

ARTICLE 8.5
CHERRY CREEK BASIN WATER QUALITY AUTHORITY

Section

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25-8.5-101. Legislative declaration.

(1) The general assembly hereby finds and declares that the organization of a Cherry Creek basin water quality authority will:

(a) Be for the public benefit and advantage of the people of the state of Colorado;

(b) Benefit the inhabitants and landowners within the authority by preserving water quality in Cherry Creek and Cherry Creek reservoir;

(c) Benefit the people of the state of Colorado by preserving waters for recreation, fisheries, water supplies, and other beneficial uses;

(d) Promote the health, safety, and welfare of the people of the state of Colorado.

(2) It is further declared that the authority will provide for effective efforts by the various counties, municipalities, special districts, and landowners within the boundaries of the authority in the protection of water quality.

(3) It is further declared that the authority should provide that new developments and construction activities pay their equitable proportion of costs for water quality preservation and facilities.

(4) This article, being necessary to secure the public health, safety, convenience, and welfare, shall be liberally construed to effect its purposes.

Source: L. 88: Entire article added, p. 1029, § 1, effective April 28.

25-8.5-102. Definitions.

As used in this article, unless the context otherwise requires:

- (1) "Agricultural lands" means all lands except land rezoned by a county or municipality for business, commercial, residential, or similar uses or subdivided lands. Those include property consisting of a lot one acre or more in size which contains a dwelling unit.
- (2) "Authority" means the Cherry Creek basin water quality authority created pursuant to section 25-8.5-103.
- (3) "Board" means the governing body of the authority provided for in section 25-8.5-106.
- (3.5) "Conservation district" means any conservation district created pursuant to article 70 of title 35, C.R.S.
- (4) "County" means any county enumerated in article 5 of title 30, C.R.S.
- (5) "Municipality" means a municipality as defined in section 31-1-101 (6), C.R.S.
- (6) "Publication" means three consecutive weekly advertisements in a newspaper or newspapers of general circulation within the boundaries of the authority. It shall not be necessary that an advertisement be made on the same day of the week in each of the three weeks, but not less than twelve days, excluding the day of first publication, shall intervene between the first publication and the last publication. Publication shall be complete on the date of the last publication.
- (7) "Resolution" means an ordinance as passed by a member municipality or a resolution as passed by a member county or special district.
- (8) (Deleted by amendment, L. 2002, p. 517, § 12, effective July 1, 2002.)
- (9) "Special district" means any district created pursuant to article 1 of title 32, C.R.S., which has the power to provide sanitation services or water and sanitation services and has wastewater treatment facilities within the boundaries of the authority.
- (10) "Wastewater treatment facility" means a facility providing wastewater treatment services which has a designed capacity to receive sewage for treating, neutralizing, stabilizing, and reducing pollutants contained therein prior to the disposal or discharge of the treated sewage. "Wastewater treatment facility" does not include any pretreatment facilities, lift stations, interceptor lines, or other transmission facilities to transmit sewage effluent outside the boundaries of the authority.

Source: L. 88: Entire article added, p. 1030, § 1, effective April 28. L. 2002: (3.5) added and (8) amended, p. 517, § 12, effective July 1.

25-8.5-103. Creation and organization.

The Cherry Creek basin water quality authority is hereby created. The authority shall be a quasi-municipal corporation and political subdivision of the state, with the powers provided in this article.

Source: L. 88: Entire article added, p. 1030, § 1, effective April 28.

ANNOTATION

Am. Jur.2d. See 61C Am. Jur.2d, Pollution Control, §§ 720, 723, 724.

25-8.5-104. Boundaries of authority.

