

§ 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. Settlers 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 benefitted, 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 benefitted.

(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  
 Number Name Appraised Amount Amount  
 Section Value for Fixed Fixed to Court  
 Part T R. (Lot Acres or Book Page Amount under  
 for Purchase for Value of

Fixed (Part) Damages	Section (Sub.) for Benefits	(Blk.) No.)	Area 37-4-105	of fee	Easement
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)



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.