

**Pueblo Conservancy District
Assessment Project
Development of Assessment – Phase II
Final Report
September 25, 2012**



111 East 5th Street • Pueblo, CO 81003
Ph: (719) 544-6823 • (719) Fax: 544-6825



RESIDENTIAL AND COMMERCIAL
REAL PROPERTY VALUATIONS
1315 W. 4th St.
Pueblo, CO. 81004
(719) 544-5516 | (719) 544-5715 fax

**Altman | Keilbach | Lytle
Parlapiano & Ware, P.C.**
Attorneys & Counselors at Law
229 Colorado Avenue
Pueblo, Colorado 81004
719-545-7325

Garren, Ross & DeNardo, Inc.
CERTIFIED PUBLIC ACCOUNTANTS

3673 Parker Boulevard, Suite 200
Pueblo, CO. 81008
(719) 544-9872 | (719) 253-5417 fax



PUEBLO CONSERVANCY DISTRICT ASSESSMENT PROJECT
FINAL REPORT: DEVELOPMENT OF ASSESSMENT – PHASE II
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I. EXECUTIVE SUMMARY – PHASE II

The attached Report is the second phase of a three phase approach submitted in response to a Request for Proposal from the Board of the Pueblo Conservancy District for a review process to be used in assessing the maintenance fee for the District. Attached is a Summary of the Preliminary or Phase I Report. Other than reviewing the attached Summary of the Phase I Report, for background information, this Phase II Report is designed to be a stand alone Report which does not require further reference to the Phase I Report.

This Phase II Report provides a follow up to the initial analysis of benefits provided by the Arkansas River and Wildhorse Creek levees and the Pueblo Conservancy District and further identifies three groups, or tiers, of those benefited. Those tiers are identified as Pueblo County, outside of the City and the flood plain, the City of Pueblo, outside of the flood plain, with the third tier consisting of property within the flood plain.

This Report provides a proposed updated boundary of the flood plain with a suggested modification of the District boundary to match the currently identified flood plain.

Also included in this Report is updated data on the valuation of property lying within each tier. This valuation information is based on data developed and provided by the Pueblo County Assessor as well as data developed by the State of Colorado for State Assessed property. The Pueblo County Assessor has indicated a willingness to develop the data base to identify the property value within the proposed new District boundary once that boundary is officially approved. This will allow a more accurate break out of the value of the State Assessed Property within the District boundary which, for the purposes of this Report, is an estimate only.

NorthStar Engineering & Surveying Inc., in collaboration with ASI Constructors, Inc., made a visual inspection of the exterior concrete cap of the Arkansas River levee. That work was required as there are no existing evaluation reports on the levee. Also, since FEMA is requiring the levee to be certified to provide for flood control, an order of magnitude of deficiencies within the levee and its concrete cap had to be identified. Based on that visual inspection and previous evaluations, improvement designs, and certifications for other regional levee projects initial cost estimates were prepared. Those cost estimates present a level of magnitude from which the District can complete preliminary planning for future tasks associated with improvements to and certifications of the Arkansas River and Wildhorse Creek levees.

Based on the review and analysis of all the information and data which could be obtained, the Consultant Team has developed a recommendation for the work likely needed and the revenue needs for the District for next year and ensuing years as well as a method of funding the maintenance fee. The revenue need beyond 2013 is a best projection based on the level of technical review that was possible given the time and budget constraints of the project. This Report provides in detail the rationale for the recommendations as well

as identifying what work and tasks that will need to be completed to more fully refine the long term costs for the District.

II. SUMMARY OF PRELIMINARY PHASE – PHASE I REPORT

The Pueblo Conservancy District was formed, after petition to the District Court, in 1923. The District was organized pursuant to the Conservancy Law of Colorado, C.R.S. 37-1-101 et seq. These statutes were adopted by the Colorado Legislature in direct response to the catastrophic flood of 1921 in Pueblo. The statutes are attached herein as Appendix G. The adoption of the statute was not without controversy, however the Colorado Supreme Court held, in 1923 that the statute was constitutional and further held that the maintenance fee established by the statute is a fee and not a tax.

The Board of the Pueblo Conservancy District, in 2012, issued a Request for Proposal for a review of the process used in assessing the maintenance fee for the District. Pursuant to the RFP the District engaged the team of NorthStar Engineering and Surveying, Inc., Altman, Keilbach, Lytle Parlapiano & Ware, P.C., Garren, Ross & DeNardo, Inc. and Arrowhead Real Estate Appraisals, LLC to perform the review. The team suggested the review and recommendations be divided into three parts, the first part of which (Phase I) was to consist of information and data gathering, review of the process and a Report with recommendations to the Board. The Phase I Report was completed and presented to the Directors of the District on June 27, 2012.

The Pueblo Conservancy District developed the plan for and arranged the bonded funding for the construction that, to this day, provides a barrier to flooding from the Arkansas River into much of the downtown area of Pueblo. The boundary of the District, as created in 1923, was included as an Appendix in the Phase I Report. Even with the dam on the Arkansas River (west of Pueblo, built in the 1960's) without the levees significant portions of the City could suffer substantial flooding and damage in the event of a large storm event. The Pueblo Conservancy District has continued to provide the maintenance for the levees since their construction.

After Hurricane Katrina struck the Gulf Coast, which resulted in major flooding to the city of New Orleans, the Corps of Engineers was subject to criticism for failure to assure that the levees that protected New Orleans were properly maintained. As a result the Corps of Engineers and FEMA initiated a program of reviewing levees in the United States and updating associated flood plain mapping. The Pueblo Conservancy District was advised that unless the Arkansas River and Wildhorse Creek levees were certified the City would lose its protected status which had ensured that flood insurance could be provided at very affordable rates. Without the availability of affordable flood insurance most forms of financing for property are not available.

The Consultant Team concluded that it is necessary for the community to continue to have levees to protect significant parts of the City which provide essential public health, safety and welfare services to all of the citizens of Pueblo County (Part IV of the Phase I

Report). It is not only important to have the levees it is essential to have the levees certified to continue to have affordable flood insurance (Part IV of the Phase I Report). Conservancy districts were established by the legislature almost ninety years ago to carry out this very function of constructing and maintaining levees. The Phase I Report concludes, in Part IV, that the Pueblo Conservancy District is the most appropriate entity to continue to maintain the levees.

The Phase I Report provided a review/listing of all the property within the District boundaries, a listing of all the parcels in the updated flood plain mapping, and a listing of all property owners in the District. Reference was made in specific Appendices to those properties that have, historically, been assessed a maintenance fee.

The statutes (which are reprinted in this Phase II Report as Appendix G), provide for an analysis of the benefits of the levees to property both within and outside of the District. The Phase I review concluded that without the levees services essential to the public health, safety and welfare would be impaired, to a significant degree, in the event of a major flood event on the Arkansas River. The area that would be subject of flooding hosts both City and County facilities, as well as transportation and communication systems, that are essential to the protection of public safety, health and welfare. As a result, all of the citizens of both the City and the County receive a benefit from the existence of the levees. Properties within the flood plain receive an additional benefit in the protection of those properties and the availability of affordable flood insurance.

Part V of the Phase I Report explored approaches to apportionment of the maintenance fees to properties in the County, properties in the City, and the properties within the flood plain. The Report Appendices provided some hypothetical examples, based on the value of properties within the three different areas, assuming different allocation of value among the three areas.

To move the project forward to Phase II (Development of Assessment), the Board decided that the proposed Phase I approach met the needs and goals of the District. The Board had several discussions with various County entities about issues posed in the Phase I Report regarding valuation of properties within the flood plain that have no current valuation. Direction received from the Board regarding valuations on unvalued properties is both detailed later in this Phase II Report and incorporated into the findings of the Phase II Study.

In reviewing and proposing an approach that is both equitable and manageable the Consultant Team, in the Phase I Report, suggested using the fair market value of properties in the County, City and District, as a basis for assessing a maintenance fee, given that for the most part those values may be obtained from the Pueblo County Assessor, and for the State Assessed properties from the State of Colorado. There are however, City, County and non-profit owned properties that have no current valuation. The Board deferred any potential assessment on those entities until a future date when their valuations could be established by the Pueblo County Assessor.

III. DEVELOPMENT OF SUPPORTING DOCUMENTATION FOR MAINTENANCE FEE

On April 12, 2012 the Pueblo Conservancy District Board of Directors hired the Consultant Team of Northstar Engineering & Surveying, Inc., Altman, Keilbach, Lytle, Parlapiano & Ware, P.C., Garren, Ross & DeNardo, Inc., and Arrowhead Real Estate Appraisals, LLC to complete Preliminary Phase Services (Phase I) for this Assessment Project. A Final Report documenting the results of the Preliminary Phase Services was presented to the District Directors at their June 27, 2012 meeting. That Phase I Report included a recommended plan of action for moving forward with the Assessment Project. That plan included recommended services for Phase II (Development of Assessment) and Phase III (Input and Final Assessment). On July 25, 2012 the District Directors hired the same Consultant Team to move forward with Phase II of the Project (Development of Assessment).

The focus of the “Development of Assessment” phase of this Assessment Project is on the: preparation of a revised district boundary; development of estimated 20 year costs for required operations and maintenance work, intergovernmental agreements, capital improvements, and planning work; estimates of preliminary evaluation, design, and construction costs for anticipated upgrades and new improvements to the Arkansas River and Wildhorse/Dry Creek levees; identification of potential benefits to irrigation companies with head gates on the Arkansas River; preparation of a final estimate of a three tiered maintenance fee with tier areas defined by the new Pueblo Conservancy District boundary, the city limits line, and the county line; expansion of flood insurance rate examples; and review and documentation of legal/statutory rationale for the proration of maintenance fees for a three tiered assessment rate concept.

The Phase I Report, in its recommended services for Phase II, also included task items for development of valuations on State Assessed properties (including personal property) in the new District boundary. The task items also included valuation of currently unvalued City, County, and non-profit properties both in the new District boundary and countywide. After receipt of the Phase I Report, the District Directors held several meetings with members of the Consultant Team as well as staff members of the Pueblo County Assessor and Pueblo County Treasurer. The District Directors made the determination that they would rely on valuations from the Pueblo County Assessor with respect to State Assessed properties (including personal property) in the new District boundary. That information would be provided to the Consultant Team for use in preparation of the three tiered maintenance fee assessment rates as required by the “Development of Assessment” phase services. The District Directors also decided to allow the Pueblo County Assessor to value currently unvalued City, County, and non-profit properties. Realizing that work would take several years, the District Directors decided to move forward with Phase II of the Project such that a maintenance fee could be established for collection next year. At such time as the County Assessor completes valuation of the remaining governmental and non-profit properties, the District Directors will readdress the maintenance fee assessment and determine whether the level of

assessment should be adjusted to account for the values of governmental and non-profit properties.

The original Conservancy District boundary was established when the Pueblo Conservancy District was organized in response to the catastrophic 1921 Arkansas River flood. A copy of that document was included in the Phase I Report. During Phase I, the Consultant Team identified 3,804 parcels that lie completely or partially within those District boundaries. It was also determined that there were 2,421 property owners of record for the 3,804 parcels in the District. Additionally, it was determined that of the 2,421 property owners in the District, 610 had been historically assessed for maintenance activities of the District and that those 610 owners represented 866 total parcels.

Since the Pueblo Reservoir was constructed in the early-1960s, significant modifications to the limits of the Arkansas River floodplain have occurred. That construction resulted in numerous parcels or properties which were previously in the Arkansas River floodplain being removed from the floodplain. Therefore, numerous properties within the historic District boundary now fall outside of the new flood zone limits (with or without levee certification as discussed below). The District Directors tasked Northstar Engineering & Surveying, Inc. to prepare a revised District boundary map to include, in general, only those parcels lying within or partially within the limits of the revised Arkansas River floodplain (without levee certification as discussed below). That document was provided (in the form of a parcel map) to the Pueblo County Assessor for use in obtaining valuations on State Assessed properties. The District Directors also authorized the Consultant Team to prepare a legal description of the revised boundary for the District's use in obtaining District Court approval of the revised District boundary. Appendix A of this Phase II Report includes the revised District boundary map and legal description. That document has been reproduced at a reduced scale for incorporation into this Report. Full size copies of the document have been provided to the District Administrator, Mr. Rick Kidd, P.E.

Appendix B of this Report includes reduced size drawings of current and historic floodplain maps as they relate to both the City and County of Pueblo. The four floodplain maps included in Appendix B are:

- B-1 – City of Pueblo Current Floodplain (prior to levee certification requirements for the Arkansas River and Wildhorse Creek levees)
- B-2 – 100 year Arkansas River floodplain without levee certification (as prepared by Anderson Consulting Engineers, Inc.)
- B-3 – 100 year Wildhorse Creek floodplain without levee certification (as prepared by Anderson Consulting Engineers, Inc.)
- B-4 – Current Pueblo County floodplain (prior to levee certification requirements for the Arkansas River and Wildhorse Creek levees)

Drawings B-1 and B-4 provide floodplain limits for the City and County of Pueblo as they existed prior to the concerns of FEMA regarding existing levees. If the District is successful in certifying the existing levees on both the Arkansas River and Wildhorse

Creek, it is reasonably anticipated that updated floodplain mapping in the City and County of Pueblo will closely resemble the current mapping shown on drawings B-1 and B-4.

Drawings B-2 and B-3 provide anticipated flood limits and potential flooding depths for the Arkansas River and Wildhorse Creek should the existing levees not be certified and therefore, not provide for flood control. There are major differences between the current and potential floodplains. These differences have major impacts, with respect to flooding potential and insurance costs and availability, on a large number of properties within the District.

Appendix D includes a drawing showing existing irrigation company head gates on the Arkansas River within Pueblo County. This information was obtained from the State of Colorado, Division of Water Resources, Division Engineer. Two of the irrigation/canal companies with head gates originating in Pueblo County serve users in Crowley and Otero Counties. Those are the Colorado Canal and the Rocky Ford Highline Canal. According to the Otero County Assessor, the Rocky Ford Highline Canal serves 335 parcels with a total of 18,596 acres being irrigated. Much of the Colorado Canal shares have been sold to Aurora, Colorado and therefore, much of the water is diverted at other locations outside of Pueblo County. According to the Crowley County Assessor, the number of parcels and total acres still being irrigated are currently unknown and existing records are incomplete. All other irrigation/canal companies with head gates on the Arkansas River in Pueblo County serve Pueblo County users.

Extensive research has been conducted by the Consultant Team in an attempt to identify existing conditions of the Arkansas River and Wildhorse Creek levees. No previous evaluation reports are known to exist. Evaluation reports of the Fountain Creek levees were found, but that documentation has no bearing on either the Arkansas River or Wildhorse Creek levees. Conditions of the existing levees and potential remediation/improvement alternatives will be discussed in greater detail in Section IV of this Report.

IV. COST DATA FOR DISTRICT OPERATIONS AND IMPROVEMENT OF LEVEES

A portion of the proposed maintenance fee assessment will be necessary to provide for continuing operating and maintenance costs of the District. As such, it was necessary to estimate what those costs might become. The data which was made available for this purpose were copies of the District's recent budget (with a focus on 2012) and annual compiled financial statements prepare by the District's external C.P.A. for the last three years ended December 31, 2011, 2010 and 2009.

That data was used to identify recurring operations and maintenance costs of the District. Specific capital costs for levee improvement projects were removed from the proposed operating and maintenance budget. Costs for those proposed projects will be treated

separately. This resulted in the identification of approximately \$121,630 of operations and maintenance costs. However, cost increases in several areas are expected. The adjustments needed are briefly described as follows:

- Increase HARP contributions to more traditional levels of \$60,000 to \$65,000 per year.
- Increase budget for ongoing maintenance and repairs to \$50,000 per year.
- Increase budget for professional fees and administrative costs to include potential increases in legal, engineering, accounting and audit fees by \$15,000 per year.
- Provide a budget for County Treasurer's collection costs of 1% and an additional 2% for delinquent payments.
- Increase the budget for contingencies by \$20,000 resulting in a budget of \$25,000 or roughly 10% of the overall budget.

These adjustments result in an estimate of the operations and maintenance budget needed, when rounded, of \$230,000. A detailed summary of the identified operating and maintenance budget for the District can be found in Appendix J.

Appendix C contains guidelines from the Federal Emergency Management Agency (FEMA) regarding levee certification and floodplain mapping. The document entitled "Levee Mapping – Complying with 44 CFR 65.10" provides guidelines on how management agencies must certify and maintain levees for accreditation by the Federal Emergency Management Agency. As discussed in the Phase I Report, for FEMA to accept the existing levees when preparing final floodplain mapping for both the Arkansas River and Wildhorse Creek the management agency for the levees must complete the certification process. The Arkansas River levee is basically an earthen dike with a 10" thick concrete cap. The Wildhorse Creek levee is earthen compacted fill material. Both levees fall within FEMA guidelines for levees requiring certification for flood protection.

As indicated in Section III of this Report, evaluation reports on either the Arkansas River levee or the Wildhorse Creek levee do not exist. The only known information is correspondence from FEMA requiring the levees be to certified and correspondence from the consultant preparing Arkansas River floodplain mapping for FEMA to the City of Pueblo providing preliminary cost estimates for evaluation and certification of the referenced levees. It is known, based on visual observations as well as construction activities associated with the Legacy Project on the Arkansas River that foundation failures and undercutting at the toe of the levee have occurred. Also, portions of the concrete cap has cracked, slipped and buckled. These conditions are much more prominent on the lower sections (bottom 20' ±) of the levee. Photos of existing conditions are included in Appendix E. Any of the referenced conditions can result in potential failures of the concrete cap and its subgrade. Failure of the concrete cap can result in "piping failures" or even "wash out" of the earthen levee behind it. Due to water levels in the Arkansas River, even during low flow periods, the extent of potential concrete cap foundation failures and potential undercutting is unknown. A detailed levee evaluation study complete with a geotechnical analysis of the earthen levee (including

materials and construction) and structural evaluation of the concrete cap and subgrade will be required to accurately determine existing conditions.

The major cost issue for the Pueblo Conservancy District over a period of the next 20 years will be completing necessary repairs/remediation/improvements to both the Arkansas River and Wildhorse Creek levees such that those levees can be certified to meet Federal Emergency Management Agency standards.

Due to the critical nature of the cost estimating task associated with levee evaluation, improvements, and certifications, the Consultant Team elected to bring onto the team a highly recognized contractor with extensive experience in major dam and levee construction projects. This new Consultant Team member will help identify the magnitude of existing conditions and costs associated with the repair / remediation / improvements of the existing levees. ASI Constructors, Inc. of Pueblo West, Colorado was brought onto the Consultant Team to help in this evaluation and cost estimating process. A detailed firm bio, work history, and list of awards received by ASI Constructors, Inc. are included in Appendix H of this Report. Portions of the Arkansas River levee were inspected by the Consultant Team at the water surface level and significant portions of the existing levees were walked. Repair/remediation/improvement alternatives were identified, discussed, evaluated, and estimated. Due to the significant level of buckling, shifting, and cracking identified, in particular on the lower sections of the concrete cap, the alternative of replacing the concrete cap was selected over remediation measures such as pinning or shoring. Cost estimates for three options with respect to concrete cap replacement are shown in Appendix H.

Option 1 addresses replacement of the entire height of existing concrete surfacing. Due to the existence of the Pueblo Reservoir, the capacity of the channel as currently surfaced is well in excess of capacity required for the 100 year design storm. Also, the condition of the existing concrete panels on the upper half of the levee is much better than the condition of the existing concrete panels on the lower portions of the levee. Therefore, it was determined that Option 1 was excessive with respect to the certification requirements of FEMA.

Option 3 addresses partial replacement of the concrete surfacing at the lower 10' of the levee. This is the area where the worse conditions currently exist. Toe/footing failures and excessive cracking and buckling of the lower section of these panels can be seen at various points along the levee. There are two major concerns the Consultant Team has with limiting the projected improvements to the lower 10' of the levee. First, that area does not appear to fully convey 100 year flow depths and freeboard. That could create some future concerns regarding levee certification. Second, the face of the levee (approximately 40 feet) is covered with concrete panels with a joint in the center (at approximately 20 feet). Replacement of the lower 10' would result in partial replacement of the lower panels. That would require significant saw cutting and other demolition activities potentially creating additional damage to the upper portion of the lower panels. Also, although not as significant, the upper portion of the lower panels do display signs of cracking and buckling.

Option 2 addresses removal and replacement of the lower concrete panels on the levee (approximately 20'). This is the improvement alternative recommended by the Consultant Team based on currently known conditions. This option proposes to replace all existing concrete panels and appurtenant improvements within the conveyance area for the 100 year design storm including freeboard. It also results in the replacement of existing improvements which display the greatest signs of cracking and buckling.

Based on the construction cost estimating activities completed by the Consultant Team including ASI Constructors, Inc. and information obtained regarding evaluations, improvement designs, certifications, etc. on other levees around the Rocky Mountain region, the preliminary cost estimates in Appendix I were prepared. Those estimates also address other known projects along the Arkansas River and Wildhorse Creek floodways which have been identified by Pueblo Conservancy District staff.

In order to develop a Maintenance Fee Assessment Rate, two key factors must be determined. The first of those is the tier contribution percentage for each of the three tiers discussed in Phase I and approved by the District Directors when authorizing the work of Phase II. Determination of the contribution distribution for each of the three tiers will be discussed in Section V of this Report. The second factor is the development of anticipated O&M and capital improvement costs over a 20 year time horizon. That will allow annual revenue estimates and resulting Maintenance Fee Assessment Rates for each of the three tiers to be developed.

As previously discussed, Appendix J includes a summary of anticipated future operating and maintenance costs for the District. Appendix H includes a summary of preliminary levee improvement alternative cost estimates. Appendix I contains preliminary cost estimates for work related to Arkansas River and Wildhorse Creek levee evaluations, improvements, and certifications. The cost estimates in Appendix I were developed based on the Consultant Team recommended Option 2 alternative of Appendix H. The second page of Appendix J includes a summary of bonding requirements and debt service requirements for each of the construction options identified in Appendix H. Based on the assumptions included within that document and assuming a 20 year debt retirement schedule, approximately \$960,000 per year will be required to complete the recommended Option 2 levee improvement projects. Adding the \$230,000 per year operating and maintenance costs results in an estimated annual revenue requirement of approximately \$1,200,000.

The three tiered assessment calculations of Appendix L have been developed based on an estimated revenue need of \$1.2 million per year. The Consultant Team understands the District's desire to commence the maintenance fee assessment in the year 2013. We also understand that it will not be possible to commence all construction activities related to Option 2 in that time frame. Nonetheless, we would recommend the District commence the maintenance fee assessment in 2013 at a rate level necessary to generate the \$1,200,000. The revenue collected in the first year can be used for operations and maintenance costs (estimated at \$230,000 per year) and levee evaluations/designs (estimated at \$700,000). That will leave an initial year balance of approximately

\$270,000 which could be used to complete some of the smaller Arkansas River and Wildhorse Creek levee projects which have been identified in Appendix I. Also, a contingency fund can be provided to account for possible variations in estimates of State Assessed properties in the floodplain and associated revenue generation.

V. LEGAL/STATUTORY REVIEW, BENEFIT ANALYSIS, AND RATIONALE FOR THREE TIERED MAINTENANCE FEE

The enabling legislation for Conservancy Districts was passed by the Colorado Legislature shortly after, and in direct response to, the catastrophic 1921 flood which wreaked devastation on Pueblo. The statute, as currently codified, is attached at Appendix G. The adoption of the statute was not without controversy and resulted in a Colorado Supreme Court decision in 1923, *People ex rel. Setters v. Lee* which is also attached at Appendix G. The *Setters v. Lee* case upheld the constitutionality of the legislation and held that the maintenance fee established by the statute was not a tax but a fee.

In addressing the question of the need for the Pueblo Conservancy District and the benefits conferred there are several sections of the statute to note.

THE STATUTES –“CONSERVANCY LAW OF COLORADO”

The statute, C.R.S. 37-1-102(3)(a) provides that the words “land” or “property”, as used in the statute, includes not only real property as defined in the laws of Colorado but also includes, among others, railroads, telephone lines, gas, sewer and water systems and rights of way of public service companies. Also included among the entities to be considered in an analysis are public corporations “according to the benefits received” (C.R.S. 37-1-102(3)(b)).

The statute provides that a conservancy district is a public corporation (C.R.S. 37-1-108(6)) and that the statute is to be liberally construed to effect its purposes such being “necessary to secure and preserve the public health, safety, convenience, and welfare, and being necessary for the prevention of great loss of life and for the security of public and private property from floods and other uncontrolled waters, shall be liberally construed to effect the purposes of said articles.” (C.R.S. 37-1-103).

The statute established a broad set of purposes (C.R.S. 37-2-101)) and the board of directors is provided with a broad scope of powers to carry out these purposes (C.R.S. 37-3-103). Included within those powers is the power to perform a variety of works and tasks both in and out of the boundaries of the district (C.R.S. 37-1-1-3 (d), (f), (g), and (h)). There is additionally a broad general grant of power providing the board of directors is “vested with all powers necessary for the accomplishment of the purposes for which the district is organized and no enumeration of particular powers granted shall be construed to impair any general grant of power contained in this section, or to limit any such grant to power of the same class as those enumerated.” (C.R.S. 37-3-104)

The statute provides for the appointment by the court of three appraisal commissioners. Among the duties of the appraisal commissioners is the duty to “appraise all benefits and damages accruing to all land within or without the district by reason of the execution of the official plan.” (C.R.S. 37-4-101)

The statute, (C.R.S. 37-4-102 (2)), provides the appraisal commissioners are to “appraise the benefits of every kind to all land and property within or without the district which will result from the organization of said district and the execution of the official plan.”

The statute has a provision dealing specifically with valuing land, not within the boundaries of the district, which will be affected by the improvements. “If the appraisers find that land not embraced within the boundaries of the district will be affected by the proposed improvement or should be included in the district, they shall appraise the benefits and damages to such land, and shall file notice in the court of the appraisal which they have made upon the lands beyond the boundaries of the district, and to the land which, in their opinion, should be included in the district.” (C.R.S. 37-4-103). This provision clearly requires an analysis to be made of any benefits which are received by property outside of the district but appears to leave it up to the appraisal commissioners to give their opinion to the court if they believe such lands should be included in the district.

The statute provides that if property, within or without a district, is benefited but for any reason was not appraised or was not appraised to the extent of the benefits received the board of directors of the district shall direct the board of appraisers to appraise the benefits or the enhanced benefits received by such property. (C.R.S. 37-4-115)

The statute creates three funds, a “preliminary fund”, a “construction fund” and a “maintenance fund” (C.R.S. 37-5-101). It is the fee for the maintenance fund which is the focus of this review and report.

The specifics of the purpose and structure of the maintenance fund are set out at C.R.S. 37-5-107. As referenced earlier the fee for the maintenance fund has been deemed by the Courts to be a fee and not a tax. See Appendix G for the case *People ex rel. Setters v. Lee*

THE PURPOSE AND ONGOING NEED FOR A CONSERVANCY DISTRICT

The Pueblo Conservancy District was established as a direct result of the 1921 flood and the legislation adopted shortly thereafter to make such a district a legal possibility. The Pueblo Conservancy District incurred the necessary debt and had an earthen levee with a concrete cap built to protect the community from future flooding. The dam on the Arkansas River which created the Pueblo Reservoir was not built until the 1960’s. Until the construction of the dam the levee was the sole source of protection for the Pueblo Community from another catastrophic flood. While the dam provides additional flood control it does not provide complete protection as can be seen from the flood plain maps (Appendix B). It was beyond the scope of this study to examine the additional risk to the community if there should be a failure, in whole or part of the dam. Suffice it to say, if

the dam should cease to serve its purpose the risk to the community would be even greater.

The threshold question is if there were no levee would the community be at risk. The flood plain maps clearly indicate the community would be at great risk.

The levee continues to provide a valuable protection to the Pueblo Community from severe flooding on the Arkansas River and on Wildhorse Creek. To have an effective levee requires an entity to maintain that levee. The Conservancy Law of Colorado provides a specific entity for that type of purpose. The Pueblo Conservancy District has operated efficiently. It has no employees and contracts for all of its services. The boundaries of the district extend beyond the City limits of the City of Pueblo. The City would not be able to exercise the necessary jurisdiction outside its boundaries to effectively carry out the functions of the district. The Pueblo Conservancy District is the logical entity to continue to maintain the levee to protect the community.

Once you go beyond the issue of the need for the levee and the entity to maintain the levee there is an additional question posed as the result of more recent major floods.

When Hurricane Katrina struck the Gulf Coast the City of New Orleans had major flooding which caused incredible damage. Both the Corps of Engineers and FEMA were faulted, the Corps for not ensuring the levees were properly maintained and FEMA for a slow response. As a result FEMA began updating its various flood plain maps and the Corps indicated to Pueblo that unless the levee could be certified that the flood insurance for the community, available because the areas in the FEMA flood plain were considered to be protected by the levee, would no longer be considered as protected areas and thus the cost of flood plain insurance would escalate enormously (see Appendices B, C, F and M). Thus even if there is a levee which is maintained if it is not certified (Appendix C) it will be treated, for the purpose of flood insurance as if it does not exist. Many real estate loans, for properties located in a flood plain, cannot be made without flood insurance.

Thus not only does the community need the levee and need the levee maintained, the community needs the levee to be certified.

BENEFITS

In reviewing the property within the flood plain (Appendices B and K) there are a significant number of properties and facilities owned by the City or the County of Pueblo which provide essential public health, safety and welfare functions. The area also contains essential communication links and major links to the roadway system for emergency services. If there were no levee and there were a flood of catastrophic proportions there would be a major impact on the ability of law enforcement, fire, ambulance, communication and transportation which would place the health, safety and welfare of everyone in Pueblo County at some level of risk.

By way of example, everyone in Pueblo County relies on the Judicial System and the new Judicial Building, which is under construction, is in the flood plain. Everyone in the City of Pueblo relies on the police department which has its headquarters in the flood plain. In examining Appendix K it can be seen that the number and types of essential services that

could suffer a severe disruption in the event of a flood without the levee is widespread. Based upon the statutory provision that all property within or without the district should be considered for any benefit there is a clear benefit to everyone in the County of Pueblo to not have essential health, safety and welfare impacted by a breakdown in the ability to provide emergency and other essential services. Likewise there is a benefit to everyone in the City of Pueblo for the same reason.

In reviewing the City or County owned properties within the flood plain that could be impacted on initial glance it might appear that the great majority of these properties are owned by the City of Pueblo. While the record ownership is, in fact, with the City, many of these properties provide services to all of the citizens of Pueblo County. By way of example the Ice Arena and Municipal Auditorium provide services and facilities for everyone in Pueblo County. The Historic Arkansas Riverwalk of Pueblo (HARP) is maintained and operated by the HARP Authority which is an entity created by an intergovernmental agreement among the City of Pueblo, Pueblo County, the Board of Water Works, the Pueblo Conservancy District and the Pueblo Urban Renewal Authority, and it provides a venue for community wide activities and entertainment. Many individuals who maintain their homes in Pueblo County, outside of the City limits, nevertheless work in the City and is so doing depend on the police and fire protection provided by the City for their places of employment. The two major hospitals that serve the entire community have their main facilities located within the City and require these essential City services in order to provide necessary emergency and in patient health care services.

While everyone in Pueblo County benefits from the levee those residing within the City limits enjoy a greater level of benefit. Residents of the City of Pueblo not only have the benefits, briefly outlined in the preceding paragraph, but they also rely on the police and fire services of the City to be safe and secure in their homes. Additionally there are a number of City Departments, or agencies, such as the Planning and Zoning Department and the Department of Public Works, which provide services which are predominantly a benefit to the residents and property owners in the City.

For the properties within the flood plain there is an additional benefit. The statutes have contemplated this latter benefit with the provisions at C.R.S. 37-5-104.5, “Determination of special benefits – factors considered”. Those properties within the flood plain, in addition to having the benefits outlined above to all of the City and County have the direct benefit of the protection of their property from serious damage or destruction from a catastrophic flood event. There is an additional benefit of a certified levee. Without certified levee properties that currently are not required to have flood insurance would find the cost of flood insurance would escalate to an incredible, and likely unaffordable level. Properties that currently do have flood insurance enjoy a very marginal rate due to the existence of the levee and how a certified levee reduces the areas considered to lie within the flood plain (please see Appendix M). Without a certified levee or flood insurance loans for these properties within the flood plain would be, for the most part, unavailable due to banking regulations.

We also reviewed the irrigation and ditch companies with head gates served from the Arkansas River. Most of those irrigation and ditch companies serve land within Pueblo

County. The Pueblo County Assessor records reflect that irrigated land carries a higher value than land not irrigated which provides a valuation basis for those properties. Two irrigation or ditch companies were identified with head gates in eastern Pueblo County which then serve lands to the east of the Pueblo County line. In each instance the potential revenue from possible fees was de minimus and the cost of assessing, billing and collecting fees appears likely to exceed any revenue so in the final analysis those ditch companies were disregarded.

Because there are three levels of benefits which have been identified it is appropriate to structure the maintenance fee to reflect, in a reasonable fashion, relative levels of benefits. After reviewing all of the factors we have determined that the equitable division of the fees would be for the Conservancy District to assess twenty-five percent (25%) of its total fees to properties located in Pueblo County and outside of the City limits and outside of the flood plain; fifty percent (50%) of the total fees be assessed to properties lying within the City of Pueblo and outside of the flood plain; and, twenty-five percent (25%) of the total fees be assessed to properties lying within the flood plain. An important factor in maintaining a reasonable relationship of the benefits to the fees was a review of the total value of the property within each of the tiers relative to the generation of revenue and the corresponding level of fees per property value. As referenced in footnote 6 to Appendix L, total values were derived from the Pueblo County Assessor's records together with the information available for those properties which are assessed by the State of Colorado. The Pueblo County Assessor has indicated that once the new Conservancy District boundary has been adopted, his office will proceed to request those entities which are State Assessed with property in the new District boundary to provide a break out of the value of their properties within the District. For the purpose of this Report the value of the State Assessed property within Tier III is an estimate only. Once the Assessor has been able to provide a more definitive value it may be necessary to revisit the contribution percentages for the three tiers to assure an equitable allocation of the fees.

Attached as Appendix L is an estimate of how the proposed assessment of the fees would apportion, based on the data that has been available, with regard to the value of properties in the three areas.

FLOOD ZONE INSURANCE IMPACTS

The following discussion and table demonstrates how the National Flood Insurance Program (NFIP) premium rates are developed for residential and non-residential properties. Appendix F contains a summary of recent changes to National Flood Insurance legislation.

RATING

This section contains information, including rate tables, required to accurately rate a National Flood Insurance Program (NFIP) flood insurance policy. Information and rates for the Preferred Risk Policy (PRP) and Residential Condominium Building Association Policy (RCBAP) are found in their respective sections of the rating guidelines of NFIP.

The detailed drawings, and accompanying text and tables, in the Lowest Floor Guide section of the NFIP rating guidelines are to be used as a guide for identifying the lowest floor for rating buildings. This guide will assist in developing the proper rate for the building. Examples of some rating situations are shown at the end of this section.

AMOUNT OF INSURANCE AVAILABLE

Building Coverage	Emergency Program	Basic Insurance Limits	Regular Program Additional Insurance Limits	Total Insurance Limits
Single Family Dwelling	\$ 35,000*	\$ 60,000	\$190,000	\$250,000
2-4 Family Dwelling	\$ 35,000*	\$ 60,000	\$190,000	\$250,000
Other Residential	\$100,000**	\$175,000	\$ 75,000	\$250,000
Non-Residential	\$100,000**	\$175,000	\$325,000	\$500,000

CONTENTS COVERAGE

Residential	\$ 10,000	\$ 25,000	\$ 75,000	\$100,000
Non-Residential	\$100,000	\$150,000	\$350,000	\$500,000

* In Alaska, Guam, Hawaii, and U.S. Virgin Islands, the amount available is \$50,000.

** In Alaska, Guam, Hawaii, and U.S. Virgin Islands, the amount available is \$100,000.

The following chart demonstrates the factors for Residential properties up to four units.

A Zone				B/C Zone			
Rates w/o Basement				Rates w/o Basement			
Building		Contents		Building		Contents	
0.76	0.66	0.91	0.24	0.91	0.24	1.39	0.43

The following chart demonstrates the factors for Non-Residential properties.

A Zone				B/C Zone			
Rates w/o Basement				Rates w/o Basement			
Building		Contents		Building		Contents	
0.83	1.31	1.62	0.99	0.85	0.24	1.12	0.36

The information in Appendix M demonstrates what the insurance premium would be for Building Coverage only for properties located within Tiers 1 and 2 using the B/C Zone factors for residential properties at different value intervals. The insurance rates for Tier 3 have been developed using A Zone factors for non-residential properties as all of those properties are located in an A Zone. It also shows what the Pueblo Conservancy District Maintenance Fee Assessment would be at the same property value intervals.

The flood insurance premiums shown in Appendix M for Tier 1 and Tier 2 are the least expensive rates. The maximum amount of coverage for a residential property is \$250,000. Notice that the premiums top out at \$1,002 and that the Maintenance Fee for a \$1,000,000 property in the city would be \$98.74. Flood insurance premiums for non-residential properties caps at \$500,000 and the premium tops out at \$5,710. A property with a value of \$5,395,950 would pay an insurance premium of the same \$5,710 and the amount of insurance would be only \$500,000. These insurance premiums are for building coverage only.

Contents coverage of \$500,000 for a non-residential property would be an additional \$5,895 making the total building and contents premium \$11,605 for maximum coverage of \$500,000 building and \$500,000 contents.

The highest identified property value in the Conservancy District that is privately owned is just under \$6,500,000 and the Conservancy District Maintenance Fee Assessment for that property would be approximately \$6,878. This amount is still significantly less than building and contents coverage through the NFIP.

VI. PHASE III (INPUT AND FINAL ASSESSMENT) – SCOPE OF SERVICES AND FEE ESTIMATE

- Prepare information for presentation to City Staff and City Council, County Staff and County Commissioners, property owners within the District/flood plain, railroads, utility companies, school districts, and other stakeholders.
- Participate in presentations to the various groups identified above to obtain “buy in” to the final plan to be approved by the Board of Directors of the Conservancy District. Fees for this work are limited to a total of six meetings. Coordination of meeting locations, any costs for room rentals, etc. and any costs of advertising for said meetings are not included in the Scope of Services for this Task.
- Support the Conservancy District Board of Directors in formal presentation to the District Court and formal adoption of the Assessment.
- Prepare detailed “Request for Qualifications” package that the Conservancy District can use to solicit consultant teams for preparation of levee evaluations including geotechnical and surveying services; levee improvement design

services; and permitting and environmental compliance services. Focus of the RFQ package will be on the ultimate certification of the Arkansas River and Wildhorse Creek levees in accordance with the Federal Emergency Management Agency levee certification criteria found in Part 44 Section 65.10 of the National Flood Insurance Program regulations.