(1) The boundaries of the authority shall be determined by the authority, subject to the following:

(a) The boundaries shall be limited to the drainage basin of Cherry Creek from its headwaters to the dam at Cherry Creek reservoir, which the general assembly hereby finds to be:

(I) Arapahoe county: Portions of sections thirty-five and thirty-six, township four south, range sixty-seven west of the sixth principal meridian; a portion of section thirty-one, township four south, range sixty-six west of the sixth principal meridian; portions of sections one, two, three, ten, fifteen, twenty-two, twenty-three, twenty-seven, and thirty-four, and all of sections eleven, twelve, thirteen, fourteen, twenty-four, twenty-five, twenty-six, thirty-five and thirty-six, township five south, range sixty-seven west of the sixth principal meridian; all of sections seven, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six and portions of sections five, six, eight, nine, fourteen, fifteen, sixteen, twenty-three and twenty-four, township five south, range sixty-six west of the sixth principal meridian; all of section thirty-one and portions of sections nineteen, twenty-nine, thirty, and thirty-two, township five south, range sixty-five west of the sixth principal meridian;

(II) Douglas county: Portions of sections four, nine, sixteen, twenty-one, twenty-eight and thirty-three, and all of sections five, six, seven, eight, seventeen, eighteen, nineteen, twenty, twenty-nine, thirty, thirty-one, and thirty-two, township six south, range sixty-five west of the sixth principal meridian; township six south, range sixty-six west of the sixth principal meridian; portions of sections three, ten, fifteen, twenty-one, twenty-two, twenty-eight, thirty-one, thirty-two and thirty-three, and all of sections one, two, eleven, twelve, thirteen, fourteen, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, thirty-four, thirty-five and thirty-six, township six south, range sixty-seven west of the sixth principal meridian; portions of sections four, nine, sixteen, and twenty-one, and all of sections five, six, seven, eight, seventeen, eighteen, nineteen, twenty, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, and thirty-three, township seven south, range sixty-five west of the sixth principal meridian; township seven south, range sixty-six west of the sixth principal meridian; portions of sections four, five, nine, fourteen, fifteen, sixteen, twenty-three, twenty-five, twenty-six, and thirty-six, and all of sections one, two, three, ten, eleven, twelve, thirteen, and twenty-four, township seven south, range sixty-seven west of the sixth principal meridian; portions of sections twenty-eight and thirty-three and all of sections four, five, six, seven, eight, nine, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-nine, thirty, thirty-one, and thirty-two, township eight south, range sixty-five west of the sixth principal meridian; portions of sections six, seven, eighteen, nineteen, twenty-nine, thirty, and thirty-one, and all of sections one, two, three, four, five, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, thirty-two, thirty-three, thirty-four, thirty-five and thirty-six, township eight south, range sixty-six west of the sixth principal meridian; a portion of section one, township eight south, range sixty-seven west of the sixth principal meridian; all of sections four, five, six, seven, eight, nine, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two and thirty-three, township nine south, range sixty-five west of the sixth principal meridian; all of township nine south, range sixty-six west excepting portions of sections six and seven; portions of sections thirteen, twenty-three, twenty-four, twenty-five, and thirty-six, township nine south, range sixty-seven west of the sixth principal meridian; portions of sections twenty-eight and thirty-three, and all of sections four, five, six, seven, eight, nine, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-nine, thirty, thirty-one, and thirty-two, township ten south, range sixty-five

west of the sixth principal meridian; portions of sections five, six, seven, eight, seventeen, eighteen, nineteen, twenty-nine, thirty, thirty-one, and all of sections one, two, three, four, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, thirty-two, thirty-three, thirty-four, thirty-five and thirty-six, township ten south, range sixty-six west of the sixth principal meridian; a portion of section one, township ten south range sixty-seven west of the sixth principal meridian.

(b) Lands may be included within the boundaries of the authority pursuant to section 25-8.5-119.

(c) Lands within the boundaries identified in paragraph (a) of this subsection (1) may be excluded from the authority pursuant to section 25-8.5-120.

(2) The authority shall maintain a current map, showing all lands that are included in the authority's boundaries.

Source: L. 88: Entire article added, p. 1031, § 1, effective April 28.

25-8.5-105. Authority members.

(1) The following entities shall be members of the authority:

(a) Each county that has property within the authority's boundaries shall have one member;

(b) Each municipality that has property within the authority's boundaries shall have one member;

(c) The special districts that include in their service areas property within the Cherry Creek basin and that own and operate wastewater treatment services facilities in the Cherry Creek basin shall collectively be represented by a single member of the authority. For the purposes of this paragraph (c), wastewater treatment services shall mean a wastewater treatment facility with a designed capacity to receive more than two thousand gallons of sewage per day.

