

**The Southwestern Water Conservation District**  
**The West Building, 841 E Second Avenue**  
**Durango, CO 81301**

NOTICE IS HEREBY GIVEN  
A Special Board Meeting of the  
Southwestern Water Conservation District  
will be held on

**Thursday, October 31, 2019**  
**841 E 2nd Avenue**  
**Durango, Colorado**  
**2:00 p.m.-5:00 p.m.**

Posted, Noticed and Revised October 30, 2019

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**Tentative Agenda**

*Except the time indicated for when the meeting is scheduled to begin, the times noted for each agenda item are estimates and subject to change. The Board may address and act on agenda items in any order to accommodate the needs of the Board and the audience. Agenda items can also be added during the meeting at the consensus of the Board.*

*A call-in option will be available for the meeting, and if possible, please contact Laura Spann at (970) 247-1302 in advance of the meeting to verify and record your participation. Phone option: Call (605) 475-5618, Passcode 797282#*

**Thursday, October 31, 2019**

**1.0 Call to Order – Roll Call, Verification of Quorum and Pledge of Allegiance (2:00 p.m.)**

**2.0 Review and Approve Agenda (2:03 p.m.)**

**3.0 Executive Session (2:05 p.m.)**

- 3.1 Colorado River Interstate and Intra-state matters, including drought contingency planning and demand management
- 3.2 Case No. 14CW3011, San Luis Valley Water Conservancy District, Water Division 3
- 3.3 Fair Labor Standards Act, employee compensation, and record keeping
- 3.4 Updates to SWCD Programs Coordinator's Job Description, including job duties

**General Session (3:30 p.m.)**

**4.0 Report from Executive Session**

**5.0 Questions and Comments from Audience (3:35 p.m.)**

**6.0 Hydrologic Update (3:40 p.m.)**

**7.0 Old Business (3:45 p.m.)**

- 7.1 Colorado River matters
  - 7.1.1 Interstate and intra-state matters, including drought contingency planning (DCP) effort and exploration of demand management
  - 7.1.2 Proposed Hydros Consulting Joint Contract with River District for Colorado River Interstate Modeling
- 7.2 SWCD Mission and Strategic Planning Effort
  - 7.2.1 Proposed SWCD Goals and Activities
  - 7.2.2 Review of Board Committee Assignments
- 7.3 Proposed SWCD Budget Process for Adoption

- 7.4 Proposed 2020 SWCD Meeting and Holiday Schedule
- 7.5 Proposed SWCD Personnel Policies
- 7.6 Updates to SWCD Programs Coordinator's Job Description, including job duties
- 7.7 Updates to SWCD Executive Director's Job Description, including job duties
- 7.8 Discussion regarding SWCD Investment Policies and Guidelines

## **8.0 Adjournment (5:00 p.m.)**

*Three or more board members may attend a reception and dinner with SWCD Annual Water Seminar speakers ([DoubleTree Hotel](#), 501 Camino del Rio, 6:15pm).*

## **Friday, November 1, 2019**

*Three or more board members may attend the SWCD Annual Water Seminar ([DoubleTree Hotel](#), 501 Camino del Rio, 8:30 a.m.-4:00 p.m.).*

### **Upcoming Meetings**

Thursday, December 5, 2019	9:00 a.m.	Regular Board Meeting
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# Water Supply Update for October 31, 2019