(Fee estimate on following page)

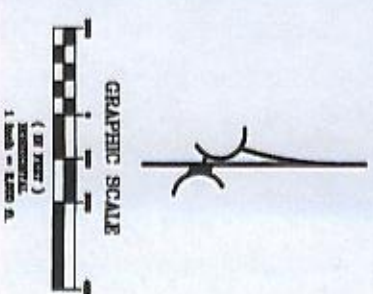
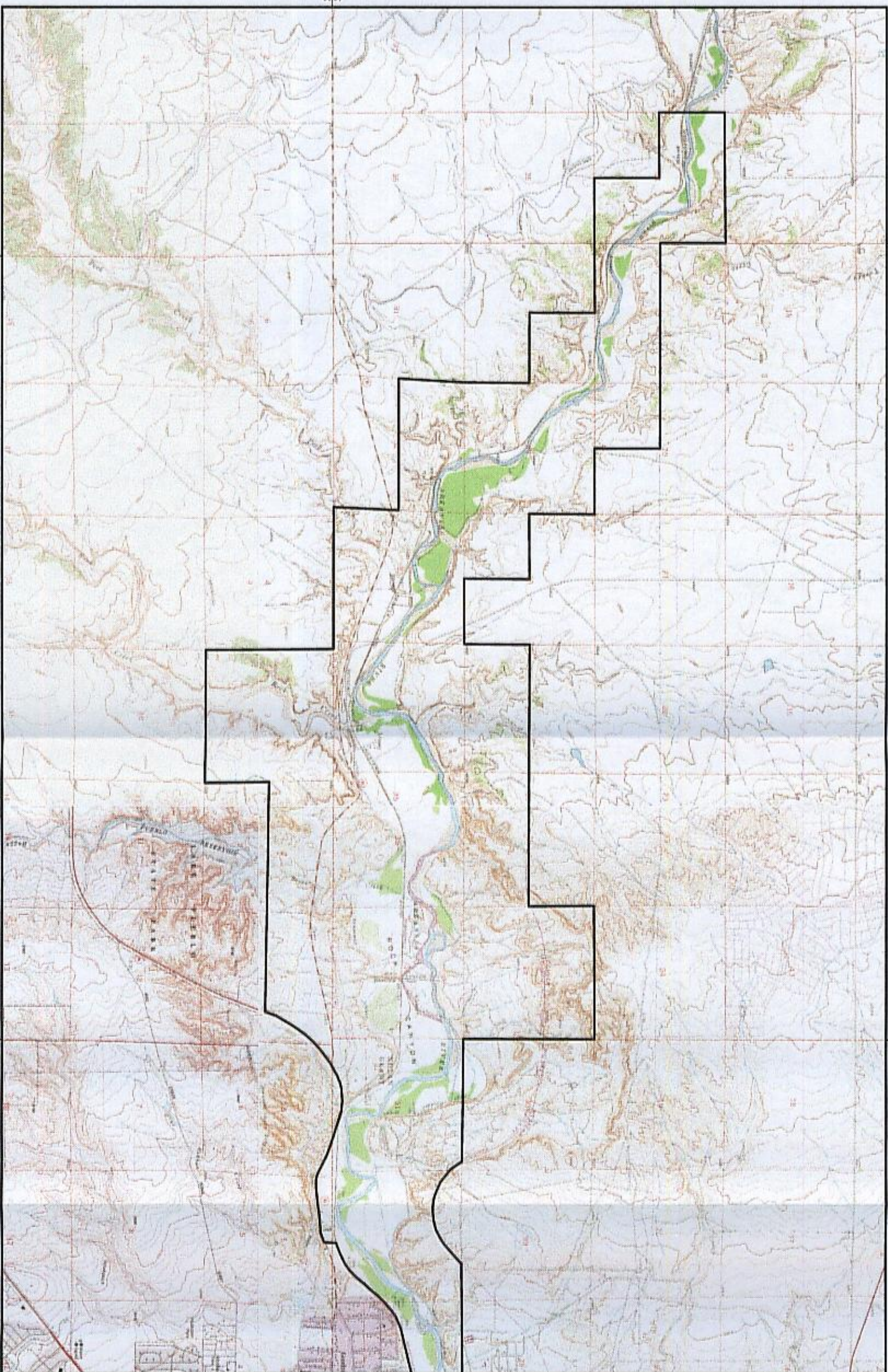
**PUEBLO CONSERVANCY DISTRICT
ASSESSMENT PROJECT
LEVEL OF EFFORT AND FEE ESTIMATE
(Revised September 25, 2012)
PHASE III - INPUT AND FINAL ASSESSMENT**

TASK DESCRIPTION PHASE III ONLY	NorthStar Engineering and Surveying, Inc.				Arrowhead Appraisals		Altman, et al		Garren Ross & DeNardo		TOTAL HOURS	REIMBURSABLE COST ESTIMATE
	PRIN./P.E.	PRIN./P.L.S.	P.M./P.E.	G.I.S. TECH	CGA	CRA	ATTORNEY	LEG. ASSIT.	CPA	ACCOUNTANT		
Prepare Information for Formal Stakeholder Presentations	2	-	8	-	2	2	8	2	4	-	28	\$500
Participate in Presentations/Stakeholder Meetings (6 Maximum)	12	-	12	-	12	-	12	-	12	-	60	\$500
Final Adoption of Assessment by District Court and Board of Directors	2	-	-	-	2	-	24	2	2	-	32	\$50
Prepare "Request for Qualifications" for Consultant Teams	4	-	24	-	-	-	6	-	-	-	34	\$100
PHASE III PROJECT TOTAL	20	0	44	0	16	2	50	4	18	0	154	\$1,150
HOURLY BILLING RATE	\$140	\$140	\$110	\$75	\$125	\$105	\$205	\$90	\$185	\$100	-	-
FEE ESTIMATE	\$2,800	\$0	\$4,840	\$0	\$2,000	\$210	\$10,250	\$360	\$3,330	\$0	\$23,790	\$1,150
										TOTAL PHASE III COST		\$24,940

APPENDIX A

REVISED DISTRICT BOUNDARY MAP

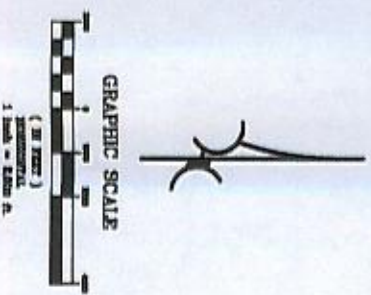
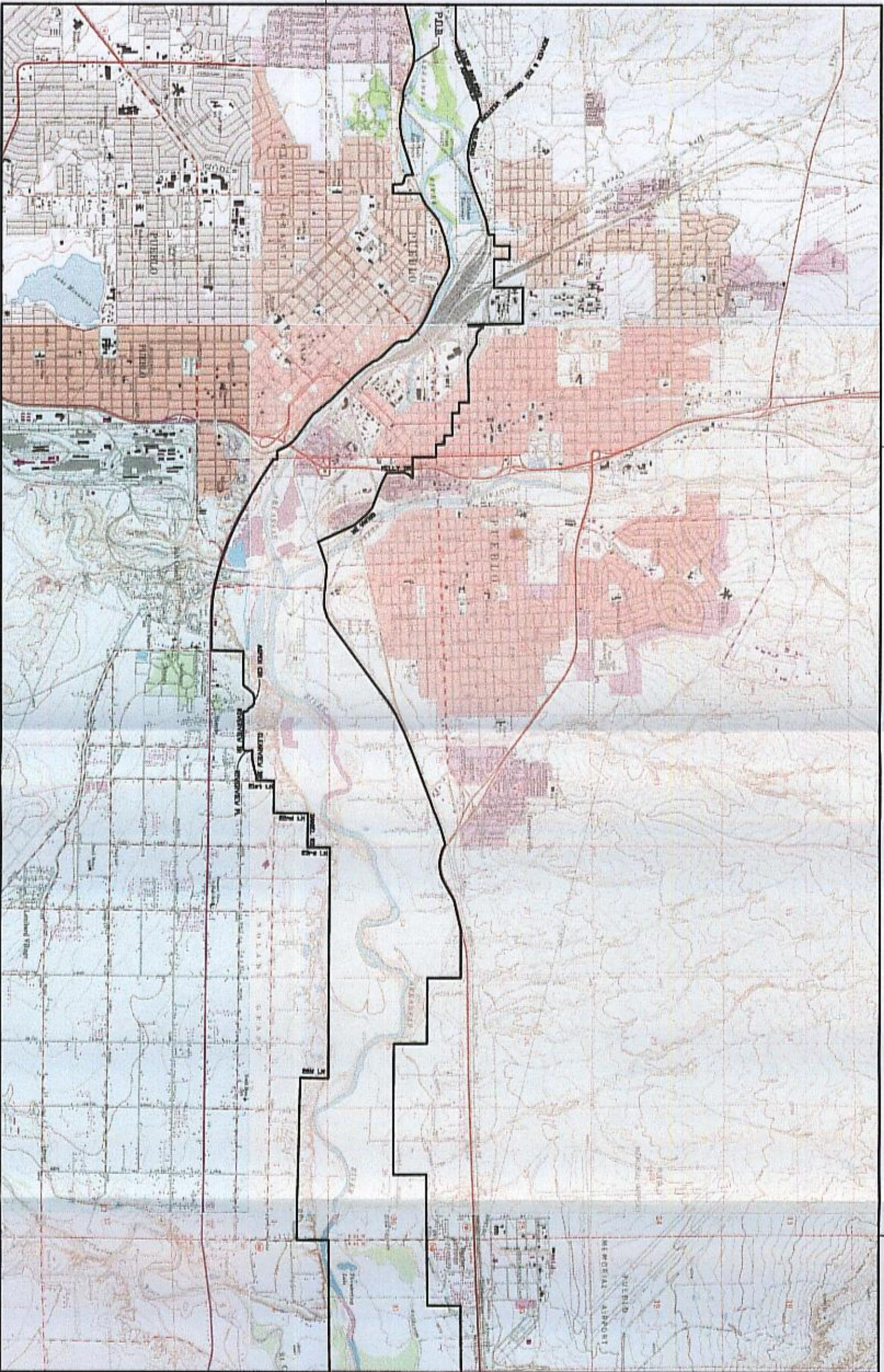
PUEBLO CONSERVANCY DISTRICT
COUNTY OF PUEBLO, STATE OF COLORADO



SHEET 2 OF 6

NORTHSTAR ENGINEERING AND SURVEYING, INC. 111 E. 10TH ST., SUITE 100 PUEBLO, CO 81003 TEL: 719-244-6833 FAX: 719-244-6834			
FIELD CONSERVANCY DISTRICT			
DISTRICT BOUNDARY			
DATE: 08-13-12	SCALE: 1" = 2,000'	DESIGNED BY: JMS	DATE: 08-13-12
PROJECT NO: 1200800			DATE: 08-13-12

PUEBLO CONSERVANCY DISTRICT COUNTY OF PUEBLO, STATE OF COLORADO



SHEET 3 OF 6

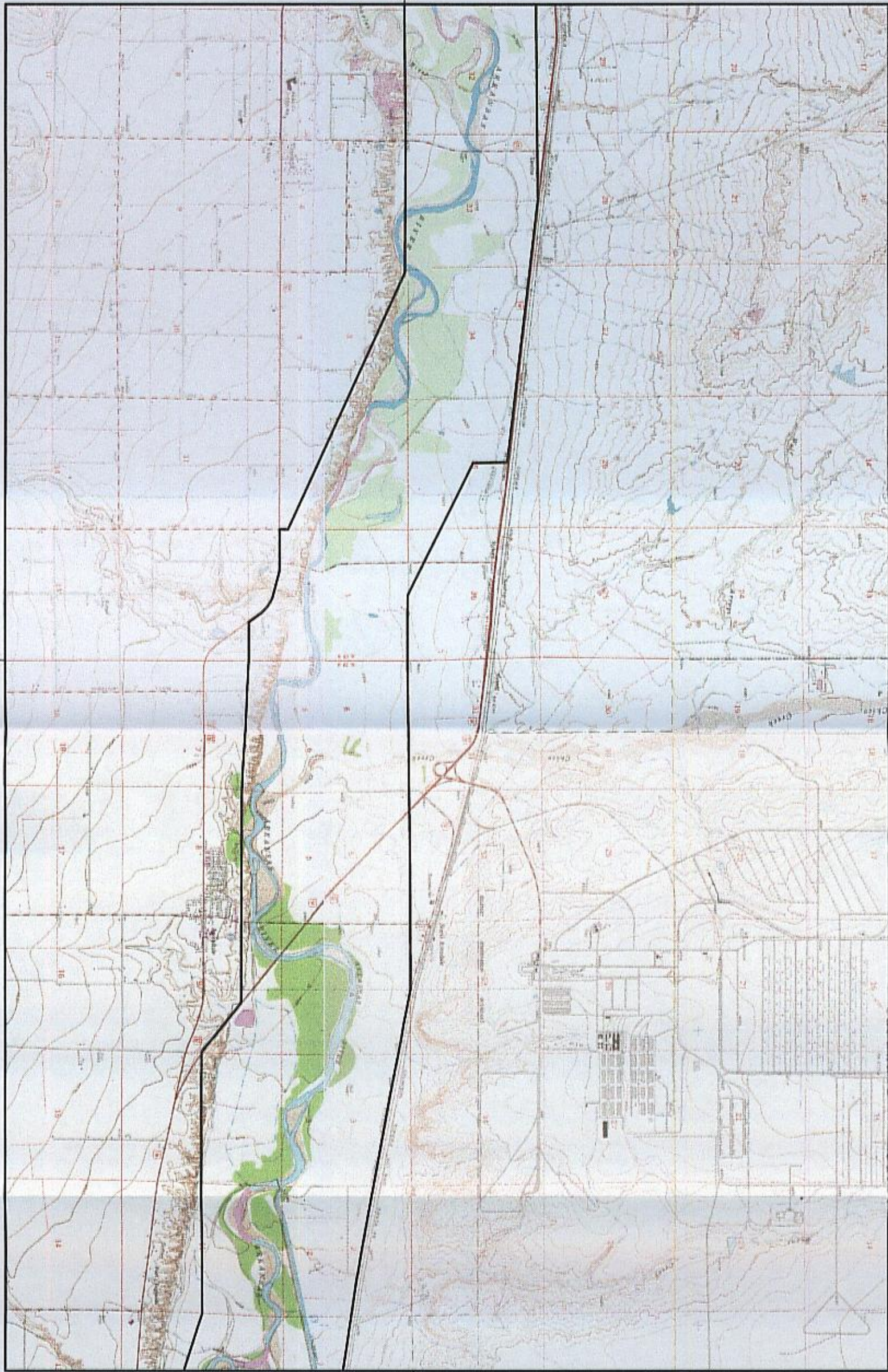
NORTHSTAR
ENGINEERING AND SURVEYING
111 E. 8TH ST.
PUEBLO, CO 81008
TEL: 781-444-8888 FAX: 781-444-8888

PUEBLO CONSERVANCY DISTRICT
DISTRICT BOUNDARY
DATE: 08-13-12
DRAWN BY: JMS
CHECKED BY: JMS

12000800

1" = 2,000'
08-13-12
08-13-12

PUEBLO CONSERVANCY DISTRICT
COUNTY OF PUEBLO, STATE OF COLORADO



SHEET 4 OF 6

NORTHSTAR
ENGINEERING AND SURVEYING
111 E. 8TH ST.
PUEBLO, CO 81003
TEL: 783-0000 FAX: 783-0001
WWW.NS-ENGINEERING.COM

NSA
NORTHSTAR ASSOCIATES
111 E. 8TH ST.
PUEBLO, CO 81003
TEL: 783-0000 FAX: 783-0001
WWW.NS-ENGINEERING.COM

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TEL: 783-0000 FAX: 783-0001
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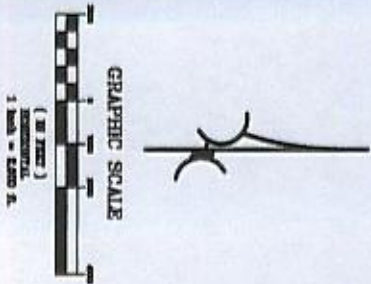
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PUEBLO, CO 81003
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WWW.NS-ENGINEERING.COM

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PUEBLO, CO 81003
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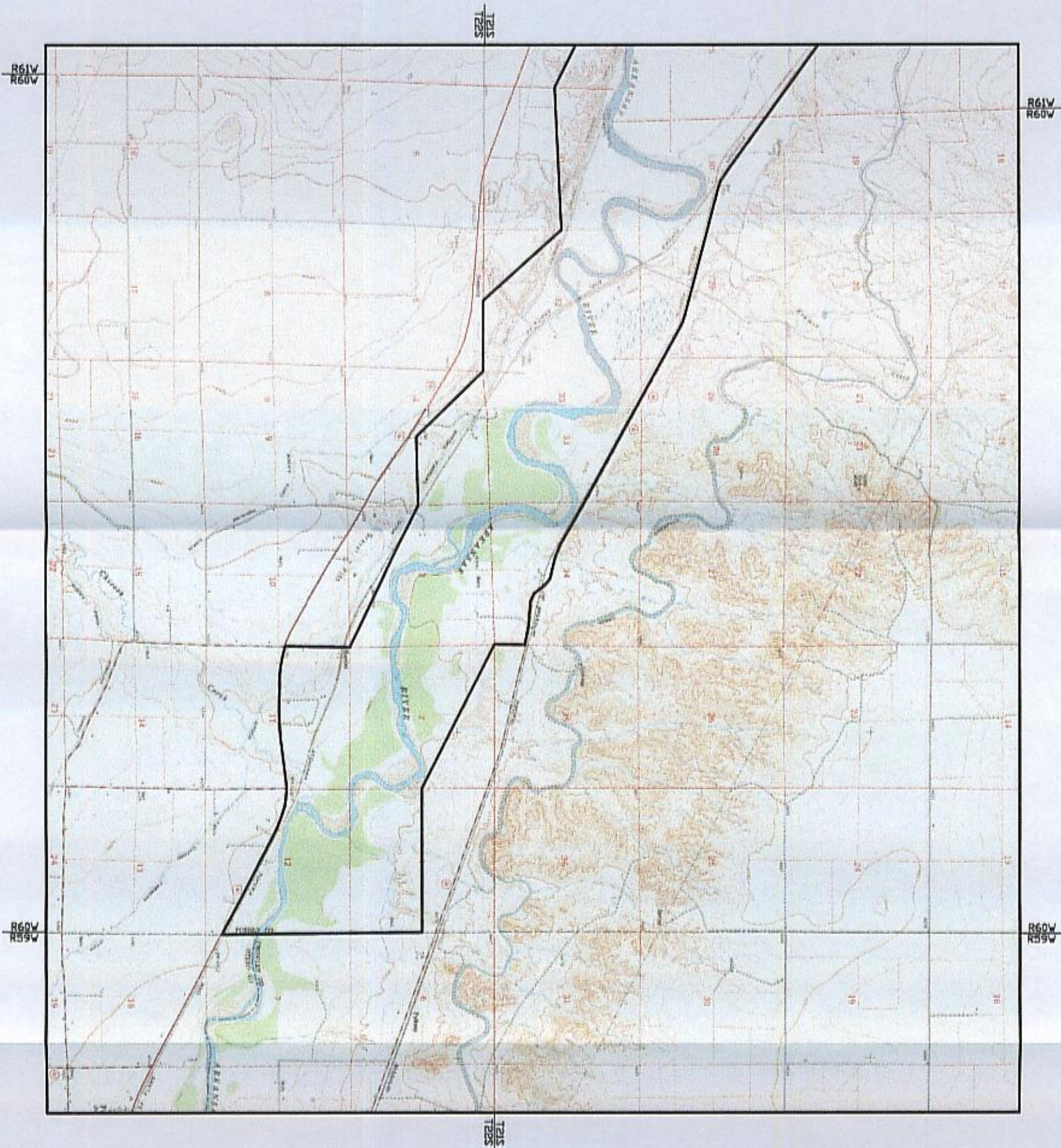
PUEBLO CONSERVANCY DISTRICT
COUNTY OF PUEBLO, STATE OF COLORADO



SHEET 5 OF 6

NORTHSTAR ENGINEERING AND SURVEYING			
111 E. 8TH ST. SUITE 100 PUEBLO, CO 81004			
TEL: 719/244-6833 FAX: 719/244-6833			
PUEBLO CONSERVANCY DISTRICT			
DESIGNED BY: J. D. GILBERT			
DATE: 08-13-12			
PROJECT NO.: 1200800			

PUEBLO CONSERVANCY DISTRICT
COUNTY OF PUEBLO, STATE OF COLORADO



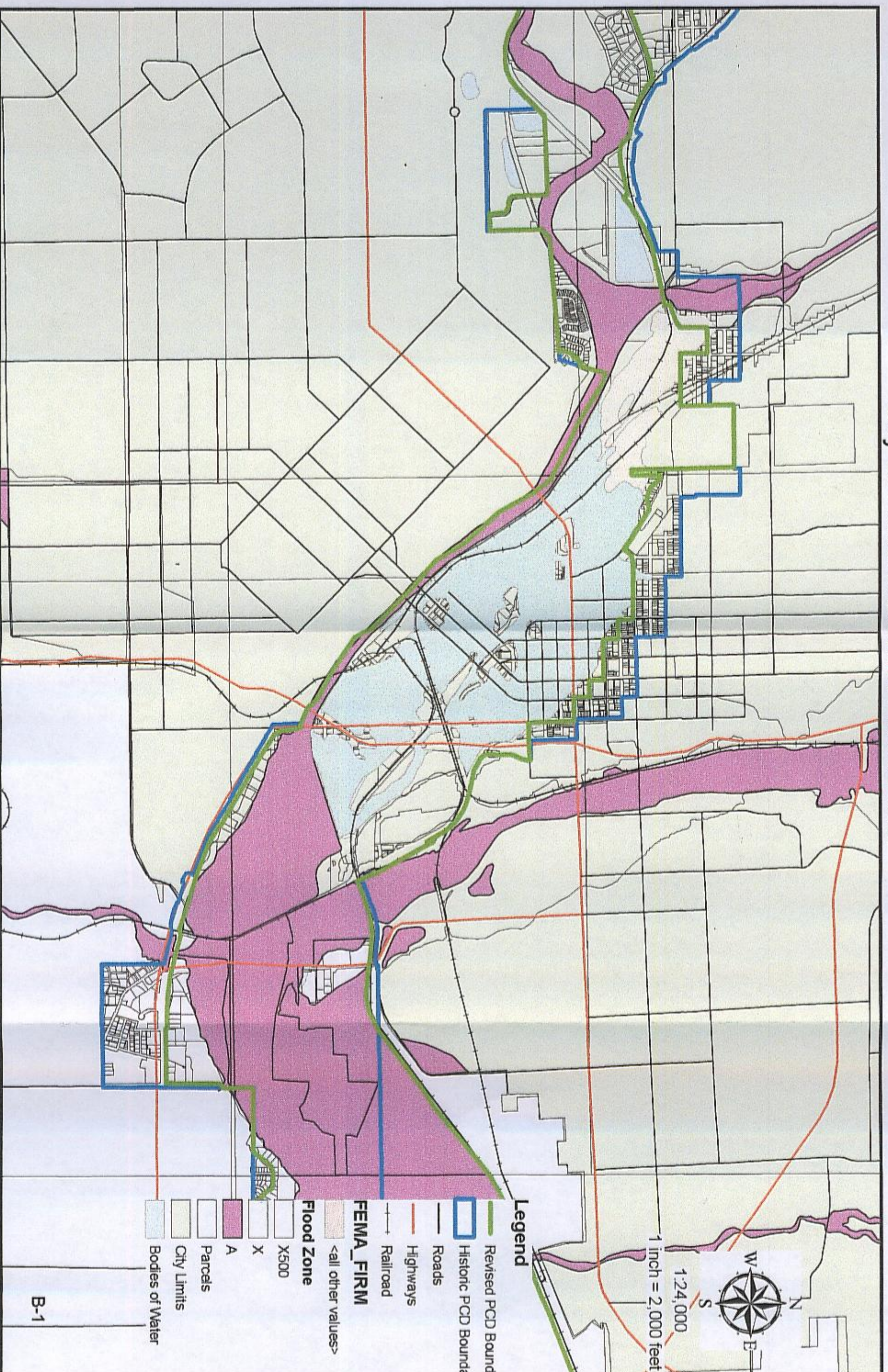
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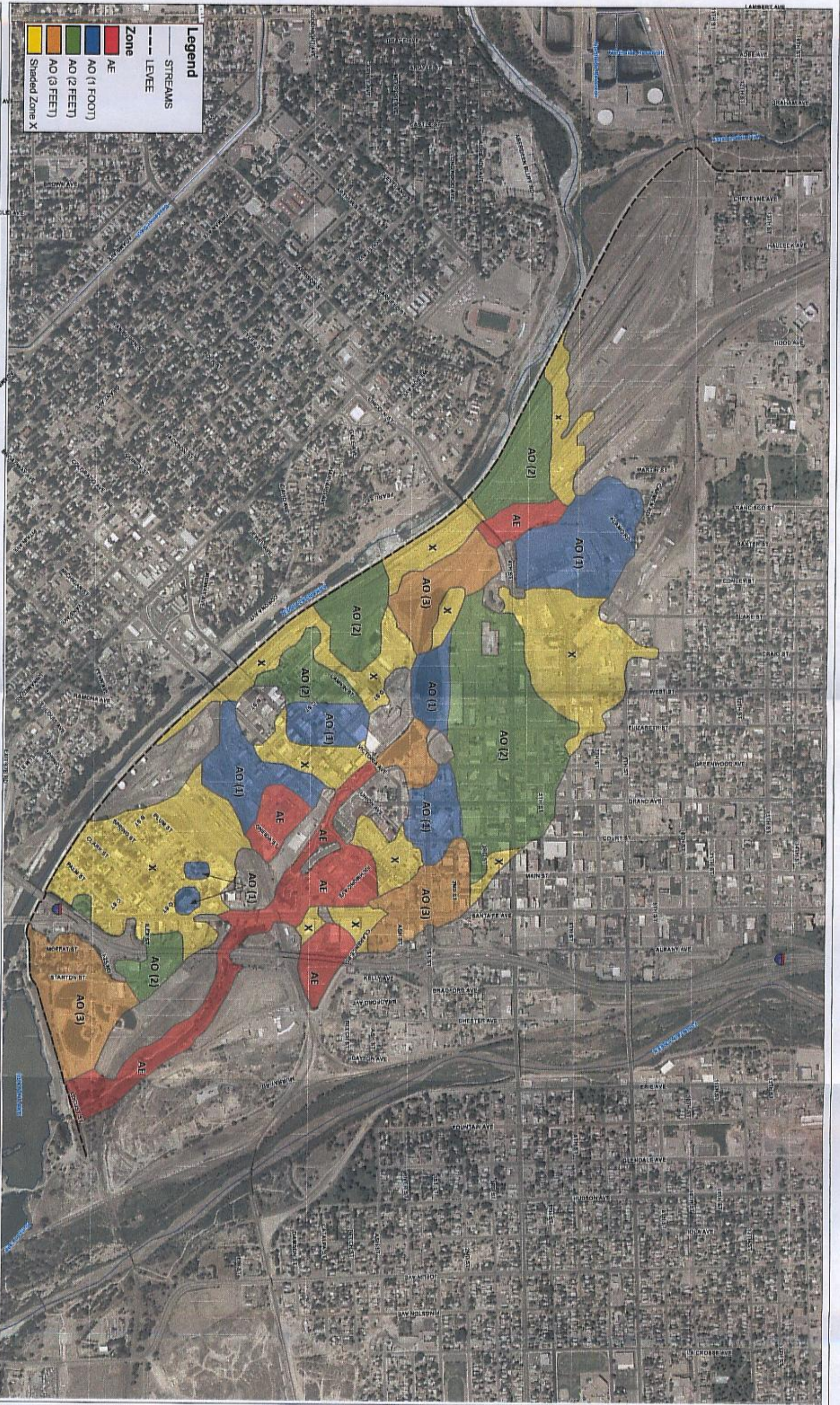
NORTHSTAR	
ENGINEERING AND SURVEYING	
111 E. 8TH ST. PUEBLO, CO 81003	
TEL: 719-244-8888 FAX: 719-244-8888	
PROJECT	
PUEBLO CONSERVANCY DISTRICT	
DISTRICT BOUNDARY	
DATE: 08-13-12	
DRAWN BY: JMS	
FILE NO.: 1200800	

APPENDIX B

FLOOD PLAIN MAPPING

City of Pueblo Current Flood Plain





Legend

— STREAMS

--- LEVEE

Zone

AE

AO (1 FOOT)

AO (2 FEET)

AO (3 FEET)

Shaded Zone X

N

0 500 1,000 2,000

1 inch equals 500 feet

100 Year Arkansas Levee Removal Floodplain

B-2

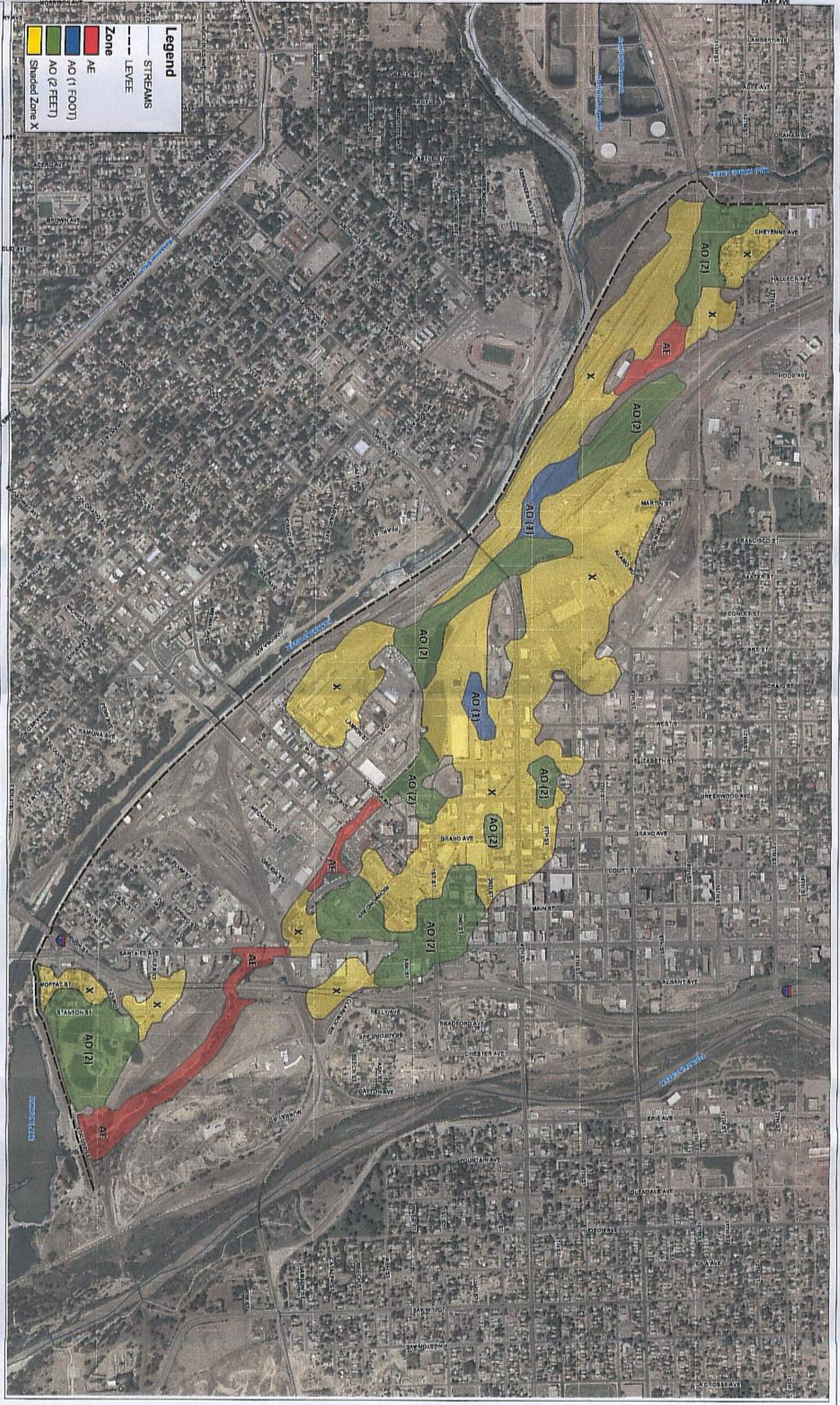


Legend

STREAMS
LEVEE

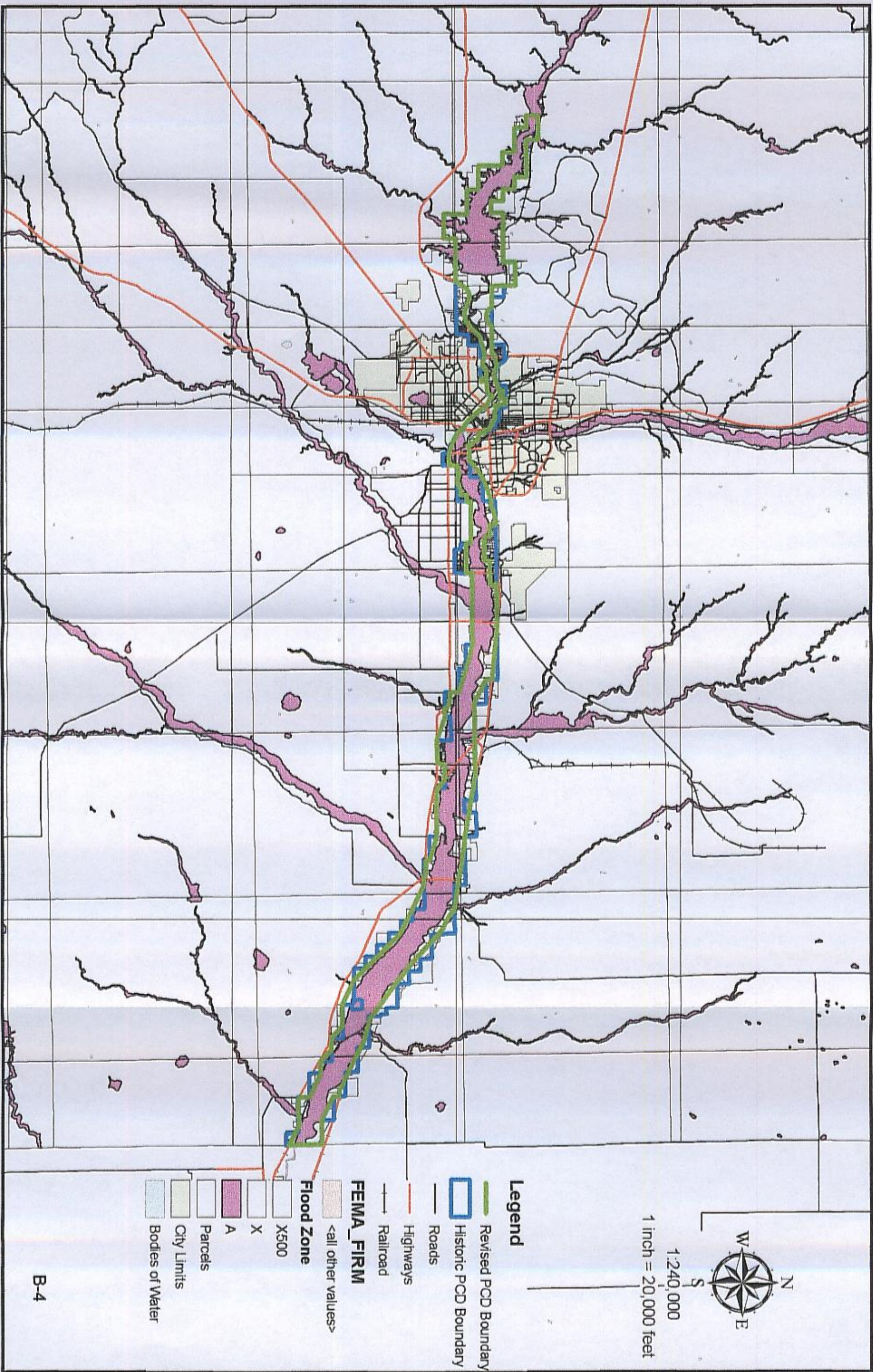
Zone

- AE
- AO (1 FOOT)
- AO (2 FEET)
- Shaded Zone X



100 Year Wild Horse Levee Removal Floodplain

Current Pueblo County Flood Plain



APPENDIX C

FEMA LEVEE CERTIFICATION CRITERIA



FEMA



Levee Mapping - Complying with 44 CFR 65.10

What are the Requirements of 44 CFR 65.10?

In order for a levee to be accredited by FEMA and shown on a FIRM as providing protection from the base flood, a levee must first be certified by a Professional Engineer or a Federal Agency that designs levees. Levees are accredited when levee owners, communities, or other interested parties provide appropriate data and documentation demonstrating compliance with 44 CFR 65.10 in the following five areas: General Criteria, Design Criteria, Operation Plans and Criteria, Maintenance Plans and Criteria, and Certification Requirements. Communities with levees are not required to demonstrate compliance with 44 CFR 65.10, but must do so for any levee they wish to have recognized on a FIRM.

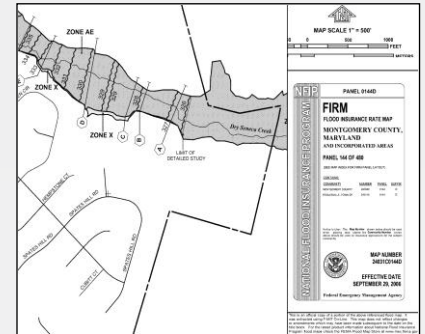
General Criteria

FEMA will recognize only those levees that meet, and continue to meet, minimum standards consistent with the level of protection sought through comprehensive floodplain management criteria found in 44 CFR Section 60.3.

Design Criteria

A registered Professional Engineer must certify data and documentation demonstrating the structural design criteria are met. The submitted documentation must include certified “as built” plans. Additionally, recent photographs of the levee, including embankments and levee closures, while not required, will be helpful to FEMA in performing the review. Mandatory information includes:

- Freeboard design, including that for riverine and coastal levees
- Closure designs showing all openings have closure devices, closures are designed according to sound engineering practice and are a structural part of the levee during operation
- Embankment protection demonstrating no appreciable erosion of levee embankment during the base flood



Code of Federal Regulations

Title 44, Chapter 1, Section 65.10 of the Code of Federal Regulations (44 CFR 65.10) is titled, “Mapping of areas protected by levee systems.” It provides the minimum design, operation, and maintenance standards levees must meet and continue to meet in order to be recognized as providing protection from the base flood (also known as one-percent-annual-chance flood) on Flood Insurance Rate Maps (FIRMs).

The Federal Emergency Management Agency (FEMA) recognizes (accredits) levees based on data and documentation provided by a community or other responsible party.

FEMA review is solely for establishing flood hazard zones and does not constitute a determination as to how a levee will perform during a flood event. If a levee is accredited, FEMA will reflect the levee as providing protection from the base flood on the FIRM.

RiskMAP
Increasing Resilience Together

- Embankment and foundation stability analyses evaluating expected seepage during base flood loading conditions, including flooding depth, duration, penetrations, and other seepage and stability factors
- Settlement analysis assessing potential freeboard loss due to settlement, showing that minimum freeboard will be maintained
- An interior drainage analysis identifying the source(s) and magnitude of interior flooding performed by a registered Professional Engineer
- In some unique situations FEMA may require additional design criteria to ensure the levee provides adequate risk reduction

Operations and Maintenance Plans and Criteria

The Operations and Maintenance (O&M) plans must include information fulfilling the minimum requirements of 44 CFR 65.10(C) and 44 CFR 65.10 (D). The O&M of the levee must be under the jurisdiction of an approved agency and officially adopted by that agency. Official adoption generally requires a vote by a governing body.

Certification Requirements

Data submitted to support a given levee complies with the structural requirements outlined above must be certified by a registered Professional Engineer, along with certified as-built plans for the levee. Certification, as defined in 44 CFR 65.2(b), is a statement that the submitted information is accurate and in accordance with sound engineering practices.