(d) A total of seven members shall be appointed by the governor to represent sports persons, recreational users, and concerned citizens. A minimum of two of these appointees shall be residents of Colorado and shall be from bona fide sports persons' or recreational organizations that have members who use the reservoir. A minimum of two of these appointees shall be from bona fide citizen or environmental organizations interested in preserving water quality with members who use the reservoir or live within Cherry Creek basin. At least three of the appointed members shall have backgrounds in or professional training regarding water quality issues. A simple majority of the appointed members shall be appointed to four-year terms, the remainder shall be appointed to initial two-year terms, and the members appointed to fill the vacancies upon expiration of such two-year terms shall serve four-year terms. The governor may replace any appointed member with a new member by appointment every four years.

Source: L. 88: Entire article added, p. 1032, § 1, effective April 28. **L. 2001:** (1) amended, p. 896, § 1, effective August 8.

25-8.5-106. Board of directors.

(1) The governing body of the authority shall be a board of directors which shall exercise and perform all powers, rights, privileges, and duties invested or imposed by this article.

(2) Each authority member shall appoint one representative and two alternates to serve on the board. The representative and alternates for the special district authority member shall be chosen by unanimous consent of the special districts referenced in section 25-8.5-105 (1) (c), or included under section 25-8.5-119. Any county, municipality, or special district that provides wastewater treatment services by contract with another entity that is a member of the authority shall not be entitled to a separate member on the board, and such a special district shall not be entitled to representation by the special district member.

(3) Directors shall be appointed for terms of two years. Notice of each appointment shall be given to the recording secretary for the authority.

(4) No director shall receive compensation as an employee of the authority. Reimbursement of actual expenses for directors shall not be considered compensation.

(5) An appointment to fill a vacancy on the board shall be made by the authority member for the remainder of the unexpired term.

(6) If a board member or designated alternate fails to attend two consecutive regular meetings of the board, the authority may submit a written request to the appointing authority member to have its representative attend the next regular meeting. If, following such request, said representative fails to attend the next regular board meeting, the board may appoint an interim representative from the authority member's jurisdiction to serve until the authority member appoints a new representative.

(7) An authority member, at its discretion, may remove from office any board member or designated alternate representing the authority member and appoint a successor.

(8) The board shall elect one of its members as chairman of the authority and one of its members as secretary-treasurer and shall appoint a recording secretary who may be a member of the board.

(9) The recording secretary shall keep in a visual text format that may be transmitted electronically a record of all of the authority's meetings, resolutions, certificates, contracts, bonds given by employees or contractors, and all corporate acts which shall be open to inspection of all interested parties.

(10) The secretary-treasurer shall keep strict and accurate accounts of all money received by and disbursed for and on behalf of the authority.

Source: **L. 88:** Entire article added, p. 1032, § 1, effective April 28. **L. 2001:** (2) amended, p. 897, § 2, effective August 8. **L. 2009:** (9) amended, (HB 09-1118), ch. 130, p. 561, § 3, effective August 5.

25-8.5-107. Voting.

(1) Each authority member, through its designated director or designated alternate acting in the director's place, shall be entitled to one vote.

(2) Board action upon proposed waste load allocations, site location or site plans selected pursuant to section 25-8-702, discharge permits secured pursuant to section 25-8-501, amendments to the authority's wastewater management plan, and all budget and funding decisions shall require an affirmative vote of a majority of all authority members. Any vote by the special district member on such board action shall reflect the majority of the represented special districts.

(3) All decisions of the board not enumerated in subsection (2) of this section shall be made and decided by a majority of the quorum. A quorum requires that at least fifty percent of all authority members be present.

(4) A director shall disqualify himself from voting on any issue in which he has a conflict of interest unless such director has disclosed such conflict of interest in compliance with section 18-8-308, C.R.S., in which case such disclosure shall cure the conflict. A director shall abstain from voting if the director would obtain a personal financial gain from the contract or services being voted upon by the authority.

(5) Notwithstanding subsection (2) of this section, any vote regarding a change in the levy and collection of ad valorem taxes pursuant to section 25-8.5-111 (1) (p) (I) shall be limited to authority members representing municipalities or counties within the authority's boundaries.

Source: L. 88: Entire article added, p. 1033, § 1, effective April 28. **L. 2001:** (2) and (3) amended and (5) added, p. 897, § 3, effective August 8.