## Southwestern Water Conservation District

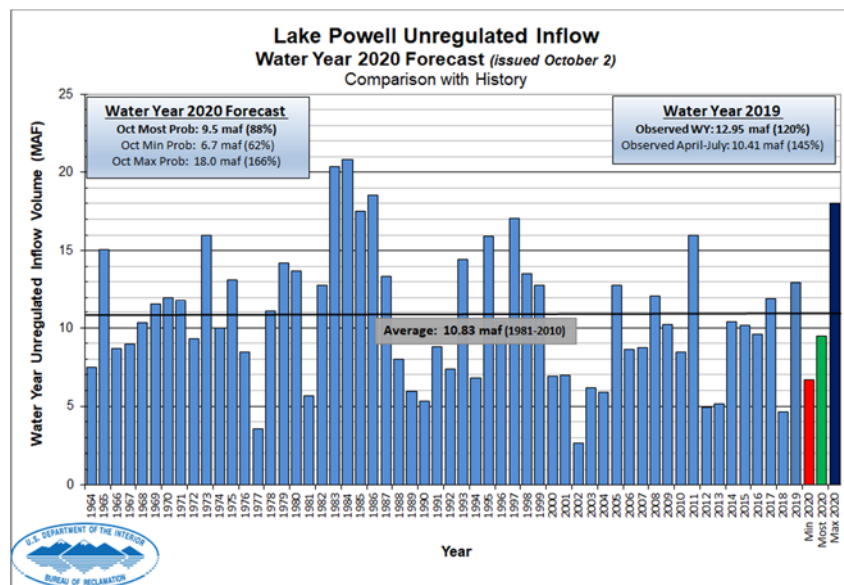
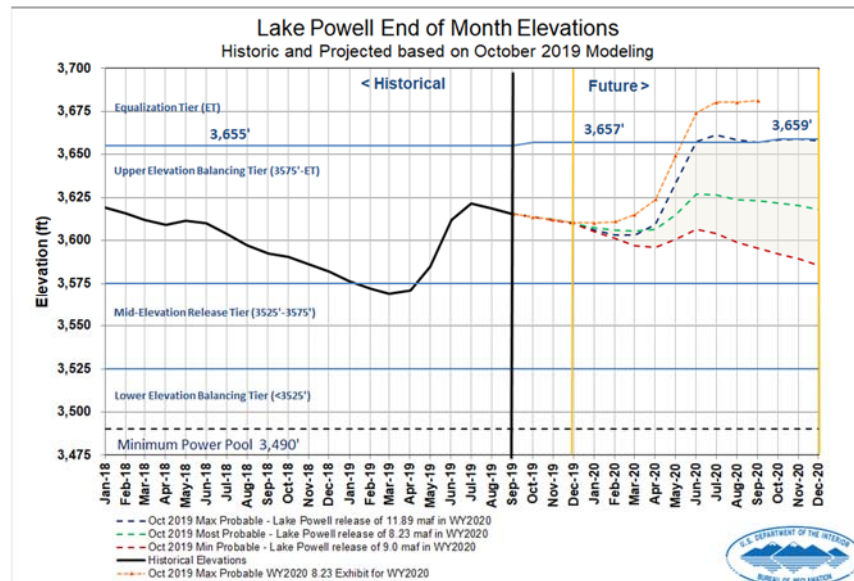
### FROM YOUR EXECUTIVE DIRECTOR



#### NOTES FROM FRANK KUGEL

#### COLORADO RIVER HYDROLOGY & STORAGE

Lake Powell levels were at 54% of capacity with 13.1 maf in storage on October 22 and the content at Lake Mead was 39% of capacity with 10.3 maf in storage. For Water Year 2019, coordinated reservoir operations will be in the Upper Elevation Balancing Tier. Under this Tier the initial annual water year release volume is 8.23 maf. Lake Powell operations will shift to balancing releases for the remainder of water year 2019. Lake Powell is currently projected to release 9.0 maf in water year 2019; and this projection will be updated each month throughout the remainder of the water year.