Accredited Levees Still Present Residual Risks

Even after the Professional Engineer certification and FEMA accreditation processes are completed, there is still a flood risk associated with

levees. While levees are designed to reduce risk, even properly maintained levees can fail or be overtopped by large flood events. *Levees reduce risk, they do not eliminate it.*



Many communities and public agencies seek the minimum one-percent-annual-chance level of flood risk reduction. However, this cannot be viewed as a health and safety standard; it is simply a level of flood risk.

Living with Levees – It’s a Shared Responsibility

FEMA and other government agencies are working to make citizens aware of their risk through various forms of outreach including fact sheets such as this. Most local officials have adopted protocols and procedures for ensuring public safety and individual property owners are learning more about their risk and the steps for protecting their families, businesses, and communities from the threat of flooding.

Remember, levees are not fail proof – protect your future by knowing your flood risk, knowing your role in reducing the risk from flood, and taking the steps today to ensure the safety of lives and property in areas behind levees.



For More Information

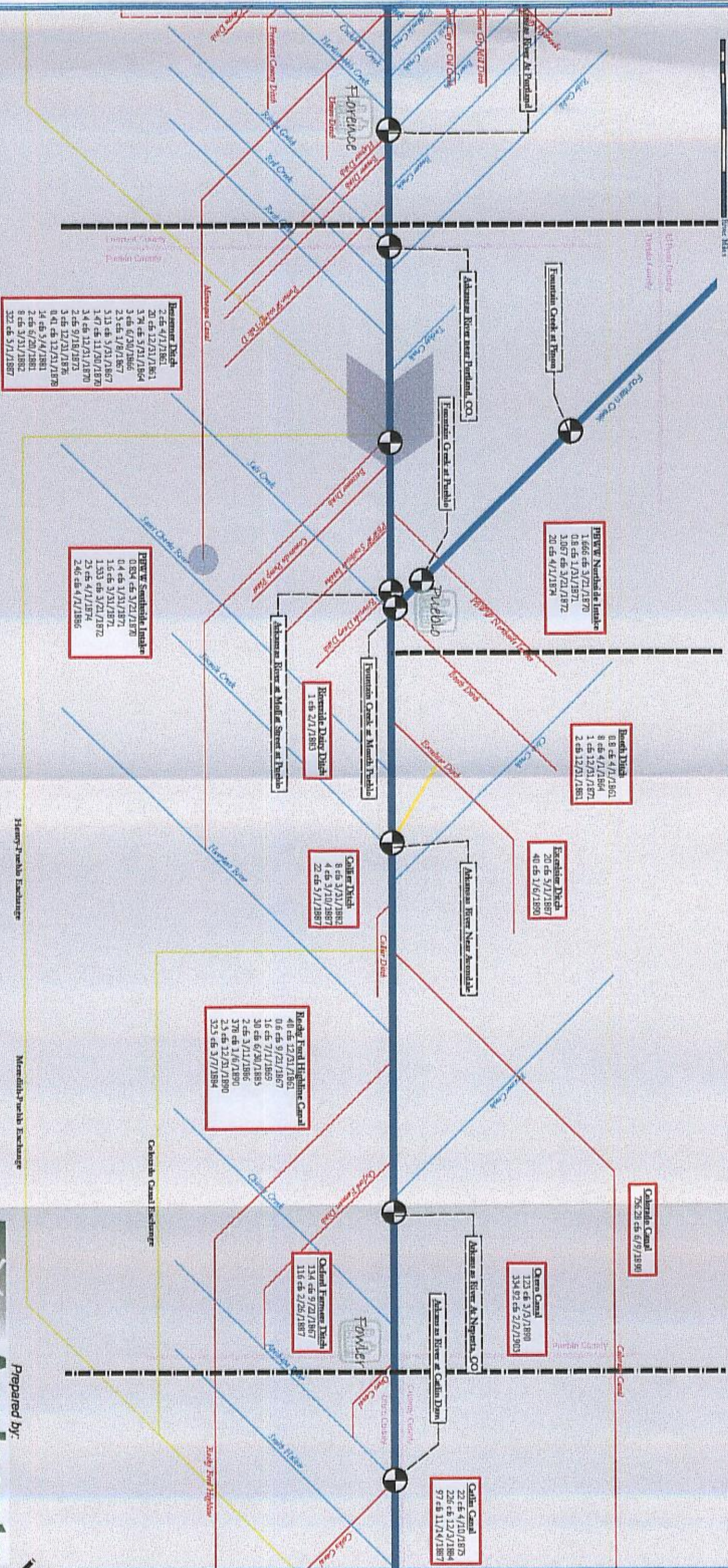
- To review 44 CFR, please visit: www.access.gpo.gov/nara/cfr/waisidx_00/44cfrv1_00.html.
- For a formatted version of 44 CFR 65.10, it can be downloaded at: www.fema.gov/library/viewRecord.do?id=2741.
- For additional information on levees, please visit: www.fema.gov/plan/prevent/fhm/lv_intro.shtm.
- For additional information on flood hazard mapping, please visit: www.fema.gov/plan/prevent/fhm/index.shtm.

APPENDIX D

ARKANSAS RIVER BASIN IRRIGATION COMPANY LINE DIAGRAM

Arkansas River Basin

Line Diagram District 14 Detail Southeastern Colorado Water Conservancy District



Henry-Pueblo Exchange

Merced-Pueblo Exchange

Colorado Canal Exchange



Prepared by:
Applegate
Group, Inc.
March 2008

APPENDIX E

PHOTOS OF EXISTING ARKANSAS RIVER LEVEE CONDITIONS

















APPENDIX F

2012 CONFERENCE REPORT ON NATIONAL FLOOD INSURANCE REFORM LEGISLATION

2012 Conference Report on National Flood Insurance Reform Legislation (Passed by House & Senate)

Provision	Biggert-Waters Flood Insurance Reform Act of 2012 (112th Congress)
Title	Biggert-Waters Flood Insurance Reform Act of 2012 (Sec. 100201)
Purpose	To extend the authorization of the national flood insurance program, to achieve reforms to improve the financial integrity and stability of the program, and to increase the role of private markets in the management of flood insurance risk, and for other purposes.
Program Extension	Would reauthorize the NFIP and its financing through September 30, 2017. (Sec. 100203)
Reform of Premium Rate Structure	
Increase in Average Annual Limit on Premium Growth	Would increase the annual limitation on premium increase from 10% to 20% (Sec. 100205)
Phase-In of Actuarial Rates For Certain Properties	Would require the Administrator of the Federal Emergency Management Agency (FEMA) to phase in actuarial rates over 4 years for the following pre-FIRM properties: non-primary residences, severe repetitive loss properties, any properties where flood losses have exceeded the property value, any business property, and any property that has sustained substantial damage (over 50% of Fair Market Value (FMV)) or improved over 30% of FMV. The premium increases for the previously mentioned categories of pre-FIRM properties are subject to a 25% annual limitation. (Sec. 100205)
Actuarial Rates for Certain Severe Repetitive Loss Properties	Would charge actuarial rates to any prospective insured who refused to accept any offer of mitigation assistance following a major disaster, or in connection with a repetitive loss property (Sec. 100205)
Extension of Premium Rate Subsidy on New Policies or Lapsed Policies	Would prohibit the Administrator from offering subsidized flood insurance rates to any property not insured under the NFIP as of the date of enactment, to any prospective insured whose coverage previously lapsed as a result of deliberate choice of the policyholder. (Sec. 100205)
Considerations in Determining Chargeable Premium Rates	Would require the Administrator to consider catastrophic loss years in the calculation of average losses. (Sec. 100211)
Payment of Premiums in Installments	Would authorize FEMA to accept the payment of flood insurance premium in installments. (Sec. 100205)

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Mandatory Purchase Requirements	
Use of Private Insurance to Satisfy Mandatory Purchase Requirement	Would permit a lending institutions to accept a private primary flood insurance policy in lieu of a NFIP flood policy to satisfy the mandatory purchase requirements (Sec. 100239)
Penalties for Lender Non-Compliance with Mandatory Purchase Requirement	Would increase penalties for lenders that fail to ensure that properties required to have flood coverage purchase such coverage. Penalties are increased from \$350 to \$2000 per violation, and this section removes the limit on annual penalties. (Sec. 100208)
Escrow of Flood Insurance Payments	Would require lending institutions to create escrow accounts for the payment of flood insurance premiums. (Sec. 100209)
Termination of Force-Placed Insurance	Within 30 days of receipt by a lender or servicer of confirmation of a borrower's existing flood insurance coverage, the lender or servicer shall terminate any force-placed insurance and refund all force-placed insurance premiums and fees charged to the borrower during any period of coverage overlap. For confirmation of coverage, a lender or servicer shall accept the borrower's insurance policy declarations page that includes the flood policy number and the insurance company or agent and contact number (Sec. 100244)
Coverage and Benefits	
Availability of Insurance for Multi-Family Properties	Would allow multi-family residential building owners (with 5 or more units) to purchase flood insurance up to the commercial coverage limits, which is currently \$500,000 for the structure. (Sec. 100204)
Eligibility for Flood Insurance for Persons Residing in Communities Making Adequate Progress on the Improvement of a Flood Protection System	Would require the Administrator to permit persons residing in areas that have made adequate progress on the improvement of a flood protection system to buy flood insurance. Areas eligible for flood coverage under this section would pay the same rate as if the flood protection system had been completed (Sec. 100230)
Clarification of Residential and Commercial Coverage Limits	Would clarify the aggregate coverage limits available to (one to four family) residential buildings as \$250,000. The aggregate coverage limit available for non-residential buildings is \$500,000 for each structure and a \$500,000 aggregate limit for contents. (Sec. 100228)
Minimum Annual Deductibles	The minimum annual deductible for pre-FIRM properties will be 1) \$1,500 if the property is insured for \$100,000 or less, or 2) \$2,000 if the property is insured for more than \$100,000. Minimum post-FIRM property deductibles will be 1) \$1,000 for those with \$100,000 of coverage or less, or 2) \$1,250 if the property is insured for more than \$100,000. (Sec. 100210)

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Mandatory Coverage Areas	Would require the Administrator in conjunction with the Technical Mapping Advisory Council (TMAP) to establish meaningful standards for updating and maintaining maps. Maps shall include: 1) all areas within the 100-year flood plain, 2) all areas within the 500-year flood plain, 3) areas of residual risk (including behind levees, dams, and other flood control structures), 4) areas that could be inundated as a result of the failure of a levee, dam, or other flood control structure, and 5) the level of protection provided by flood control structures. Authorizes \$400 million annually for mapping. Directs FEMA to enhance communication and outreach to states, local communities, and property owners regarding mapping changes and mandatory purchase requirements. (Sec. 100216)
Payment of Condominium Claims	Would clarify that condominium owners with flood insurance policies should receive claims payments regardless of the adequacy of flood insurance coverage of the condominium association and other condominium owners. (Sec. 100214)
Insurance Coverage for Private Property Affected by Flooding from Federal Lands	Would require the Administrator to determine for certain claims: 1) if flooding conditions were exacerbated by post-wildfire conditions on federal land; and 2) whether or not flood insurance was purchased by impacted policyholders within 60 days after the wildfire. (Sec. 100241)
Treatment of Swimming Pool Enclosures Outside of Hurricane Season	Would prevent the presence of an enclosed swimming pool from having an effect on the terms of coverage or the ability to receive coverage under the NFIP. (Sec. 100242)
Financial/Borrowing Authority	
Utilizing Private Reinsurance	Would require FEMA to conduct an assessment of the private reinsurance market's capacity to assume a portion of the NFIP insurance risk. This section clarifies that FEMA is authorized to secure reinsurance from the private market. In addition, FEMA would be required to include in their annual report to Congress, an assessment of NFIP's ability to pay claims, as well as any use of FEMA's authority to secure reinsurance. (Sec. 100232)
Repayment Plan for Borrowing Authority	Would require detailed reporting and repayment plans to be submitted to the Treasury and Congress whenever FEMA has to borrow funds to pay for losses in the NFIP. (Sec. 100213)
Reserve Fund	Would require FEMA to build up a reserve fund to help cover losses in higher than average years. The reserve fund shall maintain a balance of 1% of the sum of the total potential loss exposure of outstanding policies. In order to reach this requirement, FEMA will be required to put at least 7.5% of the reserve ratio into the fund each year until the reserve ratio is met. (Sec. 100212)

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FEMA Authority on Transfer of Policies	Would permit the Administrator, at his or her discretion, to refuse to accept the transfer of the administration of policies for coverage under the flood insurance program that are written and administered by any insurance company or other insurer, or any insurance agent or broker. (Sec. 100245)
Flood Plain Management and Loss Mitigation	
Grants for Mitigation Activities	Would reform and streamline existing FEMA mitigation programs. Gives priority to mitigation programs that will result in the greatest amount of savings for the National Flood Insurance Fund. (Sec. 100225)
Participation in State Disaster Claims Mitigation	Would require FEMA, at the request of a State Insurance Commissioner, to take part in state sponsored, non-binding mediation to resolve insurance claim disputes. (Sec. 100223)
Oversight and Expense Reimbursements of Insurance Companies	Would require FEMA to collect accurate and adequate information on WYO company expenses. FEMA shall develop a methodology for determining what WYO companies should be reimbursed for their activities under the program. All WYOs will be required to submit data based on that methodology. Using that data, FEMA will be required to conduct rulemaking on reimbursement rates, to ensure that WYO companies are being reimbursed based on actual expenses, including standard business costs and operating expenses. WYO insurers may be fined up to \$1,000 per day for non-compliance with certain reporting requirements. GAO will report to Congress on the efficacy of the rules (Sec. 100224)
Policy Disclosure Requirements	Would require that each policy state all conditions, exclusions, and other limitations pertaining to coverage under the subject policy, regardless of the underlying insurance product, in plain English, in boldface type, and in a font size that is twice the size of the text of the body of the policy. (Sec. 100234)
Notice of Flood Insurance Availability Under RESPA's Good Faith Estimate	Would require that lenders provide to all purchasers, a disclosure of the availability of flood insurance under the Real Estate Settlement Procedures Act (RESPA). (Sec. 100222)
No Cause of Action	States that no cause of action may be brought against the U.S. for violation of any notification requirements imposed by this act or any amendment to this act (Sec. 100249)
Community Building Code Administration Grants	Would provide grant funds to supplement existing state or local funding for administration of building code enforcement. The amount of the grant is based on the size of the community with 50% of the funds available for communities with a population

	of more than 50,000; 25% for communities with populations between 20,000-50,000; and 12.5 percent for communities with a population less than 20,000. There must be at least one full-time building code official for the community to obtain the grant. Also, provides for outreach to Native American communities about the availability of flood insurance under the NFIP. (Sec. 100243)
Flood Risk Assessment and Mapping	
Treatment of Levees	Would allow for the construction of permanent flood risk reduction levees on property acquired by FEMA if the Administrator and Chief of Engineers determine that it is the most effective means of mitigation against flood risk. Local authorities must submit an annual levee maintenance certification to the Administrator. (Sections 100240 and 100248)
Army Corps of Engineer Evaluation of Levee Systems	Would require FEMA and the Army Corps of Engineers, in cooperation with the National Committee on Levee Safety, to form a Flood Protection Structure Accreditation Task Force to better align the data that the Corps collects during levee inspections with the data required under FEMA's accreditation program. (Sec. 100226)
Ongoing Modernization of Flood Maps and Elevation Standards	Would require the Technical Mapping Advisory Council (TMAP) shall within 12 months of enactment prepare written recommendations in a future conditions risk assessment and modeling report and to submit such recommendations to the Administrator. (Sec. 100215)
Technical Mapping Advisory Council	Would reestablish the Technical Mapping Advisory Council (TMAP) to ensure that FEMA adopts meaningful standards for updating and maintaining maps. The Council would include the Administrator and 12 of his appointees. The appointed members of the Council include: 1) the Under Secretary of Commerce for Oceans and Atmosphere, 2) a member of a recognized professional surveying association, 3) a member of a recognized mapping association, 4) a member of a recognized professional engineering association, 5) a member of a recognized flood hazard determination firm, 6) a representative of the U.S. Geological Survey, 7) a representative of an organization of State geographic information, 8) a representative of State national flood insurance coordination offices, 9) a representative of the Corps of Engineers, 10) the Secretary of the Interior (or a designee), 11) the Secretary of Agriculture (or a designee), 12) a member of a recognized regional flood and storm water management organization, 13) a representative of a State agency with familiarity with flood insurance rate maps, and 14) a representative of a local government agency with familiarity with flood insurance rate maps. (Sec. 100215)
Reimbursement for Certain Costs Related to	Would reimburse certain expenses for property owners who successfully appeal a

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FEMA Mapping Errors	scientific or technical error made by FEMA in the mapping process. (Sec. 100246)
Local Data Requirement	Would require that FEMA use local data when mapping communities identified by the Administrator as Community Identification Number 360467, and impacted by the Jamaica Bay flooding source, or identified by the Administrator as Community Identification Number 360495. Requires FEMA to remap any communities that fit this requirement within one year after enactment of the bill. (Sec. 100229)
Scope of Appeals	Permits community map appeals to address the Special Flood Hazard Area boundary in addition to the Base Flood Elevation (Sec. 100217)
Scientific Resolution Panel	Would establish an independent Scientific Resolution Panel that will address mapping-related concerns from communities that are dissatisfied with the outcome of their appeal to FEMA. The provision would also authorize certain communities that have already been remapped to use the new Panel to rule on Letters of Map Revision (Sec. 100218)
Removal of Limitation on State Contributions for Updating Flood Maps	Would remove the limitation that states can only contribute up to a maximum of 50% for the cost of mapping. Would permit states to invest additional funds in mapping. (Sec. 100219)
Coordination Amongst Federal Agencies on Mapping	Would require various federal departments (NOAA, FEMA, USGS) to work together to coordinate mapping and risk determination budgeting. Requires OMB, FEMA and others to submit a joint report to Congress within 30 days of the budget submission on the crosscutting budget issues with respect to mapping. (Sec. 100220)
Alternative Loss Allocation	
Alternative Loss Allocation for Indeterminate "Slab" Claims	<ul style="list-style-type: none"> • Requires that the Administrator of FEMA develop a "Named Storm Event Model" to generate post-event assessments with an accuracy of not less than 90 percent for indeterminate losses; • Requires the Administrator of FEMA to work in consultation with the Office of the Federal Coordinator for Meteorology to submit a plan to Congress for the collection of event data within 270 days; • Establishes a coastal wind and water event database for the collection and compilation of storm event data within 365 days of enactment; • Requires the Administrator of FEMA to establish a protocol for collecting data for post-event assessment within 540 days of enactment; • The post-event assessment would be due no later than 90 days after the identification of

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	<p>a named storm;</p> <ul style="list-style-type: none"> •Creates a system for allocating loss between wind and water for indeterminate (slab) claims; •Imposes civil penalties of up to \$1,000 for any insurance claims adjuster who knowingly and willingly makes a false or inaccurate determination for an indeterminate (slab) loss. •Requires the National Academy of Sciences to evaluate the expected financial impact of the "Coastal" (loss allocation) formula on the NFIP. Also, the validity of scientific assumptions used to develop the formula will be evaluated. A report containing the results of the evaluation must be submitted to the Senate Committee on Banking, Housing, and Urban Affairs, and the House Committee on Financial Services. •It is within the discretion of the Administrator to use the "Coastal" (loss allocation) formula only if the National Academy of Sciences report concludes that: 1) the "Coastal" formula does not have an adverse financial impact on the NFIP; and 2) the "Coastal" formula is based on valid scientific assumptions that would result in at least a 90 percent degree of accuracy in loss allocation for indeterminate losses. •Prospectively, each time an adjustment is made to the "Coastal" formula the National Academy of Sciences will evaluate the impact of the changes in a report delivered to the Senate Committee on Banking, Housing, and Urban Affairs, and the House Committee on Financial Services. (Sections 100251, 100252, and 100253)
Studies and Reports for Congress	
Study on Business Interruption and Additional Living Expenses Coverage	Would require the Comptroller General to conduct a study on the possibility of including business interruption and/or additional living expenses coverage, and the effects that these coverage options could have on the NFIP. (Sec. 100233)
Study of Participation and Affordability for Certain Policyholders	Would require FEMA to conduct a study on possible methods to encourage and maintain participation in the NFIP, as well as making the NFIP more affordable for low income individuals through targeted assistance. The study will also include an economic analysis provided by the National Academy of Sciences. (Sec. 100236)
Study on Interagency Coordination	Would require FEMA to contract with the National Academy of Public Administration to conduct a study on how FEMA can improve interagency coordination on flood mapping and funding, and how FEMA can establish joint funding mechanisms with federal, state, and local agencies to share the collection and use of data for mapping. (Sec. 100221)

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Study on Pre-FIRM Structures	Would require the GAO to conduct a study of pre-FIRM structures to determine what types of properties are pre-FIRM, who owns the properties, locations, property values, and other information. (Sec. 100231)
Study on Contractors Used by FEMA	Would require the GAO, in consultation with the Department of Homeland Security Inspectors General Office, to review the three largest contractors used by FEMA in operating and managing the flood insurance program. (Sec. 100231)
Study on FIP Determinations	Would require FEMA to conduct a study examining the process for determining when a flood event has commenced or is in progress for purposes of NFIP flood insurance coverage. This section also clarifies the meaning of "eligible coverage" for purposes of recent Missouri River flooding. (Sec. 100227)
Study on Privatization	Would require FEMA to conduct an assessment of the private reinsurance market's capacity to assume a portion of the NFIP insurance risk. This section clarifies that FEMA is authorized to secure reinsurance from the private market. In addition, FEMA would be required to include in their annual report to Congress, an assessment of NFIP's ability to pay claims, as well as any use of FEMA's authority to secure reinsurance. (Sec. 100232)
Study on the Participation of Native Americans in the NFIP	Would require the U.S. Comptroller General to study the reasons why only 45 out of 565 Native American tribes participate in the NFIP. (Sec. 100237)
Report on Financial Conditions of NFIP	Would require FEMA to submit an annual report to Congress on its activities and financial health, including the amount paid in premiums, losses, expenses, number of policies, insurance in force, estimate of average loss year, and a description and amount of claims paid. (Sec. 100231)
Technical Corrections	Would replace the term "Director" with "Administrator in the Flood Disaster Protection Act of 1973, National Flood Insurance Act of 1968, and Federal Flood Insurance Act of 1956. (Sec. 100238)
Report on Inclusion of Building Codes in Floodplain Management Criteria	Would require that the Administrator of FEMA conduct a study on the impact, effectiveness, and feasibility of including widely used and nationally recognized building codes as part of the floodplain management criteria. (Sec. 100235)
FIO Study on Risks, Hazards, and Insurance	Would require the Director of FIO to conduct a study and submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report providing an assessment of the current state of the market for natural catastrophe insurance in the United States. (Sec. 100247)

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APPENDIX G

COLORADO REVISED STATUTES

§ 37-1-101. Short title.

Colorado Statutes

Title 37. WATER AND IRRIGATION

CONSERVANCY LAW OF COLORADO - FLOOD CONTROL

Article 1. Conservancy Law - Flood Control

Current through the 2012 First Extraordinary Session

§ 37-1-101. Short title

Articles 1 to 8 of this title shall be known and may be cited as the "Conservancy Law of Colorado".

Cite as C.R.S § 37-1-101

History. L. 22: p. 11, § 1. C.L. § 9515. CSA: C. 138, § 126. CRS 53: § 30-1-1. C.R.S. 1963: § 29-1-1.

Title 37. WATER AND IRRIGATION

CONSERVANCY LAW OF COLORADO - FLOOD CONTROL

Article 1. Conservancy Law - Flood Control

Current through Chapter 75 of the 2012 Legislative Session

§ 37-1-102. Definitions

As used in articles 1 to 8 of this title, unless the context otherwise requires:

(1) "Conservancy district" means the districts created under articles 1 to 8 of this title; and the bonds which may be issued under articles 1 to 8 of this title may be called "conservancy bonds", and such designation may be engraved or printed on their face.

(2) "Court" means the district court of that judicial district of the state of Colorado wherein the petition for the organization of a conservancy district shall be filed.

(3)(a) "Land" or "property" means real estate, as "real estate" is defined by the laws of the state of Colorado, and shall embrace all railroads, tramroads, electric railroads, street and interurban railroads, highways, roads, streets and street improvements, telephone, telegraph, and transmission lines, gas, sewer, and water systems, water rights, pipelines, and rights-of-way of public service corporations, and all other real property whether held for public or private use.

(b) When "land" or "property" is used, with reference to benefits, appraisals, assessments, or taxes, public corporations, as political entities, according to benefits received, shall be considered as included in such reference, in the same manner as "land" or "property".

(4) "Person" means a person, firm, partnership, association, or corporation, other than a county, town, city, or other political subdivision. Similarly, "public corporation" means counties, towns, cities, school districts, drainage districts, irrigation districts, water districts, park districts, and all governmental agencies clothed with the power of levying or providing for the levy of general or special taxes or special assessments.

(5) "Publication" means printing once a week for three consecutive weeks in at least one newspaper of general circulation in each county wherein such publication is to be made. It shall not be necessary that publication shall be made on the same day of the week in each of the three weeks, but not less than fourteen days (excluding the day of the first publication) shall intervene between the first publication and the last publication, and publication shall be complete on the date of the last publication.

Cite as C.R.S § 37-1-102

History. L. 22: p. 11, § 1. C.L. § 9515. CSA: C. 138, § 126. CRS 53: § 30-1-1. C.R.S. 1963: § 29-1-1.

Cross References:

For publication of legal notices, see part 1 of article 70 of title 24.

§ 37-1-103. Liberal construction

Articles 1 to 8 of this title, being necessary to secure and preserve the public health, safety, convenience, and welfare, and being necessary for the prevention of great loss of life and for the security of public and private property from floods and other uncontrolled waters, shall be liberally construed to effect the purposes of said articles.

Cite as C.R.S § 37-1-103

History. L. 22: p. 72, § 71. C.L. § 9585. CSA: C. 138, § 196. CRS 53: § 30-1-6. C.R.S. 1963: § 29-1-6.

§ 37-1-104. Removal of officials for cause

Any director or other officer of any district organized under articles 1 to 8 of this title may be removed for cause after a hearing upon a motion filed by any interested person in the original proceeding in which the district was organized.

Cite as C.R.S § 37-1-104

History. L. 22: p. 70, § 67. C.L. § 9581. CSA: C. 138, § 192. CRS 53: § 30-1-2. C.R.S. 1963: § 29-1-2.

§ 37-1-105. Remedy by mandamus

The performance of all duties prescribed in articles 1 to 8 of this title concerning the organization and administration or operation of a conservancy district may be enforced against any officer thereof or against any person or corporation refusing to comply with any order of the board of directors, by mandamus, at the instance of the board or of any person or corporation interested in any way in such district or proposed district. Such proceedings shall be instituted in the district court having jurisdiction of the original case.

Cite as C.R.S § 37-1-105

History. L. 22: p. 70, § 68. C.L. § 9582. CSA: C. 138, § 193. CRS 53: § 30-1-3. C.R.S. 1963: § 29-1-3.

Case Notes:

ANNOTATION

Law reviews. For article, "Highlights of the 1955 Legislative Session -- Corporations", see 28 Rocky Mt. L. Rev. 60 (1955).

§ 37-1-106. Early hearings

All cases in which there may arise a question of the validity of the organization of a conservancy district, or a question of the validity of any proceeding under articles 1 to 8 of this title, shall be advanced as a matter of immediate public interest and concern and heard in all courts at the earliest practicable moment. The courts shall be open at all times for the purposes of said articles.

Cite as C.R.S § 37-1-106

History. L. 22: p. 72, § 70. C.L. § 9584. CSA: C. 138, § 195. CRS 53: § 30-1-5. C.R.S. 1963: § 29-1-5.

§ 37-1-107. Correction of faulty notices

(1) In every case where a notice is provided for in articles 1 to 8 of this title, if the court finds for any reason that due notice was not given, the court shall not thereby lose jurisdiction, and the proceeding in question shall not thereby be void or be abated, but the court shall in that case order due notice to be given, and shall continue the hearing until such time as notice shall be properly given, and thereupon shall proceed as though notice had been properly given in the first instance.

(2) In case any particular appraisal, assessment, or levy is held void for want of legal notice, or in case the board of directors determines that any notice with reference to any land may be faulty, then the board of directors may file a motion in the original cause asking that the court order notice to be given to the owner of such land, and the court shall set a time for hearing as provided in articles 1 to 8 of this title. If the original notice as a whole is held to be sufficient but faulty only with reference to publication as to particular lands, only the owners of and persons interested in such particular lands need be notified by such subsequent notice, and if the publication of any notice in any county is held to be defective or not made in time, publication of the defective notice need be had only in the county in which the defect occurred.

Cite as C.R.S § 37-1-107

History. L. 22: p. 71, § 69. C.L. § 9583. CSA: C. 138, § 194. CRS 53: § 30-1-4. C.R.S. 1963: § 29-1-4.

§ 37-1-108. Short forms and abbreviations

(1) In any order of court the words "The court now here finds that it hath jurisdiction of the parties to and of the subject matter of this proceeding", shall be equivalent to a finding of the existence of each jurisdictional fact necessary to confer plenary jurisdiction upon the court and necessary from the proper signing and filing of the initial petitions to the date of the order, to meet every legal requirement imposed by articles 1 to 8 of this title.

(2) No other evidence of the legal hypothecation of the proceeds of any special assessment levied under said articles, to pay the bonds or warrants issued pursuant to articles 1 to 8 of this title, shall be required than the passage of a resolution by the board of directors and the issuance of bonds or warrants in accordance therewith.

(3) In the preparation of any assessment or appraisal record the usual abbreviations employed by engineers, surveyors, and abstractors may be used.

(4) Where it would be necessary to use a long description to properly describe any parcel of land, the appraisers, after locating the land generally, may refer to the book and page of the public record of any instrument in which the land is described, which reference shall be sufficient for all the purposes of articles 1 to 8 of this title to identify the land described in the public record so referred to.

(5) It shall not be necessary in any notice required to be published by articles 1 to 8 of this title to specify the names of the owners of the lands or of the persons interested therein; but any such notice may be addressed "To all persons interested" with like effect as though such notice named every owner of any lands within the territory specified in the notice and every person interested therein and every lienor, actual or inchoate.

(6) Every district declared upon hearing to be a conservancy district shall thereupon become a political subdivision and a public corporation of the state of Colorado invested

with all the powers and privileges conferred upon such districts by articles 1 to 8 of this title.

Cite as C.R.S § 37-1-108

History. L. 22: p. 72, § 74. C.L. § 9588. CSA: C. 138, § 198. CRS 53: § 30-1-8. C.R.S. 1963: § 29-1-8.

§ 37-1-109. Repeal - saving clause

All laws or parts of laws conflicting in any way with any of the provisions of articles 1 to 8 of this title, in regard to improvements of the character contemplated by said articles, or regulating or limiting the power of taxation or assessment, or otherwise interfering with the execution of articles 1 to 8 of this title according to their terms, are declared inoperative and ineffective as to said articles, as completely as if they did not exist. But all such laws and parts of laws shall not be otherwise affected by said articles.

Cite as C.R.S § 37-1-109

History. L. 22: p. 72, § 73. C.L. § 9587. CSA: C. 138, § 197. CRS 53: § 30-1-7. C.R.S. 1963: § 29-1-7.

§ 37-2-101. Jurisdiction of district court - purposes of districts

(1) The district court sitting in and for any county in this state has jurisdiction, when the conditions stated in section 37-2-102 are found to exist, to establish conservancy districts, which may be entirely within or partly within and partly without the judicial district in which said court is located, for any of the following purposes:

- (a) Preventing floods;
- (b) Regulating stream channels by changing, widening, and deepening the same;
- (c) Regulating the flow of streams;
- (d) Diverting, controlling, or in whole or in part eliminating watercourses;
- (e) Protecting public and private property from inundation; and incident to such purposes and to enable its accomplishment, any district so established has the power to straighten, widen, deepen, change, divert, or change the course or terminus of any natural or artificial watercourse; to build reservoirs, canals, levees, walls, embankments, bridges, or dams; to reclaim or fill low lands and lands subject to overflow; to remove and to regulate and prescribe the location of improvements upon land; to maintain, operate, and repair any of the construction herein named; and to do all other things necessary for the fulfillment of the purposes of articles 1 to 8 of this title; and such powers shall also be construed as purposes for which benefits may be appraised as provided in articles 1 to 8 of this title;
- (f) The conservation, development, utilization, and disposal of water for agricultural, municipal, and industrial uses thereof, when desirable as a part of a project or undertaking the principal purpose of which is one or more of the purposes set out in this section;
- (g) Participating in the development of parks and recreational facilities within the boundaries of the conservancy district.

Cite as C.R.S § 37-2-101

History. L. 22: p. 12, § 2. C.L. § 9516. CSA: C. 138, § 127. CRS 53: § 30-2-1. L. 57: p. 296, § 1. C.R.S. 1963: § 29-2-1. L. 94: (1)(g) added, p. 577, § 1, effective April 7.

Case Notes:

ANNOTATION

The general assembly has authority to form a conservancy district involving parts of cities and counties, and the conservancy district act is not in violation of art. XX, Colo. Const., governing municipal improvements of home rule city. *People ex rel. Setters v. Lee*, 72 Colo. 598, 213 P. 583 (1923).

§ 37-2-102. Petition

(1) The establishment of conservancy districts for the purposes and in the manner provided for in articles 1 to 8 of this title is declared to be conducive to public health, safety, convenience, and welfare. Before any conservancy district is established under articles 1 to 8 of this title, a petition shall be filed in the office of the clerk of the court vested with jurisdiction, in a county in which all or part of the lands embraced in said proposed conservancy district are situated, signed either by two hundred owners of land or by a majority of the owners of land situate within the limits of the territory proposed to be organized into a district. Such petition may be signed by the governing body of any public corporation lying wholly or partly within the proposed district, in such manner as it may prescribe, and when so signed by such governing body such a petition on the part of the said governing body shall fill all the requirements of representation upon such petition of the owners of land of such public corporation as they appear upon the tax rolls; and thereafter it shall not be necessary for individuals within said public corporation to sign such a petition. Such a petition may also be signed by railroad corporations and other corporations owning lands within the proposed district. Any city interested in some degree in the improvement, upon proper action by its governing body, may alone file the petition required by this section.

(2) The petition shall set forth: The proposed name of said district; that property within the proposed district will be benefited by the accomplishment of one or more of the purposes enumerated in section 37-2-101; and a general description of the purpose of the contemplated improvement and of the territory to be included in the proposed district. Said description need not be given by metes and bounds or by legal subdivisions, but it shall be sufficient to enable a property owner to ascertain whether his property is within the territory proposed to be organized as a district. Said territory need not be contiguous if it is so situated that the organization as a single district of the territory described is calculated to promote one or more of the purposes enumerated in section 37-2-101. Said petition shall pray for the organization of the district by the name proposed.

(3) No petition with the requisite signatures shall be declared null and void on account of alleged defects, but the court may at any time permit the petition to be amended to conform to the facts by correcting any errors in the description of the territory or in any other particular. Several similar petitions or duplicate copies of the same petition for the organization of the same district may be filed and shall together be regarded as one petition. All such petitions filed prior to the hearing on the first petition filed shall be considered by the court the same as though filed with the first petition placed on file. In determining whether a majority of landowners have signed the petition, the court shall be governed by the names as they appear upon the tax roll, which shall be prima facie evidence of such ownership.

Cite as C.R.S § 37-2-102

History. L. 22: p. 13, § 3. C.L. § 9517. CSA: C. 138, § 128. CRS 53: § 30-2-2. C.R.S. 1963: § 29-2-2.

Case Notes:

ANNOTATION

Mere informalities will not vitiate a notice so long as they do not mislead, and the notice gives the necessary information to the proper parties. *People ex rel. Setters v. Lee*, 72 Colo. 598, 213 P. 583 (1923).

§ 37-2-103. Bond of petitioners

At the time of filing the petition or at any time subsequent thereto and prior to the time of the hearing on said petition, a bond shall be filed, with security approved by the court, sufficient to pay all the expenses connected with the proceedings in case the organization of the district is not effected. If at any time during the proceeding the court is satisfied that the bond first executed is insufficient in amount, it may require the execution of an additional bond within a time to be fixed not less than ten days distant, and upon failure of the petitioners to execute the same, the petition shall be dismissed.

Cite as C.R.S § 37-2-103

History. L. 22: p. 15, § 4. C.L. § 9518. CSA: C. 138, § 129. CRS 53: § 30-2-3. C.R.S. 1963: § 29-2-3.

§ 37-2-104. Notice of hearing on petition

(1) Immediately after the filing of such petition, the court wherein such petition is filed shall by order fix a place and time, not less than sixty days nor more than ninety days after the petition is filed, for hearing thereon, and thereupon the clerk of said court shall cause notice by publication (Schedule Form I) to be made of the pendency of the petition and of the time and place of the hearing thereon. The clerk of said court shall also forthwith cause a copy of said notice to be mailed by registered mail to the board of county commissioners of each of the several counties having territory within the proposed district.

(2) The district court in and for the county in which the petition for the organization of a conservancy district has been filed shall thereafter, for all purposes of articles 1 to 8 of this title, except as otherwise provided in said articles, maintain and have original and exclusive jurisdiction coextensive with the boundaries of said conservancy district and of lands and other property proposed to be included in said district or affected by said district, without regard to the usual limits of its jurisdiction.

(3) No judge of such court wherein such petition is filed shall be disqualified to perform any duty imposed by articles 1 to 8 of this title by reason of ownership of property within any conservancy district or proposed conservancy district or by reason of ownership of any property that may be benefited, taxed, or assessed therein.

Cite as C.R.S § 37-2-104

History. L. 22: p. 15, § 5. C.L. § 9519. CSA: C. 138, § 130. CRS 53: § 30-2-4. C.R.S. 1963: § 29-2-4.

Case Notes:

ANNOTATION

Notice of hearing is not a process under § 22 of art. VI, Colo. Const. Notice of hearing upon a petition to form a conservancy district under the provisions of this section is not a process within the meaning of § 22 of art. VI, Colo. Const. *People ex rel. Setters v. Lee*, 72 Colo. 598, 213 P. 583 (1923).

Cross References:

For Schedule Form I, see § 37-8-101 .

§ 37-2-105. Protesting petitions - hearing on petitions - organization of districts

(1) At any time after the filing of a petition for the organization of a conservancy district and not less than thirty days prior to the time fixed by the order of the court for the hearing upon said petition and not thereafter, a petition may be filed in the office of the clerk of the court wherein the proceeding for the creation of said district is pending, signed by a majority of the owners of the land in said proposed district, protesting the creation of said district. Upon the filing of such protesting petition, it is the duty of the clerk of the court forthwith to make as many certified copies thereof, including the signatures thereto, as there are counties into any part of which said proposed district extends and forthwith to place in the hands of the county treasurer of each of such counties one of said certified copies.

(2) Thereupon it shall be the duty of each of such county treasurers to determine from the last tax rolls of his county in his hands, and to certify to the said district court under his official seal, prior to the day fixed for the hearing, the total number of owners of the land situate in said proposed district within his county and the total number of owners of the land situate in such proposed district within his county who have signed said protesting petition, and such certificate shall constitute prima facie evidence of the facts so stated therein and shall be so received and considered by said court. Upon the day set for the hearing upon the original petition, if it appears to the court from such certificate, and from such other evidence as may be adduced by any party in interest, that the said protesting petition is not signed by a majority of the owners of land within the proposed district, the court shall thereupon dismiss said protesting petition and shall proceed with the original hearing as provided in articles 1 to 8 of this title.