25-8.5-108. Ex officio members.

(1) Ex officio members shall be provided with notice of the authority meetings. Ex officio members shall not serve on the board. Ex officio members are not voting members. The following shall be considered ex officio members:

(a) Every conservation district of which more than two-thirds of its territory is included within the authority's boundaries;

(b) Any other governmental or quasi-governmental agency designated as an ex officio member by the authority.

Source: L. 88: Entire article added, p. 1034, § 1, effective April 28. **L. 2002:** (1)(a) amended, p. 517, § 13, effective July 1.

25-8.5-109. Meetings.

- (1) The board shall fix the time and place at which its regular meetings shall be held and provide for the calling and holding of special meetings.
- (2) Notice of the time and place designated for all regular meetings shall be posted at the office of the county clerk and recorder of each of the counties included within the authority. Such notices shall remain posted and shall be changed in the event that the time or place of such regular meetings is changed.
- (3) Special meetings of the board shall be held at the call of the chairman or upon request of two board members. The authority shall inform all board members five calendar days before the special meeting and shall post notice in accordance with subsection (2) of this section at least three days before the special meeting of the date, time, and place of such special meeting and the purpose for which it is called.
- (4) All business of the board shall be conducted only during said regular or special meetings, and all said meetings shall be open to the public, but the board may hold executive sessions as provided in part 4 of article 6 of title 24, C.R.S.

Source: **L. 88:** Entire article added, p. 1034, § 1, effective April 28. **L. 91:** (4) amended, p. 821, § 5, effective June 1.

25-8.5-110. Powers of board - organization - administration.

- (1) The board has the following powers relating to carrying on the affairs of the authority:
- (a) To organize, adopt bylaws and rules of procedure, and select a chairman and chairman pro tempore;
 - (b) To make and pass resolutions and orders which are necessary for the governance and management of the affairs of the authority, for the execution of the powers vested in the authority, and for carrying out the provisions of this article;
 - (c) To fix the location of the principal place of business of the authority and the location of all offices maintained under this article;
 - (d) To prescribe by resolution a system of business administration, to create any and all necessary offices, to establish the powers and duties and compensation of all employees, and to require and fix the amount of all official bonds necessary for the protection of the funds and property of the authority;
 - (e) To appoint and retain employees, agents, and consultants to make recommendations, coordinate authority activities, conduct routine business of the authority, and act on behalf of the authority under such conditions and restrictions as shall be fixed by the board;
 - (f) To prescribe a method of auditing and allowing or rejecting claims and demands and a method for the letting of contracts on a fair and competitive basis for the construction of works, structures, or equipment or for the performance or furnishing of such labor, materials, or supplies as may be required for the carrying out of any of the purposes of this article.

Source: L. 88: Entire article added, p. 1034, § 1, effective April 28.

25-8.5-111. Powers of authority - general and financial.

(1) In order to accomplish its purposes, the authority has the power to:

- (a) Develop and implement, with such revisions as become necessary in light of changing conditions, plans for water quality controls for the reservoir, applicable drainage basin, waters, and watershed, to achieve and maintain the water quality standards. In particular, the authority shall submit, within two years after August 8, 2001, a plan to the water quality control commission that is intended to meet state water quality standards, including measures to mitigate the impacts of nonpoint source pollutants.
- (b) Conduct pilot studies and other studies that may be appropriate for the development of potential water quality control solutions;
- (c) Develop and implement programs to provide credits, incentives, and rewards within the Cherry Creek basin plan for water quality control projects;
- (d) Recommend the maximum loads of pollutants allowable to maintain the water quality standards;
- (e) Recommend erosion controls and urban runoff control standards and conduct educational programs regarding such controls in the basin;
- (f) Recommend septic system maintenance programs;
- (g) Incur debts, liabilities, and obligations;
- (h) Have perpetual existence;
- (i) Have and use a corporate seal;
- (j) Sue and be a party to suits, actions, and proceedings;
- (k) Enter into contracts and agreements affecting the affairs of the authority including, but not limited to, contracts with the United States and the state of Colorado and any of their agencies or instrumentalities, political subdivisions of the state of Colorado, corporations, and individuals;
- (l) Acquire, hold, lease (as lessor or lessee), and otherwise dispose of and encumber real and personal property;
- (m) Acquire, lease, rent, manage, operate, construct, and maintain water quality control facilities or improvements for drainage, nonpoint sources, or runoff within or without the authority;
- (n) Establish rates, tolls, fees, charges, and penalties except on agricultural land for the functions, services, facilities, and programs of the authority; except that the total annual revenue collected from said rates, tolls, fees, and charges, less the cost of said functions, services, facilities, and programs, shall not exceed thirty percent of the annual authority budget;
- (o) Establish in cooperation with the department of natural resources fees for Cherry Creek reservoir users, which amounts shall be subject to the review and approval of the board of parks and outdoor recreation, which shall not unreasonably withhold approval. Said reservoir fees, including all users regardless of activity, however established, shall not in total exceed the amount that would be collected