## HYDROLOGY SNAPSHOT

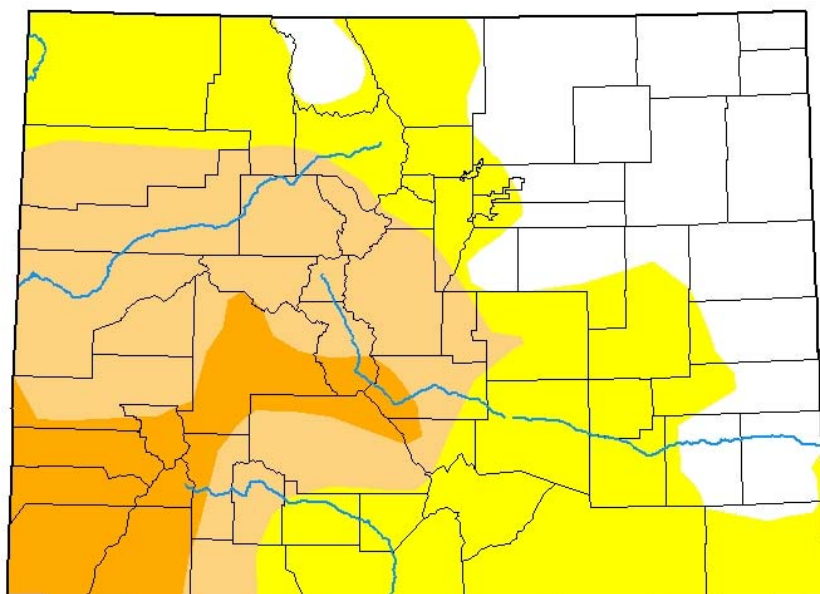
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### DRY CONDITIONS ARE BACK







Severe drought conditions have returned to the southwest part of the state.

### U.S. Drought Monitor Colorado

**October 15, 2019**  
(Released Thursday, Oct. 17, 2019)  
Valid 8 a.m. EDT



Intensity:

-  None
-  D0 Abnormally Dry
-  D1 Moderate Drought
-  D2 Severe Drought
-  D3 Extreme Drought
-  D4 Exceptional Drought

*The Drought Monitor focuses on broad-scale conditions. Local conditions may vary. See accompanying text summary for forecast statements.*

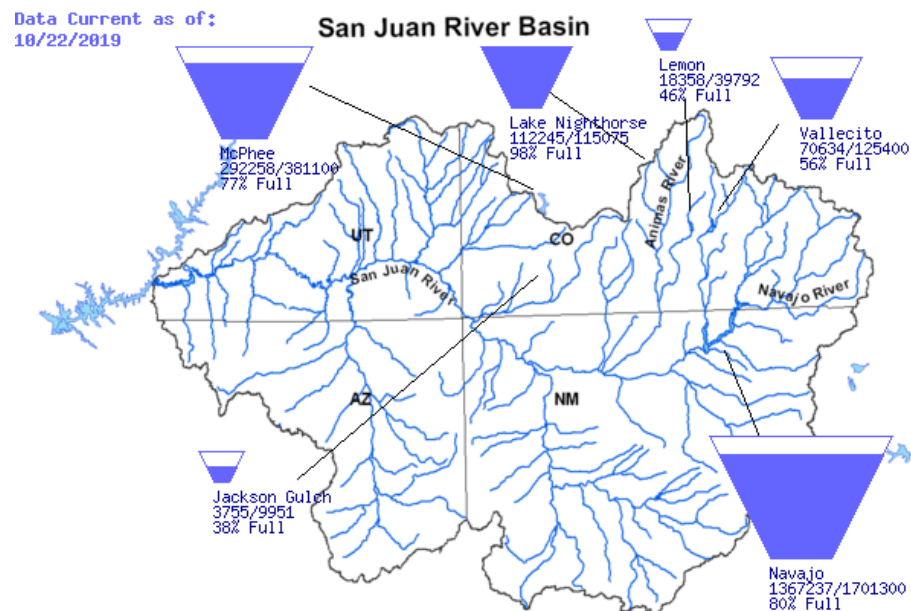
Author:

Richard Heim  
NCEI/NOAA



[droughtmonitor.unl.edu](http://droughtmonitor.unl.edu)

Here are storage levels and stream flows from across our region.

