MEMORANDUM

TO: Members, CWCB
FROM: Bill McDonald
DATE: January 9, 1986
SUBJECT: Agenda Item 20d, January 16-17, 1986, Board Meeting—Water Project Financing Legislation

Introduction

At the November meeting, the Board reviewed the two bills concerning water project financing which had been reported out by the Interim Legislative Committee on Land and Water Resources. As you will recall, one bill was proposed by the Alliance for Colorado's Future, while the other had been proposed by Rolly Fischer and Jim Robb.

Since the November Board meeting, it is the Alliance proposal which has served as the vehicle for discussion in the Colorado Water Congress committee which is dealing with the matter of project financing. In turn, there have been numerous revisions to the Alliance proposal relative to what was reported out by the Interim Committee. I am not aware of discussion in the water community about the Fischer/Robb bill.

Alliance Proposal

A summary of the Alliance proposal as of the writing of this memorandum is enclosed. Also enclosed is the bill, the most important part of which is the first seven pages.

Fischer/Robb Proposal

The key features of this proposal are as follows:

1. Sales and Use Tax
   0.4% increase effective starting on July 1, 1986.
2. Dedication of revenues
Revenues from the tax increase are credited to a new fund called the Colorado Water Resources Development and Mitigation Fund.

3. Nature of Fund
   a. Continuing fund.
   b. Interest earned from investment of fund is credited to it.
   c. Moneys credited to fund must be appropriated to be available for use.

4. Use of fund
   a. Construction of water projects, including feasibility studies.
   b. Dam safety and rehab.
   c. For purposes established for the CWCB construction fund and the Development Authority.

5. Compensation for transbasin diversions
   a. Any project to divert "water from one basin for use in another basin" shall require a mitigation plan to be prepared by the Development Authority.
   b. The mitigation plan shall provide for, but not be limited to: facilities to protect water quality, water supply, aquatic habitat, recreational uses, and compact requirements; compensation for increased costs to diverters; compensation for costs to local government; etc.
   c. Development Authority may participate in preparation of EISs.
   d. No construction on a transbasin diversion project can start until the mitigation plan is approved by the General Assembly and moneys appropriated to the Development Authority for the required compensation.

Other Proposals

Representative Chris Paulson also has water project financing legislation under consideration. His draft bill contains provisions which are substantially the same as the Alliance proposal. However, his bill will apparently also be addressed to capital investments in highways, state buildings, higher education, and other areas, rather than being limited to water resources development.

Discussion

The issue before the Board is whether it would like to take a position on any of the proposed legislation. It appears that the substance of the Alliance proposal is the most likely vehicle for legislative consideration of water project financing given the amount of effort which has gone into its preparation by water interests.
In considering possible water project financing legislation, I believe that a number of questions need to be addressed in order to clearly define the objective which is sought. These questions are set forth in the enclosed "Discussion Outline--Water Project Financing Legislation" (dated 12/4/85). I have shared this with the Colorado Water Congress committee which is working on the Alliance proposal.

JWM/gl

Enclosures: as stated
### SUMMARY OF 1-7-86 ALLIANCE PROPOSAL

<table>
<thead>
<tr>
<th>Citation</th>
<th>Page/Line</th>
<th>Creation of Colo. Water Resources Development Fund</th>
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<tbody>
<tr>
<td>101(1)</td>
<td>1/9</td>
<td>Fund created</td>
</tr>
<tr>
<td>101(21)</td>
<td>1/23</td>
<td>$300 million cap</td>
</tr>
<tr>
<td>102(1)</td>
<td>2/1</td>
<td>Purposes of the fund</td>
</tr>
<tr>
<td>102(2)(a)</td>
<td>2/25</td>
<td>15% allocation to west slope projects of not less than 300,000 AF, exclusive of the A-LP Project</td>
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<tr>
<td>(2)(b)</td>
<td>3/9</td>
<td>5% allocation to mitigation of environmental impacts</td>
</tr>
<tr>
<td>(2)(c)</td>
<td>3/16</td>
<td>Costs of mitigation are non-reimbursable</td>
</tr>
<tr>
<td>102(3)</td>
<td>3/21</td>
<td>Mitigation limited to the 5% funding availability</td>
</tr>
<tr>
<td>102(3)(a)</td>
<td>3/25</td>
<td>Remaining 80% available for the following purposes:</td>
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<tr>
<td>102(3)(b)</td>
<td>4/1</td>
<td>Project planning studies and environmental statements (statements are non-reimbursable)</td>
</tr>
<tr>
<td>102(3)(c)</td>
<td>4/3</td>
<td>Construction of water resource and flood control projects</td>
</tr>
<tr>
<td>102(3)(d)</td>
<td>4/5</td>
<td>Repair, rehab, and enlargement of existing projects</td>
</tr>
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<td>102(3)(e)</td>
<td>4/8</td>
<td>Construction of facilities for better conservation and management</td>
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<td>102(3)(f)</td>
<td>4/12</td>
<td>Construction of recreational facilities (non-reimbursable)</td>
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<td>102(3)(g)</td>
<td>4/14</td>
<td>Construction of projects for maintenance of water quality standards</td>
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<tr>
<td>102(3)(h)</td>
<td>4/17</td>
<td>Construction of underground recharge and storage projects (non-reimbursable)</td>
</tr>
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<td>102(3)(i)</td>
<td>4/19</td>
<td>Funding of CWCB construction fund</td>
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<td>Funding for the CWR&amp;PDA</td>
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</tbody>
</table>
Priorities for use of funds