if the reservoir user fee was one dollar per reservoir user per year.

(p) (I) Levy and collect ad valorem taxes on and against all taxable property within the authority subject to the limitation that no mill levy for any fiscal year shall exceed one-half mill; however, ad valorem taxes greater than one-half mill can be levied by the authority if it is approved by the electors at an election held according to the procedures of part 8 of article 1 of title 32, C.R.S.

(II) No property tax shall be levied until the fees from the recreation users and the development fees are established.

(q) Issue and refund revenue and assessment bonds and pledge the revenues of the authority or assessments therefor to the payment thereof in the manner provided in part 4 of article 35 of title 31, C.R.S., and as provided in this article;

(r) Invest any moneys of the authority in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S.;

(s) Review and approve water quality control projects of any entity other than the authority within the boundaries of the authority;

(t) Except that the authority shall not have the power to regulate agricultural nonpoint source activities; such agricultural nonpoint source activities shall be subject only to the provisions of section 25-8-205 (5);

(u) Have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted to the authority by this article. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this article.

(2) Nothing in subsection (1) of this section shall be construed as authorizing the authority to take any action or spend any moneys in a manner that is inconsistent with its statutory purpose to protect and preserve the water quality of Cherry Creek reservoir. Consistent therewith, the authority shall expend funds only pertaining to the water quality standards, control regulations, or similar regulations regarding the water quality of Cherry Creek and Cherry Creek reservoir if such expenditures are clearly consistent with improving, protecting, and preserving such water quality. The authority shall focus its efforts on improving, protecting, and preserving the water quality of Cherry Creek and Cherry Creek reservoir, and on achieving and maintaining the existing water quality standards.

(3) Of the revenues collected by the authority under paragraphs (n), (o), and (p) of subsection (1) of this section, a minimum of sixty percent on an annual basis shall be spent on construction and maintenance of pollution abatement projects in the Cherry Creek basin or on payments due under loans or other debt incurred and spent by the authority entirely upon such projects.

Source: L. 88: Entire article added, p. 1035, § 1, effective April 28. L. 89: (1)(r) amended, p. 1111, § 17, effective July 1. L. 2001: (1)(a), (1)(d), (1)(e), and (1)(n) amended and (2) and (3) added, p. 898, § 4, effective August 8.

ANNOTATION

Am. Jur.2d. See 61C Am. Jur.2d, Pollution Control, §§ 720, 723, 724.

25-8.5-112. Power to issue bonds.

To carry out the purposes of this article, the board is authorized to issue revenue or assessment bonds of the authority. Bonds shall bear interest at a rate such that the net effective interest rate of the issue of bonds does not exceed the maximum interest rate set forth in the resolution adopted by the board authorizing the issuance of the bonds, payable semiannually, and shall be due and payable serially, either annually or semiannually, commencing not later than three years after date of issuance. The form and terms of said bonds, including provisions for their payment and redemption, shall be determined by the board. If the board so determines, such bonds may be redeemable prior to maturity upon payment of a premium not exceeding three percent of the principal thereof. Said bonds shall be executed in the name and on behalf of the authority, signed by the chairman of the board with the seal of the authority affixed thereto, and attested by the secretary of the board. Said bonds shall be in such denominations as the board shall determine, and the bonds and coupons shall bear the original or facsimile signature of the chairman of the board.

Source: L. 88: Entire article added, p. 1036, § 1, effective April 28.