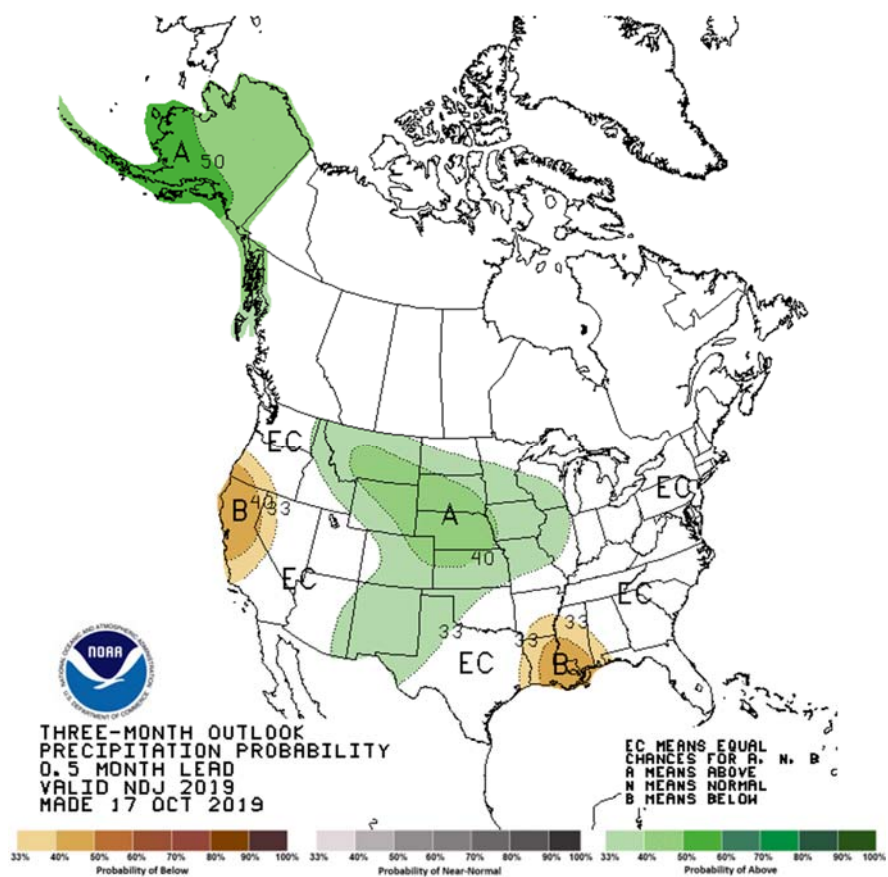
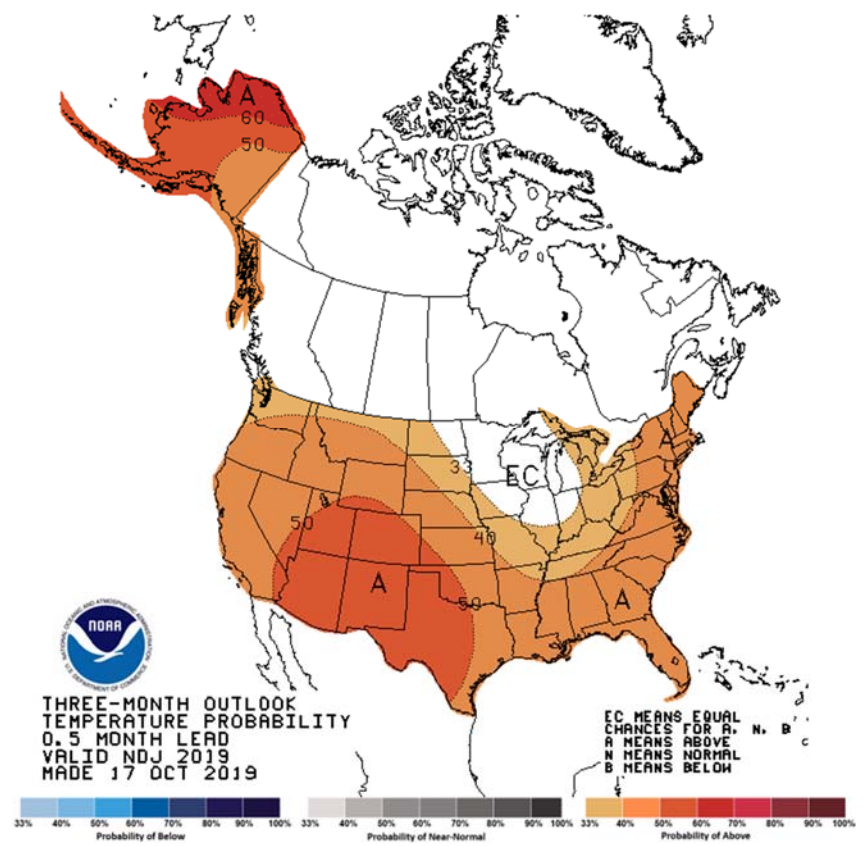