The Narrows and Animas-La Plata Projects, a project above Chatfield Reservoir, and a project in the South Platte Basin below Henderson have the first priority.

Projects hereafter authorized shall be funded to completion concurrently with the first priority projects to the extent that such funding is not inconsistent with the demonstrated funding requirements of the priority projects.

Reports to the General Assembly

Annual report by CWCB and CWR&PDA by joint resolution
Report by CWCB re west slope projects using the 15% allocation
Report by CWCB re project above Chatfield
Report by AG and CWR&PDA re A-LP project
Report by CWR&PDA re Narrows project and project below Henderson

Sales tax provisions

Increases the sales and use tax by 0.4 percent, with the revenue therefrom being credited to the fund

Repealer

Repeals section 37-95-107.5, CRS (H.B. 1088, 1985 Session)

Effective Date

January 1, 1987

* All cites are to article 96 of title 37, CRS.
Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Title 37, Colorado Revised Statutes, as amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

**ARTICLE 96**

**Colorado Water Resources Development Fund**

**37-96-101. Colorado water resources development fund — creation.** (1) There is hereby created a fund, to be known as the Colorado water resources development fund and referred to in this article as the "fund", which shall consist of all moneys credited thereto pursuant to section 39-26-123.2(1), C.R.S., and of all moneys which may be otherwise made available to it by the general assembly. All interest earned from the investment of moneys in the fund shall be credited to the fund and shall become a part thereof. The fund shall be a continuing fund and it shall not revert to the general fund of the state at the end of any fiscal year. The fund shall be expended for the purposes and in the manner set forth in section 37-96-102 and in accordance with the priorities specified in section 37-96-103.

(2) Following the close of any fiscal year in which the moneys in the fund exceed three hundred million dollars, after the transfer of moneys required by subsection (2)(a) of section 37-96-102 and excluding any amount held in the fund pursuant to subsection (1) of section 37-96-102, such excess shall be credited to the capital construction fund created by section 24-75-302, C.R.S.
37-96-102. **Purposes of the fund.** (1) In order that the people of the state of Colorado may, as a matter of statewide concern, have and enjoy the perpetual use of those waters apportioned to the state of Colorado by interstate compact, and in order to dispose of any current or future claims for compensation, compensatory storage, damages, or mitigation of damages originating within the basin of origin because of present or future transbasin diversions, notwithstanding any provision of section 37-45-118 (1)(b)(IV), of part 5 of article 65.1 of title 24, C.R.S., or of any other law to the contrary, fifteen percent of the annual revenues credited to the fund pursuant to section 39-26-123.2, C.R.S., together with the interest accruing from the investment thereof, shall be used to plan and construct reservoirs and related facilities in western Colorado with a collective available capacity of not less than three hundred thousand acre-feet, excluding the available capacity of the Animas-La Plata participating project of the Colorado river storage project, of which amount not less than two hundred twenty-five thousand acre-feet shall be available exclusively for future uses in western Colorado and not less that seventy-five thousand acre-feet shall be available to make exchanges or compact deliveries required to accommodate diversions from the Colorado river basin for uses outside the basin within the state of Colorado.