25-8.5-113. Revenue refunding bonds.

Any revenue bonds issued by the authority may be refunded by the authority, or by any successor thereof, in the name of the authority, subject to the provisions concerning their payment and to any other contractual limitations in the proceedings authorizing their issuance or otherwise appertaining thereto, by the issuance of bonds to refund, pay, and discharge all or any part of such outstanding bonds, including any interest on the bonds in arrears or about to become due, for the purpose of avoiding or terminating any default in the payment of the interest on and principal of the bonds, of reducing interest costs or effecting other economies, or of modifying or eliminating restrictive contractual limitations appertaining to the issuance of additional bonds or to any system appertaining thereto or for any combination of such purposes. Refunding bonds may be delivered in exchange for the outstanding bonds refunded or may be sold as provided in this article for an original issue of bonds.

Source: L. 88: Entire article added, p. 1036, § 1, effective April 28.

25-8.5-114. Use of proceeds of revenue refunding bonds.

The proceeds of revenue refunding bonds shall either be immediately applied to the retirement of the bonds being refunded or be placed in escrow in any state or national bank within the state which is a member of the federal deposit insurance corporation to be applied to the payment of the bonds being refunded upon their presentation therefor; but, to the extent any incidental expenses have been capitalized, such refunding bond proceeds may be used to defray such expenses, and any accrued interest and any premium appertaining to a sale of refunding bonds may be applied to the payment of the interest thereon or the principal thereof, or both interest and principal, or may be deposited in a reserve therefor, as the board may determine. Any such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other moneys available for its purpose. Any proceeds in escrow, pending such use, may be invested or reinvested in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S. Such proceeds and investments in escrow, together with any interest to be derived from any such investment, shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due, and any charges of the escrow agent payable therefrom to pay the bonds being refunded as they become due at their respective maturities or due at any designated prior redemption dates in connection with which the board shall exercise a prior redemption option. Any purchase of any refunding bond issued under this article shall in no manner be responsible for the application of the proceeds thereof by the authority or any of its officers, agents, or employees.

Source: L. 88: Entire article added, p. 1037, § 1, effective April 28. **L. 89:** Entire section amended, p. 1111, § 18, effective July 1.

25-8.5-115. Facilities - comprehensive program.

(1) The authority, acting by and through the board, may acquire, construct, lease, rent, improve, equip, relocate, maintain, and operate water quality control facilities, any project, or any part thereof for the benefit of the authority and the inhabitants thereof, after the board has made such preliminary studies and otherwise taken such action as it determines to be necessary or desirable.

(2) (a) The authority shall develop a comprehensive program for the water quality control facilities specified in subsection (1) of this section. A comprehensive program may consist of one project or more than one project.

(b) A hearing on the proposed comprehensive program shall be scheduled, and notice of the hearing shall be given by publication and posted in the office of the county clerk and recorder of each member county. Upon closure of the hearing, the board may either require changes to be made in the comprehensive program or the board may approve or reject the comprehensive program as prepared.

(c) If any substantial changes to the comprehensive program are ordered at any time, a further hearing shall be held pursuant to notice which shall be given by publication.

Source: L. 88: Entire article added, p. 1037, § 1, effective April 28.

ANNOTATION

Am. Jur.2d. See 61C Am. Jur.2d, Pollution Control, §§ 720, 723, 724.

25-8.5-116. Coordination with drainage and flood control measures.

(1) Any exercise by the authority of the powers granted by section 25-8.5-111 or 25-8.5-115 which affects drainage and flood control shall be consistent with and conform to the drainage and flood control program of the urban drainage and flood control district adopted pursuant to section 32-11-214, C.R.S., the resolutions, rules, regulations, and orders of the district issued pursuant to section 32-11-218 (1) (e), C.R.S., and any flood plain zoning resolutions, rules, regulations, and orders of any public body having jurisdiction to adopt the same.

(2) Construction by the authority of drainage or water quality control facilities which might or will affect drainage or flood control within the boundaries of the urban drainage and flood control district shall not be undertaken until a proposal therefor has been presented to and approved by the board of directors of said district. Such proposal shall demonstrate compliance with the requirements of subsection (1) of this section, and the board shall apply the same standards of flood control and drainage criteria for approval thereof as it applies for review of proposals presented for approval pursuant to section 32-11-221, C.R.S. The provisions of section 32-11-221, C.R.S., shall apply to the presentation, consideration, and determination by said board of directors of any such proposal or modification thereof.