(3) If the court finds from the evidence that said protesting petition is signed by a majority of the owners of the land situate in the district, the court shall forthwith dismiss the original petition praying for the creation of the district. The finding of the court upon the question of the total number of owners of the land situate in said proposed district and upon the question of the number of the owners of the land situate in said proposed district signing said protesting petition, the genuineness of the signatures, and all matters of law and fact incidental to such determinations shall be final and conclusive on all parties in interest whether appearing or not.

(4) At any time prior to the hearing by the court on the petition for the organization of any conservancy district extending into more than one county, or for the inclusion in any existing conservancy district of territory situate in a county no part of which is then in such district, the board of county commissioners of any county into which said proposed district extends, or the board of county commissioners of any county, territory of which is proposed to be included in any existing district, has the right to file, in the court wherein the petition for the organization of such proposed district or the proceeding for the inclusion of additional territory in any existing district is pending, a copy of a

resolution of such board of county commissioners protesting against the organization of such district or the inclusion of such territory in an existing district, which copy of resolution shall be duly certified by the clerk of said board of county commissioners, and thereupon, unless said protest is withdrawn prior to the hearing, said court shall deny and dismiss such petition; but the board of county commissioners of any such county into which said proposed district extends, or territory of which is sought to be included in an existing district, shall be required to make and file such protest, if within the time specified a written request to do so, signed by a majority of the owners of the land lying within the part of said proposed conservancy district in said county, is filed with the clerk of said board of county commissioners.

(5) If the board of county commissioners fails or refuses, upon the filing of such request, to protest against the organization of said district, and to file a certified copy thereof with the clerk of the court, then the court, upon petition, prior to such hearing, of any person or public corporation signing the request, or attorney or agent of any person or corporation signing such request, shall determine the sufficiency of such request so filed, upon notice by publication within said county, and hearing thereon, and if it is determined by the court that such request has the requisite signatures, the court shall enter an order in the same manner and effect as though a protest had been made and filed by the board of county commissioners.

(6) Any owner of real property in said proposed district not having individually signed a petition for the organization of a conservancy district and desiring to object to the organization and incorporation of said district, on or before the date set for the cause to be heard, may file objections to the organization and incorporation of the district. Such objections shall be limited to a denial of the statements in the petition and shall be heard by the court as an advanced case without unnecessary delay.

(7) Upon the said hearing, if it appears that a petition for the organization of a conservancy district has been signed and presented, as provided in section 37-2-102, in conformity with articles 1 to 8 of this title, and that the allegations of the petition are true, and that no protesting petition has been filed, or if filed has been dismissed as provided in this section, the court, by order duly entered of record, shall adjudicate all questions of jurisdiction, declare the district organized, and give it a corporate name by which in all proceedings it shall thereafter be known, and thereupon the district shall be a political subdivision of the state of Colorado and a body corporate with all the powers of a public or municipal corporation and shall have power to sue and be sued, to incur debts, liabilities, and obligations, to exercise the right of eminent domain and of taxation and assessments as provided in said articles, to issue negotiable bonds, and to do all acts expressly authorized and all acts necessary and proper for the carrying out of the purposes for which the district was created and for executing the powers with which it is invested.

(8) In such decree the court shall designate the place where the office or principal place of business of the district shall be located, which shall be within the corporate limits of the district, if practicable, and which may be changed by order of court from time to time. The regular meetings of the board of directors shall be held at such office or place of business, but for cause may be adjourned to any other convenient place. The official records and files of the district shall be kept at the office so established.

(9) If the court finds that no petition has been signed and presented in conformity with articles 1 to 8 of this title, or that the material facts are not as set forth in the petition filed, it shall dismiss said proceedings and adjudge the costs against the signers of the petition in such proportions as it deems just and equitable. No appeal or other remedy shall lie from an order dismissing said proceedings; but nothing in this section shall be construed to prevent the filing of a subsequent petition for similar improvement or for a similar conservancy district, and the right so to renew such proceedings is expressly granted and authorized.

(10) If an order is entered establishing the district, such order shall be deemed final and binding upon the real property within the district, and no appeal or other remedy shall lie therefrom, and the entry of such order shall finally and conclusively establish the regular organization of the said district against all persons except the state of Colorado, in an action in the nature of quo warranto, commenced by the attorney general within three months after said decree declaring such district organized as provided in this section, and not otherwise. The organization of said district shall not be directly nor collaterally questioned in any suit, action, or proceeding except as expressly authorized in this article.

Cite as C.R.S § 37-2-105

History. L. 22: p. 16, § 6. C.L. § 9520. CSA: C. 138, § 131. CRS 53: § 30-2-5. C.R.S. 1963: § 29-2-5.

Case Notes:

ANNOTATION

Law reviews. For article, "Legal Classification of Special District Corporate Forms in Colorado", see 45 Den. L.J. 347 (1968).

There can be no constitutional objection to the conservancy district act on the ground that it provides that no appeal or writ of error shall lie to review the order establishing a district. *People ex rel. Setters v. Lee*, 72 Colo. 598, 213 P. 583 (1923).

A signature by trustee of stockholders does not make stockholders signers. Where a land owning corporation signed a protesting petition in a proceeding for the organization of a conservancy district, as "trustee for the use of its stockholders", with a typewritten list of its stockholders attached, this did not make the stockholders signers, and is construed as the signature of but one owner. *People ex rel. Setters v. Lee*, 72 Colo. 598, 213 P. 583 (1923).

Sufficiency of petition need not be determined prior to publication of notice. Under the provisions of the conservancy district act, there is no necessity for the determination of the sufficiency of a petition for the formation of a district prior to the publication of notice. Such determination may be had at the time of the hearing. *People ex rel. Setters v. Lee*, 72 Colo. 598, 213 P. 583 (1923).

The findings of the court in matters pertaining to petitions and protests, in the organization of conservancy districts, are conclusive. *People ex rel. Setters v. Lee*, 72 Colo. 598, 213 P. 583 (1923).

§ 37-2-106. Provisions for recording decree of incorporation

Within thirty days after the district has been declared a corporation by the court, the clerk of the court shall transmit to the division of local government in the department of local affairs and to the county clerk and recorder in each of the counties having lands in

said district copies of the findings and the decree of the court incorporating said district. The same shall be filed with said division, and copies shall also be recorded in the office of the county clerk and recorder of each county in which a part of the district may be, where they shall become permanent records.

Cite as C.R.S § 37-2-106

History. L. 22: p. 20, § 7. C.L. § 9521. CSA: C. 138, § 132. CRS 53: § 30-2-6. C.R.S. 1963: § 29-2-6. L. 76: Entire section amended, p. 605, § 29, effective July 1. L. 83: Entire section amended, p. 1227, § 11, effective July 1.

§ 37-3-101. Appointment of directors

Within thirty days after entering the decree incorporating said district, the court shall appoint as a board of directors of the district three persons who are residents of the county or counties in which the conservancy district is situated, at least two of whom shall own real property in said district, one for a term of two years, one for a term of three years, and one for a term of five years. At the expiration of their respective terms of office, appointments shall be made by said court for terms of five years. The court shall fill all vacancies which may occur on the said board. Each director shall hold office during the term for which he is appointed and until his successor is duly appointed and has qualified and shall furnish a corporate surety bond, at the expense of the district, in an amount and form fixed and approved by the court, conditioned upon the faithful performance of his duties as director. All special and regular meetings of the board shall be held at locations which are within the boundaries of the district or which are within the boundaries of any county in which the district is located, in whole or in part, or in any county so long as the meeting location does not exceed twenty miles from the district boundaries. The provisions of this section governing the location of meetings may be waived only if the proposed change of location of a meeting of the board appears on the agenda of a regular or special meeting of the board and if a resolution is adopted by the board stating the reason for which a meeting of the board is to be held in a location other than under the provisions of this section and further stating the date, time, and place of such meeting.

Cite as C.R.S § 37-3-101

History. L. 22: p. 21, § 8. C.L. § 9522. CSA: C. 138, § 133. CRS 53: § 30-3-1. C.R.S. 1963: § 29-3-1. L. 90: Entire section amended, p. 1501, § 13, effective July 1.

Case Notes:

ANNOTATION

The conservancy district law is not repugnant to art. III, Colo. Const., as delegating legislative functions to the judiciary, in the provision for the appointment of district officers by the court. *People ex rel. Setters v. Lee*, 72 Colo. 598, 213 P. 583 (1923). The power of appointing officers is more executive than it is legislative. Such power, taken by itself, is not judicial, but when it is incidental to the exercise of judicial functions, as it is under the conservancy law, its existence does not vitiate the statute. *People ex rel. Setters v. Lee*, 72 Colo. 598, 213 P. 583 (1923). The board of directors of a conservancy district is not a "special commission" as that term is used in § 35 of art. V, Colo. Const. *People ex rel. Setters v. Lee*, 72 Colo. 598, 213 P. 583 (1923).

The board of directors is a permanent board. The governing body of the district is the board of directors. The act contemplates and provides for the permanent existence of that board. It is as much the governing body of the district as the Moffat tunnel commission is of the Moffat tunnel improvement district, and is as permanent. People ex rel. Setters v. Lee, 72 Colo. 598, 213 P. 583 (1923).

§ 37-3-102. Oath - organization

Each director, before entering upon his or her official duties, shall take and subscribe to an oath, before an officer authorized to administer oaths, that the director will honestly, faithfully, and impartially perform the duties of his or her office and that he or she will not be interested directly or indirectly in any contract let by said district, which oath shall be filed in the office of the clerk of said court in the original case. Upon taking the oath, the board of directors shall choose one of its number as chairman of the board and president of the district and shall elect some suitable person secretary of the board and of the district who may or may not be a member of the board. Such board shall adopt a seal and shall keep in a visual text format that may be transmitted electronically a record of all of its proceedings, minutes of all meetings, certificates, contracts, bonds given by employees, and corporate acts, which shall be open to the inspection of all owners of property in the district as well as to all other interested parties.

Cite as C.R.S § 37-3-102

History. L. 22: p. 21, § 9. C.L. § 9523. CSA: C. 138, § 134. CRS 53: § 30-3-2. C.R.S. 1963: § 29-3-2. L. 2009: Entire section amended, (HB 09-1118), ch. 130, p. 563, § 10, effective August 5.

§ 37-3-103. General powers

(1) In order to protect life and property within the district, and to protect or relieve land subject to overflowing or washing, or which is menaced or threatened by the normal flow or flood or surplus or overflow waters of any natural watercourse, stream, canyon, or wash, whether perennial, intermittent, or flood, and in order to effect the protection of the land and other property in the district, and in order to accomplish all other purposes of the district, the board of directors is authorized:

- (a) To clean out, straighten, widen, alter, deepen, or change the course or terminus of any ditch, drain, sewer, river, watercourse, pond, lake, creek, or natural stream in or out of said district;
- (b) To fill up any abandoned or altered ditch, drain, sewer, river, watercourse, pond, lake, creek, or natural stream and to concentrate, divert, or divide the flow of water in or out of said district;
- (c) To construct and maintain main and lateral ditches, sewers, canals, levees, dikes, dams, sluices, revetments, reservoirs or retarding basins, floodways, pumping stations and syphons, and any other works and improvements deemed necessary to construct, preserve, operate, or maintain the works in or out of said district;
- (d) To construct, reconstruct, or enlarge or cause to be constructed, reconstructed, or enlarged any bridges that may be needed in or out of said district;
- (e) To construct, reconstruct, or elevate roadways and streets;

(f) To construct or reconstruct any works and improvements along, across, through, or over any public highway, canal, railroad right-of-way, track, grade, fill, or cut, in or out of said district;

(g) To remove or change the location of any fence, building, railroad, canal, or other improvements in or out of said district;

(h) To acquire by donation, purchase, or condemnation, to construct, own, lease, use, and sell, and to hold, encumber, control, and maintain any easement, water right, railroad right-of-way, canal, sluice, reservoir or retarding basin, mill dam, water power, work, franchise, park, cemetery, or other public way or place, or any real or personal property, public or private, in or out of said district, for rights-of-way or retarding basins, or for materials of construction, or for any other use not inconsistent with the purposes of articles 1 to 8 of this title;

(i) To replot or subdivide land, open new roads, parks, streets, and alleys, or change the location of existing ones;

(j) To cause the dissolution of the district pursuant to article 3.5 of this title;

(k) To participate in the development of parks and recreational facilities including, but not limited to, trails, greenways, and riverfront development within the boundaries of said district.

(2) Nothing in articles 1 to 8 of this title shall be construed to grant to any conservancy district organized under said articles the power to regulate or administer water rights or to take or damage such water rights, except upon payment of compensation.

Cite as C.R.S § 37-3-103

History. L. 22: p. 25, § 15. C.L. § 9529. CSA: C. 138, § 140. CRS 53: § 30-3-8. L. 57: p. 298, § 1. C.R.S. 1963: § 29-3-8. L. 81: (1)(j) added, p. 1746, § 1, effective May 28. L. 94: (1)(k) added, p. 577, § 2, effective April 7.

§ 37-3-104. General grant of power

The board of directors of any district organized under articles 1 to 8 of this title is vested with all powers necessary for the accomplishment of the purposes for which the district is organized and capable of being delegated by the general assembly of the state of Colorado; and no enumeration of particular powers granted shall be construed to impair any general grant of power contained in this section, or to limit any such grant to power of the same class as those so enumerated.

Cite as C.R.S § 37-3-104

History. L. 22: p. 31, § 24. C.L. § 9538. CSA: C. 138, § 149. CRS 53: § 30-3-17. C.R.S. 1963: § 29-3-17.

Case Notes:

ANNOTATION

Law reviews. For article, "County Court Practice Changed", see 29 Dicta 62 (1952).

§ 37-3-105. Employment of agents

(1) The secretary shall be the custodian of the records of the district and of its corporate seal and shall assist the board of directors in such particulars as it may direct in the performance of its duties. The secretary shall attest, under the corporate seal of the district, all certified copies of the official records and files of the district that may be required of him by this article or by any person ordering the same and paying the

reasonable cost of transcription, and any portion of the record so certified and attested shall prima facie import verity. The secretary shall serve also as treasurer of the district unless a treasurer is otherwise provided for by the board of directors. The board shall also have the authority to appoint other members of the board as custodians for district funds. The board may also employ a chief engineer, who may be an individual, partnership, or corporation; an attorney; and such other engineers, attorneys, and agents and assistants as may be needed; and it may provide for their compensation, which, with all other necessary expenditures, shall be part of the cost or maintenance of the improvement.

(2) The employment of the secretary, treasurer, chief engineer, and attorney for the district shall be evidenced by agreements in writing which, so far as possible, shall specify the amounts to be paid for their services. The chief engineer shall be superintendent of all the works and improvements, and shall make a full report to the board of directors each year, or oftener if required by the board, and may make such suggestions and recommendations to the board as he may deem proper. The secretary and treasurer and such other agents or employees of the district as the court may direct shall furnish corporate surety bonds, at the expense of the district, in amount and form fixed and approved by the court, conditioned upon the faithful performance of their respective duties.

Cite as C.R.S § 37-3-105

History. L. 22: p. 22, § 11. C.L. § 9525. CSA: C. 138, § 136. CRS 53: § 30-3-4. C.R.S. 1963: § 29-3-4. L. 81: (1) amended, p. 1750, § 3, effective May 28.

§ 37-3-106. Regulations to protect works

(1) Where necessary, in order to secure the best results from the execution and operation of the plans of the district or to prevent damage to the district by the deterioration or misuse or by the pollution of the waters of any watercourse therein, the board of directors may make regulations for and may prescribe the manner of building bridges, roads, fences, or other works in, into, along, or across any channel, reservoir, or other construction; and may prescribe the manner in which ditches or other works shall be adjusted to or connected with the works of the district or any watercourse therein; and, when not in conflict with the regulations of the state board of health, may prescribe the manner in which the watercourses of the district may be used for sewer outlets or for disposal of waste.

(2) The construction of any works in a manner harmful to the district or to any watercourse therein, and in a manner contrary to that specified by the board of directors, is a misdemeanor, punishable by a fine of not more than one thousand dollars. The directors have authority to enforce by mandamus or other legal proceedings all necessary regulations made by them and authorized by articles 1 to 8 of this title and may remove any harmful construction or may close any opening improperly made. Any person, corporation, or municipality willfully failing to comply with such regulations is liable for all damage caused by such failure and for the cost of renewing any construction damaged or destroyed.

Cite as C.R.S § 37-3-106

History. L. 22: p. 28, § 19. C.L. § 9533. CSA: C. 138, § 144. CRS 53: § 30-3-12. C.R.S. 1963: § 29-3-12.

§ 37-3-107. Quorum

A majority of the directors shall constitute a quorum, and a concurrence of the majority in any matter within their duties is sufficient for its determination.

Cite as C.R.S § 37-3-107

History. L. 22: p. 22, § 10. C.L. § 9524. CSA: C. 138, § 135. CRS 53: § 30-3-3. C.R.S. 1963: § 29-3-3.

§ 37-3-108. Plans

(1) Upon its qualification, the board of directors shall prepare or cause to be prepared a plan for the improvements for which the district was created. Such plan shall include such maps, profiles, plans, and other data and descriptions as may be necessary to set forth properly the location and character of the work, and of the property benefited or taken or damaged, with estimates of cost and specifications for doing the work.

(2) In case the board of directors finds that any former survey made by any other district or in any other manner is useful for the purposes of the district, it may take over the data secured by such survey or such other proceedings as may be useful to it and may pay therefor an amount equal to the value of such data to said district.

(3) Upon the completion of such plan, the board of directors shall cause notice thereof to be given by publication in each county in which said district may be located, in whole or in part, and shall permit the inspection thereof at the office of the district by all persons interested. Said notice shall fix the time and place for the hearing of all objections to said plan not less than twenty days nor more than thirty days after the last publication of said notice. All objections to said plan shall be in writing and filed with the secretary of the district at his office not more than ten days after the last publication of said notice. After said hearing before the board of directors, the board shall adopt a plan as the official plan of the said district. If, however, any person objects to said official plan, so adopted, then such person may, within ten days from the adoption of said official plan, file in the office of the clerk of the court in the original case establishing the district his objections in writing, specifying the features of the plan to which objection is made, and thereupon the court shall fix a day for the hearing thereof before the court, not less than ten days nor more than twenty days after the time fixed for filing objections, at which time the court shall hear said objections and adopt, reject, or refer back said plan to said board of directors.

(4) If the court should reject said plan, then the board shall proceed as in the first instance under this section to prepare another plan. If the court should refer back said plan to the board for amendment, then the court shall continue the hearing to a day certain without publication of notice. If the court approves the said plan as the official plan of the district, then a certified copy of the order of the court approving the same shall be filed with the secretary of the district and by him incorporated into the records of the district. The official plan may be altered in detail from time to time until the assessment record is filed, and of all such alterations the appraisers shall take notice. After the assessment record has been filed in court, no alterations of the official plan shall be made except as provided in section 37-4-113.

Cite as C.R.S § 37-3-108

History. L. 22: p. 23, § 12. C.L. § 9526. CSA: C. 138, § 137. CRS 53: § 30-3-5. C.R.S. 1963: § 29-3-5.

Case Notes:

ANNOTATION

The "official plan" is the plan which may be adopted for the improvements for which the district was created. The board of directors is the body that prepares and, upon a hearing, adopts the plan. It also has the power to levy assessments, to borrow money, and otherwise act for the conservancy district. *People ex rel. Setters v. Lee*, 72 Colo. 598, 213 P. 58 (1923).

§ 37-3-109. Execution of plans

The board of directors has full authority to devise, prepare for, execute, maintain, and operate all works or improvements necessary or desirable to complete, maintain, operate, and protect the works provided for by the official plan and to that end may employ and secure men and equipment under the supervision of the chief engineer or other agents or may in its discretion let contracts for such works, either as a whole or in parts.

Cite as C.R.S § 37-3-109

History. L. 22: p. 24, § 13. C.L. § 9527. CSA: C. 138, § 138. CRS 53: § 30-3-6. C.R.S. 1963: § 29-3-6.

Case Notes:

ANNOTATION

Public works constructed under the conservancy district law are of a public nature and for public purposes. *People ex rel. Setters v. Lee*, 72 Colo. 598, 213, P. 583 (1923).

§ 37-3-110. Contracts

When it is determined to let the work by contract, contracts in amounts in excess of ten thousand dollars shall be advertised after notice by publication calling for bids, and the board may reject any or all bids or may let said contract to the lowest or best bidder who gives a good and approved bond with ample security, conditioned on the carrying out of the contract. Such contract shall be in writing and shall be accompanied by or shall refer to plans and specifications for the work to be done prepared by the chief engineer. Said contract shall be approved by the board of directors and signed by the president of the district and by the contractor and shall be executed in duplicate; but in case of sudden emergency when it is necessary in order to protect the district, the advertising of contracts may be waived upon the unanimous consent of the board of directors, with the approval of the court; but the provisions of this section shall not apply if it is determined by the board of directors that the work be done on force account.

Cite as C.R.S § 37-3-110

History. L. 22: p. 26, § 16. C.L. § 9530. CSA: C. 138, § 141. CRS 53: § 30-3-9. C.R.S. 1963: § 29-3-9.

Case Notes:

ANNOTATION

Law reviews. For article, "Highlights of the 1955 Legislative Session -- Corporations", see 28 Rocky Mt. L. Rev. 60 (1955).

§ 37-3-111. Surveys and investigation

The board of directors also has the right to establish and maintain stream gauges, rain gauges, and a flood warning service with telephone or telegraph lines or telephone or telegraph service, and may make such surveys and examinations of rainfall and flood conditions, stream flow, and other scientific and engineering subjects as are necessary and proper for the purposes of the district, and may issue reports thereon.

Cite as C.R.S § 37-3-111

History. L. 22: p. 30, § 22. C.L. § 9536. CSA: C. 138, § 147. CRS 53: § 30-3-15. C.R.S. 1963: § 29-3-15.

§ 37-3-112. Cooperation with United States or other agencies

The board of directors also has the authority to enter into contracts or other arrangements with the United States government or any department thereof, with persons, railroads, or other corporations, with public corporations, and with the state government of this or other states and with irrigation, drainage, conservation, conservancy, or other improvement districts, in this or other states, for cooperation or assistance in constructing, maintaining, using, and operating the works of the district or for making surveys and investigations or reports thereon. It may purchase, lease, or acquire land or other property in adjoining states in order to secure outlets or for other purposes of articles 1 to 8 of this title and may let contracts and spend money for securing such outlets or other works in adjoining states.

Cite as C.R.S § 37-3-112

History. L. 22: p. 30, § 23. C.L. § 9537. CSA: C. 138, § 148. CRS 53: § 30-3-16. C.R.S. 1963: § 29-3-16.

§ 37-3-113. Access to lands - penalty

The board of directors of any district organized under articles 1 to 8 of this title, or its employees or agents, including contractors and their employees and the members of the board of appraisers provided for in article 4 of this title, and their assistants, may enter upon lands within or without the district in order to make surveys and examinations to accomplish the necessary preliminary purposes of the district or to have access to the work, being liable, however, for actual damage done; but no unnecessary damage shall be done. Any person or corporation preventing such entry is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than fifty dollars.

Cite as C.R.S § 37-3-113

History. L. 22: p. 25, § 14. C.L. § 9528. CSA: C. 138, § 139. CRS 53: § 30-3-7. C.R.S. 1963: § 29-3-7.

§ 37-3-114. Removal of structures

(1) For the accomplishment of the official plan, the board of directors of any district has full power to improve in alignment, section, grade, location, or any other manner any watercourse, and it may remove, widen, lengthen, lower, raise, or otherwise change any public or private road bridge or railroad bridge, or any flume, aqueduct, or telephone, telegraph, gas, oil, sewer, water, or other pipelines, or any other construction over,

across, in, into, under, or through any such watercourse or may require the same to be done. The foregoing shall apply to all such changes specified by the official plan or reasonably necessary for the accomplishment of the same; but, if any such change is made necessary in any construction because of the failure of the same to permit the free flow of water in such stream in time of flood or to permit the necessary enlargement or protection of the channel, then the owner of such construction shall make such change and all adjustments of grade, roadway, track, approach, or other construction incidental thereto, without cost to the district and without any claim for damages against the district; but the district shall pay the cost of excavating the earth for the enlargement of any channel or for placing earth for the filling of any channel, where such excavation or filling is required as a part of the official plan in making the changes outlined in this section. The district shall not be required to make such fill or excavation unless the same would be necessary to the official plan if the construction or work so changed did not exist.

(2) Before the removal, change, or modification of any work or construction outlined in this section, the board of directors shall give notice to the owner thereof requiring that the same be adapted to the official plan. In case such removals, changes, or adjustments are not commenced and completed by the owner within the respective times specified therefor in such notice, which time shall be reasonable under all circumstances, such removals, changes, or adjustments may be made by the district at the expense of the owner.

Cite as C.R.S § 37-3-114

History. L. 22: p. 28, § 20. C.L. § 9534. CSA: C. 138, § 145. CRS 53: § 30-3-13. C.R.S. 1963: § 29-3-13.

§ 37-3-115. Passing equipment through bridge or grade

In case it is necessary to pass any dredge boat or other equipment through a bridge or grade of any railroad company or other corporation, county, city, town, or other municipality, the board of directors shall give notice to the owner of said bridge or grade that the same shall be removed temporarily to allow the passage of such equipment or that an agreement be immediately entered into in regard thereto. The owner of said bridge or grade shall keep an itemized account of the cost of the removal and if necessary of the replacing of said bridge or grade, and the necessary and actual cost shall be paid by the district. In case the owner of said bridge or grade fails to commence or complete provision for the passage of said equipment within the time specified in the notice, the board of directors may remove such bridge or grade at its own expense, interrupting traffic in the least degree consistent with good work and without unnecessary damage or delay. In case it is hindered or prevented from so doing, the owner of said bridge or grade shall be liable for all damage resulting to the district therefrom.

Cite as C.R.S § 37-3-115

History. L. 22: p. 30, § 21. C.L. § 9535. CSA: C. 138, § 146. CRS 53: § 30-3-14. C.R.S. 1963: § 29-3-14.

§ 37-3-116. Condemnation under general law

The district shall also have the right, instead of having appraisals made by the board of appraisers, to condemn for the use of the district, according to the procedure provided by articles 1 to 7 of title 38, C.R.S., for the appropriation of land or other property taken for public use, any land or property within or without said district not acquired or condemned by the court on the report of said appraisers.

Cite as C.R.S § 37-3-116

History. L. 22: p. 27, § 18. C.L. § 9532. CSA: C. 138, § 143. CRS 53: § 30-3-11. C.R.S. 1963: § 29-3-11.

Case Notes:

ANNOTATION

Law reviews. For article, "Eminent Domain in Colorado", see 29 Dicta 313 (1952).

§ 37-3-117. Dominant right of eminent domain

(1) The district, when necessary for the purposes of articles 1 to 8 of this title, has a dominant right of eminent domain over the right of eminent domain of railroad, telegraph, telephone, gas, water power, and other companies and corporations and over towns, cities, counties, and other public corporations.

(2) In the exercise of this right, due care shall be taken to do no unnecessary damage to other public utilities and, in case of failure to agree upon the mode and terms of interference, not to interfere with their operations or usefulness beyond the actual necessities of the case, due regard being given to the other public interests involved.

Cite as C.R.S § 37-3-117

History. L. 22: p. 27, § 17. C.L. § 9531. CSA: C. 138, § 142. CRS 53: § 30-3-10. C.R.S. 1963: § 29-3-10.

Case Notes:

ANNOTATION

Law reviews. For article, "Eminent Domain in Colorado", see 29 Dicta 313 (1952).

§ 37-3.5-101. Dissolution of district

(1) At such time as the board of directors of any conservancy district by unanimous decision determines that the original purposes for the organization of the district have been accomplished and after the district has paid in full any indebtedness incurred by it, the board may devise a plan of dissolution which shall be filed, together with a petition for dissolution, with the court which authorized the organization of the district pursuant to section 37-2-105(7).

(2) Such plan of dissolution shall set forth the proposal by the board of directors to dispose of any assets which the district may then own and to transfer any remaining responsibilities of the district to a political subdivision of the state.

(3) Immediately after the filing of such petition for dissolution, the court wherein such petition is filed shall, by order, fix a date, time, and place for a public hearing thereon, and thereupon the clerk of said court shall cause notice of said hearing to be published weekly for three successive weeks in a newspaper of general circulation in the county where said court is located. Any person who wishes to object to the proposed plan of dissolution shall file a written objection at any time after the filing of a petition for dissolution but not less than five days prior to the date fixed by the order of the court for the hearing upon said petition. At the hearing, the court may take such testimony as the

court deems proper. If the court finds that the original purpose for the organization of the district has been accomplished, that the district is no longer indebted to any person, and that adequate provision has been made for the disposition of any assets of the district and the transfer of any remaining responsibilities of the district to a political subdivision of the state, the court may enter an order approving the plan of dissolution. In lieu of approving said plan, the court may order an election submitting the proposition of dissolution of the district to the electors of the district, and any such election ordered shall be conducted pursuant to the procedures of sections 37-3.5-105 to 37-3.5-107.

(4) If an order approving the plan of dissolution is entered, the board of directors shall expeditiously implement the plan of dissolution and upon the completion of its implementation shall file, with the court and with the division of local government in the department of local affairs, a notice that the dissolution of the district has been completed in compliance with the plan of dissolution approved by the court. Upon the receipt of such notice, the court shall enter a decree granting the petition for dissolution and dissolving the district. On and after the date of the entering of such decree, the district shall be deemed dissolved, any bonds posted on behalf of members of the board shall be deemed discharged, and the board of directors shall be relieved of further responsibilities and liabilities with regard to the district.

(5) As used in this section, "political subdivision" means any entity of government authorized by law to impose ad valorem taxes on taxable property located within its territorial limits.

Cite as C.R.S § 37-3.5-101

History. L. 81: Entire article added, p. 1746, § 2, effective May 28.

§ 37-3.5-102. Election for dissolution - petition or resolution filed

(1) Any conservancy district organized may be dissolved in the manner specified in this section and sections 37-3.5-103 to 37-3.5-107 if such district has not been authorized to incur bonded or other indebtedness under the procedures set forth in article 5 of this title and such district has not incurred bonded or other indebtedness pursuant to the provisions of any other law; except that, if such district has entered into a contract with the United States or any other agency thereof, no dissolution shall take place unless the secretary of the interior of the United States has first consented thereto.

(2) An election submitting the proposition of dissolution of the district may be initiated by the filing of a copy of a resolution adopted by three-fourths of all the members of the board of directors of such district requesting such an election or by the filing of a petition requesting such election. Such resolution or petition shall be filed in the district court which formed said district.

(3) Any such petition so filed shall be accompanied by a good and sufficient bond for five hundred dollars with not less than two sureties approved by the court, and, if a majority of the qualified electors do not vote for dissolution in the election specified in this article, the amount of such bond shall be forfeited to the district; otherwise the same shall be discharged.

(4) If the valuation for assessment of land together with improvements thereon within said district when formed is in excess of twenty million dollars, such petition shall bear signatures of any owners of land equal in number to two-thirds or more of the number of such type of owners required by section 37-2-102 upon a petition for the formation of

such a district. Such land shall be situated within the limits of the district and shall not be embraced within the incorporated limits of any city or town. Said petition shall also bear the signatures of any owners of land or land embraced within the incorporated limits of a city or town equal in number to two-thirds or more of the number of such type of owners required by said section upon a petition for the formation of such a district, said land to be situated within the limits of the district.

(5) If the valuation for assessment of land and improvements thereon within such district when formed is less than twenty million dollars, said petition shall contain the same number and type of signatures required by section 37-2-102 upon petitions for the formation of such a district. In either case the petition shall set forth opposite each signature the description of the land and the valuation for assessment thereof together with any improvements. Similar petitions or duplicate copies of the same petition may be filed together and shall be regarded as one petition. No petition with the requisite signatures shall be declared void on account of alleged defects, but the court may permit the petition to be amended from time to time to conform to the facts by correcting errors in descriptions, valuation, or any other particular.

Cite as C.R.S § 37-3.5-102

History. L. 81: Entire article added, p. 1747, § 2, effective May 28.

§ 37-3.5-103. Notice of election

Upon presentation of such petition or resolution, the court shall cause a notice to be published forthwith at least once each week for four consecutive weeks in a newspaper of general circulation in each county where the district or parts thereof lie. Such notice shall recite that a petition or resolution for dissolution of the district has been filed, shall describe generally the territory of the district, and shall further specify the time and places of election, which time shall not be less than sixty days nor more than ninety days after the date of the last publication of the notice. If an objection to the petition or resolution is filed in such court by an owner of land situated within said district within twenty days from the date of the last publication of the notice, the court may, if necessary, continue the election from time to time until all objections are disposed of. Due notice of the time and places of any continued election shall be given in the manner and form prescribed above.

Cite as C.R.S § 37-3.5-103

History. L. 81: Entire article added, p. 1748, § 2, effective

§ 37-3.5-104. Objections to resolution or petition

Objections to a resolution for an election shall be confined to the question of whether sufficient directors voted in favor of the same. Objections to a petition for such election shall be confined to the question of whether sufficient qualified owners of land situate within the district have signed the petition for such election. Such petition shall be accepted as prima facie evidence of all facts stated therein, and all signatures affixed to such petition shall be presumed to be those of qualified owners residing within the boundaries of the district until the contrary is proven. No signer of a petition shall be permitted to withdraw his name from such petition after it is filed, except for fraud. All objections shall be heard as an advanced case on the docket of the court. Nothing in this section shall be construed to prevent the filing of subsequent resolutions or petitions

for the same purpose, but elections on the proposition of dissolution shall not be held more frequently than once every three years.

Cite as C.R.S § 37-3.5-104

History. L. 81: Entire article added, p. 1748, § 2, effective May 28.

§ 37-3.5-105. Election procedure - ballot

(1) Any election held for the purpose of submitting the proposition of dissolution of a district may be held separately or may be consolidated or held concurrently with any other election authorized by law. The election shall be conducted by the secretary of the board of directors of such district under the supervision of the court, and the court shall fix the manner of holding the same and shall also fix the compensation to be paid the officers of the election and shall designate the precincts and polling places. The court shall also appoint for each polling place and for each precinct, from the electors thereof, the officers of such election, which officers shall consist of three judges, one of whom shall act as clerk, who shall constitute a board of election for each polling place.

(2) The description of precincts may be made by reference to any order of the board of county commissioners of the county in which the district or any part thereof is situated or by reference to any previous order or resolution of the board or by detailed description of such precincts. Precincts established by the boards of the various counties may be consolidated for special elections held under this article. In the event that any such election is called to be held concurrently with any other election or is consolidated therewith, the court order need not designate precincts or polling places or the names of officers of election but shall contain a reference to the act or order calling such other election and fixing the precincts and polling places and appointing election officers therefrom.

(3) The respective election boards shall conduct the election in their respective precincts in the manner prescribed by law for the holding of general elections and shall make their returns to the secretary of the district. At any regular or special meeting of the board held not earlier than five days following the date of such election, the returns thereof shall be canvassed and the results declared. In the event that any election held under this article is consolidated with any primary or general election, the returns thereof shall be made and canvassed at the time and in the manner provided by law for the canvass of the returns of such primary or general election. It is the duty of such canvassing body to promptly certify and transmit to the board a statement of the result of the vote upon the proposition submitted under this article. Upon receipt of such certificate, it is the duty of the board to tabulate and declare the results of the election held under this article.

(4) The results of such election shall be certified promptly by the secretary of the board of directors to the court. It is the duty of the secretary of the board of directors of the district to prepare ballots to be used at the election on which shall be inscribed the words "For Dissolution" and "Against Dissolution". The costs of the election and ballots shall be paid by the district under the supervision of the court, and the district shall be authorized, under the supervision of the court, to borrow funds for this purpose. Irrespective of any other provision of this article, the district shall not be required or authorized to hold any election on the proposition of such borrowing.

Cite as C.R.S § 37-3.5-105

History. L. 81: Entire article added, p. 1749, § 2, effective May 28.

§ 37-3.5-106. Majority vote determines question

The electors of the district shall be qualified to vote on the question of dissolving the district. If a majority of votes are for dissolution of the district, the district shall be dissolved as provided in section 37-3.5-107. Any objections to the election, or proceedings to invalidate the election, must be filed in the court within thirty days from the date of the election. Errors, omissions, and irregularities not affecting substantial rights shall be disregarded.

Cite as C.R.S § 37-3.5-106

History. L. 81: Entire article added, p. 1750, § 2, effective May 28.

§ 37-3.5-107. Winding up and dissolution - order entered

(1) In the event that the vote is for dissolution, any qualified signer of the petition for the election or the board of directors of such district may, within such time as may be fixed by the court, present a written plan for the winding up of the affairs of the district. Such plan may specify that the affairs of the district be wound up by the board of directors of the district or by a receiver appointed by the court for that purpose. On a day fixed by the court, the court shall consider such plan and shall enter an order establishing therefrom a plan for the winding up of such affairs. The court shall retain continuing jurisdiction to modify such plan from time to time and shall supervise such winding up.

(2) If no such plan is presented on or before the day set by the court, then the court shall appoint a receiver to wind up the affairs of the district under the court's supervision. Upon the appointment of any receiver, all authority of the board of directors of the district shall terminate; except that its authority to levy taxes for the payment of the obligations of the district and the costs of winding up shall continue until the district is dissolved. Such board shall levy taxes within the limits imposed by article 5 of this title sufficient to pay expeditiously such obligations and costs, and, if a receiver has been appointed, all tax collections shall be delivered to such receiver.

(3) When it appears to the satisfaction of the court that all obligations of the district have been discharged and the costs of winding up the district paid, such court shall enter an order dissolving the district, and a certified copy of such order shall be recorded by the clerk of the court in all counties in which the district may be situate. All funds remaining in the hands of such receiver or board of directors after such dissolution shall be divided among the counties comprising any part of such district in proportion to the total valuation of taxable property in such county within the boundaries of such district, as determined by the tax roll of such counties in the treasurer's hands, for the calendar year preceding the year in which such dissolution occurs, and said receiver or members of the board of directors shall thereupon be discharged by the court.

Cite as C.R.S § 37-3.5-107

History. L. 81: Entire article added, p. 1750, § 2, effective May 28.

§ 37-4-101. Appointment of appraisal commissioners

At the time of making its order organizing the district or at any time thereafter, the court shall appoint three commissioners, referred to in this article as appraisers or the board of appraisers, whose duties shall be to appraise the lands or other property within and

without the district to be acquired for rights-of-way, reservoirs, and other works of the district and to appraise all benefits and damages accruing to all land within or without the district by reason of the execution of the official plan. Said appraisers shall be freeholders residing within the state of Colorado, who may or may not own lands within said district. Each of the appraisers, before taking up his duties, shall take and subscribe to an oath that he will faithfully and impartially discharge his duties as such appraiser and that he will make a true report of such work done by him. The appraisers at their first meeting shall elect one of their own number chairman, and the secretary of the board of directors or his deputy shall be ex officio secretary of said board of appraisers during their continuance in office. A majority of the appraisers shall constitute a quorum, and a concurrence of the majority in any matter within their duties is sufficient for its determination. The court, by order, may remove any appraiser at any time, and shall fill all vacancies in the board of appraisers, or may appoint a new board, as occasion may require, which new board, if appointed, shall perform all the duties and exercise all the powers of the board of appraisers of the district.

Cite as C.R.S § 37-4-101

History. L. 22: p. 31, § 25. C.L. § 9539. CSA: C. 138, § 150. CRS 53: § 30-4-1. C.R.S. 1963: § 29-4-1.