Reservoir storage remains above average in southwestern Colorado despite the dry summer and fall.

### STREAM FLOWS ON 10/23/19

San Juan at Pagosa Springs – 56 cfs  
Piedra at Arboles – 62 cfs  
Pine near Ignacio – 49 cfs  
Animas at Durango – 251 cfs  
La Plata at Hesperus – 5.3 cfs  
Mancos near Towaoc – 3.3 cfs  
McElmo Creek near Cortez – 30 cfs  
Dolores at Dolores – 46 cfs  
San Miguel at Placerville – 84 cfs

The 90-day forecast for November through January calls for warmer and slighter wetter than normal conditions for southwest Colorado.



## **Southwestern Water Conservation District Board Committees Participation**

(Notes from October 1, 2019 Meeting)

### **Instream Flow**

Monte Naslund  
Jenny Russell  
Don Schwindt  
Charlie Smith

### **Colorado River**

Don Schwindt  
Doug Stowe  
Bob Wolff  
Beth Van Vurst

### **Budget & Investment**

JR Ford  
Jenny Russell

### **Litigation**

Jenny Russell  
Charlie Smith

### **Personnel/Travel Reimbursement Policy**

JR Ford  
Jenny Russell

### **Outreach**

Rusty Hinger  
Don Schwindt



## MEMORANDUM

DATE: October 23, 2019  
TO: SWCD Board of Directors  
FROM: SWCD Staff  
RE: Formalizing *Revised* District Budget Process

We would like to recommend adoption of the following budget schedule and procedure *as revised based upon board discussion at the October 1<sup>st</sup> meeting*. This proposed schedule and procedure abides by requirements of Local Government Budget Law and procedures recommended by the Colorado Department of Local Affairs (DOLA).

1. **August board meeting:** Board appoints a budget officer (typically the executive director) and reviews goals and activities. Budget Officer presents draft of goals and activities for the coming year to the board for discussion, prioritizing, and preliminary approval.
2. **September budget workshop:** Between the August board meeting and the September budget workshop, Budget Officer works with the Secretary-Treasurer to develop a draft budget based on goals for the coming year. Initial draft budget presented to the board by Budget Officer (statutory deadline is October 15). Budget Officer advises board of Assessors' estimates of assessed values. Board discusses draft budget and directs staff to make any agreed-upon changes.
3. **October board meeting:** *The Board will review the revised budget, including September changes, and the draft budget message. The Board will endeavor to have the draft budget substantially complete as a result of discussion at the October meeting. After October 15<sup>th</sup>, this draft budget will be available for public inspection. Notice that the draft budget is available for inspection, as well as the date of the December public budget hearing, will be published.*
4. **December board meeting:** Board conducts public hearing on the proposed budget. Following the public hearing, the board may revise the proposed budget in response to public comment. Board adopts the budget based on final assessed valuations and sets the mill levy based upon receipt of final assessed valuations from the nine counties by the statutory deadline (December 10). Budget Officer certifies the mill levy to the County Commissioners by the statutory deadline (December 15).
5. **Prior to January 31:** Budget Officer files the budget, budget message, related resolutions, and mill levy certifications with DOLA prior to deadline (January 31). SWCD's adopted budget is then publicly available on the [DOLA Local Government Information System](#).