Source: L. 88: Entire article added, p. 1038, § 1, effective April 28.

25-8.5-117. Transfer of powers.

(1) Upon the adoption of the board of directors of the urban drainage and flood control district and the board of directors of the authority created herein of a joint resolution delegating the agreed-upon responsibility to the urban drainage and flood control district for carrying out and meeting, within the district's boundaries, the compliance requirements and the permitting requirements imposed with respect to storm water runoff quality by the federal "Water Quality Act of 1987" and any regulations and standards adopted pursuant thereto or pursuant to state law, all powers contained in this act to deal with water quality control and compliance relating to the agreed-upon aspects of storm water runoff and nonpoint sources of pollution, including financial powers and special assessment powers but not including ad valorem taxation powers, shall be transferred to the urban drainage and flood control district.

(2) Upon the transfer of powers as provided in subsection (1) of this section, any allocation of waste loads affecting storm water runoff or nonpoint sources of pollution proposed or adopted by the authority shall be effective only upon adoption thereof or concurrence therewith by the board of directors of the urban drainage and flood control district.

(3) If the urban drainage and flood control district accepts the responsibility and the transfer of powers as provided in subsection (1) of this section, after completion of a plan for water quality controls by the authority which involves storm drainage runoff or nonpoint sources and after commencement of implementation of such plan, the district shall be bound to carry out the plan as it relates to the storm water and nonpoint source powers transferred to it within the time requirements, if any, of the plan.

Source: L. 88: Entire article added, p. 1038, § 1, effective April 28.

25-8.5-118. Power to levy special assessments.

(1) The board, in the name of the authority, for the purpose of defraying all the cost of acquiring or constructing, or both, any project or facility authorized by this article, or any portion of the cost thereof not to be defrayed with moneys available therefor from its own funds, any special funds, or otherwise, also has the power under this article:

(a) To levy assessments against all or portions of the property within the authority and to provide for collection of the assessments pursuant to part 6 of article 20 of title 30, C.R.S.;

(b) To pledge the proceeds of any assessments levied under this article to the payment of assessment bonds and to create liens on such proceeds to secure such payments;

(c) To issue assessment bonds payable from the assessments, which assessment bonds shall constitute special obligations of the authority and shall not be a debt of the authority; and

(d) To make all contracts, to execute all instruments, and to do all things necessary or convenient in the exercise of the powers granted in this article or in the performance of the authority's duties or in order to secure the payment of its assessment bonds.

(2) The authority shall give notice, by publication once in a newspaper of general circulation in the authority, to the owners of the property to be assessed, which shall include:

(a) The kind of improvements proposed;

(b) The number of installments and the time in which the cost of the project will be payable;

(c) A description of the properties which will be assessed;

(d) The probable cost per acre or other unit basis which, in the judgment of the authority, reflects the benefits which accrue to the properties to be assessed; except that no benefit shall accrue to agricultural lands;

(e) The time, not less than thirty days after the publication, when a resolution authorizing the improvements will be considered;

(f) A map of the properties to be assessed, together with an estimate and schedule showing the approximate amounts to be assessed, and a statement that all resolutions and proceedings are on file and may be seen and examined by any interested person at the office of the authority or other designated place at any time within said period of thirty days; and

(g) A statement that all complaints and objections by the owners of property to be assessed in writing concerning the proposed improvements will be heard and determined by the authority before final action thereon.

(3) The finding, by resolution, of the board that said improvements were ordered after notice given and after hearing held and that such proposal was properly initiated by the said authority shall be conclusive of the facts so stated in every court or other tribunal.

(4) Any resolution or order regarding the assessments or improvements may be modified, confirmed, or

rescinded at any time prior to the passage of the resolution authorizing the improvements.

Source: L. 88: Entire article added, p. 1039, § 1, effective April 28.

25-8.5-119. Inclusion of property.

(1) Any municipality, county, or special district, or any portion thereof, shall be eligible for inclusion upon resolution of its governing body requesting inclusion in the authority and describing the property to be included. The authority, by resolution, may include such property on such terms and conditions as may be determined appropriate by the board.