(2)(a) At the end of each fiscal year, five percent of the annual revenues credited to the fund pursuant to section
(a) Planning studies, including environmental assessments and environmental impact statements, for Colorado water projects, the costs of which assessments and statements shall be nonreimbursable;
(b) The construction of Colorado water resource and flood control projects;

(c) The repair, rehabilitation, and enlargement of Colorado water resource projects;

(d) The construction and implementation of facilities, measures, and means for the better conservation and management of water resources;

(e) The construction and development of adequate recreational facilities as a part of, and which can be reasonably incorporated into, Colorado water projects, the cost of which facilities shall be non-reimbursable;

(f) The construction of projects and facilities for the maintenance of water quality standards;

(g) The construction of underground recharge and storage projects, the costs of which projects shall be non-reimbursable;

(h) The Colorado water conservation board construction fund created in section 37-60-121; and

(i) The Colorado water resources and power development authority established in section 37-95-104.

37-96-103. Priorities for use of the fund. (1) With respect to the moneys in the fund which are available for the purposes of subsection (3) of section 37-96-102, the following projects shall have the first priority for expenditures from the fund:

(a) The projects previously authorized by senate joint resolution number 6, fifty-third general assembly;
(b) A major multipurpose water project for the benefit of the Denver metropolitan area on the South Platte river upstream from the Chatfield reservoir;

(c) A major multipurpose water project to regulate and store the waters of the South Platte river or its tributaries located on the South Platte river or its tributaries which enter downstream of the Henderson gauging station northerly of Denver.

(2) It is the intent of the general assembly that other projects which may be hereafter authorized shall be funded to completion concurrently with the first priority projects described in subsection (1) of this section to the extent that such funding is not inconsistent with the demonstrated funding requirements of said priority projects as they may be approved by the general assembly pursuant to the actions described in section 37-96-104.

37-96-104. Reports to the general assembly. (1) Not later than February 1 of each year, the Colorado water conservation board and the Colorado water resources and power development authority, after consultation with the department of local affairs and the water quality control commission, shall, by joint resolution, submit to the general assembly recommendations, including proposed contractual and repayment arrangements, for the use of the moneys which are expected to become available to the fund for the purposes set forth in subsection (3) of section 37-96-102. Said joint resolution shall include any recommendations made by the division of
parks and outdoor recreation for the development and construction of adequate recreational facilities as a part of any recommended water project, which facilities shall be considered as the primary responsibility of the state of Colorado.

(2) Not later than July 1, 1990, the Colorado water conservation board, in cooperation with the Colorado river water conservation district, the southwestern water conservation district, and other interested entities, shall submit to the general assembly a plan or plans, including proposed contractual and repayment arrangements, to effectuate the reservoir storage in the Colorado river basin of western Colorado as described in subsection (1) of section 37-96-102, which plan or plans may be thereafter revised from time to time to carry out the intent of the said subsection (1).

(3) Not later than February 1, 1988, the Colorado water conservation board, in cooperation with the sponsors of the project described in section 37-96-103 (1)(b), shall submit to the general assembly a plan, including proposed contractual and repayment arrangements, for the expenditure of moneys from the fund in an amount sufficient to insure the timely construction of said project, which plan may be revised thereafter to reflect actual construction costs, it being the intent of the general assembly that moneys credited to the fund shall be dedicated and available in a timely and sufficient amount to insure construction of said project.

(4) At such time as the attorney general of the state of Colorado, the Colorado water resources and power development
authority, and the appropriate federal agencies have approved
a mutually acceptable plan for state participation in the
Animas-La Plata participating project of the Colorado river
storage project, such plan and the terms thereof shall be
presented to the general assembly for its consideration.

(5) At such time as the Colorado water resources and
power development authority and the appropriate local and
federal authorities have approved a mutually acceptable plan
for state participation in the Narrows project, and at such
time as the said authority, in cooperation with the project
sponsors, has approved a mutually acceptable plan for state
participation in the project described in section 37-96-103
(1)(c), such plan or plans and the terms thereof shall be
presented to the general assembly for its consideration.

SECTION 2. 29-2-108 (1) and (3), Colorado Revised
Statutes, 1977 Repl. Vol., as amended, are amended to read:

29-2-108. Limitation on amount. (1) In no case shall
the total sales tax or total use tax imposed by the state of
Colorado, any county, and any city or town in any locality in
the state of Colorado exceed seven AND FOUR-TENTHS percent;
except that this limitation shall not preclude a county sales
tax or use tax at a rate not to exceed one percent.