We recommend that you formally adopt this procedure by motion, to be effective for the 2021 budget and all future years until specifically modified by board action.



2020

## SWCD BOARD MEETING SCHEDULE

## JANUARY

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

## FEBRUARY

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## MARCH

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## APRIL

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## MAY

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31						

## JUNE

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31						

## JULY

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## AUGUST

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## SEPTEMBER

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## OCTOBER

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## NOVEMBER

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29	30					

## DECEMBER

S	M	T	W	T	F	S
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20	21	22	23	24	25	26
27	28	29	30	31		

  Holiday Closure
   Regular Board Meeting
   Other Meetings

## PROPOSED 10-23-19

Call in Number: 1-605-475-5618, 797282#

WED, JAN 1: NEW YEARS DAY

TUES, JAN 14: BOARD TELECONFERENCE

MON, JAN 20: MLK DAY

TUES, JAN 28: BOARD TELECONFERENCE

FEB 12-13: GRANT MEETING, REGULAR MEETING

MON, FEB 17: PRESIDENTS DAY

WED, FEB 26: BOARD TELECONFERENCE

WED, MARCH 11: BOARD TELECONFERENCE

WED, MARCH 25: BOARD TELECONFERENCE

THURS, APRIL 2: REGULAR BOARD MEETING

FRI, APRIL 3: ANNUAL WATER SEMINAR

WED, APRIL 15: BOARD TELECONFERENCE

WED, APRIL 29: BOARD TELECONFERENCE

WED, MAY 6: CHILDREN'S WATER FESTIVAL

MON, MAY 25: MEMORIAL DAY

TUES, JUNE 2: REGULAR BOARD MEETING

FRI, JULY 3: INDEPENDENCE DAY (OBSERVED)

TUES, AUG 4, 5: BOARD MTG &amp; TOUR

MON, SEPT 7: LABOR DAY

WED, SEPT 9: BUDGET WORKSHOP

TUES, OCT 13: REGULAR BOARD MEETING

NOV 26-27: THANKSGIVING

TUES, DEC 8: REGULAR BOARD MEETING

DEC 24-25: CHRISTMAS



Investment Management

10237 West 52nd Place  
# 104  
Wheat Ridge, CO 80033

303-848-3640

## Rate Sheet Week of 10/16/19

### US Treasury Yields

3 Month 1.65%  
1 Year 1.59%  
2 Year 1.59%  
3 Year 1.57%  
4 Year 1.57%  
5 Year 1.56%  
7 Year 1.65%  
10 Year 1.74%  
30 Year 2.23%

Bloomberg LP 10/16/19

### Federal Funds Rate 1.75% - 2.00%

Next FOMC Meeting October 30, 2019

### CD Rates

Sallie Mae Bk 1.90% 10/23/24  
BMO Harris BK \* 2.00% 10/18/23  
Sallie Mae Bk 1.85% 10/24/22  
Ally Bank 1.80% 10/25/21  
Goldman Sachs 1.75% 10/22/20  
(FDIC Insured up to \$250,000)

\*callable

### US Agency Offers (GSE's)

FHLB 2.20% 10/16/24 – 01/16/20 call 5y-3mo  
FHLMC 2.03% 04/17/23 – 04/17/20 call 3.5y-6mo  
FHLMC 1.86% 10/21/22 – 04/21/20 call 3y-6mo 1X  
FHLMC 1.875% 10/22/21 – 04/22/20 call 2y-6mo  
FHLB 1.75 % 04/15/21 – 04/15/20 call 1.5y-6mo  
(New Issues at Par)