(2) Upon receipt of a resolution requesting inclusion, the board shall cause an investigation to be made within a reasonable time to determine whether or not the municipality, county, or special district, or portion thereof, may feasibly be included within the authority, whether the municipality, county, or special district has any property which is tributary to the basin, waters, or watersheds governed by the authority, and the terms and conditions upon which the municipality, county, or special district may be included within the authority. If it is determined that it is feasible to include the municipality, county, or special district, or portion thereof, in the authority, and the municipality, county, or special district has property tributary to the basin, waters, or watersheds governed by the authority, the board by resolution shall set the terms and conditions upon which the municipality, county, or special district, or portion thereof, may be included within the authority and shall give notice thereof to the municipality, county, or special district. If the board determines that the municipality, county, or special district, or portion thereof, cannot feasibly be included within the authority or otherwise determines that the municipality, county, or special district should not be included within the authority, the board shall pass a resolution so stating and notifying the municipality, county, or special district of the action of the board. The board's determination that the county, municipality, or special district, or portion thereof, should not be included in the authority shall be conclusive.

(3) (a) If the governing body of the municipality, county, or special district desires to include the municipality, county, or special district, or portion thereof, within the authority upon the terms and conditions set forth by the board, the governing body shall adopt a resolution declaring that the public health, safety, and general welfare requires the inclusion of said municipality, county, or special district within the authority and that the governing body desires to have said municipality, county, or special district, or portion thereof, included therein upon the terms and conditions prescribed by the board. The governing body of such municipality, county, or special district, before final adoption of said resolution, shall hold a public hearing thereon, notice of which shall be given by publication in a newspaper of general circulation within such municipality, county, or special district, which shall be complete at least ten days before the hearing. Upon the final adoption of said resolution, the clerk of the governing body of such municipality, county, or special district shall forthwith transmit a certified copy of the resolution to the board and to the division of local government in the department of local affairs.

(b) After receipt of a copy of such resolution, the board shall pass and adopt a resolution including said municipality, county, or special district, or portion thereof, in the authority and shall cause a certified copy thereof to be transmitted to the division of local government and a certified copy to the governing body of the municipality, county, or special district.

(4) The director of said division, upon receipt of a certified copy of the resolution of the board, shall forthwith issue a certificate reciting that the municipality, county, or special district, or portion thereof, described in such resolution has been duly included within the authority according to the laws of the state of Colorado. The inclusion of such territory shall be deemed effective upon the date of the issuance of such certificate, and the validity of such inclusion shall not be contestable in any suit or proceeding which has not been commenced within thirty days from such date. The said division shall forthwith

transmit to the governing body of such municipality, county, or special district and to the board five copies of such certificate, and the clerk of such governing body shall forthwith record a copy of the certificate in the office of the clerk and recorder of each county in which such municipality, county, or special district, or portion thereof, is located and file a copy thereof with the county assessor of each such county. Additional copies of said certificate shall be issued by the division of local government upon request.

Source: L. 88: Entire article added, p. 1040, § 1, effective April 28.

25-8.5-120. Exclusion of property.

- (1) Any owner of property within the boundaries of the authority may petition to be excluded from the authority.
- (2) In order for such property to be excluded, the board shall determine that the property to be excluded does not receive wastewater treatment services or have an individual sewage disposal system located within the authority and either:
 - (a) Was improperly included within the authority; or
 - (b) Is not tributary to the basin, waters, or watersheds governed by the authority or will not benefit from projects or improvements provided by the authority.
- (3) Any petition for exclusion shall specify the property to be excluded and evidence that the property complies with the criteria of subsection (2) of this section.
- (4) The authority shall provide notice of the date, time, and place of the authority's meeting to consider the petition for exclusion.
- (5) The authority may approve, modify, or deny a petition for exclusion.
- (6) If the authority approves a petition for exclusion of property, the authority shall file a copy of said resolution with the division of local government and with the county, municipality, or special district authority members which includes within its boundaries the excluded property, record a copy of the resolution in the office of the county clerk and recorder in the county in which said excluded property is located, and file a copy with the county assessor in such county.

Source: L. 88: Entire article added, p. 1041, § 1, effective April 28.