(3) The additional one-tenth of one percent tax imposed
by article 26.1 of title 39, C.R.S., shall be exempt from the
seven AND FOUR-TENTHS percent limitation imposed by subsection
(1) of this section and from the seven and one-half percent
limitation imposed by subsection (2) of this section.
SECTION 3. 39-26-106 (1) (a), Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

39-26-106. Schedule of sales tax. (1) (a) There is imposed upon all sales of commodities and services specified in section 39-26-104 a tax at the rate of three AND FOUR-TENTHS percent of the amount of the sale, to be computed in accordance with schedules or systems approved by the executive director of the department of revenue. Said schedules or systems shall be designed so that no such tax is charged on any sale of seventeen cents or less.

SECTION 4. Part 1 of article 26 of title 39, Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

39-26-123.2. Credit of sales and use tax receipts to Colorado water resources development fund. An amount equal to four-tenths of one percent of the net revenue from sales and use taxes which otherwise would be credited to the general fund shall be credited to the Colorado water resources development fund created in section 37-96-101, C.R.S. Such transfers shall be made as soon as possible after the twentieth day of the month.

SECTION 5. 39-26-202 (1), Colorado Revised Statutes, 1982 Repl. Vol., as amended to read:

39-26-202. Authorization of tax. (1) There is imposed and excise at the rate of three AND FOUR-TENTHS percent of storage or acquisition charges or costs for the privilege of storing, using, property purchased at retail. Such tax shall
be payable to and shall be collected by the executive director of the department of revenue and shall be computed in accordance with schedules or systems approved by said executive director.

SECTION 6. **Repeal.** 37-95-107.5, Colorado Revised Statutes, is repealed.

SECTION 7. **Effective date.** This act shall take effect January 1, 1987.

SECTION 8. **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.
Discussion Outline
Water Project Financing Legislation

1. What is the broad objective of the proposed legislation?
   a. What are the problems to be addressed?
   b. Why do they exist?

2. What kinds of project purposes should be financed with state tax monies? Why is state financing needed? What distinctions can and should be drawn, if any, between different kinds of project purposes and between different sets of beneficiaries in determining why state financing is needed?
   a. New projects for:
      (1) Irrigation water supplies?
      (2) Rural municipal raw water supplies?
      (3) Urban municipal raw water supplies?
      (4) Treatment and distribution systems for (2) or (3)?
      (5) Flood protection and damage prevention?
      (6) Industrial water supplies?
      (7) "Better management" of already developed water supplies?
      (8) Indeterminate future uses?
      (9) Wastewater treatment?
   b. Repair and rehabilitation of facilities for the same purposes as in a. above?
   c. Environmental impact statements, fish and wildlife mitigation facilities, and recreation facilities? Should only these costs, as opposed to project construction costs proper, be financed for certain of the above kinds of project purposes?
   d. Acquisition of dam and reservoir sites to hold for future use?
3. What kinds of water resources planning activities should be undertaken with state money?
   a. Should state money be used to pay 100 percent of the cost of studies?
   b. Should costs be repayable by project sponsors?

4. Is state financing of water projects (other things also?) a vehicle by which the issue of compensation for diversions from the west slope to the east slope can be resolved? If so, how is the solution to be structured so as to give the concerned parties sufficient certainty as to the result?

5. Should identified projects and project priorities be set forth in this legislation? If so, what should they be?

6. In light of the answers to the above questions, how much money is needed and justifiable?

7. What kinds of financing are to be made available with state tax monies? Does the answer vary as a function of the kind of project purpose involved?
   a. Kinds of financing
      (1) Grants
      (2) Non-interest bearing loans
      (3) Interest bearing loans below market rates
      (4) Creation of reserve funds, etc., to enable the issuance of revenue bonds
      (5) General obligation bonds (would require a constitutional amendment)?
      (6) Other
   b. Should financing cover all project costs or only part of the costs (with project sponsors having to find the balance of the financing from other sources)?

8. What are the alternative means of raising the necessary state tax money? What are the pros and cons of the alternatives? Does the alternative selected vary as a function of the kind of financing to be used?

9. Are the current statutory authorities of the Colorado Water Conservation Board and the Colorado Water Resources and Power Development Authority sufficient to implement whatever planning activities, project purposes, and financing mechanisms are decided upon? If not, in what ways do they need to be changed?