Case Notes:

ANNOTATION

Law reviews. For comment, "Water: Statewide or Local Concern? City of Thornton v. Farmers Reservoir & Irrigation Co.", see 56 Den. L.J. 625 (1979).

§ 37-4-102. Appraisals

(1) During the preparation of the official plan, the board of appraisers shall examine and become acquainted with the nature of the plans for the improvement and of the lands and other property affected thereby, in order that they may be better prepared to make appraisals.

(2) When the official plan is filed with the secretary of the district, he shall at once notify the appraisers, and they shall thereupon proceed to appraise the benefits of every kind to all land and property within or without the district which will result from the organization of said district and the execution of the official plan. They shall also appraise the damages sustained and the value of the land and other property necessary to be taken by the district for which settlement has not been made by the board of directors. In the progress of their work, the appraisers shall have the assistance of the attorney, engineers, secretary, and other agents and employees of the district.

(3) The board of appraisers shall also appraise the benefits and damages, if any, accruing to cities, towns, counties, and other public corporations as political entities, and to the state of Colorado, and the same shall be considered the same as benefits or damages, as the case may be, to land or other property.

(4) Before appraisals of compensation and damages are made, the board of directors of the district may report to the appraisers the parcels of land it wishes to purchase and for which it wishes appraisals to be made, both for easement and for purchase in fee simple, and the directors may specify the particular purpose for which and the extent to which an easement in any property is desired, describing definitely such purpose and extent.

(5) The appraisers shall appraise all damages which may, because of the execution of the official plan, accrue to real or other property, either within or without the district, which damages shall also cover easements acquired by the district for all of the purposes of the district, unless otherwise specifically stated.

(6) Wherever instructed to do so by the board of directors, the appraisers shall appraise lands which it may be necessary or desirable for the district to own and shall appraise both the total value of the land and also the damages due to an easement for the purposes of the district. Upon such appraisals being confirmed by the court, the board of directors of the district shall have the option of paying the entire appraised value of the property and acquiring full title to it in fee simple or of paying only the cost of such easement, for the purposes of the district.

(7) Upon written demand by the owner, such option shall be exercised by the directors within ninety days after the date of the final judicial determination of such appraisal. The appraisers in appraising benefits and damages shall consider only the effect of the execution of the official plan. Appraisals of value for property taken shall be made without reference to any increase in value thereof due to the execution of the official plan. The appraisers in making appraisals shall give due consideration and credit to any other works or other systems of protection already constructed or under construction which form a useful part of the work of the district according to the official plan. Where the appraisers or a jury, in case one is called, returns no appraisal of damages to any property, it is deemed a finding by it that no damages will be sustained.

Cite as C.R.S § 37-4-102

History. L. 22: p. 32, § 26. C.L. § 9540. CSA: C. 138, § 151. CRS 53: § 30-4-2. C.R.S. 1963: § 29-4-2.

§ 37-4-103. Land affected outside the district

If the appraisers find that land not embraced within the boundaries of the district will be affected by the proposed improvement or should be included in the district, they shall appraise the benefits and damages to such land, and shall file notice in the court of the appraisal which they have made upon the lands beyond the boundaries of the district, and to the land which, in their opinion, should be included in the district. The appraisers shall also report to the court any lands which, in their opinion, should be eliminated from the district; but no territory lying in any county into which any existing district does not already extend shall be included in such district, except in accordance with the provision of section 37-2-105 with reference to the inclusion of land in such counties.

Cite as C.R.S § 37-4-103

History. L. 22: p. 34, § 27. C.L. § 9541. CSA: C. 138, § 152. CRS 53: § 30-4-3. C.R.S. 1963: § 29-4-3.

§ 37-4-104. Notice of hearing on land excluded from or taken into district

If the report of the board of appraisers includes recommendations that other lands be included in the district or that certain lands be excluded from the district, it is the duty of the clerk of the court before which the proceeding is pending, upon order of the court, to give notice to the owners of such property by publication (Schedule Form V) to be made as provided in articles 1 to 8 of this title for a hearing on the petition for the creation of the district. The time and place of the hearing shall be the same as provided for the

hearing on appraisals, and upon such hearing the court shall make and enter such orders with respect to lands to be included in or excluded from the district as the facts and the provisions of articles 1 to 8 of this title require. As to the owners of property to be excluded from the district, it will be sufficient to notify them of that fact.

Cite as C.R.S § 37-4-104

History. L. 22: p. 34, § 28. C.L. § 9542. CSA: C. 138, § 153. CRS 53: § 30-4-4. C.R.S. 1963: § 29-4-4.

Cross References:

For Schedule Form V, see § 37-8-101 .

§ 37-4-105. Report of appraisal commissioners

(1) The board of appraisers shall prepare a tabulated report of its findings which shall be bound in book form and which shall be known as the conservancy appraisal record. Such record (Schedule Form VI) shall contain the names of the owners of property appraised as they appear on the tax rolls or from the records of the office of the county clerk and recorder, a description of the property appraised, the amount of benefits appraised, the amount of damages appraised, and the appraised value of land or other property which may be taken for the purposes of the district. The appraisers shall also report any other benefits or damages or any other matter which, in their opinion, should be brought to the attention of the court. No error in the names of the owners of property or in the descriptions thereof shall invalidate said appraisal or the levy of assessments or taxes based thereon, if sufficient description is given to identify such property.

(2) When the report is completed, it shall be signed by at least a majority of the appraisers and deposited with the clerk of the court who shall file it in the original case. At the same time certified copies of that part of the report giving the appraisal of benefits and appraisals of land to be taken and of damages in any county other than that in which the original case is pending shall be made and filed with the county clerk and recorder of such county.

Cite as C.R.S § 37-4-105

History. L. 22: p. 35, § 29. C.L. § 9543. CSA: C. 138, § 154. CRS 53: § 30-4-5. C.R.S. 1963: § 29-4-5.

Cross References:

For Schedule Form VI, see § 37-8-101 .

§ 37-4-106. Notice of hearing on appraisals

(1) Upon the filing of the report of the appraisers, the clerk of the court in which the original cause is pending shall, upon order of the court, give notice thereof by publication (Schedule Form VII) in each county in the conservancy district. It shall not be necessary for said clerk to name the parties interested, nor to describe separate lots or tracts of land in giving said notice, but it shall be sufficient to give such descriptions as will enable the owner to determine whether or not his land is covered by such description.

(2) Where lands in different counties are mentioned in said report, it shall not be necessary to publish in each county a description of all the lands in the district but only of that part of the said lands situate in the county in which publication is made.

Cite as C.R.S § 37-4-106

History. L. 22: p. 35, § 30. C.L. § 9544. CSA: C. 138, § 155. CRS 53: § 30-4-6. C.R.S. 1963: § 29-4-6.

Cross References:

For Schedule Form VII, see § 37-8-101 .

§ 37-4-107. Hearing on appraisals

Any property owner may accept the appraisals in his favor of benefits and of damages and of lands to be taken, as made by the appraisers, or may acquiesce in their failure to appraise damages in his favor, and shall be construed to have done so unless, within ten days after the last publication provided for in section 37-4-106, he has filed exceptions to said report or to any appraisal of either benefits or of damages, or of the value of land to be taken. All exceptions shall be heard by the court beginning not less than twenty nor more than thirty days after the last publication provided for in section 37-4-106 and determined in advance of other business so as to carry out, liberally, the purposes and needs of the district. The court may, if it deems necessary, return the report to the board of appraisers for their further consideration and amendment and may enter its order to that effect. If, however, the appraisal roll as a whole is referred back to the appraisers, the court shall not resume the hearing thereon without new notice, as for an original hearing thereon. But the court may, without new notice, order the appraisers to revise and amend the roll when the order of the court specifies the changes to be made.

Cite as C.R.S § 37-4-107

History. L. 22: p. 36, § 31. C.L. § 9545. CSA: C. 138, § 156. CRS 53: § 30-4-7. C.R.S. 1963: § 29-4-7.

Cross References:

For requirements of publication, see § 37-1-102(5).

§ 37-4-108. Decree on appraisals

If it appears to the satisfaction of the court, after having heard and determined all said exceptions, that the estimated cost of constructing the improvements contemplated in the official plan is less than the benefits appraised, then the court shall approve and confirm said appraisers' report as so modified and amended, and such findings and appraisals shall be final and incontestable, except as provided in this article. In considering the appraisals made by the board of appraisers, the court shall take cognizance of the official plan and of the degree to which it is effective for the purposes of the district. In case the court finds that the estimated benefits appraised are less than the estimated total cost of the execution of the official plan, exclusive of interest on deferred payments, or that the official plan is not suited to the requirements of the district, it may at its discretion return said official plan to the directors of the district with an order directing them to prepare new or amended plans, or it may dissolve the district after having provided for the payment of all expenses theretofore incurred.

Cite as C.R.S § 37-4-108

History. L. 22: p. 36, § 32. C.L. § 9546. CSA: C. 138, § 157. CRS 53: § 30-4-8. C.R.S. 1963: § 29-4-8.

§ 37-4-109. Appeals from awards

(1) Any person or public or private corporation desiring to appeal from an award of the appraisers as to compensation, damages, or benefits shall, within ten days from the judgment of the court confirming the report of the appraisers, file with the clerk of the court a written notice making demand for a jury trial. If the appeal is solely from an award as to benefits, the appellant shall, at the same time, file a bond with good and sufficient security to be approved by the clerk, in a sum not exceeding two hundred dollars, to the effect that if the verdict is not more favorable to appellant than the award of the appraisers, the appellant will pay the costs of the appeal. The appellant shall state definitely from what part of the order the appeal is taken. The appeal may be from the award of compensation, damages, or benefits, or one or more of them, but from no other part of the judgment of the court confirming the report of the appraisers.

(2) In case more than one appeal is filed from the award as to compensation, damages, or benefits, the court may, upon a showing that the same may be consolidated without injury to the interest of anyone, consolidate and try the same together.

(3) Upon demand for a jury trial to fix the amount of compensation for property proposed to be taken or damaged, the court shall order the board of directors at once to begin condemnation proceedings therefor in the district court of the county in which are situate the lands sought to be condemned, in the district court in and for such county, which suit shall be conducted in accordance with articles 1 to 7 of title 38, C.R.S., concerning the right of eminent domain, where a jury is demanded.

(4) Upon demand for a jury trial to fix the assessment of benefits or the assessment of damages other than those incident to condemnation proceedings, the court shall order the board of directors to present a petition embodying the facts and the claims made in short form, which shall be filed in the court in which the original case is pending, whereupon a jury shall be empaneled according to law to try and determine the issue presented, as in condemnation proceedings.

Cite as C.R.S § 37-4-109

History. L. 22: p. 37, § 33. C.L. § 9547. CSA: C. 138, § 158. CRS 53: § 30-4-9. C.R.S. 1963: § 29-4-9.

§ 37-4-110. Entry after deposit of award

No property shall be taken under articles 1 to 8 of this title until just compensation has been paid according to law. But where a trial by jury is demanded under section 37-4-109, the board of directors may pay into court the amount allowed by the appraisers, with the costs, and thereupon the court shall make an order admitting the said district into possession of the property and thereupon the board of directors may enter into undisturbed possession of the property and rights involved. The right of entry provided by this section is a cumulative remedy and additional to the district's right of possession during the pendency of condemnation proceedings under the provisions of articles 1 to 7 of title 38, C.R.S.

Cite as C.R.S § 37-4-110

History. L. 22: p. 38, § 34. C.L. § 9548. CSA: C. 138, § 159. CRS 53: § 30-4-10. C.R.S. 1963: § 29-4-10.

§ 37-4-111. Filing decree

(1) Upon the entry of the order of the court approving the report of the appraisers, as provided for in articles 1 to 8 of this title, the clerk of said court in which the same is entered shall transmit to the secretary of the district a certified copy of the said decree and of the appraisals as confirmed by the court, except those parts from which appeals have been perfected in accordance with section 37-4-109, but not determined.

(2) When any proceeding to review a judgment of the district court, confirming the verdict of a jury, has been finally determined, the clerk of the court deciding the same shall certify the amount of each item of the judgment to the clerk of the court having the original case, who shall file the same therein and shall thereupon transmit certified copies of the same to the secretary of the district who shall thereupon complete the conservancy appraisal record.

Cite as C.R.S § 37-4-111

History. L. 22: p. 39, § 35. C.L. § 9549. CSA: C. 138, § 160. CRS 53: § 30-4-11. C.R.S. 1963: § 29-4-11.

§ 37-4-112. Appeals shall not delay proceedings

(1) No appeal from an award by the appraisers under articles 1 to 8 of this title shall be permitted to interrupt or delay any action or the prosecution of any work under articles 1 to 8 of this title, except where the appellant is entitled to a jury trial under the constitution of the state, and the district does not exercise the right of deposit provided by section 37-4-110, in which case only so much of the work shall be interrupted or delayed as would constitute a taking or damaging of the property of such appellant.

(2) No proceeding to review a judgment of the district court entered under the provisions of articles 1 to 8 of this title shall be commenced after thirty days from the entry of the judgment sought to be reviewed.

(3) The board of directors of any district organized under articles 1 to 8 of this title has the same right as property owners to invoke the jurisdiction of an appellate court of the state of Colorado to review any reviewable order of the district court made in any proceeding under said articles.

(4) The failure to appeal from or seek a review of any order of the court in any proceeding under articles 1 to 8 of this title within the time specified in this section shall constitute a waiver of any irregularity in the proceedings, and the remedies provided for in said articles shall exclude all other remedies except as provided in this section.

Cite as C.R.S § 37-4-112

History. L. 22: p. 39, § 36. C.L. § 9550. CSA: C. 138, § 161. CRS 53: § 30-4-12. C.R.S. 1963: § 29-4-12.

§ 37-4-113. Change of official plan

(1) The board of directors may at any time when necessary to fulfill the objects for which the district was created alter or add to the official plan, and when such alterations or additions are formally approved by the board and by the court and are filed with the secretary, they shall become part of the official plan for all purposes of articles 1 to 8 of this title. Where such alterations or additions in the judgment of the court neither materially modify the general character of the work, nor materially increase resulting damages for which the board is not able to make amicable settlement, nor increase the total cost more than ten percent above that estimated in the official plan, no action other

than a resolution of the board of directors shall be necessary for the approval of such alterations or additions. In case the proposed alterations or additions materially modify the general character of the work, or materially modify the resulting damages, or materially reduce the benefits for which the board is not able to make amicable settlement, or materially increase the benefits in such a manner as to require a new appraisal, or increase the total cost more than ten percent above that estimated in the official plan, the court shall direct the board of appraisers, which may be the original board, or a new board appointed by the court on petition of the board of directors, to appraise the property to be taken, benefited, or damaged by the proposed alterations or additions.

(2) Upon the completion of the report by the board of appraisers, notice shall be given and a hearing had on its report in the same manner as in the case of the original report of the board of appraisers, and the same right of appeal to a jury shall exist; but where only a few landowners are affected, the clerk of the court may, on order of the court, if found to be more economical and convenient, give personal notice of the pendency of the report of said appraisers instead of notice by publication; and if the only question at issue is additional damages or reduction of benefits to property due to modifications in or additions to the official plan, the board of directors may, if practicable, make settlements with the owners of the property damaged instead of having appraisals made by the board of appraisers. In case such settlements are made, notice and hearing need not be had. After district bonds are sold, as provided in articles 1 to 8 of this title, in order that their security may not be impaired, no reduction shall be made in the amount of uncontested benefits appraised or costs assessed against any property in the district; but in lieu of any reduction in assessment, if by reason of a modification in or addition to the official plan an excessive assessment is made under the provisions of section 37-5-104, the excess shall be paid to the property owner in cash. This provision shall apply to all changes in appraisals under articles 1 to 8 of this title.

Cite as C.R.S § 37-4-113

History. L. 22: p. 40, § 37. C.L. § 9551. CSA: C. 138, § 162. CRS 53: § 30-4-13. C.R.S. 1963: § 29-4-13.

Case Notes:

ANNOTATION

Law reviews. For article, "County Court Practice Changed", see 29 Dicta 62 (1952).

§ 37-4-114. Lands exempt and later liable to assessment

If any lands in any district organized under articles 1 to 8 of this title are not liable to assessment at the time of the execution of the work, but afterwards, during the period when such work is being paid for, become liable to assessment, such lands shall thereupon be appraised and assessed as other lands in said district receiving equal benefits.

Cite as C.R.S § 37-4-114

History. L. 22: p. 41, § 38. C.L. § 9552. CSA: C. 138, § 163. CRS 53: § 30-4-14. C.R.S. 1963: § 29-4-14.

§ 37-4-115. Subsequent appraisals

In case any property within or without any district is benefited, which for any reason was not appraised in the original proceedings, or was not appraised to the extent of benefits received, or in case any person or public corporation makes use of or profits by the works of any district organized under articles 1 to 8 of this title to a degree not compensated for in the original appraisal, or in case the directors of the district find it necessary subsequent to the time when the first appraisals are made to take or damage any additional property, the directors of said district, at any time such condition becomes evident, shall direct the board of appraisers to appraise the benefits or the enhanced benefits received by such property, or such damages or value of property taken, and the proceedings in articles 1 to 8 of this title for appraising lands not at first included within the boundaries of the district shall in all matters be conformed to, including notice to the parties; or the board may, at its discretion, make settlement with such person or public corporation for such use, benefit, damage, or property taken.

Cite as C.R.S § 37-4-115

History. L. 22: p. 41, § 39. C.L. § 9553. CSA: C. 138, § 164. CRS 53: § 30-4-15. C.R.S. 1963: § 29-4-15.

§ 37-4-116. Validation of irregular proceedings

(1) No fault in any notice or other proceeding shall affect the validity of any proceeding under articles 1 to 8 of this title except to the extent to which it can be shown that such fault resulted in a material denial of justice to the property owner complaining of such fault.

(2) In case it is found upon a hearing that, by reason of some irregularity or defect in the proceedings, the appraisal has not been properly made, the court may, nevertheless, on having proof that expense has been incurred which is a proper charge against the property of the complainant, render a finding as to the amount of benefits to said property and appraise the proper benefits accordingly, subject to a claim for a jury as already provided, when the party is entitled thereto, and thereupon said land shall be assessed as other land equally benefited.

(3) In the event that at any time, either before or after the issuance of bonds pursuant to the provisions of articles 1 to 8 of this title, the appraisal of benefits, either as a whole or in part, is declared by any court of competent jurisdiction to be invalid by reason of any defect or irregularity in the proceedings therefor, whether jurisdictional or otherwise, the said district court where the original case is pending is authorized, on the application of the board of directors of the said district, or on the application of any holder of any bonds which may have been issued pursuant hereto, promptly and without delay to remedy all defects or irregularities, as the case may require, by causing to be made in the manner provided in articles 1 to 8 of this title, a new appraisal of the amount of benefits against the whole or any part of the lands in the said district, as the case may require.

Cite as C.R.S § 37-4-116

History. L. 22: p. 42, § 40. C.L. § 9554. CSA: C. 138, § 165. CRS 53: § 30-4-16. C.R.S. 1963: § 29-4-16.

§ 37-5-101. Funds

(1) The moneys of every conservancy district organized under articles 1 to 8 of this title shall consist of the following separate funds:

(a) "Preliminary funds" means the proceeds of the level rate assessment authorized by section 37-5-102.

(b) "Construction fund" means the proceeds of levies made against the special benefits appraised, equalized, and confirmed under the provisions of articles 1 to 8 of this title.

(c) "Maintenance fund" means the proceeds of a special assessment to be levied annually for the purpose of upkeep, administration, and current expenses as provided in said articles. Moneys received by the district from any other source shall be placed in any fund which the board of directors orders.

(2) No vouchers shall be drawn against the preliminary fund or against the maintenance fund until an assessment levying resolution has been properly passed by the board of directors and duly entered upon its records. No bonds shall be issued against the construction fund until an assessment levying resolution has been properly passed by the board of directors and duly entered upon its records and until the property owners have been given an opportunity for a period of not less than sixty days to pay in cash the assessment so levied against their respective properties.

Cite as C.R.S § 37-5-101

History. L. 22: p. 43, § 41. C.L. § 9555. CSA: C. 138, § 166. CRS 53: § 30-5-1. C.R.S. 1963: § 29-5-1.

Case Notes:

ANNOTATION

The assessment provisions of the conservancy district law held not to be in contravention of the due process clause of the federal and state constitutions. People ex rel. Setters v. Lee, 72 Colo. 598, 213 P. 583 (1923).

§ 37-5-102. Preliminary fund

(1) As soon as any district has been organized under articles 1 to 8 of this title and a board of directors has been appointed and qualified, such board has the authority to fix the amount of an assessment upon the property within the district not to exceed one mill for every dollar of valuation for assessment thereof as a level rate to be used for the purpose of paying the expenses of organization, for surveys and plans, for other incidental expenses which may have been incurred prior to the time when money is received from the sale of bonds or otherwise, and for the general administration of the district. In accordance with the schedule prescribed by section 39-5-128, C.R.S., the amount of assessment for each dollar of valuation for assessment shall be certified to the boards of county commissioners of the various counties in which the district, or any portion thereof, is located and by them included in their next annual levy for state and county purposes. Said amount shall be collected for the use of such district in the same manner as are taxes for county purposes, and the revenue laws of the state for the levy and collection of taxes on real estate for county purposes, except as modified in this article, shall be applicable for the levy and collection of the amount certified by the directors of such district as aforesaid, including the enforcement of penalties and forfeiture for delinquent taxes.

(2) All collections made by the county treasurer pursuant to such levy shall be paid to the treasurer of the conservancy district on or before the tenth day of the next

succeeding calendar month. If such items of expense have already been paid in whole or in part from other sources, they may be repaid from the receipts of such levy, and such levy may be made although the work proposed may have been found impracticable or for other reasons may have been abandoned. The information collected by the necessary surveys, the appraisal of benefits and damages, and other information and data are declared to constitute benefits for which said assessment may be levied. In case a district is dissolved or abandoned for any cause whatsoever before the work is constructed, the data, plans, and estimates which have been secured shall be filed with the clerk of the court in which the district was organized and shall be matters of public record available to any person interested.

(3) If all the expenses of organization, for surveys and plans, and for other incidental expenses which may have been incurred prior to the time when money is received from the sale of bonds or otherwise have been paid in full, any or all of the moneys remaining in the preliminary fund may be transferred by the board of directors to any of the other funds of the district.

Cite as C.R.S § 37-5-102

History. L. 22: p. 44, § 42. C.L. § 9556. CSA: C. 138, § 167. CRS 53: § 30-5-2. C.R.S. 1963: § 29-5-2. L. 81: (1) amended and (3) added, p. 1751, § 4, effective May 28. L. 87: (1) amended, p. 1408, § 7, effective April 22.

Case Notes:

ANNOTATION

Special assessments for conservancy district purposes are not a tax within the meaning of § 3 of art. X, Colo. Const., concerning taxation. *People ex rel. Setters v. Lee*, 72 Colo. 598, 213 P. 583 (1923).

Cross References:

For the levy and collection of taxes on real estate, see articles 1 to 14 of title 39.

§ 37-5-103. Power to borrow money for the preliminary fund

In order to facilitate the preliminary work, the board of directors may borrow money at a net effective interest rate as determined by said board and, as evidence of the debt so contracted, may issue and sell or may issue to contractors or others negotiable evidences of debt, in this article called "warrants", and may pledge, after it has been levied, the preliminary assessment of not exceeding one mill for the repayment thereof. If any warrant so issued by the board of directors is presented for payment and is not paid for want of funds in the treasury, that fact, with the date of presentation, shall be endorsed on the back of such warrant, which shall thereafter draw interest at the rate specified in the endorsement, not exceeding the net effective interest rate when issued, until such time as there is money on hand sufficient to pay the amount of said warrant with interest.

Cite as C.R.S § 37-5-103

History. L. 22: p. 45, § 43. C.L. § 9557. CSA: C. 138, § 168. CRS 53: § 30-5-3. C.R.S. 1963: § 29-5-3. L. 75: Entire section amended, p. 1363, § 1, effective June 29.

§ 37-5-104. Construction fund

(1) After the list of property, with the appraised benefits as approved by the court or that part thereof from which no appeal is pending, has been filed with the secretary of the

district, then from time to time, as the affairs of the district may demand, the board of directors shall levy on all property upon which benefits have been appraised an assessment of such portion of said benefits as may be found necessary by said board to pay the cost of the appraisal, except as paid out of the preliminary fund, the preparation and execution of the official plan including superintendence of construction and administration during the period of construction plus ten percent of said total to be added for contingencies but not to exceed, in the total of principal, the appraised benefits so adjudicated. The assessment to be known as the "construction fund assessment" shall be apportioned to and levied on each tract of land or other property in said district in proportion to the benefits appraised, and not in excess thereof, and, in case bonds are issued as provided in articles 1 to 8 of this title, then the amounts of interest which will accrue on such bonds, as estimated by said board of directors, shall be included in and added to the said assessment, but the interest to accrue on account of the issuing of said bonds shall not be construed as a part of the cost of construction in determining whether or not the expenses and costs of making said improvement are equal to or in excess of the benefits appraised. As soon as said assessment is levied, the secretary of the district, at the expense of the district, shall prepare in duplicate an assessment record of the district. It shall be in the form of a well-bound book endorsed and named, "Construction Fund Assessment Record of..... Conservancy District", which endorsement shall also be printed at the top of each page thereof.

(2) The construction fund assessment record shall include a table or schedule (Schedule Form VIII, 1) showing in properly ruled columns:

(a) The names of the owners of the property to which benefits are appraised, which may be as they appear in the decree of the court confirming the appraisals, and, in case of appraisals against a town, city, county, or other public corporation, the name of the individual owners need not be given, but only the name of such corporation;

(b) The descriptions of the items of property appraised and assessed, arranged by counties;

(c) The total amount of benefits appraised against each item of property;

(d) The total assessment levied against each item of property to which benefits have been appraised, and in this column of the record provision shall be made for the entry of successive levies of assessments;

(e) A blank column in which the treasurer shall enter the assessments paid within the sixty-day period in which property owners may pay their assessments;

(f) In successive columns, the construction fund installments, or if bonds are issued, these columns may be designated bond fund installments, both principal and interest, one column for each installment, with provision for the entry of installments of successive levies, if any, and suitable blank columns in which the county treasurer shall record the several installment amounts, principal and interest, as collected by him, and the names of the persons paying the same. Where successive levies of assessments are made for the construction fund, the construction fund assessment record shall contain suitable notations to show the number of levies and the amount of each, to the end that it may disclose the aggregate of all levies for the construction fund.

(3) Upon the completion of the construction fund assessment record, it shall be signed by the president of the district, and the seal of the district shall be thereunto affixed and

attested by the signature of the secretary, and the same shall thereafter become a permanent record in the office of said district.

(4) If it is found at any time that the total amount of assessments levied is insufficient to pay the cost of the works set out in the official plan or of additional work done, the board of directors may levy such additional assessments and may make such amendments or supplements to the construction fund assessment record from time to time as may be necessary to provide funds to complete the work, but the total of all such assessments, exclusive of interest, shall not exceed the total of benefits appraised.

(5) After the cost of the works set out in the official plan or of additional work done has been paid in full, any or all moneys remaining in the construction fund may be transferred by the board of directors to the maintenance fund.

Cite as C.R.S § 37-5-104

History. L. 22: p. 45, § 44. C.L. § 9558. CSA: C. 138, § 169. CRS 53: § 30-5-4. C.R.S. 1963: § 29-5-4. L. 81: (5) added, p. 1751, § 5, effective May 28.

Cross References:

For Schedule Form VIII, see § 37-8-101 .

§ 37-5-104.5. Determination of special benefits - factors considered

(1) The term "benefit", for the purposes of assessing a particular property within a conservancy district particularly with respect to regulating streamflow to control floods, includes, but is not limited to, the following:

(a) Any increase in the market value of the property;

(b) The provision for accepting the burden from specific dominant property for discharging surface water onto servient property in a manner or quantity greater than would naturally flow because the dominant owner made some of his property impermeable;

(c) Any adaptability of property to a superior or more profitable use;

(d) Any alleviation of health and sanitation hazards accruing to particular property or accruing to public property in the improvement district, if the provision of health and sanitation is paid for wholly or partially out of funds derived from taxation of property owners of the improvement district;

(e) Any reduction in the maintenance costs of particular property or of public property in the improvement district, if the maintenance of the public property is paid for wholly or partially out of funds derived from taxation of property owners of the improvement district;

(f) Any increase in convenience or reduction in inconvenience accruing to particular property owners, including the facilitation of access to and travel over streets, roads, and highways;

(g) Recreational improvements accruing to particular property owners as a direct result of drainage improvement.

Cite as C.R.S § 37-5-104.5

History. L. 75: Entire section added, p. 998, § 4, effective July 1.

§ 37-5-105. Payment of assessments

(1) When the construction fund assessment record is placed on file in the office of the district, notice by publication shall be given to property owners that they may pay their

assessments. Any owners of real property assessed for the execution of the official plan under the provisions of articles 1 to 8 of this title shall have the privilege of paying such assessment to the treasurer of the district within sixty days from the time such publication is completed, and the amount to be paid shall be the full amount of the assessment less any amount added thereto to meet interest. When such assessment has been paid, the secretary of the district shall enter upon the said assessment record opposite each tract for which payment is made the words "paid in full", and such assessment shall be deemed satisfied. The payment of such assessment shall not relieve the landowner from the payment of a maintenance assessment nor from the payment of any further assessments, not exceeding the total of benefits appraised which may be necessary as provided in articles 1 to 8 of this title.

(2) Failure to pay the whole construction fund assessment within said period of sixty days shall be conclusively considered an election on the part of all persons interested, whether under disability or otherwise, to pay such assessment in installments as provided in this section. All persons so electing to pay in installments shall be conclusively considered as consenting to said official plan and all work thereunder, the issuance of bonds provided for in articles 1 to 8 of this title, and the payment of interest thereon, and such election shall be conclusively considered as a waiver of all right to question the power or jurisdiction of the conservancy district to construct the works set forth in said official plan, the regularity or sufficiency of the proceedings, or the validity or the correctness of such assessment; except that any public corporation may, within said sixty days, elect to pay, in whole or in part, the amount assessed against such corporation in not more than ten annual installments, beginning at the time of the next annual levy of taxes by such corporation, but nothing in this section shall be construed to relieve such corporation from liability for successive levies of assessments, not exceeding the amount of benefits appraised.

(3) In case of such election to pay in installments, the construction fund assessment shall be payable in not less than five nor more than thirty annual installments of principal, the first of which installments shall be payable in not less than one and not more than five years, and the last in not more than thirty years after the filing of the construction fund assessment record in the office of the district, with interest in all cases on the unpaid principal, computed semiannually, at a rate not exceeding six percent per annum, all as may be determined by the board of directors of the conservancy district by resolution.

(4) Subject to the foregoing requirements, all installments, both of principal and interest, shall be payable at such times as may be determined by the board of directors of the conservancy district by resolution as provided in articles 1 to 8 of this title.

(5) Upon failure to pay any installment, whether of principal or interest, when due, the whole amount of the unpaid principal of such installment and accrued interest thereon shall draw interest at the rate of one percent per month or fraction of a month until the day of sale, as provided in this article; but, at any time prior to the day of sale, the owner may pay the amount of all unpaid and overdue installments, with interest at one percent per month or fraction of a month, and all penalties accrued.

(6) After the expiration of the period of sixty days within which the property owners may pay their respective assessments, as limited in this article, the treasurer of the district shall certify to the board of directors the aggregate of the amount so paid, and

thereupon the board of directors may pass and include in its records a bonding resolution in which shall be stated the amount of the construction fund assessment and the amount thereof paid as aforesaid, and in the same resolution they shall apportion the uncollected assessment into installments or levies for the collection of interest upon the unpaid installments, and they may order the issuance of conservancy district bonds in an amount not exceeding ninety percent of the levy in anticipation of the collection of said installments. The residue of the tax so levied, not less than ten percent, shall constitute a contingent account to protect the bonds from casual default, and, if not needed for this purpose, may be transferred from time to time to the maintenance fund of the district.

Cite as C.R.S § 37-5-105

History. L. 22: p. 48, § 45. C.L. § 9559. CSA: C. 138, § 170. CRS 53: § 30-5-5. C.R.S. 1963: § 29-5-5.

§ 37-5-106. Conservancy bonds

(1) The board of directors may, if in its judgment it seems best, issue conservancy bonds (Schedule Form IV) in an amount not to exceed ninety percent of the total amount of the construction fund assessment, exclusive of interest, levied under the provisions of articles 1 to 8 of this title, in denominations of not less than one hundred dollars, bearing interest from date at a net effective interest rate determined by said board, to mature at annual intervals within thirty years commencing not later than five years after date, as may be determined by the board of directors, both principal and interest payable at a place or places determined by the board of directors and designated in the bonds. Said bonds shall be signed by the president of the district, and the seal of the district shall be thereunto affixed and attested by the signature of the secretary. The semiannual payments of interest shall be evidenced by coupons bearing a lithographed or engraved facsimile of the signature of the treasurer of the district. In case any officer whose signature or certificate appears upon bonds or coupons issued pursuant to articles 1 to 8 of this title ceases to be an officer before the delivery of such bonds to the purchaser, such signature or certificate shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until the delivery of the bonds.

(2) All of said bonds, when executed, shall be delivered to the treasurer of said district, who shall sell the same in such quantities and at such times as the board of directors may order to meet the payments for the works and improvements of the district. Said bonds may be sold below par, but they shall be sold at such a price that the total payment of principal and interest is not greater than would have been required if the bonds had borne the net effective interest rate when issued and had been sold for par and accrued interest. The bonds shall show on their faces the purpose for which they are issued and shall be payable out of money derived from the construction fund. A sufficient amount of the assessments shall be appropriated by the board of directors for the purpose of paying the principal and interest of bonds, and the same shall, when collected, be set apart in a separate fund for that purpose and no other. All bonds and coupons not paid at maturity shall bear interest at the net effective interest rate when issued, from maturity until paid, or until sufficient funds have been deposited at the place of payment. Any expenses incurred in the issue and sale of said bonds and in

paying bonds and interest thereon may be paid out of any funds in the hands of the district treasurer.

(3) The board of directors, in making assessment levies provided in this article, shall take into account maturing bonds and interest on all bonds and shall make ample provision for the payment thereof. In case the proceeds of the original assessments made under the provisions of articles 1 to 8 of this title are not sufficient to pay punctually the principal of and the interest upon all bonds issued under this article, then the board of directors shall make such additional levy or levies against the appraised benefits as may be necessary for such purposes, and under no circumstances shall any assessment levies be made that will in any manner or to any extent impair the security of any bond issued under this article or the fund available for the payment of the principal thereof and interest thereon. But no bond issue under this article, or the assessment made to pay the same, shall have a priority of lien over any other bond issued or assessment made under this article. Said district treasurer shall, at the time of taking office, execute and deliver to the president of the district a bond with good and sufficient sureties to be approved by the said board of directors, conditioned that he shall account for and pay over as required by law and as ordered by said board of directors all moneys received by him on the sale of such bonds, or from any other source, and that he will sell and deliver such bonds to the purchaser or purchasers thereof, according to the terms prescribed in this article and not otherwise, and that he will, when ordered by said board to do so, return to said board, duly canceled, all bonds not sold, which said bonds shall remain in the custody of the president of the district, who shall produce the same for inspection or for use as evidence whenever and wherever legally required to do so.

(4) The said treasurer shall promptly report all sales of bonds to the board of directors, and the board of directors shall issue warrants upon the treasurer at the proper time for the payment of the maturing bonds so sold and the interest payments coming due on all bonds sold, and said treasurer shall place sufficient funds at the place of payment to pay the same. In case warrants are not issued by the board of directors as provided in this section, then the treasurer shall of his own accord place funds at the place of payment, and the canceled bonds and coupons shall be accepted in lieu of such warrants. The successors in office of any such district treasurer shall not be entitled to said bonds or the proceeds thereof until he has complied with all the foregoing provisions applicable to his predecessor in office; but, if it is deemed more expedient to the board of directors, as to moneys derived from the sale of bonds issued or from any other source, said board may by resolution select some suitable bank or banks or other depository, which depository shall give good and sufficient bond, as temporary or assistant treasurer, to hold and disburse said moneys on the orders of the board of directors as the work progresses, until such fund is exhausted or transferred to the district treasurer by order of the said board of directors. For such deposit the district shall receive not less than two percent interest per annum. The funds derived from the sale of said bonds shall be used for the purpose of paying the cost of the works and improvements and such costs, expenses, fees, and salaries as may be authorized by law and shall be used for no other purpose.

(5) If at the time when the bonds are ready to be issued, the board of directors is of the opinion that such bonds cannot advantageously be issued and sold in whole or in part,

the board may sell parts only of the entire issue or may pledge all or part of said issue as collateral to a loan, but no partial sale or pledge shall be made without the order of the board made and entered of record, and no pledge shall be made at a greater margin than at the rate of one hundred dollars of bond principal for ninety dollars of loan.

(6) The district may borrow money from the United States government and provide for the repayment thereof in the manner provided for the payment of bonds, and the board of directors may make any necessary regulations to provide for such payment.

(7) A party who has not sought a remedy against any proceeding under articles 1 to 8 of this title until after bonds have been sold shall not for any cause have an injunction against the collection of taxes or assessments for the payment of said bonds.

(8) Articles 1 to 8 of this title shall, without reference to any other law of the general assembly of the state of Colorado, be full authority for the issuance and sale of the bonds authorized in articles 1 to 8 of this title, which bonds shall have all the qualities of negotiable investment securities as provided by article 8 of title 4, C.R.S. and when executed and sealed in conformity with the provisions of articles 1 to 8 of this title and when sold or pledged in the manner prescribed in this article, and the consideration therefor received by the district shall not be invalid for any irregularity or defect in the proceedings for the issue, sale, or pledge thereof and shall be incontestable in the hands of a holder in due course. No proceedings in respect to the issuance of any such bonds shall be necessary except such as are required by articles 1 to 8 of this title.

(9) Whenever the owner of any coupon issued pursuant to the provisions of articles 1 to 8 of this title presents such bond to the treasurer of the district, or to such bank or other depository as the board of directors of the district may for such purpose designate as registrar, with a request for the conversion of such bond into a registered bond, the said treasurer, bank, or other depository shall cut off and cancel the coupons of any such coupon bond so presented and shall stamp, print, or write upon such coupon bond so presented, either upon the back or the face thereof, as may be convenient, a statement to the effect that the said bond is registered in the name of the owner and that thereafter the interest and principal of said bond are payable to the registered owner. Thereafter and from time to time, such bond may be transferred by such registered owner in person or by attorney duly authorized on presentation of such bond for registration as before, a similar statement being stamped, printed, or written thereon. Such statement stamped, printed, or written upon any such bond may be substantially in the following form:

"This bond is registered in the name of (here insert name of owner) pursuant to the provisions of the conservancy law of Colorado, and the interest and principal thereof are hereafter payable to such owner.

Treasurer (or Registrar)
Conservancy District.
Date....."

(10) If any bond is registered as provided in subsection (9) of this section, the principal and interest of such bond shall be payable to the registered owner. The treasurer of the district shall enter in a register of said bonds to be kept by him or in a separate book the fact of the registration of such bond and the name of the registered owner thereof, so

that the register or book shall at all times show what bonds are registered and the name of the registered owner thereof.

(11) All bonds issued by any conservancy district pursuant to articles 1 to 8 of this title shall be exempt from all state, county, municipal, school, and other taxes imposed by any taxing authority of the state of Colorado.

