law that requires voter approval for state agencies to issue revenue bonds. A summary of the 2003 Referendum A that would have allowed the CWCB to issue water infrastructure revenue bonds is also provided.

**General obligation debt.** According to the Colorado Constitution, "the state shall not contract any debt by loan in any form, except to provide for casual deficiencies of revenue [or] erect public buildings for the use of the state. . ."<sup>10</sup> The Colorado Supreme Court determined that this law prohibits the state from incurring general obligation debt, which is debt that is secured by the full faith, credit, and taxing powers of the state. The court also determined that the purpose of the constitutional limit on debt is to keep the state

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<sup>9</sup>Water Supply Reserve Account Criteria and Guidelines developed jointly by the Colorado Water Conservation Board and Interbasin Compact Committee, Revised December 1, 2008.

<sup>10</sup>Article XI, Section 3, Colo. Const.

substantially on a cash basis, to prohibit the pledge of future fixed revenues, to forbid the contracting of debts, and to make sure that one General Assembly would not paralyze the next by obligating the available revenues of both.<sup>11</sup>

***State debt subject to voter-approval.*** Article X, Section 20 of the Colorado Constitution, called the Taxpayer's Bill of Rights (TABOR), requires state and local governments to obtain voter approval for any multiple-fiscal year debt or other financial obligation, unless enough money is set aside to pay for the obligation in all years the payments are due.<sup>12</sup> In 2003, the voters rejected Referendum A that would have allowed the CWCB to issue revenue bonds to pay for water infrastructure development. Additional information about this measure follows.

***Enterprises and state debt.*** TABOR allows certain governmental entities, called *enterprises*, to issue revenue bonds without obtaining voter approval. Enterprises are self-supporting, government-owned businesses that receive revenue (primarily from fees) in return for the provision of goods or services, and have the authority to issue revenue bonds. An enterprise must be designated by the General Assembly. An enterprise may only receive up to 10 percent of its annual revenue from government sources and must otherwise be financially independent. Current enterprises include higher education auxiliary facilities, the State Lottery, College Assist and CollegeInvest, Correctional Industries, the state nursing home system, the State Fair Authority, the Student Obligation Bond Authority, the Division of Wildlife, Colorado Tolling Enterprise, and the Unemployment Insurance Program.

***Referendum A and water infrastructure revenue bonds.*** In 2003, the Colorado voters rejected Referendum A that would have authorized the CWCB to issue up to \$2 billion of water infrastructure revenue bonds for the purpose of financing public and private water infrastructure projects that were to be approved by the Governor.<sup>13</sup> The measure stated that such bonds would not constitute a debt by loan in any form under Section 3 of Article XI of the State Constitution because payments of principal and interest were required to be made solely from revenues and receipts derived from the sale of water, power, and other assets from projects funded by the bonds. The owners of bonds were also prohibited from seeking any other revenues of the state for the payment of the bonds. The CWCB's authority to issue water infrastructure revenue bonds was repealed upon the defeat of Referendum A.<sup>14</sup>

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<sup>11</sup>In re Senate Resolution No. 2, Concerning the Constitutionality of House Bill No. 6, 31 P.2d 325, 94 Colo. 101.

<sup>12</sup>Article X, Section 20 (4) (b), Colo. Const.

<sup>13</sup>Senate Bill 03-236.

<sup>14</sup>Sections 37-60-201 to 37-60-210, C.R.S.