Cite as C.R.S § 37-5-106

History. L. 22: p. 50, § 46. C.L. § 9560. CSA: C. 138, § 171. CRS 53: § 30-5-6. C.R.S. 1963: § 29-5-6. L. 75: (1) and (2) amended, p. 1363, § 2, effective June 29; (8) amended, p. 222, § 77, effective July 16.

Cross References:

For Schedule Form IV, see § 37-8-101 .

§ 37-5-107. Maintenance fund

(1) To maintain, operate, and preserve the improvements made pursuant to articles 1 to 8 of this title, and to strengthen, repair, and restore the same when needed, and for the purpose of defraying the current expenses of the district, the board of directors may, upon the substantial completion of said improvements, or any unit thereof, and on or before the first Monday in November in each year thereafter, levy an assessment on each tract or parcel of land and upon public corporations, subject to assessments under articles 1 to 8 of this title, to be known as the "maintenance fund assessment". Said maintenance fund assessment shall be apportioned upon the basis of the total appraisal of benefits accruing for original and subsequent construction and shall not exceed one percent thereof in any one year, unless the court shall by its order authorize an assessment of a larger percentage.

(2) Said assessment shall be levied by resolution of the board of directors, shall be enrolled in the "maintenance fund assessment record" provided for in this article (Schedule Form VIII, 2), shall be certified to the treasurers of the several counties in which lands so assessed are situated, and shall be collected by the treasurers of said counties and delivered to the treasurer of the district in like manner and with like effect provided for the enrollment, certification, collection, and return of other assessments set forth in said articles; except that no such maintenance assessment shall be payable in annual installments, but the whole assessment shall be due and payable as and when taxes for county purposes levied in the same year are due and payable.

(3) The amount of the maintenance assessment paid by any parcel of land shall not be credited against the benefits appraised against such parcel of land; but the maintenance assessment shall be in addition to any assessment that has been or can be levied against the benefits so appraised.

Cite as C.R.S § 37-5-107

History. L. 22: p. 55, § 47. C.L. § 9561. CSA: C. 138, § 172. CRS 53: § 30-5-7. C.R.S. 1963: § 29-5-7.

Cross References:

For Schedule Form VIII, see § 37-8-101 .

§ 37-5-108. Power to borrow money for the maintenance fund

In anticipation of the collection of maintenance assessments, the board of directors may borrow money at a net effective interest rate determined by said board and, as evidence

of the debt so contracted, may issue and sell or may issue to contractors or others negotiable evidence of debt, in this article called "warrants", and may pledge, after it has been levied, the said maintenance assessments for the repayment thereof. If any warrant so issued by the board of directors is presented for payment and is not paid for want of funds in the treasury, that fact, with the date of presentation, shall be endorsed on the back of such warrant, which shall thereafter draw interest at the rate specified in the endorsement, not exceeding the net effective interest rate when issued, until such time as there is money on hand sufficient to pay the amount of said warrant with interest.

Cite as C.R.S § 37-5-108

History. L. 22: p. 56, § 48. C.L. § 9562. CSA: C. 138, § 173. CRS 53: § 30-5-8. C.R.S. 1963: § 29-5-8. L. 75: Entire section amended, p. 1364, § 3, effective June 29.

§ 37-5-109. Readjustment of maintenance fund assessments

(1) Whenever the owners or representatives of twenty-five percent or more of the acreage or value of the lands in the district file a petition in the court in which the original petition was filed, stating that there has been a material change in the values of the property in the district since the last previous appraisal of benefits, and praying for a readjustment of the appraisal of benefits for the purpose of making a more equitable basis for the levy of the maintenance fund assessment, the court shall by order fix a time and place for a hearing thereon, and thereupon the clerk of the court shall give notice by publication of the filing of and hearing upon said petition, in such manner as the court shall provide in the order for such hearing.

(2) Upon the hearing of said petition, if said court finds that there has been a material change in the value of property in said district since the last previous appraisal of benefits, the court shall order that there be a readjustment of the appraisal of benefits for the sole purpose of providing a basis upon which to levy the maintenance assessments of said district. Thereupon the court shall direct the appraisers of the conservancy district to make such readjustment of appraisals in the manner provided in articles 1 to 8 of this title, and said appraisers shall make their report, and the same proceedings shall be had thereon, as nearly as may be, as are provided in this article for the appraisal of benefits accruing for original construction; except that in making the readjustment of the appraisal of benefits said appraisal shall not be limited to the aggregate amount of the original or any previous appraisal of benefits, and after the making of such readjustment, the limitation of the annual maintenance assessment to one percent of the total appraised benefits shall, unless otherwise ordered by the court, apply to the amount of benefits as readjusted; and except that there shall be no such readjustment of benefits oftener than once in ten years.

Cite as C.R.S § 37-5-109

History. L. 22: p. 57, § 49. C.L. § 9563. CSA: C. 138, § 174. CRS 53: § 30-5-9. C.R.S. 1963: § 29-5-9.

§ 37-5-110. Levies

(1) After the expiration of the sixty-day period in which persons interested may pay the whole construction fund assessment, and each year thereafter if necessary to effectuate the provisions of this article, the board of directors shall determine, order, and levy the

total assessments to be collected annually under articles 1 to 8 of this title for the payment of conservancy district bonds, principal and interest, and the treasurer of the district shall thereupon enter the same in the construction fund assessment record of the district, tabulating and extending said record as provided in this article, which record shall thereupon be approved by the board of directors, and the portion thereof relating to each county shall be certified by the clerk of the district, under the seal thereof, and by him delivered to the county treasurer of each county wherein property assessed is located. It is the duty of the treasurer of each county to receive the same as a tax book and to collect the same according to law, and such construction fund assessment record shall be the treasurer's warrant and authority to demand and receive the assessments due in his county as found in the same.

(2) Such assessments shall become due and shall be collected during each year at the same time and in the same manner that state and county taxes are due and collectible; and, if further assessments are necessary to effectuate the provisions of this article, such assessments shall be levied, evidenced, and certified as provided in this section in apt time and not later than November 1 in such year, to the treasurer of each county in which the real property subject to such assessment in each district is situate.

(3) The board of directors shall each year determine, order, and levy the assessments authorized by articles 1 to 8 of this title which become due and collectible during each year on account of the maintenance fund as provided in this article.

(4) The maintenance fund assessment record (Schedule Form VIII, 2) shall include a table or schedule showing in properly ruled columns:

(a) The names of the owners of the property to which benefits are appraised, which may be as they appear in the decree of the court confirming the appraisals, and, in case of appraisals against a town, city, county, or other public corporation, the name of the individual owners need not be given, but only the name of such corporation;

(b) The description of the items of property appraised and assessed, arranged by counties;

(c) The total maintenance assessment levied against each item of property;

(d) Blank columns in which the treasurer shall enter payments as made and the name of the persons paying the same.

(5) The maintenance fund assessment record shall be prepared in duplicate in a well-bound book, which shall be endorsed and named "Maintenance Fund Assessment Record of..... Conservancy District", which endorsement shall also be printed at the top of each page in said book. One copy of that part of such duplicate affecting lands in any county shall be forwarded to the county treasurer of such county for his use. It is the duty of the treasurer of each county to receive the same as a tax book and to collect the same according to law, and such maintenance fund assessment record shall be the treasurer's warrant and authority to demand and receive the assessments due in his county as found in the same.

(6) The county treasurer shall receive payment of all assessments, with interest and penalties, appearing upon said construction fund assessment record and said maintenance fund assessment record, or portion thereof, filed with him and, in case of default in the payment of any installment of principal of the construction fund assessment, or interest thereon, when due, shall advertise and sell any property concerning which such default is suffered for the unpaid installment of the assessments

thereon; and likewise, in case of default in the payment of any maintenance fund assessment, the county treasurer shall advertise and sell any property concerning which such default is suffered. Said advertisements and sales shall be made at the same time and in the same manner, under all the same conditions and penalties, and with the same effect, provided by general law for sales of real estate in default of payment of general taxes. Lands sold for delinquent taxes or assessments under this article may be bid in, by, or for the conservancy district in like manner and like effect, including the issuance of a deed, as is provided by law with respect to lands bid in, by, or for cities and towns.

(7) All collections made by the county treasurer upon such assessment records in any calendar month shall be accounted for and paid over to the treasurer of the district on or before the tenth day of the next succeeding calendar month, with separate statements of all such collections for each item of property assessed.

Cite as C.R.S § 37-5-110

History. L. 22: p. 58, § 50. C.L. § 9564. CSA: C. 138, § 175. CRS 53: § 30-5-10. C.R.S. 1963: § 29-5-10.

Cross References:

For procedure to increase tax levy beyond statutory limits, see § 29-1-302; for Schedule Form VIII, see § 37-8-101 .

§ 37-5-111. Manner of collection - tax sale - certificate of purchase - tax deed

(1) Lands sold for delinquent assessments under articles 1 to 8 of this title shall be struck off to the conservancy district or bid in for the conservancy district, in like manner and effect, including issuance of a deed therefor, as provided by law with respect to lands struck off to, or bid in for, counties, cities, or towns as the case may be; but when a certificate of purchase has been issued to the conservancy district with respect to any lands, no certificate of purchase for subsequent assessments shall be issued with respect to the same lands, except to the conservancy district, until all assessments represented by certificates of purchase held by the conservancy district have been redeemed or paid.

(2) No holder of such certificate of purchase, other than the conservancy district, shall be entitled to a tax deed thereon, except upon payment of all assessments subsequent to such certificate of purchase, which are due and unpaid or unredeemed, at the time of issuance of the tax deed; and the tax deed so issued to such holder shall be subject to future unpaid assessments. Any such holder of a certificate of purchase may at any time after three years from issuance thereof present the same to the county treasurer, together with all subsequent certificates held by him, as evidence of subsequent payment of assessments, and request the county treasurer to issue one tax deed thereon; and one tax deed shall be issued accordingly in the same manner as other tax deeds.

(3) The conservancy district may at any time after three years from issuance of any such certificate of purchase held by the district present the same to the county treasurer, together with all subsequent certificates of purchase held by it as evidence of unpaid subsequent assessments, and request the county treasurer to issue one tax deed thereon; and one deed shall be issued accordingly in the same manner as other tax deeds; but such tax deed shall not prejudice the parity of any existing lien for

general taxes. Upon the delivery of the tax deed, the conservancy district shall have and enjoy all the rights of an owner in fee simple to the lands described therein; but no sale of such land shall be made by the district except subject to the lien of assessments due and unpaid subsequent to the issuance of the tax deed to the district, as well as future unpaid assessments, nor shall the district convey such property by deed with covenants of warranty, nor shall any sale of such property be made for less than the principal amount of the original assessment thereon, remaining due and unpaid, unless such sale is approved by an order of the district court in which the organization proceeding of the district is pending.

(4) The conservancy district by resolution of its board of directors may sell, assign, and deliver any such certificates held by the district for such sum as the board of directors may determine and authorize; but no such sale or assignment shall be made which does not include all certificates held by the district with respect to the same land. Upon presentation and surrender of such certificates by the assignee thereof to the county treasurer, such officer shall accept the same in payment of the assessment represented thereby, unless such purchaser requests a tax deed thereon as provided in this section. No such assignment shall be made by the district for less than the principal sum represented by the certificate assigned, except upon order approving the assignment, made by the district court wherein the organization proceedings of the district is pending.

Cite as C.R.S § 37-5-111

History. L. 45: p. 541, § 1. CSA: C. 138, § 175(1). CRS 53: § 30-5-11. C.R.S. 1963: § 29-5-11.

§ 37-5-112. Collection by civil action

In addition to all other remedies for collection of assessments provided by this article, and cumulative therewith, the conservancy district may at any time after three years from the issuance of any certificate of purchase held by the district bring a civil action to foreclose the lien for assessments represented by all certificates of purchase held by the district with respect to the same land and for other relief with respect to such land as provided by the Colorado rules of civil procedure then in effect for the foreclosure of liens on real property; but no statute of limitation shall be applicable to the rights of the conservancy district arising from any assessment; and no decree, or sale of lands thereunder, shall be made except subject to the lien of future unpaid installments of assessments. The county treasurer shall be made a party to any action of the conservancy district authorized by this section.

Cite as C.R.S § 37-5-112

History. L. 45: p. 542, § 2. CSA: C. 138, § 175(2). CRS 53: § 30-5-12. C.R.S. 1963: § 29-5-12

§ 37-5-113. Bond of county treasurer

Before receiving the assessment record, the treasurer of each county in which lands or other property of the district is located shall execute to the conservancy district a bond with at least two good and sufficient sureties, or a corporate surety company, the cost of which shall be paid by the district in a sum not less than the probable amount to be collected by him, and which he may have in his custody for the district at any one time,

during any one year, the amount of which said bond shall be fixed by order of the district court based thereon, conditioned that said treasurer shall, as provided in this article, pay over and account for all assessments so collected by him. Said bond after approval by the board of directors shall be deposited with the secretary of the district who shall be custodian thereof, and who shall produce the same for inspection and use as evidence whenever and wherever lawfully required to do so.

Cite as C.R.S § 37-5-113

History. L. 22: p. 60, § 51. C.L. § 9565. L. 31: p. 215, § 1. CSA: C. 138, § 176. CRS 53: § 30-5-13. C.R.S. 1963: § 29-5-13 .

§ 37-5-114. Lien of conservancy assessments

All conservancy assessments provided for in articles 1 to 8 of this title, together with all interest thereon and all penalties for default in payment of the same and all costs in collecting the same, shall, from the date of filing the certificate of the preliminary fund assessment with the board of county commissioners, and the construction fund assessment record and maintenance fund assessment record, mentioned in this article, in the office of the treasurer of the county wherein the lands and properties are situated, until paid, constitute a perpetual lien on said lands and property on a parity with the tax lien for general state, county, city, town, or school taxes, and no sale of such land or property to enforce any general state, county, city, town, or school tax or other lien shall extinguish the perpetual lien of such assessments.

Cite as C.R.S § 37-5-114

History. L. 22: p. 61, § 52. C.L. § 9566. CSA: C. 138, § 177. L. 45: p. 543, § 3. C.R.S. 53: § 30-5-14. C.R.S. 1963: § 29-5-14 .

§ 37-5-115. Assessment records prima facie evidence

The record of assessments contained in the respective assessment records of the district shall be prima facie evidence in all courts of all matters therein contained.

Cite as C.R.S § 37-5-115

History. L. 22: p. 61, § 53. C.L. § 9567. CSA: C. 138, § 178. CRS 53: § 30-5-15. C.R.S. 1963: § 29-5-15.

§ 37-5-116. Remedy for defective assessments

If any assessment made under the provisions of articles 1 to 8 of this title proves invalid, the board of directors shall, by subsequent or amended acts or proceedings, promptly and without delay remedy all defects or irregularities, as the case may require, by making and providing for the collection of new assessments or otherwise.

Cite as C.R.S § 37-5-116

History. L. 22: p. 61, § 54. C.L. § 9568. CSA: C. 138, § 179. CRS 53: § 30-5-16. C.R.S. 1963: § 29-5-16.

§ 37-5-117. Duties of officers of public corporations as to assessments

(1) Whenever, under the provisions of articles 1 to 8 of this title, an assessment is levied against a public corporation, as defined in said articles, and is finally determined, it is the duty of the governing or taxing body of such public corporation immediately to take all the legal and necessary steps to provide for the payment of the same. It is the duty of

the said governing or taxing body of such public corporation in its next annual levy succeeding said determination to levy and assess a tax by a uniform rate upon all the taxable property within the boundaries of said public corporation and certify the same to the treasurer of the county in which such corporation is located, whose duty it is to receive and collect the same for the benefit of the conservancy district, in like manner and with like remedies and penalties as provided in this article for collection of other assessments.

(2) Nothing in this section shall prevent the assessment of the real estate of other corporations or persons situated within the corporate limits of such public corporation which may be subject to assessment for special benefits to be received.

(3) In the event of any dissolution or disincorporation of any conservancy district organized pursuant to the provisions of articles 1 to 8 of this title, such dissolution or disincorporation shall not affect the lien of any assessment for benefits imposed pursuant to the provisions of articles 1 to 8 of this title, or the liability of any lands in such district to the levy of any future assessments for the purpose of paying the principal of and interest upon any bonds issued under this article, and in that event, or in the event of any failure on the part of the officers of any district to qualify and act, or in the event of any resignations or vacancies in office which prevent action by the said district or by its proper officers, it is the duty of the county treasurer and of all other officers charged in any manner with the duty of assessing, levying, and collecting taxes for public purposes in any county, municipality, or political subdivision in which such land shall be situated to perform all acts which may be necessary and requisite to the collection of any such assessment which may have been imposed and to the levying, imposing, and collecting of any assessment which it may be necessary to make for the purpose of paying the principal and interest of said bonds.

(4) Any holder of any bonds issued pursuant to the provisions of articles 1 to 8 of this title, or any person or officer being a party in interest, may either at law or in equity by suit, action, or mandamus, enforce and compel performance of the duties required by articles 1 to 8 of this title of any of the officers or persons mentioned in articles 1 to 8 of this title.

Cite as C.R.S § 37-5-117

History. L. 22: p. 61, § 55. C.L. § 9569. CSA: C. 138, § 180. CRS 53: § 30-5-17. C.R.S. 1963: § 29-5-17.

Case Notes:

ANNOTATION

The constitutional limitation of § 8 of art. XI, Colo. Const., concerning taxation, does not apply to improvements to be paid for out of special assessments. *People ex rel. Setters v. Lee*, 72 Colo. 598, 213 P. 583 (1923).

City cannot pay this assessment by a special assessment of its own. The debt or obligation resting on a city by reason of the levy of an assessment made against it by the conservancy district would not be met by a special assessment of such city itself, but the city must pay its assessment by the levy of a tax at a uniform rate upon all the taxable property within its boundaries. *People ex rel. Setters v. Lee*, 72 Colo. 598, 213 P. 583 (1923).

§ 37-5-118. Penalty for failure of treasurer to pay over tax

If any county treasurer or other person entrusted with the collection of any assessment made under the provisions of articles 1 to 8 of this title refuses, fails, or neglects to make prompt payment of the assessments, or any part thereof, collected under said articles to the treasurer of the district upon his presentation of a proper demand, then he shall pay a penalty of ten percent on the amount of his delinquency. Such penalty shall become due and payable at once, and both he and his sureties shall be liable therefor on his bond as provided for in said articles.

Cite as C.R.S § 37-5-118

History. L. 22: p. 63, § 56. C.L. § 9570. CSA: C. 138, § 181. CRS 53: § 30-5-18. C.R.S. 1963: § 29-5-18.

§ 37-5-119. Surplus funds and annual reports

(1) Any surplus funds in the treasury of the district may be used for retiring bonds, reducing the rate of assessment, or for accomplishing any other of the legitimate objects of the district.

(2) At least once a year, or oftener if the court orders, the board of directors shall make a report to the court of its proceedings and an accounting of receipts and disbursements to that date, which shall be filed with the clerk of the court. Thereupon, the court shall order the auditing of said accounts by competent public accountants, who shall file their report thereon with the clerk of the court.

Cite as C.R.S § 37-5-119

History. L. 22: p. 63, § 57. C.L. § 9571. CSA: C. 138, § 182. CRS 53: § 30-5-19. C.R.S. 1963: § 29-5-19.

§ 37-5-120. Compensation of officials

(1) Each member of the board of directors shall receive for attendance at each meeting a sum fixed by order of the court and shall receive such sum per day and his necessary expenses for the time actually employed in the performance of his duties.

(2) When the interests of the district so require, the board of directors by resolution may designate one of its members as executive director in charge of construction, maintenance, and the general business affairs of the district and fix a reasonable monthly compensation therefor in proportion to the per diem rate and in lieu thereof as to the director so designated. Such executive director shall be at all times subject to the direction of the board of directors.

(3) Each appraiser, including temporary special appraisers, shall receive a sum per day to be approved by the court for the time actually employed in the performance of his duties.

(4) Each county treasurer shall retain for his services one percent of the amount collected by him on assessments, except assessments paid by public corporations, but all other services required of courts, county treasurers, or other public officers under articles 1 to 8 of this title shall be performed as part of their official duties, and without additional compensation.

Cite as C.R.S § 37-5-120

History. L. 22: p. 63, § 58. C.L. § 9572. CSA: C. 138, § 183. L. 45: p. 543, § 4. CRS 53: § 30-5-20. L. 61: p. 297, § 1. C.R.S. 1963: § 29-5-20 .

§ 37-6-101. Lands in more than one district

(1) The same land may be included in more than one district and be subject to the provisions of articles 1 to 8 of this title for each district in which it may be included; but no district shall be organized under articles 1 to 8 of this title in whole or in part within the territory of a district already organized under said articles until the court having jurisdiction of the original conservancy district determines, upon application, whether the purposes of said articles will best be accomplished by the organization of an additional district or whether such conditions demand that the territory proposed to be organized into an additional district shall be organized as part of the existing district. Such application shall fulfill all the requirements of a petition for a district as set forth in section 37-2-102.

(2) Upon application, if the court determines that the organization of such territory as a part of the original district should not be ordered, then proceedings may be had before any court of competent jurisdiction for the formation of an additional district in accordance with the provisions of articles 1 to 8 of this title. Any person whose signature has been subscribed to said application may within ten days after such decision withdraw his signature therefrom, and if at the expiration of said period there remain sufficient subscribers to said petition to satisfy the requirements of section 37-2-102, and in case such court determines that the territory described in such application, if organized for the purpose of a conservancy district, should be included within the original district, like proceedings shall thereupon be had with respect to the territory and the owners thereof as in the case of a petition for the formation of a district. Upon the hearing, if it appears that the purpose of articles 1 to 8 of this title would be subserved by the organization of such territory as part of the original district, the court shall by its findings, duly entered of record, enter a decree accordingly.

Cite as C.R.S § 37-6-101

History. L. 22: p. 64, § 59. C.L. § 9573. CSA: C. 138, § 184. CRS 53: § 30-6-1. C.R.S. 1963: § 29-6-1.

§ 37-6-102. Union of districts

(1) In case two or more districts have been organized under articles 1 to 8 of this title in a territory which, in the opinion of the directors of each of the districts, should constitute but one district, the board of directors of the districts may petition the court for an order uniting said districts into a single district; but if such districts are contiguous, such petition may be signed and presented by the directors of any one of such contiguous districts. Said petition shall be filed in the office of the clerk of the district court in and for that county which has the greatest valuation of real property within the districts sought to be included, as shown by the tax rolls of the respective counties. Said petition shall set forth facts showing that the purposes of articles 1 to 8 of this title would be subserved by the union of said districts and that such union would promote the economical execution of the purposes for which the districts were organized.

(2) Upon the filing of said petition the court shall by order fix a time and place of hearing, and thereupon the clerk shall give notice by publication or by personal service to the

boards of directors of the districts which it is desired to unite with the district of the petitioners. Such notice shall contain the time and place where the hearing on the petition will be had and the purpose of the same, and under the provisions of section 37-2-105, in case the said two or more districts sought to be united severally include a part of the territory within two or more counties. Such hearing shall be had in accordance with the provisions of articles 1 to 8 of this title as to the hearing upon petition for the formation of a conservancy district.

(3) After the hearing, if the court finds that the averments of the petition are true and that the said districts, or any of them, should be united, it shall so order, and thereafter such districts shall be united into one district and proceed as such. The court shall designate the corporate name of such united district, and such further proceedings shall be taken as provided for in articles 1 to 8 of this title. The court shall in such order appoint the directors of such united district who shall thereafter have such powers and be subject to such regulations as are provided for directors in districts created in the first instance. All legal proceedings already instituted by or against any of such constituent districts may be revived and continued against such united district by an order of court substituting the name of such united district for such constituent districts, and such proceedings shall then continue accordingly.

(4) Instead of organizing a new district from such constituent districts, the court may, in its discretion, direct that one or more of such districts described in the petition be included in another of said districts, which other shall continue under its original corporate name and organization, or it may direct that the district or districts so absorbed shall be represented on the board of directors of the original district, designating what members of the board of directors of the original district shall be retired from the new board and what members representing the included district or districts shall take their places; or it may direct that the included district or districts shall become subdistricts of the main district.

Cite as C.R.S § 37-6-102

History. L. 22: p. 65, § 60. C.L. § 9574. CSA: C. 138, § 185. CRS 53: § 30-6-2. C.R.S. 1963: § 29-6-2.

§ 37-6-103. Subdistricts

(1) Whenever it is desired to construct improvements wholly within or partly within and partly without any district organized under articles 1 to 8 of this title, which improvements will affect only a part of said district, for the purpose of accomplishing such work, subdistricts may be organized upon petition of the owners of real property, within or partly within and partly without the district, which petition shall fulfill the same requirements concerning the subdistricts as the petition outlined in section 37-2-102 is required to fulfill concerning the organization of the main district and shall be filed with the clerk of the district court and shall be accompanied by a bond as provided for in section 37-2-103. All proceedings relating to the organization of such subdistricts shall conform in all things to the provisions of said articles relating to the organization of districts. Whenever the court by its order duly entered of record declares and decrees the subdistricts to be organized, the clerk of said court shall thereupon give notice of such order to the directors of the district, who shall thereupon act also as directors of the subdistrict. Thereafter, the proceedings in reference to the subdistrict shall in all

matters conform to the provisions of said articles; except that, in the appraisal of benefits and damages for the purposes of such subdistricts, in the issuance of bonds, in the levying of assessments, and in all other matters affecting only the subdistrict, the provisions of said articles shall apply to the subdistrict as though it were an independent district, and it shall not, in these things, be amalgamated with the main district.

(2) The board of directors, board of appraisers, chief engineer, attorney, secretary, and other officers, agents, and employees of the district shall, insofar as it may be necessary, serve in the same capacities for such subdistrict, and contracts and agreements between the main district and subdistrict may be made in the same manner as contracts and agreements between two districts. The distribution of administration expense between the main district and subdistrict shall be in proportion to the interests involved and the amount of service rendered, such division to be made by the board of directors with the right of appeal to the court establishing the district. This section shall not be held to prevent the organization of independent districts for local improvements under other laws within the limits of a district organized under articles 1 to 8 of this title.

Cite as C.R.S § 37-6-103

History. L. 22: p. 67, § 61. C.L. § 9575. CSA: C. 138, § 186. CRS 53: § 30-6-3. C.R.S. 1963: § 29-6-3.

§ 37-6-104. Remedy for injury by a district

(1) In case any person or public corporation, within or without any district organized under articles 1 to 8 of this title, may be injuriously affected with respect to property rights in any manner whatsoever by any act performed by any official or agent of such district, or by the execution, maintenance, or operation of the official plan, and except as otherwise provided in article 10 of title 24, C.R.S., and in case no other method of relief is offered under articles 1 to 8 of this title, the remedy shall be as follows: The person or public corporation seeking relief shall petition the court before which said district was organized for an appraisal of damages sufficient to compensate for such injuries. The court shall thereupon direct the board of appraisers of the district to appraise said damages and injuries and to make a report to the court on or before the time named in the order of the court. Upon the filing of such report, the court shall cause notice to be given to the petitioner and to the directors of the district of a hearing on said report. At the time of such hearing, the court shall consider said report of said appraisers and may ratify said report or amend it as the court may deem equitable or may return it to the said board of appraisers and require them to prepare a new report. Upon the filing of an order of the court approving said report of said appraisers, with such modifications as it may have made, said order shall constitute a final adjudication of the matter, unless it is appealed in the manner provided in this article, within twenty days.

(2) Appeal from said order to a jury may be had as provided in this article, in case of condemnation proceedings, by the petitioners, by the directors of the district, or by any person or corporation adversely affected by the report of the appraisers. No damages shall be allowed under this section which would not otherwise be allowed by law; but nothing in this section shall be construed to deprive any person or public corporation of the remedy of injunction in the case of prospective irreparable injury.

Cite as C.R.S § 37-6-104

History. L. 22: p. 68, § 62. C.L. § 9576. CSA: C. 138, § 187. CRS 53: § 30-6-4. C.R.S. 1963: § 29-6-4. L. 71: p. 1212, § 4.

§ 37-7-101. District protection

The board of directors has the right to police and protect the works of the district, to prevent persons, vehicles, or livestock from passing over the works of the district, and to prevent the doing of any act which would result in damage thereto.

Cite as C.R.S § 37-7-101

History. L. 22: p. 69, § 63. C.L. § 9577. CSA: C. 138, § 188. CRS 53: § 30-7-1. C.R.S. 1963: § 29-7-1.

§ 37-7-102. Injury to survey marks - penalty

The willful destruction, injury, or removal of any bench marks, witness marks, stakes, or other reference marks, placed by the surveyors or engineers of the district or by contractors in constructing the works of the district, is a misdemeanor, punishable by a fine of not more than one hundred dollars. The original field notes of surveys shall be the permanent property of the district.

Cite as C.R.S § 37-7-102

History. L. 22: p. 69, § 64. C.L. § 9578. CSA: C. 138, § 189. CRS 53: § 30-7-2. C.R.S. 1963: § 29-7-2.

§ 37-7-103. Liability for damages - penalty - jurisdiction

(1) All persons and corporations, public or private, shall be liable for damages done to works of the district by themselves, their agents, or their employees or by their livestock. Any person guilty of willful damage is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars and costs and shall be liable for all damages and costs. The board of directors has authority to repair such damage at the expense of the person or corporation causing the same.

(2) In all cases declared misdemeanors by articles 1 to 8 of this title, the county court of the county in which the offense is committed has jurisdiction thereof and, upon complaint being made as required by law, may issue a warrant directed to any proper officer of his county for the arrest of any person so charged with such misdemeanor, and, upon the arrest of such person, the county judge before whom such person is brought for trial shall hear and determine the cause and, if he finds the accused guilty, shall assess the fine as prescribed in articles 1 to 8 of this title.

Cite as C.R.S § 37-7-103

History. L. 22: p. 69, § 65. C.L. § 9579. CSA: C. 138, § 190. CRS 53: § 30-7-3. C.R.S. 1963: § 29-7-3. L. 64: p. 220, § 43.

§ 37-7-104. Penalty for fraud

The making of profit, directly or indirectly, by any officer of any district organized under articles 1 to 8 of this title or by any other public officer within the state out of any contracts entered into by the district or the use of any money belonging to the district by loaning it or otherwise using it or by depositing the same in any manner contrary to law or by removal of any money by any such officer or with his or her consent and placing it

elsewhere than is prescribed either by law or by the official acts of the board of directors for the purpose of profit is prohibited. Any person who violates this section commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S., and the officer offending shall be liable personally and upon his or her official bond for all losses to such district and for all profits realized by such unlawful use of moneys.

Cite as C.R.S § 37-7-104

History. L. 22: p. 70, § 66. C.L. § 9580. CSA: C. 138, § 191. CRS 53: § 30-7-4. C.R.S. 1963: § 29-7-4. L. 77: Entire section amended, p. 884, § 64, effective July 1, 1979. L. 89: Entire section amended, p. 850, § 133, effective July 1. L. 2002: Entire section amended, p. 1553, § 333, effective October 1.

Editor's Note:

The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See *People v. McKenna*, 199 Colo. 452, 611 P.2d 574 (1980).

Cross References:

For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

§ 37-8-101. Forms

The following forms illustrate the character of the procedure contemplated by articles 1 to 8 of this title and, if substantially complied with, with changes to meet particular requirements, shall be held to meet requirements of articles 1 to 8 of this title:

FORM I.

Notice of Hearing on Petition.

To All Persons Interested:

Public Notice Is Hereby Given:

1. That on the day of....., 20...., pursuant to the provisions of the conservancy law of Colorado, there was filed in the office of the clerk of the district court sitting in and for..... county, Colorado, the petition of..... and others for the establishment of a conservancy district to be known as..... conservancy district. (Here insert the purpose.)

2. That the lands sought to be included in said district comprise lands in and..... counties, Colorado, described as follows:
(Here insert description.)

3. That a public hearing on said petition will be had in said court on..... the day of..... at the hour of..... o'clock....M., by the district court sitting in and for..... county, at the court house in the city of..... county, Colorado.

All persons and public corporations owning or interested in real estate within the territory hereinbefore described will be given the opportunity to be heard at the time and place above specified.

Dated..... Colorado..... 20....

Clerk of the district court sitting in and for..... county, Colorado.

FORM II.

Finding on Hearing.

STATE OF COLORADO)

) ss.

County of.....)

IN THE DISTRICT COURT SITTING IN AND FOR COUNTY.

In the Matter of

..... Conservancy District.

Findings and Decree on Hearing.

On this..... day of....., 20.... this cause coming on for hearing upon the petition of.... and others, for the organization of a conservancy district under the conservancy act of the state of Colorado, the court, after a full hearing, now here finds:

1. That said petition has been signed and presented in full conformity with the conservancy law of Colorado.

2. That the allegations of said petition are true.

3. That no protesting petition has been filed (or if filed has been dismissed).

4. That this court has jurisdiction of the parties to, and the subject matter of, this proceeding.

5. That the purposes for which said district is established are:

(Insert the purposes, e.g., a system of flood prevention.)

6. That a public necessity exists for the construction of the proposed work.

7. That the territory to be included in the proposed district and the boundaries of said district are as follows:

(Here insert boundaries of district.)

8. That the said territory last above described should be constituted and created a conservancy district under the conservancy law of Colorado under the corporate name of..... conservancy district.

Wherefore, it is by the court ordered, adjudged and decreed:

That the territory as above described be and the same hereby is constituted and created a conservancy district under the conservancy law of Colorado under the corporate name of..... conservancy district, with its office or principal place of business at..... in..... county, Colorado. (If directors are appointed at the same time.) And the following persons are hereby appointed directors of said conservancy district..... for the term of one year,..... for the term of three years,..... for the term of five years, who are hereby directed to qualify and proceed according to law.

9. For consideration of other matters herein, this cause is retained on the docket of this court.

By the court, Judge.

FORM III.

Notice to Property Owners to Pay Assessments.

..... Conservancy District.

To All Persons Interested:

Public Notice Is Hereby Given:

1. That on the..... day of....., 20.... the board of directors of..... conservancy district duly levied for the account of the construction fund of said district, an assessment upon all the property in said district in the aggregate sum of....., and has caused the same to be extended upon the construction fund assessment record of said district, and that said record is now in the hands of the treasurer of the said district for collection.

2. That the entire assessment against any parcel of land may be paid to the said treasurer of the district at any time on or prior to, 20.... without costs and without interest.

3. That as soon after the..... day of, 20.... as conveniently may be, the board of directors of said district will divide the uncollected portion of said assessment into convenient installments and will issue bonds bearing interest not exceeding six percent per annum in anticipation of the collection of the several installments of said assessment, pursuant to the conservancy law of Colorado.

.....

President.

(Seal)

Attest:

.....

Secretary.

FORM IV.

Bonds and Coupons.

(Form of Bond.)

No.....

\$

UNITED STATES OF AMERICA.

State of Colorado.

..... Conservancy District.

Conservancy Bond.

Know All Men by These Presents, That..... conservancy district, a legally organized conservancy district of the state of Colorado, acknowledges itself to owe and for value received hereby promises to pay bearer..... dollars, on the first day of....., 20.... with interest thereon from the date hereof until paid at the rate of..... percent per annum, payable....., 20.... and semiannually thereafter on the first day of..... and of..... in each year on presentation and surrender of the annexed interest coupons as they severally become due. Both the principal of and the interest on this bond are hereby made payable in lawful money of the United States of America, at..... and

This bond is one of a series of bonds issued by conservancy district for the purpose of paying the cost of constructing a system for flood prevention (or for other works) for said district, and in anticipation of the collection of the several installments of an assessment duly levied upon lands within said district and benefited by said improvement in strict compliance with the conservancy law of Colorado, and pursuant to an order of the board of directors of said district, duly made and entered of record.

And it is hereby certified and recited that all acts, conditions and things required to be done in locating and establishing said district and in equalizing appraisals of benefits and in levying assessments against lands benefited thereby, and in authorizing, executing and issuing this bond, have been legally had, done and performed in due form of law; that the total amount of bonds issued by said district does not exceed ninety percent of the assessments so levied and unpaid at the time said bonds are issued, and does not exceed any legal limitation imposed by law.

And for the performance of all the covenants and stipulations of this bond and of the duties imposed by law upon said district for the collection of the principal of and the interest upon said assessment and the application thereof to the payment of this bond and the interest thereon, and for the levying of such other and further assessments as are authorized by law and as may be required for the prompt payment of this bond and the interest thereon, the full faith, credit and resources of said..... conservancy district are hereby irrevocably pledged.

In Testimony Whereof, The Board of directors of conservancy district has caused this bond to be signed by its president and sealed with the corporate seal of said district, attested by its secretary, and has caused the coupons hereto annexed to

be executed by the facsimile signature of its treasurer, as of the..... day of
....., 20.....

.....

President.

(Seal)

Attest:

.....

Secretary.

(Form of Coupon.)

\$

No.

On the first day of....., 20.....

..... conservancy district promises to pay to the bearer..... dollars, in
lawful money of the United States of America, at..... or at..... at the holder's
option, being semiannual interest due on that date on its conservancy bond dated
....., 20.....

(Facsimile Signature.)

Treasurer.

No.....

FORM V.

Form of Notice of Enlargement of District.

STATE OF COLORADO)

)ss.

County of.....)

In the District Court in and for

..... County, Colorado.

In the Matter of

.....

Conservancy District.

Notice of Enlargement of District.

To All Persons (and Public Corporations, if any) Interested:

Public Notice is Hereby Given:

1. That heretofore on the..... day of....., 20.... the district court sitting in and for..... county, Colorado, duly entered a final decree constituting and creating..... conservancy district and appointing a board of directors therefor.

2. That thereafter this court duly appointed to be the board of appraisers for said district. That said board of appraisers on the..... day of, 20.... filed their report recommending that the following lands, not originally included in the district, be added thereto.
(Here describe generally the lands which the report

of the board of appraisers recommends should be

added to the district.)

3. That on the..... day of....., 20.... (or as soon hereafter as the convenience of the court will permit) at the court house in of..... Colorado, the district court sitting in and for..... county, Colorado, will hear all persons and public corporations who are owners of or interested in the property described in this notice upon the question whether said lands should be added to and included in said..... conservancy district.

.....

Clerk of the district court sitting in and for..... county, Colorado. w=160;d=47;lm=3 - legal - landscape

FORM VI.

STATE OF COLORADO,CONSERVANCY DISTRICT.

CONSERVANCY APPRAISAL RECORD,COUNTY.

Action Taken by Appraisers, Court, and Jury.

Description

Record

On the First Line Carry Action by Appraisers; Matters

Index Owner's

Second line, Court; Third Line, Jury. Reported

Section	Number	Name	Appraised	Amount	Amount	to Court	under	for Value of
Part	T	R.	(Lot	Value for	Fixed	Fixed	Purchase	for Value of
			Acres or	Book	Page			
Fixed	Section							
(Part)	(Sub.)	(Blk.)	No.)	Area			of fee	Easement
Damages		for Benefits	37-4-105					
A	\$				\$			\$
\$								
C	\$				\$			\$
\$								
J	\$				\$			\$
\$								
A	\$				\$			\$
\$								
C	\$				\$			\$
\$								
J	\$				\$			\$
\$								

FORM VII.

Notice of Hearing on Appraisals.

STATE OF COLORADO)
) ss.

County of.....)
In the District Court Sitting in and for

..... County, Colorado.

In the Matter of

.....
Conservancy District.

Notice of Hearing on Appraisals.

To All Persons and Public Corporations Interested:

Public Notice Is Hereby Given:

1. That heretofore on the..... day of....., 20.... the district court sitting in and for county, Colorado, duly entered a decree, constituting and creating..... conservancy district and appointing a board of directors therefor.

2. That thereafter this court duly appointed the board of appraisers for said district. That said board of appraisers on..... day of....., 20.... filed their appraisal of benefits and damages. The land affected by such appraisal is described as follows:

(Here insert general description of land appraised.)

(It will be sufficient to state: "All land lying in the ward of the city of.....," or "All land abutting on street in the city of.....," or "All land lying west of..... river and east of..... railroad in section township..... range.....," or any general description pointing out the lands involved.)

The said appraisal of benefits and damages and of land to be taken is now on file in the office of the clerk of this court.

3. All public corporations and all persons, owners of or interested in the property described in said report, whether as benefited property or as property taken or damaged (whether said taken or damaged property lies within or without said district), desiring to contest the appraisals as made and returned by the board of appraisers, must file their objections in said court on or before the.... day of..., 20..., and a hearing on said appraisal will be held in this court on the..... day of, 20.... at the hour of..... o'clock....M., in the county of, Colorado, at which time an opportunity will be afforded all objectors to be heard upon their several objections.

.....
Clerk of the district court sitting in and for..... county, Colorado.
Dated at, Colorado..... day of....., 20...
FORM VIII.

Certificate of Levy of Assessments.

1.For Construction Fund Assessment Record.
STATE OF COLORADO)

) ss.

County of.....)

To the Treasurer of..... County, Colorado:

This is to certify that by virtue and under the authority of the conservancy law of Colorado, the board of directors of..... conservancy district has levied the sum of dollars for the account of the construction fund of said district, which said assessment bears interest as provided by law and is payable as set forth in the construction fund assessment record to which this certificate is appended.

The assessments above specified shall be collectible and payable in the sums therein specified at the time that the state and county taxes are due and collectible, and you are directed and ordered to demand and collect such assessments at the time that the state and county taxes are due on the same land, and the construction fund assessment record to which this certificate is appended shall be your authority to make such collection.

Witness the signature of the president of said district, attested by the seal thereof, attested by the signature of its secretary, this..... day of....., 20....

..... President.

(Seal)

Attest: Secretary.

The construction fund assessment record shall be in substantially the following form:

CONSTRUCTION FUND ASSESSMENT RECORD OF
.....CONSERVANCY DISTRICT.....COUNTY.

Assessment Levied
Bond Fund Installation to be Collected by the
Descrip-
Trial
Against Each Item of
Assessments Paid
County Treasurer
tion of
Amount of
Property to Which
Within Sixty Days
Name
Item of
Benefits
Benefits Have Been
No.

of
Property
Appraised
Appraised
Owner
Appraised
Against
Installments Due 20.....
Installments Due 20.....
and Each Item
Amount Name of
Assessed of 1st 2nd 3rd Assess. Person Assess. Date
Person Assess. Date Person
Property Assess. Assess. Assess. No. Amt. Date Making N o.
P rin. Int. Paid Making No. Prin.
Int. Paid Making
Payment Payment Payment
\$ \$ \$
1 \$ 1 \$\$ 1 \$\$
2 \$ 2 \$\$ 2 \$\$
3 \$ 3 \$\$ 3 \$\$

2. For Maintenance Fund Assessment Record.

STATE OF COLORADO)

) ss.

County of.....)

To the Treasurer of..... County, Colorado:

This is to certify that by virtue and under the authority of the conservancy law of Colorado, the board of directors of..... conservancy district has levied the sum of..... dollars, for the account of the maintenance fund for the year 20.....

The amounts of said levies upon the several parcels of land upon which the same are imposed are set forth in the maintenance fund assessment record to which this certificate is appended.

The said assessments set forth in the maintenance fund record, to which this certificate is appended, shall be collectible and payable the present year in the sums therein specified at the time that the state and county taxes are due and collectible, and you are directed and ordered to demand and collect such assessments at the time that the state and county taxes are due on the same land, and the maintenance fund assessment record to which this certificate is appended shall be your authority to make such collection.

Witness the signature of the president of the district, attested by the seal thereof, attested by the signature of its secretary, this day of....., 20.....

.....

President.

(Seal)

Attest:

.....

Secretary.

The maintenance fund assessment record shall be in substantially the following form:
MAINTENANCE FUND ASSESSMENT RECORD

OF

..... CONSERVANCY DISTRICT

..... COUNTY

For the Year.....

(Due in the Year....., at the Same Times General

Taxes Are Due.)

Payments

Total

MaintenanceName

No. Name of Description Assessments 1st and of

Owner of Property Levied 2nd Half Amount Date Person

Against each Paid Making

Item of Property Payment

1st Half	\$
2nd Half	\$
1st Half	\$
2nd Half	\$

Cite as C.R.S. § 37-8-101

History. L. 22: p. 74, § 75. C.L. § 9589. CSA: C. 138, § 199. CRS 53: § 30-8-1. C.R.S. 1963: § 29-8-1.

Case Notes:

ANNOTATION

Law reviews. For article, "When Corporate Stock Becomes Real Estate", see 21 Dicta 53 (1944).

The article does not require any particular form of notice. This section gives forms which shall "illustrate the character of the procedure". People ex rel. Setters v. Lee, 72 Colo. 598, 213 P. 583 (1923).

People ex rel. Setters v. Lee, 72 Colo. 598, 213 P. 583 (Colo. 1923)

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213 P. 583 (Colo. 1923)

72 Colo. 598

PEOPLE, by KEYES, Atty. Gen., ex rel. SETTERS et al.

v.

LEE et al.

No. 10547.

Supreme Court of Colorado, En Banc.

February 27, 1923

Casemaker Note: Portions of this opinion were specifically rejected by a later court in 170 P.3d 742

Casemaker Note: Portions of this opinion were specifically rejected by a later court in 170 P.3d 742

Original proceeding in quo warranto by the People of the State of Colorado, by Victor E. Keyes, Attorney General, upon relation of J. W. Setters and another, against Charles W. Lee and others.

Demurrer to respondent's plea and answer to the petition overruled, and information in quo warranto dismissed.

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[72 Colo. 599] Victor E. Keyes, Atty. Gen., and Russell W. Fleming, Asst. Atty. Gen. (John H. Voorhees, of Pueblo, of counsel), for plaintiffs.

Chas. M. Rose and Leo P. Kelly, both of Pueblo, and Pershing, Nye, Fry & Tallmadge, of Denver, for respondents.

[72 Colo. 600] ALLEN, J.

This is an original proceeding in quo warranto. It was instituted in this court in the name of the people of the state of Colorado, by the Attorney General, upon the relation of two owners of lands within the territory of a district hereinafter referred to as the Pueblo conservancy district. The object of this action, according to the prayer of the petition, is to exclude from office the three persons, named as respondents, who are acting as directors of the conservancy district above mentioned, and to have this court declare the office itself illegal and void, or nonexistent. The respondents have filed a plea and answer to the complaint or petition, alleging, among other things, the organization of the Pueblo conservancy district under the Conservancy Act of Colorado, and their (the respondents') appointment as directors of such district. The case is before us for determination upon the demurrer, filed by plaintiff, to the plea and answer of respondents. The case is submitted for final determination upon such demurrer.

From the pleadings in this case, and also from the briefs, the relief sought by plaintiff is asked upon two main propositions, asserted by plaintiff, namely: (1) That the act under which the district was formed is unconstitutional, and (2) that, whether constitutional or not, the district court of Pueblo county had no jurisdiction to make the order which created and established the district. The last-named contention will be discussed first, and the discussion necessitates a reference to some parts of the statute involved before taking up the argument of the plaintiff.

The Conservancy Act of Colorado may be found in chapter 174 of the Compiled Laws of Colorado of 1921, subdivision 3, entitled 'Conservancy Districts,' beginning with section 9515 and ending with section 9589.

The General Statutes are included in the Compiled Laws of Colorado 1921, commencing at page 217. The Conservancy Act of Colorado also appears as chapter 1 of the [72 Colo. 601] Laws passed by the Extraordinary Session of the Twenty-Third General Assembly.

Section 1 of the Act (section 9515, C. L. 1921) defines terms used in the statute. Section 2 (section 9516, C. L. 1921) vests in district courts jurisdiction to establish conservancy districts. Section 3 (section 9517 C. L. 1921) provides that----

'Before any conservancy district shall be established under this act, a petition shall be filed in the office of the clerk of the court vested with jurisdiction, in a county in which all or part of the lands embraced in said proposed conservancy district are situated.'

The section further provides how the petition may be signed and what it 'shall set forth.' Section 4 (section 9518, C. L. 1921) relates to the bond of petitioners.

Section 5 of the act (section 9519, C. L. 1921) provides, among other things, as follows:

'Immediately after the filing of such petition the court wherein such petition is filed or a judge thereof in vacation, shall by order fix a place and time, not less than sixty days nor more than ninety days after the petition is filed, for hearing thereon, and thereupon the clerk of said court shall cause notice by publication (Schedule Form I) to be made of the pendency of the petition and of the time and place of the hearing thereon. * * *'

The answer of the respondents shows, and the demurrer admits, that a petition for the establishment of a conservancy district was filed in the district court of Pueblo county,

on May 26, 1922. The petition prayed that the territory therein described be organized and constituted a conservancy district, under the corporate name of the 'Pueblo Conservancy District.'

Further steps were taken toward the organization of the district, and on September 14, 1922, the court rendered its decision upon the hearing on the petition, and certain objections which had been filed thereto, and entered an order creating the Pueblo conservancy district.

Enough has been stated thus far, for the purpose of disposing of the first contention made by plaintiff, which is [72 Colo. 602] that the court had no jurisdiction to enter the order because, as it is stated in its belief, 'there was no determination, judicial or otherwise, * * * as to the sufficiency of said petition prior to the publication of notice of hearing thereon.' The answer to this contention is that there was no necessity for a determination of the sufficiency of the petition 'prior to the publication of notice.' Such determination may be had, and it was had in this case, at the time of the hearing. Section 6 of the act (section 9520, C. L. 1921) provides, among other things, as follows:

'Upon the said hearing, if it shall appear that a petition for the organization of a conservancy district has been signed and presented, as hereinbefore provided, in conformity with this act, * * * the court shall, by order duly entered of record, adjudicate all questions of jurisdiction, declare the district organized and give it a corporate name. * * *'

On the same day that the petition was filed in the district court, the court ordered the publication of the notice required by section 5 of the act, hereinbefore quoted. The notice was duly published. It was not given in the name of the people, and this fact gives rise to the second contention of plaintiff, namely, that the notice is a 'process' within the meaning of section 30 of article 6 of the Constitution of the state of Colorado, which provides that 'all process shall run in the name of the 'People of the State of Colorado,' and that, therefore, the notice was void. This contention cannot be sustained, for we hold that the notice in question was not a 'process' within the meaning of the constitutional provision cited, and was not, therefore, vitiated by the fact that it did not run in the name of the people. The Constitution of the state of Illinois contains the same provision, and the meaning of the word 'process' as found therein was explained in *Curry v. Hinman*, 11 Ill. 420, decided before the adoption of our Constitution. The court there said:

'This object is manifest. It was to provide a name or title by which the sovereign power of the state should be [72 Colo. 603] designated. In England, the kind is supposed to be the fountain of justice and the source of power, and that sovereign power is there designated by his name and title. * * * Where, by the law of England, whence we have mainly borrowed our system of jurisprudence, writs or process are issued, or other proceedings are had expressly in the name of the king, here they should run in the name of the 'People.' * * * The meaning is not that everything shall be done expressly in the name of the 'People,' but that nothing shall be done in any other name. Whenever the name of the sovereign power is invoked or expressed, that shall be its designation.'

This language was approved and quoted in *McKenna v. Cooper*, 79 Kan. 847, 101 P. 662, where the court said:

'The word 'process' has many meanings. * * * In the Constitution process, which at the common law would have run in the name of the king is intended.'

The next contention of plaintiff is that the notice is insufficient and void because not in the form required by the Conservancy Act. This contention is not well founded. The act does not require any particular form of notice. Section 75 thereof (section 9589, C. L. 1921) gives forms which shall 'illustrate the character of the procedure.' For a notice of hearing on the petition, it gives a form having the following caption:

Notice of Hearing on Petition.

To All Persons Interested:

Public Notice is Hereby Given:

The notice given in the proceedings below was in the same form, except that it omitted the second line, the words, 'To All Persons Interested.' Such omission did not make the notice misleading. Persons interested in the matter of the organization of a conservancy district would be as likely to find and read the notice if it omitted the second line of the form suggested by the statute as if it included the same. The general rule in respect to notices is that mere informalities do not vitiate them so long as they do not mislead, and give the necessary information to the [72 Colo. 604] proper parties. 29 Cyc. 1117. The plaintiff cites Ahern v. Directors, 39 Colo. 409, 89 P. 963, where we held a notice defective, but there it was addressed 'To the Board of County Commissioners.' This made it misleading, as it was a notice intended for landowners. The notice involved in the instant case is not misleading. We hold it sufficient.

The plaintiff contends, in effect, that the court was without jurisdiction to make an order establishing the conservancy district because, as it alleges, the protesting petitions were signed by a majority of the landowners within the district or proposed district. The district court found to the contrary. In the examination of this point, it is noted that section 6 of the act (section 9520, C. L. 1921) provides that after the filing

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of a petition for the organization of a conservancy district, a petition may be filed by a majority of the owners of the land in the proposed district, protesting the creation of the proposed district. The section further provides that if the protesting petition is not signed by a majority of the owners of land, such petition shall be dismissed, and if the protesting petition is so signed by a majority of the landowners, then the court shall dismiss the original petition praying for the creation of the district. It is further provided as follows:

'The finding of the court upon the question of the total number of the owners of the land in said proposed district and upon the question of the number of the owners of the land situate in said proposed district signing said protesting petition, the genuineness of the signatures, and all matters of law and fact incidental to such determination shall be final and conclusive on all parties in interest whether appearing or not.'

The district court having found that a majority of the landowners did not sign the protesting petition, its finding is conclusive in the instant proceeding. State v. Fleming, 158 Mo. 562, 59 S.W. 119; State v. Albany Drainage Dist., 290 Mo. 33, 234 S.W. 339. See, also, Gillum v. Town of Rifle, 70 Colo. 198, 197 P. 1017; Londoner v. Denver, 52 Colo. 15, 119 P. 156.

[72 Colo. 605] Even if the question of the number of signers of the protesting petition could not be determined, we would be obliged to find, as did the district court, that such signers did not constitute a majority of the landowners of the proposed district. The plaintiff counts as signers of the protesting petition to stockholders of certain mutual ditch companies. These stockholders did not sign personally. The corporations signed the protesting petition, and added after the corporate name the words, 'Trustee for the Use of its Stockholders,' and a typewritten list of the stockholders. This did not make such stockholders signers. They cannot be counted, or regarded as signers, unless they sign individually. Each signer, of course, must be a landowner. If a land owning corporation signs, it counts as but one owner.

The petition in quo warranto in this case attacks the constitutionality of the Colorado Conservancy Act. It is alleged that the act violates several sections of our Constitution. We first proceed to take up the contention that the act is in violation of section 35, article 5, of the Constitution of Colorado, which provides that----

'The General Assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, * * * or to levy taxes or perform any municipal function whatever.'

This contention is evidently made on the theory that there is a 'special commission' provided by the Conservancy Act which is given power to make and supervise a public improvement and levy assessments.

The act provides for the appointment by the district court of a board of directors. In section 13 thereof (C. L. 1921, § 9527) it is provided that----

'The board of directors shall have full power and authority to devise, prepare for, execute, maintain and operate any or all works or improvements necessary or desirable to complete, maintain, operate and protect the works provided for by the Official Plan. * * *'

[72 Colo. 606] The 'Official Plan' is the plan which may be adopted for the improvements for which the district was created. The board of directors is the body that prepares, and upon a hearing adopts, the plan. It also has the power to levy assessments, to borrow money, and otherwise act for the conservancy district. Certain duties relating to appraisals are imposed on the board of appraisers. The governing body of the district is the board of directors. The act contemplates and provides for the permanent existence of that board. It is as much the governing body of the district as the Moffat Tunnel Commission is of the Moffat Tunnel improvement district, and is as permanent. In *Milheim v. Moffat Tunnel Improvement District*, 72 Colo. 268, 211 P. 649, we held the tunnel commission not to be 'special commission' within the meaning of the Constitution, and for the reasons therein stated we must now hold that the board of directors of a conservancy district is not a 'special commission.'

The petition in this case also raises the question whether the assessment provided by the act are for a public purpose. There can be no doubt that the public works which may be constructed under the act will be of a public nature and for public purposes. This has been decided with reference to the Ohio Conservancy Act in *Orr v. Allen* (D. C.) 245 F. 486. Our own cases support the same conclusion. *Tanner v. Treasury Tunnel Min. & Reduction Co.*, 35 Colo. 593, 83 P. 464, 4 L.R.A. (N. S.) 106; *Milheim v. Moffat Tunnel Improvement District*, supra.

It is alleged in the petition that the Conservancy Act is in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States, and of section 25, art. 2, of our Constitution, providing that no person shall be deprived of life, liberty, or property without due process of law. It is also claimed that the act denies to

citizens 'the equal protection of the law.'

The act provides a detailed system of appraisal of benefits of property within the district, a detailed report of a [72 Colo. 607] public character by the appraisal commissioners, and a hearing

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before the court, with a jury if desired. In the matter of assessments, and the right to be heard thereon, the Conservancy Act as fully protects the constitutional rights of the people in the district as does the Moffat Tunnel Law (Laws 1922 [Ex. Sess.] p. 88) with reference to taxpayers in the district therein created. So far as assessments are concerned, under the authority of the opinions in *Milheim v. Moffat Tunnel Improvement District*, 72 Colo. 268, 211 P. 649, the act now under consideration must be held constitutional.

Whether owners of land have any right to participation in the administration of quasi municipal corporations 'by vote or otherwise' is a political question merely. The right of the Legislature to create a quasi municipal corporation and provide for the manner of its administration and the personnel of its officers in any manner it may see fit is well established. *People v. Earl*, 42 Colo. 238, 94 P. 294. Complaint is made of the fact that the Conservancy Act limits the protesting petitions to a 'denial of the statements in the petition' to create the district. There is nothing unconstitutional in such limitation. With such limitation the objectors are given full opportunity to be heard upon the original petition for the creation of the district. The Legislature could have established a Conservancy District by direct enactment, as it established the Moffat Tunnel Improvement District, and the act would have been valid even if it made no provision for protesting petitions of any kind.

There can be no constitutional objection to the Conservancy Act because it provides (in section 6 thereof) that no appeal or writ of error shall lie to review the order establishing the district. There is no constitutional right of appeal or to a writ of error. Speaking of the establishment of drainage districts, it is said in 19 C.J. 667, that the Legislature may, in its discretion, and in the absence of constitutional inhibition, limit the right of appeal or deny it altogether. The right of appeal is not essential even in the matter of assessments. 12 C.J. 1264, note 30. For the greater reason there is no right of appeal, under the Constitution, [72 Colo. 608] in the matter of the necessity of the improvement district, or the boundaries thereof, because in such matters there is not even a constitutional right to be heard. 12 C.J. 1263.

The Ohio Conservancy Act, similar in its provisions to our statute, was held not to violate the Fourteenth Amendment to the federal Constitution, including the due process clause, in *Orr v. Allen* (D. C.) 245 F. 486, affirmed in *Orr v. Allen*, 248 U.S. 35, 39 S.Ct. 23, 63 L.Ed. 109.

One of the principal contentions of plaintiff is stated in its brief as follows:

'The grounds of objection to the constitutionality of the Conservancy Act set forth in subdivision (c) and (d) in the petition herein, as to the power conferred on the district courts, the objection is that the act delegates legislative and administrative functions to the court, in the organization, management and operation of the conservancy districts, and allows appeals from judicial decisions of the court to a jury, a nonjudicial body, thus making the functions of the court nonjudicial and constituting and conferring upon the court the duties of a special commission to act with and through its directors, appraisers and specially appointed officers in the making and supervising of municipal improvements.'

In a former part of this opinion, we state that the act creates no 'special commission' in the sense that that term is used in the Constitution. There is left to be considered, therefore, the objection that the act confers legislative functions upon the court. In this connection, it is claimed that the act violates article 3 of our Constitution, which provides that the powers of the government of that state are divided into the three departments, and that no person charged with the exercise of powers properly belonging to one department shall exercise any power properly belonging to another department.

The provisions of the Conservancy Act relating to the hearing upon the petition to create a district and the protesting petition or petitions, and the making of an order [72 Colo. 609] dismissing either the original petition or the protesting petition, and in case the proper petition has been filed and a protesting petition has either not been filed or else dismissed, the making of an order establishing the conservancy district, confer upon the court power which cannot be otherwise considered than as judicial. One of the alleged legislative powers conferred upon the district court is the power to appoint the three directors of the conservancy district, and also to appoint three appraisers.

The power of appointing officers is more executive than it is legislative. 12 C.J. 874. Such power, taken by itself, is not judicial, but when it is incidental to the exercise of judicial functions, as it is under the Conservancy Act of Colorado, its existence does not vitiate the statute. In the brief of the Attorney General and counsel for relators, it is asserted that under the act the district court in perpetuity is made the head of a political subdivision of the state. This is equivalent to saying that the court is given administrative powers and functions.

Statutes which vested in the courts the power to appoint drainage commissioners have been held constitutional. 19 C.J. 625. In *Scott v. Brackett*, 89 Ind. 413, it was said that an act providing for the appointment of commissioners of drainage is not one imposing

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on the court legislative and executive duties. The court said:

'The fact that they are appointed by the court * * * does not render them mere agents of the court, nor does it impose upon the court the duties to be discharged by them.'

Our Conservancy Act is similar to that of Ohio, and the latter was held constitutional as against the objection now being considered. *Miami County v. Dayton*, 92 Ohio St. 215, 110 N.E. 726.

In *State ex rel. Skordahl v. Flaherty*, 140 Minn. 19, 167 N.W. 122, it was held that a statute authorizing the courts to organize drainage and flood control districts, and to appoint a board of directors to carry the purposes of the act into effect, is not unconstitutional because of an unwarranted [72 Colo. 610] delegation of legislative functions and powers to the judiciary.

Conservancy or flood control districts stand on the same footing as drainage districts. This seems obvious. It is therefore pertinent to quote the following from 19 C.J. 625:

'The Legislature having authority to provide for the construction of drains and the organization of drainage

districts, in the absence of constitutional provision to the contrary, this general power carries with it, by necessary implication, all other powers necessary to make the general authority effective and to accomplish the results intended. Hence, the Legislature may designate the officers to construct and maintain drains and the mode of their selection. The power to appoint drain commissioners may be conferred upon the Governor, or the Legislature may provide for the appointment of drainage officers by * * * the courts. * * *

In *Travelers' Insurance Co. v. Industrial Commission*, 71 Colo. 495, 208 P. 465, we announced the rule that before a statute can be held unconstitutional as delegating legislative power, it must clearly appear that the power in question is purely legislative. This court there also quoted with approval the following from *State v. Public Service Commission*, 94 Wash. 274, 162 P. 523:

'The constitutional division of all governmental powers into legislative, executive and judicial is abstract and general. Their complete separation in actual practice is impossible. The many complex relations created by modern society and business have produced many situations which can be adequately met only by vesting in the same administrative officers or bodies powers inherently partaking to some extent of any two or all of these three functions.'

Upon the authorities above cited, we conclude that the act does not violate article 3 of our Constitution. It does not delegate legislative or administrative powers to the district court, within the meaning of the constitutional prohibition thereof, since judicial powers are vested by the [72 Colo. 611] statute in the court organizing the district, and the administrative powers complained of are incidental to the judicial functions vested.

The petition and the briefs raise the further question whether the Conservancy Act is in violation of section 8, art. 11, of the Constitution of Colorado. The material parts of that section, so far as this case is concerned, read as follows:

'No city or town shall contract any debt * * * except by means of an ordinance * * * providing for the levy of a tax, not exceeding twelve (12) mills on each dollar of valuation of taxable property. * * * But no such debt shall be created unless the question of incurring the same shall * * * be submitted to a vote of such qualified electors. * * * But the aggregate amount of debt so created, together with the debt existing at the time of such election, shall not at any time exceed three per cent. of the valuation last aforesaid.'

The plaintiff proceeds on the theory that this section is violated because the Conservancy Act (section 26 thereof [C. L. 1921, § 9540]) provides as follows:

'The board of appraisers shall also appraise the benefits and damages, if any, accruing to cities, towns, counties and other public corporations, as political entities, and to the state of Colorado, and the same shall be taken and considered the same as benefits or damages, as the case may be, to land or other property.'

Citing the foregoing paragraph, the Attorney General and counsel for relators say in their brief:

'From which it will be observed, upon the certification of the appraisal of benefits so made the debt of the town, city or county or other public corporation, will or may be increased in violation of the Constitutional

provision.'

The debt, if any, which will be incurred by a city or town, will not be such debt as is contemplated by the constitutional provision above quoted. The constitutional limitation does not apply to improvements to be paid for out of a special assessment. 28 Cyc. 1542. This would be **[72 Colo. 612]** true even if the special assessment would be levied by the particular town or city itself. For the greater reason it is true where the assessment is made by the state, or an agency of the state, for state purposes.

The debt or obligation resting on a city by reason of the levy of an assessment made against it by the conservancy district would not be met by a special assessment of such city itself, but the city must pay its assessment by the levy of a tax at a uniform rate upon all the taxable property within its boundaries. Section 55 of the act; section 9569, C. L. 1921.

Such taxation, and the indebtedness involved,

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is not such taxation and indebtedness as is contemplated by section 8, art. 11, of the Constitution, above quoted. That section applies only to taxation and indebtedness incurred for the governmental purposes of the city. 25 R.C.L. 92. Here the tax is for the purpose of paying an assessment to carry out the purposes, not of the city, but of the conservancy district. See *Williams v. Wedding*, 165 Ky. 361, 176 S.W. 1176.

In 19 R.C.L. 987, it is said:

'A constitution limitation upon the indebtedness of a public corporation applies to each such corporation as a distinct entity and not as a portion of a larger body.'

In *People v. Honeywell*, 258 Ill. 319, 101 N.E. 571, applying the rule last above stated, it was held that the fact that property subject to assessment for drainage benefits is within the corporate limits of a municipality which is indebted up to the constitutional limit does not prevent the levy of such assessment by the drainage district; that the constitutional limitation upon the extent of corporate indebtedness applies to each municipal corporation singly, and is a limitation against becoming indebted for general corporate purposes.

In 19 C.J. 718, it is said that an assessment for the construction or improvement of a drain may be made against counties, townships, or municipal corporations. That an assessment for special benefits, to pay for a public improvement, may be levied against a county by the city constructing such improvement, was held in County **[72 Colo. 613]** *Commissioners v. City of Colorado Springs*, 66 Colo. 111, 180 P. 301 .

Under the authorities above cited, we hold that there is no violation of section 8, art. 11, of the Constitution of Colorado, in the act in question.

The petition in quo warranto in this case pleads a violation of section 3, art. 10, of our Constitution, which provides that----

'All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the law, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation * * * of all property, real and personal. * * *'

The Conservancy Act provides for the assessment of benefits, and plaintiff asserts that if the levy of an assessment is the levy of a tax, it would be in violation of the foregoing constitutional provision, citing *Re Palmer v. Way*, 6 Colo. 106. The same question arose in the recent case of *Milheim v. Moffat Tunnel Commission*, supra, and it was there held that special assessments are not a tax within the meaning of that section of the Constitution, citing *Denver v. Knowles*, 17 Colo. 204, 30 P. 1041, 17 L.R.A. 135. That case lays down what is now the well-settled general rule. See 25 R.C.L. 90, § 7.

It is claimed that the Conservancy Act is in violation of article 20 of the state Constitution. Article 20 is the home rule amendment. We have held that the Moffat Tunnel Law, creating the Moffat Tunnel improvement district, does not violate article 20. *Milheim v. Moffat Tunnel Improvement District*, supra. This is conceded by plaintiff, but it is insisted that the Moffat Tunnel Case is not decisive of the instant case because under the Conservancy Act the city must pay the assessments levied by the district 'from funds levied as general taxes.' This distinction, or circumstance, does not affect the applicability of the Moffat Tunnel decision. That decision in this respect was based on the proposition that the improvement district is an independent entity, and that the Legislature has the authority to form a district, involving[72 **Colo. 614**] parts of counties and cities, citing *Wilson v. Board of Trustees*, 133 Ill. 443, 27 N.E. 203, a case involving a sanitary district, established by the Legislature, which included a part of the city of Chicago and certain outlying territory.

Article 20 governs local and municipal improvements of the 'Home Rule City.' The improvements authorized by the Conservancy Act are not those of Pueblo, or of any particular city or town, but of the conservancy district. The 'home rule' question arose in *Miami County v. Dayton*, 92 Ohio St. 215, 110 N.E. 726, and was decided consistently with the views herein expressed.

The demurrer of the plaintiff to the plea and answer of the respondents is overruled, and the information in quo warranto is dismissed.

TELLER, C.J., not participating.

APPENDIX H

**PRELIMINARY LEVEE IMPROVEMENT ALTERNATIVE CONSTRUCTION
COST ESTIMATES AND FIRM BIO ON ASI CONSTRUCTORS, INC.**

Preliminary Levee Improvement Alternative Construction Cost Estimates

Del Shannon, P.E., M.S. – ASI Constructors, Inc.

I went and looked at a section of the levee near the train depot and then afterwards I went to the south side of the river and walked about half of the levee section on the bike/pedestrian path. I believe we can pull together a preliminary level cost estimate that will give the Pueblo Conservancy District an idea of what to expect. We plan to base this estimate on the following factors:

- Repairing and/or replacing the plinth (the footing at the toe of the levee)
- Replacing all or a portion of the concrete panels
- Fixing portions of the embankment underlying the panels
- Maintaining (not damaging) the existing step pools – if we do damage these we'll have to repair the damage as part of our work

Obviously, we won't know what we find until we begin removing panels, and even then there could be quite a bit of variability from one section of levee to another, so to address this uncertainty. I'm proposing we provide a range of costs based on 100% removal and replacement, 70% removal and replacement and 30% removal and replacement. This will bracket the potential costs within a range, which can be narrowed as the project progresses.

I've not made any type of evaluation on the condition of the concrete panels and don't know if we will be able to pin them. However, I can say that concrete technology has dramatically improved in the +/- 90 years since this levee was constructed and (more often than not) it is more cost effective to simply replace old concrete such as this rather than try and bring it up to modern standards through heroic efforts. Having said that, it may also be possible to replace the panels up to a specific elevation (say 5 feet above the 100 year flood elevation) and retain existing panels above this elevation if they are not anticipated to be impacted by the design flood. In order to do this an intermediate level plinth will be required for the old panels to bear on. The photo shows how this issue was addressed on a small dam near Los Alamos, NM. These plinths



provide a load bearing footing at several elevations across the downstream face of an embankment dam. In this application we're constructing a roller compacted concrete spillway over the embankment, so it has some similarities to the Pueblo Levee. This spillway will pass the probable maximum flood so is more robust than is likely needed for the Pueblo Levee.

We've done a very quick and rough first pass at the Pueblo Levee project and have the following thoughts. We looked at three options for replacement, which are described below:

Option 1 – Full replacement of the facing system

- a. Replace all concrete panels with a total area ~ 730,000 square feet
- b. Assume new panels are 1 foot thick and lightly reinforced (No. 4 bars at 18 inches each way).
- c. A new plinth (footing at toe of slope) that's 1 foot wide and 10 feet deep along entire alignment and lightly reinforced (No. 4 bars at 18 inches each way)~ 5,000 cubic yards
- d. Assume an average of 6 inches of soil regrading along entire face area ~ 15,000 cubic yards
- e. Reconstruction of grouted riprap step pools < 2,000 cubic yards

Option 2 – Partial replacement (replace all concrete panels of bottom 20 vertical feet of levee)

- a. New concrete panels area ~ 500,000 square feet
- b. New panels have same dimensions and reinforcement as above.
- c. New plinth is as described above.
- d. Assume an average of 6 inches of soil regrading along replaced area ~ 9,300 cubic yards
- e. Reconstruction of grouted riprap step pools < 2,000 cubic yards

Option 3 – Partial replacement (replace all concrete panels of bottom 10 vertical feet of levee)

- a. New concrete panels area ~ 245,000 square feet
- b. New panels have same dimensions and reinforcement as above.
- c. New plinth is as described above.
- d. Assume an average of 6 inches of soil regrading along replaced area ~ 4,500 cubic yards
- e. Reconstruction of grouted riprap step pools < 2,000 cubic yards

With these rough dimensions and assumptions, we have the following approximate cost.

Option 1 - \$12.2 million

Option 2 - \$9.2 million

Option 3 - \$6.0 million

We strongly recommend adding a healthy contingency of 25% to 30% to the above costs, including engineering costs for design and construction phases, and adding other anticipated costs (permitting, environmental compliance, etc.).



INTRODUCTION

ASI Constructors, Inc. is a self-performing heavy-civil engineering contractor specializing in the construction and rehabilitation of dams (RCC, earthfill, and concrete), spillways, and other major water resource projects. We also offer many additional specialized services through our Marine Group including inspection, on-water/underwater construction, and maintenance.

ASI provides our clients innovative and cost-effective solutions to their complex projects. Sophisticated engineering and construction technologies, an honest commitment to fair business dealings along with a partnering approach to our work, and a genuine culture of safety and quality management are the foundations that we build on in all of our projects. ASI maintains an operations-driven focus where performance defines success in all aspects of our business.

HISTORY

ASI General Contractors, Inc was founded in 1978 in Buena Vista, Colorado. The company was owned and managed by two partners and operated as a regional heavy-civil contractor, with a work portfolio that varied from small dams, tunnels, and industrial construction with annual revenues typically at \$10 million.

In 1984 the company constructed Middle Fork Dam in Parachute, CO. This was the second Roller Compacted Concrete (RCC) dam built in the United States. Throughout the mid 1980's the company established itself as a leader in RCC dam construction.

In 1987 the company was reorganized as ASI RCC, Inc. with ownership maintained by one of the original principals and several minority partners. The company continued to operate as a heavy-civil contractor in the Rocky Mountain region and also maintained a leading position in the continually growing RCC dam construction market.

In 1997 the majority ownership of ASI RCC, Inc. was purchased by Patel Engineering, Ltd. and at that time two long-time shareholders assumed management responsibility for all company operations. Between 1997 and 2000 annual revenues were increased from \$20 million to \$50 million as the company expanded operations to both the Southeast and Pacific Northwest.

ASI Constructors, Inc. was incorporated in December 2005 in Colorado. In this corporate transition key management individuals purchased the majority of assets from the previous shareholders and re-established ASI Constructors as a domestic corporation.



The company remains privately owned by managing principals and key employees with proven track records for successful project delivery through a professional and hands-on approach to business and field operations.

ASI's growth has continued as volume and new markets have increased. With growth, ASI has been able to offer additional specialized services through our Marine Group including inspection, on-water/underwater construction, and maintenance. In the last ten years, ASI has also diversified its market of operations from the United States to the international dam and water resource market.

Furthermore, recent acquisitions of **HCP Constructors, Inc.** and **Engineering and Construction Innovations, Inc. (ECI)** have expanded ASI's resources and technical expertise in the water resources markets, as we continue to grow our position as industry leaders. HCP is a water transmission contractor with numerous regional water utility clients, HCP specializes in large diameter welded steel pipelines. ECI is a specialty contractor focused on water infrastructure rehabilitation, including tunnel/shaft rehabilitation and storm/sanitary sewer system improvements.

ASI is headquartered in Pueblo West, Colorado and operates throughout the United States and internationally. We are currently working on two projects in Australia – Wyaralong Dam and the Enlarged Cotter Dam Project.

PROJECTS

ASI is a construction leader in the water resources industry, having successfully completed more than **one-hundred** dam and dam rehabilitation projects and thirty new Roller Compacted Concrete (RCC) dams.

Design/Build and Early Contractor Involvement

ASI is a pioneer in the design/build and early contractor involvement approach to new dam construction and dam modifications and we are recognized leaders this emerging area of dam work. ASI completed the first true dam design/build dam project at the Pine Brook Dam in Boulder, Colorado and have continued this with numerous other design/build projects throughout the US and overseas. We are comfortable with the design/build contract arrangement. Further, we have design engineers on staff who regularly work directly with our engineering team members to provide the best overall and cost effective design.

In the past several years we have completed, or are currently working on, the following design/build projects:

- Taum Sauk Pumped Storage Hydroelectric Facility – Ameren UE



- Upper & Middle Dams, ME – NextEra Maine Hydro, LLC (operating subsidiary of Florida Power & Light)
- Bear Creek Dam Rehabilitation (Tennessee Valley Authority)
- Wyaralong Dam, Queensland, Australia
- Cotter Dam, Canberra, Australia
- Pine Brook Dam, Boulder, Colorado
- Genesee Dam, Idledale, Colorado
- Cabresto Dam, Questa, New Mexico

New Dam Construction and Dam Rehabilitation

Since our founding, ASI has constructed over 40 new dams ranging in size from the \$4.5 million Pine Brook Dam to the \$450 million Taum Sauk Upper Reservoir Reconstruction Project, both of which received the US Society on Dams Award of Excellence in the Constructed Project Award. Constructing a new dam is a complex process and is best suited for those with a strong record of success. ASI is widely recognized as one of the few contractors capable of accomplishing all of the complex and challenging elements surrounding the construction of a new dam.

The rehabilitation of existing dams is the largest market within the water resources construction marketplace. There are roughly 650,000 dams around the world, which all require regular maintenance, repair and rehabilitation in order to continuing functioning in a safe and reliable manner. ASI has worked on virtually every type of dam, spillway, valve, gate and related structure and we enjoy the challenge of rehabilitating these existing structures.

The majority of existing dams are in excess of 25 years old and were constructed at a time when spillways and hydraulic structures were designed to pass floods smaller than what modern studies show is possible. Also, as populations grow, more and more people are living downstream of existing dams, which often requires their spillways to be upgraded. ASI has worked on dozens of spillways – from construction to removal and replacement – and we have constructed and maintained fixed crest spillways, concrete structures, training wall, and hydraulic, electric, and manually actuated gates and valves.

Hydroelectric and Renewable Power

With the recent push to improve our local production of clean, renewable energy there has been strong interest and rapid expansion of the hydroelectric market. Within the US, the Federal Energy Regulatory Commission (FERC) is the federal entity responsible for the review, approval and licensing of all hydropower projects. ASI has an excellent track record of working with FERC on hydropower projects, having completed dozens of these projects throughout the US. As



hydropower continues to expand ASI is excited to continue to work on these important projects to provide safe, clean, renewable and locally produced energy.

Inland Marine Services

ASI Marine Services Group has grown out of serving the expanding needs of our clients. We have skilled commercial dive teams for inspections, underwater construction, gate and valve work and a wide range of other needs. Our commercial dive crews are mobile and carry with them the most modern equipment and tools to meet nearly any project requirement.

Some of our underwater expertise includes:

- Outlet works rehabilitation
- Trashrack design, fabrication and installation
- Inspections/video documentation
- Concrete placement
- Coatings and anode replacement
- Salvage, recovery and demolition
- Burning and welding
- Sheetpile installation and removal
- Cofferdam installation and removal
- Pipeline installation, inspection and repair
- Remote Operated Vehicle (ROV) operation

Water Transmission Infrastructure – Pipelines

With the recent formation of HCP Constructors, Inc. (HCP), ASI continues to meet the unique needs of our clients in the pipeline and buried infrastructure market. HCP specializes in the installation and rehabilitation of large diameter pipelines for water distribution systems. As communities continue to grow and as many existing pipeline continue to age and deteriorate, the need for the installation of new water distribution systems, as well as their upkeep and maintenance, has become an essential element of any distribution system. HCP is a recognized expert in this market and regular works on the toughest and most demanding projects for clients around the US.

The continued deterioration of the infrastructure that stores, conveys and distributes water supplies to communities is a problem that cannot be ignored. ASI recognizes the hard work required to cost effectively identify and rehabilitate the systems. Many water providers and users cannot afford to have their systems down for extended periods of time and over more than 30 years ASI has shown our ability to work quickly, efficiently, and cost-effectively to get dams, spillways,



gates and valves, levees, pipelines, tunnels, and conveyance structures back on line on time and within budget.

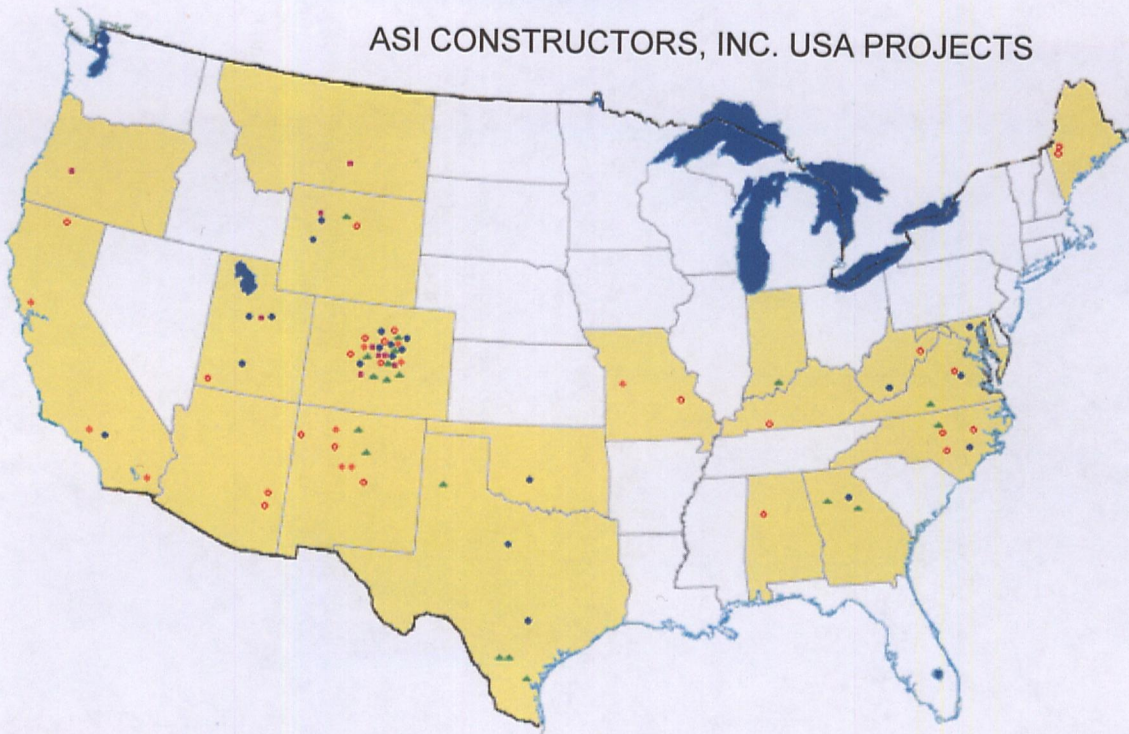
Consulting Services

Because of the expertise gained over more than 30 years working on water projects ASI is often asked to provide consulting services at nearly every phase of a project. We consult with both owners and engineers on appropriate construction technologies, constructability reviews, value engineering studies, cost estimates, material suitability, and a wide range of other issues that are vital to any water resources project, large or small.

Equipment Supply

As a self-performing, heavy civil contractor ASI maintains a large inventory of specialized equipment. We regularly work with contractors around the country and overseas to provide our equipment for many of the largest water resources projects. We are always happy to discuss providing our equipment for your project.

ASI CONSTRUCTORS, INC. USA PROJECTS



New Dams

Pine Brook Dam & Reservoir, CO
 Little Puerco Wash Flood Prot., NM
 Hunting Run Dam, VA
 Buckhorn Reservoir Expansion, NC
 Peterson Dam Rehabilitation, CO
 Quail Creek South Dam, UT
 Grindstone Canyon Dam, NM
 Dry Creek Dam, CO
 Bear Creek Dam, AL
 New Creek Site 14 Dam, WV

San Juan Chama DWP, NM
 Randleman Lake Dam, NC
 Pickle Jar Dam & Reservoir, CO
 Tie Hack Dam & Reservoir, WY
 Rocky Gulch Dam, AZ
 Stagecoach Dam & Reservoir, CO
 Middle Fork Dam, CO
 Hickory Log Dam, GA
 Deep Creek Dam, NC

Franklin Dam Replacement, KY
 Clear Lake Dam Modification, CA
 Trout Creek Dam, CO
 Chase Gulch Dam & Reservoir, CO
 New Elmer Thomas Dam, OK
 Lower Chase Creek Dam, AZ
 Genesee Dam and Reservoir, CO
 Taum Sauk Upper Reservoir Rebuild, MO
 Upper and Middle Dams, ME

Dam Modification and Rehabilitation Projects

Loch Raven Dam Rehabilitation, MD
 Tom Miller Modernization Project, TX
 Great Western Dam Rehabilitation, CO
 Modifications to Motts Run Dam, VA
 Goose Lake Dam Modification, CO
 Creek Reservoir Expansion, CO
 Buffalo Bill Dam Modifications, WY
 USAFA Repair Non-Pot Res No 2, CO
 Big Haynes No. 3 Dam, Rehab., GA

Upper Stillwater Dam Rehabilitation, UT
 Standley Lake Dam Rehabilitation, CO
 Jackson Lake Dam Rehabilitation, CO
 Jed Johnson Dam Modifications, OK
 Mona Dam Rehabilitation, UT
 Littlerock Dam Restoration, CA
 Comanche Dam & Reservoir, CO
 Catawba Dam (ESSI), NC

Piute Dam Rehabilitation, UT
 Bluestone Lake Dam DSA Phase I, WV
 Monument Lake Dam Renovation, CO
 Washakie Dam Safety Modifications, WY
 Ten Mile Tailing Dam #3 Reclamation, CO
 Fish Morris Sheppard Dam, TX
 Humphrey's Dam Rehabilitation, CO
 Wide Hollow Water Storage Supply Facility, UT

Spillways & Outlet Modification Projects

INAAP Process Waste Dam, IN
 Salado Creek Watershed Dam 15R, TX
 Wesley Seale Dam Spillway Rehab, TX
 McClure Reservoir Spillway Mod, NM
 Meadowlark Dam Rehabilitation, WY
 Grizzly Dam Outlet Works Rehab, CO
 LaJara Lake Dam Modification, NM
 Yellow River Dam Y-15 & Y-16, GA

Marrowbone Dam #1 Modification, VA
 Lake Brandt Dam Rehabilitation, NC
 Pueblo Dam Modification, CO
 Mountain Home Reservoir Rehab, CO
 Medina Dam Outlet Replacement, TX
 Rio Grande Dam Outlet Repairs, CO
 Piedra Liza Dam, NM
 Dog River Dam, GA

Yellow River Dam Y-17 Rehab, GA
 Leyden Dam Improvements, CO
 Milton Seaman Spillway Rehab, CO
 Umbarger Dam Modification, TX
 Gross Dam Auxiliary Outlet Works, CO
 Antero Dam Outlet Replacement, CO
 Big Lake Dam, Dobbins AFRB, GA
 SDS Pueblo Dam Connection, CO

Underground

Willamette Diversion Tunnel, OR
 Roberts Tunnel Gate Repair, CO
 Twin Lakes Tunnel #2 Lining, CO
 Tiber Reservoir Water Intake, MT

Syar Tunnel Control Gate & Bypass, UT
 Huntley Tunnel #2 Enlargement, MT
 Homestake Tunnel Rehabilitation, CO

Wolf Creek Tunnel Lining, CO
 Shoshone Canyon Conduit Modification, WY
 Rehabilitation of Tunnel No. 9, CO

Misc Water Resource Facilities

Unit W Wastewater Interceptor, CA
 San Antonio Arroyo Improvements, NM
 El Vado Power Project, NM
 Hudson Ranch 1 Geothermal Plant, CA

Silver Lake Energy Dissipation, CO
 Lincoln Connection Canal Lining, CO
 Stanley Canyon Energy Dissipation, CO
 San Vicente Conveyor Bid to SOJV, CA

Arroyo De Las Callabacillas, NM
 Big Thompson Canyon Siphon Repair, CO
 Harry S. Truman Stilling Basin Wall Repair, MO

Awards and Recognition

Hudson Ranch 1 Geothermal Project, Calpatria, CA

- Geothermal Energy Association GEA Honors Award in the category of Environmental Stewardship.

Wyralong Dam Project, Beaudesert, Australia

- Alliance Contracting Excellence Awards (Category A- Major Project Alliances) in Sydney, Australia 2011

Taum Sauk Upper Reservoir Dam Restoration Project, Annapolis, MO

- U.S. Society on Dams
2010 Award of Excellence in the Constructed Project
- Nominated Finalist for the Outstanding Civil Engineering Achievement (OCEA) Award
- Prestigious "Milestone in Electrical Engineering and Computing" award - The Institute of Electrical Electronics Engineers (IEEE)
- 2010 GreenSite Project of the Year in the "Industrial" category

Pine Brook Dam and Reservoir, Boulder, CO

- U.S. Society on Dams
2007 Award of Excellence in the Construction Category

Genesee Dam #2, Kittredge, CO

- Colorado Construction
2007 Gold Hard Hat Award – Outstanding Water / Wastewater Facility

Loch Raven Dam Rehabilitation, Baltimore, Maryland

- Associated General Contractors of America
2006 Aon Build America Award - Municipal & Utilities Renovation Category
- Associated Builders and Contractors
2006 Eagle Award
- American Public Works Association
2006 Public Works Project of the Year/Structures Category
- American Council of Engineering Companies, Maryland
2006 Award of Merit
- American Society of Civil Engineers, Maryland
2006 Outstanding Civil Engineering Achievement Award
- Construction Management Association of America's
2006 Project Achievement Award

Standley Lake Dam Improvement Project, Westminster, Colorado

- Associated General Contractors of America
2005 Aon Build America Award - Federal & Heavy/Renovation Category

Wesley Seale Dam Spillway Rehabilitation, Corpus Christi, Texas

- Association of State Dam Safety Officials
2001 National Rehabilitation Project of the Year

Washakie Dam Safety Modifications, Fort Washakie, Wyoming

- American Concrete Institute
2000 Award for Excellence

Littlerock Dam & Reservoir Restoration Project, Palmdale, California

- American Concrete Institute
1995 Charles J. Pankow Award - Award for Excellence

Quail Creek South Dam, Saint George, Utah

- American Concrete Institute
1991 Award for Excellence

Stagecoach Dam & Reservoir, Oak Creek, Colorado

- American Concrete Institute
1991 Award for Excellence
- Engineering News Record (ENR)
1989 Construction Industry Award

Middle Fork Dam, Parachute, Colorado

- American Concrete Institute
1984 Award for Excellence

APPENDIX I

PRELIMINARY COST ESTIMATES ARKANSAS RIVER AND WILDHORSE CREEK LEVEE EVALUATIONS, IMPROVEMENTS, AND CERTIFICATION

Pueblo Conservancy District
Arkansas River and Wildhorse Creek Levees
Preliminary Cost Estimates
Evaluations, Improvements, and Certification

Preliminary Levee Evaluations, Geotechnical Services, Engineering Design Services, Permitting and Environmental Compliance Services	\$700,000
<hr/>	
Arkansas River Construction Improvements Option No. 2 (Replace lower 20' of existing levee improvements)	\$9,200,000
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Miscellaneous Improvements i.e. Weed Removal, Crack Sealing, Grouted Riprap Replacement, etc.	\$500,000
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Wildhorse Creek Levee Reconstruction	\$300,000
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Construction Administration and Surveying Services	\$200,000
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Final Certification of Levees	\$200,000
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Subtotal	\$11,100,000
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25% Contingencies	\$2,800,000
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Total	\$13,900,000

(Total Arkansas River Levee Length Approximately 2.8 Miles)
(Total Wildhorse Creek Levee Length Approximately 1,600 L.F.)
(To Provide Protection From The 100 Year Flood)

APPENDIX J

**CONSERVANCY DISTRICT OPERATING AND MAINTENANCE
COST ESTIMATES**

**Pueblo Conservancy District
Development of Estimated
Operating and Maintenance Costs**

Budgeted Expenditures	2011 Actual Amounts	2012 Budgeted Amounts	Estimated Continuing Operations & Maintenance
Legal fees	\$17,013	\$4,800	\$4,800
Directors fees	2,520	2,160	2,160
FICA taxes	193	230	230
Engineer/administrative	6,688	6,000	6,000
Audit and bookkeeping	3,600	3,900	3,900
Insurance/bonds	3,056	3,200	3,200
Office expense	904	500	500
Office rent/storage	915	840	840
Professional fees	4,540	10,000	10,000
Appraisal fees	0	30,000	0
Travel	0	0	0
Repairs and maintenance	20,316	20,000	20,000
Arkansas River levee repairs	194,174	50,000	0
Wildhorse/Dry Creek levee preliminary design	0	20,000	0
Levee certification/preliminary work	0	25,000	0
Contingencies	0	5,000	5,000
Emergency repairs	0	15,000	15,000
Capital improvements	0	0	0
Planning and development	1,453	5,000	5,000
HARP - IGA contribution	60,000	35,000	35,000
HARP - O&M	0	10,000	10,000
Totals per Budgets	<u>\$315,372</u>	<u>\$246,630</u>	121,630
Adjustments			
Increase in HARP contributions			20,000
Treasurer's fees and allowance for delinquencies			36,000
Increase in professional fees and various administrative costs			15,000
Increase in provision for repairs			15,000
Increase in contingency budget			<u>20,000</u>
Projected Operating & Maintenance Costs			<u>\$227,630</u>
Rounded for purposes of rate projections			<u>\$230,000</u>

Pueblo Conservancy District
Development of Potential Revenue
Bond Costs

	Option 1	Option 2	Option 3
Initial cost estimate Arkansas River construction improvements	\$12,200,000	\$9,800,000	\$6,000,000
Other costs administrative, surveying, certification etc.	1,400,000	1,400,000	1,400,000
Construction contingency at 25%	<u>3,400,000</u>	<u>2,700,000</u>	<u>1,850,000</u>
Construction estimate	17,000,000	13,900,000	9,250,000
Bond counsel and underwriting costs estimated at 3%	<u>510,000</u>	<u>417,000</u>	<u>277,500</u>
Estimate of Bond Requirement	<u>\$17,510,000</u>	<u>\$14,317,000</u>	<u>\$9,527,500</u>
Estimated annual debt service cost at 3%:			
Annually for twenty years	\$1,176,947	\$962,327	\$640,398
Total for twenty years	\$23,538,940	\$19,246,540	\$12,807,960
Annually for thirty years	\$893,347	\$730,443	\$486,086
Total for thirty years	\$26,800,410	\$21,913,290	\$14,582,580
Thirty year cost in excess of twenty year cost	\$3,261,470	\$2,666,750	\$1,774,620

APPENDIX K

GOVERNMENT PARCELS/PROPERTY WITHIN DISTRICT BOUNDARY

GOVERNMENT PARCELS/PROPERTY CURRENTLY WITHIN DISTRICT BOUNDARY

ID	Parcel Number	Owner	Owner Street	Owner City	Owner State	Owner Zip	Historically Assessed	Tax Exempt	Zoning	Development	Land Assess	Land Actual	Imp. Value	Property Tax	Area (sf)
1	431320002	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Improved - East of old Rockwool	0	17790	0	0.00	838189
2	431447003	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Vacant	0	9310	0	0.00	28361
3	527000046	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	A-2	Vacant	0	480	0	0.00	125142
4	533000014	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	5200 Nature Center Rd. - Nature Center Bldgs	0	13620	0	0.00	682512
5	534000001	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	A-2	Part of water treatment facility	0	6000	0	0.00	1353393
6	534000013	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	S. of Meadow Valley Estates (Por. Inc. River)	0	3830	0	0.00	3509020
7	534000021	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	A-2	Vacant-Part of water treatment facility	0	3830	0	0.00	5131
8	534000031	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	A-2	Vacant	0	2130	0	0.00	24284
9	534000039	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	A-2	Vacant	0	350	0	0.00	4247
10	534000047	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Vacant - water fall below City Park	0	2210	0	0.00	447971
11	534000048	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	A-2	Adjacent parcel	0	2210	0	0.00	6391
12	534001008	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	A-2	Vacant	0	14000	0	0.00	111000
13	534002002	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Large parcel - possible water tank	0	13694	0	0.00	1131524
14	535200006	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	A-2	Part of water treatment facility	0	350	0	0.00	417281
15	535200007	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	A-2	Vacant - part of water treatment fac.	0	350	0	0.00	47965
16	535200008	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	A-2	Vacant - part of water treatment fac.	0	350	0	0.00	150100
17	535200010	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	A-2	Adjacent parcel	0	350	0	0.00	318497
18	535200012	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-3	Vacant	0	210	0	0.00	7839
19	535200014	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	A-2	Vacant - part of water treatment fac.	0	70	0	0.00	30683
20	536119005	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	B-4	SS 5th bet. Eliz. & Greenwood - Parking	0	59400	0	16.80	3346
21	536126006	CITY OF PUEBLO	127 THATCHER BL	PUEBLO	CO	81003		Y	B-4	NS 3rd bet. Main & Court - Parking	0	15939	0	220.66	2213
22	536126014	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	B-4	NS 3rd bet. Main & Court - Parking	0	7310	0	88.06	823
23	536130007	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-4	Parking Garage	0	63360	0	179.20	15840
24	536130008	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-4	Parking Garage	0	42240	0	230.66	10560
25	536130010	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-4	Parking Garage	0	84480	0	0.00	21120
26	536130012	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-4	Parking Garage	0	40920	0	665.36	9680
27	536133004	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	I-2	Vacant 1st & Elizabeth	0	60896	0	0.00	7682
28	536135004	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Bus Terminal	0	87589	0	0.00	27221
29	536135005	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Ice Arena	0	272411	0	150570.00	65309
30	536145012	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	E. Cor. Grand & Union	0	2832	0	1.22	669
31	536146004	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	B-4	Joseph H. Edwards Center	0	16550	0	348.52	17172
32	536146006	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	B-4	Joseph H. Edwards Center	0	10750	0	155.40	3884
33	536146012	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Joseph H. Edwards Center	0	12930	0	882.00	16709
34	536146013	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	B-4	Joseph H. Edwards Center	0	21336	0	706.30	7950
35	536146014	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	B-4	Joseph H. Edwards Center	0	22400	0	74.30	7647
36	536147012	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Old Health Dept.	0	5860	0	0.00	214
37	536148011	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	B-4	Fort Pueblo	0	16512	0	8.48	2417
38	536148012	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	B-4	Fort Pueblo	0	11456	0	187.26	3175
39	536148013	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	B-4	Fort Pueblo	0	10240	0	90.66	3597
40	536148014	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	B-4	Fort Pueblo	0	20480	0	237.12	4701
41	536321009	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	I-3, H-B	Current Municipal Court (Museum)	0	328412	0	0.00	134386
42	536407001	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427	✓	Y	I-2	Improved - S. Main & B	0	14000	0	375.92	7000
43	536407011	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427	✓	Y	I-2	Improved - S. Main & B	0	14000	0	841.18	7000
44	536417001	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Part parking garage, city shops	0	114000	0	33.26	74498
45	536417002	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Parking Lots - whole block	0	9000	0	25.34	59783
46	536418011	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Parking Lots - whole block	0	52500	0	744.10	25197
47	536418012	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Parking Lots - whole block	0	106400	0	58.46	76890
48	536418013	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Parking Lots - whole block	0	22500	0	247.10	10874
49	536418014	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Parking Lots - whole block	0	22500	0	31.86	10884
50	536418015	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Parking Lots - whole block	0	15000	0	11.90	7264
51	536418017	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y		Parking Lots - whole block	0	500	0	0.00	250
52	536423013	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Old Police Station - part of river channel	0	294860	0	400.40	73716
53	536423014	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Old Police Station - part of river channel	0	101100	0	50.76	25275
54	536423015	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Behind OPS -part of river channel	0	33440	0	3.86	8360
55	536423016	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Behind OPS -part of river channel	0	33444	0	3.86	8361
56	536423017	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Behind OPS -part of river channel	0	26548	0	3.86	6637
57	536423018	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Behind OPS -part of river channel	0	7156	0	65.92	1789
58	536424010	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Transportation Building	0	434280	0	54.10	131158
59	536424012	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Part of river channel	0	104804	0	14.60	26201

GOVERNMENT PARCELS/PROPERTY CURRENTLY WITHIN DISTRICT BOUNDARY

ID	Parcel Number	Owner	Owner Street	Owner City	Owner State	Owner Zip	Historically Assessed	Tax Exempt	Zoning	Development	Land Assess	Land Actual	Imp. Value	Property Tax	Area (sf)
60	536424013	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	By HARP	0	31864	0	7.00	7966
61	536424014	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	By HARP	0	32032	0	3.86	8009
62	536424016	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Parking Lot - S. Grand adj. to Transportation Bldg.	0	76988	0	3.66	19247
63	536427006	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	I-2	2 sm. Triangles N & S Side Grand/por. Of bldg	0	55680	0	4.10	1221
64	536449005	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427	✓	Y	S-1,H-B	City Hall	0	963558	0	0.00	52872
65	536449006	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y		Amphitheatre	0	185992	0	0.54	18206
66	536449007	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y		Amphitheatre	0	195298	0	0.30	19965
67	536449008	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Vacant	0	56	0	4.92	2905
68	536449009	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	River channel	0	12612	0	33.16	549314
69	536449010	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Boat House	0	1000	0	2.22	51218
70	536449011	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1, B-4	Parking Lot - Bull Riders	0	1000	0	1.90	39965
71	536459001	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	New Police Station	0	266586	0	551.62	131668
72	536460001	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Several Bldgs. Behind NPS	0	204732	0	553.30	101533
73	536461001	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Vacant	0	112384	0	108.60	61524
74	1405000068	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Vacant - Confluence Ark & Fountain	0	14000	0	0.00	1024413
75	1405000070	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Vacant off Stockyard Rd.	0	14000	0	0.00	153924
76	1405001006	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Stockyard Rd.	0	61830	0	0.00	375064
77	1405015001	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Part of sewer treatment facility	0	5550	0	0.00	2083101
78	1406000099	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-3	Vacant	0	450	0	0.00	46000
79	1406000107	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	I-3	Vacant	0	13930	0	0.00	445314
80	1406000112	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Vacant	0	1210	0	0.00	91651
81	1406000127	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-3	Confluence Ark. & Fountain E of RR tracks	0	12210	0	0.00	1972841
82	1505018003	CITY OF PUEBLO	PO BOX 1427	PUEBLO	CO	81002-1427		Y	S-1	Probably Goodnight Barn (historical)	0	7936	0	0.00	49438
83	527000107	PUEBLO	1 CITY HALL PL	PUEBLO	CO	81003-4201		Y	A-2	Vacant	0	800	0	0.00	71056
84	534000050	PUEBLO	1 CITY HALL PL	PUEBLO	CO	81003-4201		Y	A-2	Vacant by water treatment plant	0	700	0	0.00	98651
85	536418016	PUEBLO	1 CITY HALL PL	PUEBLO	CO	81003-4201		Y		Old Santangelos - Parking	0	7000	0	5.96	3380
86	536203006	PUEBLO A MUNICIPAL CORP	1 CITY HALL PL	PUEBLO	CO	81003-4201		Y	B-4	Midtown Circle Drive	0	34590	0	20.00	5931
87	536203009	PUEBLO A MUNICIPAL CORP	1 CITY HALL PL	PUEBLO	CO	81003-4201		Y	B-4	Midtown Circle Drive	0	34590	0	0.50	6514
88	536164005	PUEBLO COUNTY	215 W 10TH ST	PUEBLO	CO	81003-2945		Y	B-4	New Judicial Center	0	20908	0	0.00	5280
89	536164006	PUEBLO COUNTY	215 W 10TH ST	PUEBLO	CO	81003-2945		Y	B-4	New Judicial Center	0	2527	0	0.00	595
90	536164008	PUEBLO COUNTY	215 W 10TH ST	PUEBLO	CO	81003-2945		Y	B-4	New Judicial Center	0	7619	0	0.00	71898
91	536164009	PUEBLO COUNTY	215 W 10TH ST ST	PUEBLO	CO	81003-2935		Y	B-4	New Judicial Center	0	60836	0	16730.00	15245
92	600000061	PUEBLO COUNTY	215 W 10TH ST	PUEBLO	CO	81003-2945		Y	S-1	E. edge of Reservoir/appears to inc. Dam	0	4100	0	0.00	14075864
93	1208015001	PUEBLO COUNTY	10 + MAIN ST	PUEBLO	CO	81003		Y	S-1	Bldg/Softball field, tennis courts	0	7625	0	0.00	224416
94	1208114001	PUEBLO COUNTY	215 W 10TH ST	PUEBLO	CO	81003-2945		Y	S-1	Bldg & parking lot	0	1110	0	0.00	20353
95	1402001003	PUEBLO COUNTY	215 W 10TH ST	PUEBLO	CO	81003-2945		Y	A-3	28 1/2 Lane	0	9805	0	0.00	108870
96	1406000098	PUEBLO COUNTY	10TH + MAIN STS	PUEBLO	CO	81003		Y	I-3	Parking Area - Fountain	0	2210	0	0.00	274357
97	1406200002	PUEBLO COUNTY	215 W 10TH ST	PUEBLO	CO	81003-2945		Y	S-1,I-3	Runyon Field	0	6660	0	0.00	615842
98	1406200005	PUEBLO COUNTY	215 W 10TH ST	PUEBLO	CO	81003-2945		Y	I-3	Runyon Field	0	3232	0	0.00	357276
99	1406207001	PUEBLO COUNTY	10 TH & MAIN ST	PUEBLO	CO	81003		Y	S-1	Runyon Field	0	1250	0	0.00	36063
100	1406208003	PUEBLO COUNTY	215 W 10TH ST	PUEBLO	CO	81003-2945		Y	S-1	Runyon Field	0	900	0	0.00	120092
101	1406220003	PUEBLO COUNTY	215 W 10TH ST	PUEBLO	CO	81003-2945		Y	I-3	Runyon Field	0	210	0	0.00	7238
102	536128008	PUEBLO COUNTY BOARD FOR	215 W 10TH ST ST	PUEBLO	CO	81003-2935	✓	Y	B-4	Office building - 115 W. 2nd	0	32038	0	399.70	4769
103	536128018	PUEBLO COUNTY BOARD FOR	215 W 10TH ST ST	PUEBLO	CO	81003-2935	✓	Y	B-4	Parking Lot	0	31016	0	141.58	5184
104	526327004	PUEBLO MUNICIPAL CORP	127 THATCHER AVE	PUEBLO	CO	81004		Y	S-1	Vacant by water treatment plant	0	3000	0	0.00	99999
105	527000118	PUEBLO MUNICIPAL CORP	1 CITY HALL PL	PUEBLO	CO	81003-4201		Y	A-2	Vac. W. of water treatment facility	0	1600	0	0.00	78156
106	533005019	PUEBLO MUNICIPAL CORP	1 CITY HALL PL	PUEBLO	CO	81003-4201		Y	A-2, S-1	Vacant W. of Pueblo Blvd.	0	480	0	0.00	64184
107	534001002	PUEBLO MUNICIPAL CORP	1 CITY HALL PL	PUEBLO	CO	81003-4201		Y	S-1	N. side Reservoir Rd.	0	2210	0	0.00	387013
108	534001012	PUEBLO MUNICIPAL CORP	1 CITY HALL PL	PUEBLO	CO	81003-4201		Y	A-2	Adj. E of ID193	0	16210	0	0.00	140171
109	535200009	PUEBLO MUNICIPAL CORP	127 THATCHER AVE	PUEBLO	CO	81004		Y	A-2	Part of water treatment facility	0	350	0	0.00	31767
110	536122005	PUEBLO MUNICIPAL CORP	1 CITY HALL PL	PUEBLO	CO	81003-4201		Y	S-1	NE Cor. 3rd & West - Improved	0	8410	0	10.86	16764
111	536122016	PUEBLO MUNICIPAL CORP	1 CITY HALL PL	PUEBLO	CO	81003-4201		Y	S-1	Improved & parking adjacent	0	5310	0	3.60	10340
112	536126015	PUEBLO MUNICIPAL CORP	1 CITY HALL PL	PUEBLO	CO	81003-4201		Y	B-4	Parking Lot	0	36340	0	128.40	8996
113	536130009	PUEBLO MUNICIPAL CORP	1 CITY HALL PL	PUEBLO	CO	81003-4201		Y	S-4	Parking Garage	0	22440	0	323.40	6160
114	536130011	PUEBLO MUNICIPAL CORP	1 CITY HALL PL	PUEBLO	CO	81003-4201		Y	S-4	Parking Garage	0	84480	0	252.70	21120
115	536148015	PUEBLO MUNICIPAL CORP	1 CITY HALL PL	PUEBLO	CO	81003-4201		Y	B-4	Fort Pueblo	0	38400	0	627.60	8537
116	536148016	PUEBLO MUNICIPAL CORP	1 CITY HALL PL	PUEBLO	CO	81003-4201		Y	B-4	Parking & walks	0	52312	0	617.46	12767
117	536408002	PUEBLO MUNICIPAL CORP	1 CITY HALL PL	PUEBLO	CO	81003-4201		Y		Parking & road	0	35000	0	66.16	3500
118	536408003	PUEBLO MUNICIPAL CORP	1 CITY HALL PL	PUEBLO	CO	81003-4201		Y		Parking & road	0	35000	0	100.46	3500

GOVERNMENT PARCELS/PROPERTY CURRENTLY WITHIN DISTRICT BOUNDARY

ID	Parcel Number	Owner	Owner Street	Owner City	Owner State	Owner Zip	Historically Assessed	Tax Exempt	Zoning	Development	Land Assess	Land Actual	Imp. Value	Property Tax	Area (sf)
119	1501142017	PUEBLO MUNICIPAL CORP	1 CITY HALL PL	PUEBLO	CO	81003-4201		Y	R-4	Basketball slab	0	14800	0	303.22	27991
120	536168002	PUEBLO URBAN RENEWAL	126 N MECHANIC	PUEBLO	CO	81003-4231	✓	Y	B-4	Parking Lot bet. Vectra Bank & Senior Center	0	216056	0	850.12	52452
121	536168001	RICHMOND SENIOR HOUSING INC	228 N UNION AVE	PUEBLO	CO	81003	✓	Y	B-4,S-1	165 Central Main - Apartment complex	0	94088	4905418	279.12	23531
122	536128022	SANTA FE CROSSING LLLP	201 S VICTORIA A	PUEBLO	CO	81003-3434	✓	Y	B-4	215 N. Santa Fe - Apartment complex	0	68925	612753	0.00	12463
123	536142003	STATE HISTORICAL SOCIETY	1560 BROADWAY	DENVER	CO	80202-5133	✓	Y	B-4	EL PUEBLO MUSEUM	0	22000	0	0.00	4614
124	536142008	STATE HISTORICAL SOCIETY	1560 BROADWAY	DENVER	CO	80202-5133	✓	Y	B-4	EL PUEBLO MUSEUM	0	31200	0	0.00	6735
125	536142010	STATE HISTORICAL SOCIETY	1560 BROADWAY	DENVER	CO	80202-5133	✓	Y	B-4	EL PUEBLO MUSEUM	0	75680	0	0.00	12017
126	536142007	STATE HISTORICAL SOCIETY OF	106 N GRAND AVE	PUEBLO	CO	81003-3217	✓	Y	B-4	EL PUEBLO MUSEUM	0	110480	0	53.90	27371
127	536148004	STATE HISTORICAL SOCIETY OF	106 N GRAND AVE	PUEBLO	CO	81003-3217	✓	Y	B-4	EL PUEBLO MUSEUM	0	3480	0	1.32	996
128	536137013	URBAN RENEWAL AUTHORITY	115 E RIVERWALK	PUEBLO	CO	81003-3337	✓	Y	B-4	103 N. Santa Fe - Parking lot	0	25596	0	0.00	4119
129	536167001	URBAN RENEWAL AUTHORITY	115 E RIVERWALK	PUEBLO	CO	81003-3337	✓	N	B-4	Marriott Hotel	42949	148100	1623369	170483.38	38035
130	536167002	URBAN RENEWAL AUTHORITY	115 E RIVERWALK	PUEBLO	CO	81003-3337	✓	Y	B-4	Convention Center	0	303176	0	1304.52	83644
131	536167003	URBAN RENEWAL AUTHORITY	115 E RIVERWALK	PUEBLO	CO	81003-3337	✓	Y	B-4	Parking lot	0	428600	0	386.56	105890
132	536167004	URBAN RENEWAL AUTHORITY	115 E RIVERWALK	PUEBLO	CO	81003-3337	✓	Y	S-1	Parking lot	0	71400	0	0.00	21833
133	536146010	URBAN RENEWAL AUTHORITY OF	115 E RIVERWALK	PUEBLO	CO	81003-3337	✓	Y	S-1	Old Health Dept.	0	12930	0	0.00	5376
134	536146011	URBAN RENEWAL AUTHORITY OF	115 E RIVERWALK	PUEBLO	CO	81003-3337	✓	Y	S-1	Old Health Dept.	0	12930	0	0.00	4696
135	536147011	URBAN RENEWAL AUTHORITY OF	115 E RIVERWALK	PUEBLO	CO	81003-3337	✓	Y	S-1	Old Health Dept.	0	5860	0	0.00	14688
136	536422004	URBAN RENEWAL AUTHORITY OF	115 E RIVERWALK	PUEBLO	CO	81003-3337	✓	Y	S-1	Old Health Dept.	0	106400	0	0.00	22508
137	536424015	URBAN RENEWAL AUTHORITY OF	115 E RIVERWALK	PUEBLO	CO	81003-3337	✓	Y	I-2	Improved - By HARP	0	71092	0	0.00	17773
138	536426005	URBAN RENEWAL AUTHORITY OF	115 E RIVERWALK	PUEBLO	CO	81003-3337	✓	Y	I-3	209 S. Santa Fe	0	32680	0	0.00	9338
139	431319003	URBAN RENEWAL AUTHORITY PUEBLO	115 E RIVERWALK	PUEBLO	CO	81003-3337	✓	Y	I-3	Vacant - NE cor. Richmond & Santa Fe	0	8280	0	0.00	2723
140	536137009	URBAN RENEWAL AUTHORITY PUEBLO	115 E RIVERWALK	PUEBLO	CO	81003-3337	✓	Y	B-4	105 N. Santa Fe - Parking lot	0	46398	0	0.00	14160

APPENDIX L

TIERED ASSESSMENT CALCULATIONS

Pueblo Conservancy District
Example of Application of Tiered Billing
at Various Contribution Percentages

		Contribution Percentage	Total Estimated Property Values	Estimated Revenue Generated	Fee Rate Applied	Estimated Cost per \$100,000 of Property Value
Tier I	Pueblo County	25.00%	\$4,408,000,000	\$300,000	\$0.00006806	\$6.81
Tier II	Within City of Pueblo limits	50.00%	\$6,076,500,000	\$600,000	\$0.00009874	\$9.87
Tier III	Within Flood Plain only	25.00%	\$283,500,000	\$300,000	\$0.00105820	\$105.82
	Totals	100.00%	\$10,768,000,000	\$1,200,000		

General Notations and Assumptions

- 1) Tier I represents property within Pueblo County which is not within the City of Pueblo limits and not in the flood plain.
- 2) Tier II represents property in the City of Pueblo limits but not in the flood plain.
- 3) Tier III represents property within the flood plain.
- 4) The contribution percentage is the percentage of total revenue generated by the application of the fee from property owners in each Tier.
- 5) The total estimated property values represent an estimate of the total value of nonexempt property within each Tier. Exempt property represents properties owned by local governments and certain nonprofit organizations.
- 6) Total values were derived from the Pueblo County Abstract of Assessment and the State Assessment. The value within the flood plain was derived from the Pueblo County Abstract of Assessment plus an estimate of the portion of the State Assessed property within the flood plain.
- 7) For purposes of this illustration, it has been assumed the target revenue amount is \$1,200,000. This is comprised of estimated annual operations and maintenance budget of \$230,000 plus estimated annual debt service of \$970,000 (as shown in option two with a twenty year term).
- 8) The fee rate applied is the computed rate resulting from the assumptions made for contribution percentages and property values.
- 9) The estimates for a property with a market value of \$100,000 in each Tier is for illustration purposes only.

APPENDIX M

FLOOD ZONE INSURANCE RATE EXAMPLES

PUEBLO CONSERVANCY DISTRICT FLOOD ZONE INSURANCE RATE EXAMPLES 25/50/25									
TIER 1 (COUNTY)			TIER 2 (CITY)			TIER 3 (PCD IN FLOOD PLAIN)			
ACTUAL VALUE	FLOOD INS. PREMIUM	PCD FEE	ACTUAL VALUE	FLOOD INS. PREMIUM	PCD FEE	ACTUAL VALUE	FLOOD INS. PREMIUM	PCD FEE	
\$ 80,000.00	\$ 594.00	\$ 5.44	\$ 80,000.00	\$ 594.00	\$ 7.90	\$ 80,000.00	\$ 208.00	\$ 84.66	
\$ 120,000.00	\$ 690.00	\$ 8.17	\$ 120,000.00	\$ 690.00	\$ 11.85	\$ 120,000.00	\$ 732.00	\$ 126.98	
\$ 150,000.00	\$ 762.00	\$ 10.21	\$ 150,000.00	\$ 762.00	\$ 14.81	\$ 150,000.00	\$ 1,125.00	\$ 158.73	
\$ 200,000.00	\$ 882.00	\$ 13.61	\$ 200,000.00	\$ 882.00	\$ 19.75	\$ 200,000.00	\$ 1,780.00	\$ 211.64	
\$ 250,000.00	\$ 1,002.00	\$ 17.01	\$ 250,000.00	\$ 1,002.00	\$ 24.69	\$ 300,000.00	\$ 3,090.00	\$ 317.46	
\$ 400,000.00	\$ 1,002.00	\$ 27.22	\$ 400,000.00	\$ 1,002.00	\$ 39.50	\$ 400,000.00	\$ 4,400.00	\$ 423.28	
\$ 500,000.00	\$ 1,002.00	\$ 34.03	\$ 500,000.00	\$ 1,002.00	\$ 49.37	\$ 500,000.00	\$ 5,710.00	\$ 529.10	
\$ 1,000,000.00	\$ 1,002.00	\$ 68.06	\$ 1,000,000.00	\$ 1,002.00	\$ 98.74	\$ 1,000,000.00	\$ 5,710.00	\$ 1,058.20	
						\$ 2,500,000.00	\$ 5,710.00	\$ 2,645.50	
						\$ 5,000,000.00	\$ 5,710.00	\$ 5,291.01	
						\$ 5,395,950.00	\$ 5,710.00	\$ 5,710.00	
						\$ 6,500,000.00	\$ 5,710.00	\$ 6,878.31	

**NorthStar Engineering
and Surveying, Inc.**

111 East 5th Street
Pueblo, CO 81003
719-544-6823