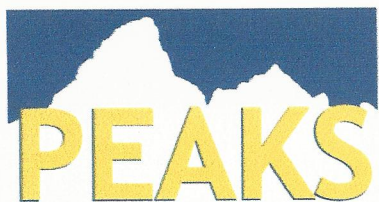
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198 Barrington Road  
Bloomfield Hills, MI 48302

**Investment Management**

303-848-3640

### **SDA Client List Includes**

Bancroft Clover Water & Sanitation District  
Berkeley Water & Sanitation District  
Bear Creek Water & Sanitation District  
Colorado River District  
Crested Butte South Metro District  
Dolores Water Conservancy District  
Eastern Rio Blanco Recreation & Park District  
Foothills Park & Rec District  
Frisco Sanitation District  
Fruitdale Sanitation District  
Grand Fire Protection District  
Little Thompson Water District  
North Pecos Water & Sanitation District  
Palisade Irrigation District  
Plateau Valley Fire Protection District  
Plateau Valley Hospital District  
Pueblo West Metropolitan District  
Red White & Blue Fire Protection District  
Salida Library District  
Snake River Water District  
Summit Fire Authority  
Upper Gunnison River Conservancy District  
Urban Drainage & Flood Control District

**[www.investwithpeaks.com](http://www.investwithpeaks.com)**

[Robert@investwithpeaks.com](mailto:Robert@investwithpeaks.com)

[Troy@investwithpeaks.com](mailto:Troy@investwithpeaks.com)

**U.S. Treasury Bonds**

**Agency Bonds**

**Certificates of Deposit**

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Investment Management

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10237 West 52nd Place  
# 104  
Wheat Ridge, CO 80033  
303-848-3640

## References in the SWWCD area

Archuleta County

Montezuma County

San Juan County

San Miquel County

Montrose County

City of Montrose

Montrose County School District

Town of Dolores

City of Cortez

Durango Fire Protection District

Please feel free to contact any of clients for references.

PEAKS is independent of SIGMA Financial Corporation and SIGMA Planning Corporation. Investment Advisory Services offered through SIGMA Planning Corporation, a registered Investment Advisor. Securities Products and Services offered through SIGMA Financial Corporation, Member FINRA/SIPC.

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# LEGAL INVESTMENTS FOR COLORADO LOCAL GOVERNMENTS



**COLORADO**  
Department of  
Local Affairs

Department of Local Affairs  
1313 Sherman Street, Room 521  
Denver, Colorado 80203  
303-864-7720  
[dola.colorado.gov](http://dola.colorado.gov)

# LEGAL INVESTMENTS FOR COLORADO LOCAL GOVERNMENTS

Colorado Department of Local Affairs  
1313 Sherman Street, Room 521  
Denver, Colorado 80203  
(303) 864-7720  
[dola.colorado.gov](http://dola.colorado.gov)

## INTRODUCTION

### LEGAL INVESTMENTS FOR COLORADO LOCAL GOVERNMENTS

Colorado local governments' investment of public money is prescribed by statute. The following information is intended as general guidance on legal investments for Colorado local governments. The Division of Local Government does not represent the information provided below to be a complete review of relevant statutes for every local government entity type. The information provided is not to be considered or construed as legal advice. Any local government considering investment of public moneys should obtain competent legal counsel.

The Colorado Constitution and several statutes govern how public moneys are invested and where public moneys are deposited; statutes also grant exceptions and exemptions for certain local governments. Notably, home-rule cities, towns, counties and the home-rule city and county are exempt from the general investment statute. Home rule entities should review their home-rule charter provisions. Certain special funds, for example, pension plan funds, are also exempt from the general public money investment statute. Limited references to legal investments for special funds are scattered throughout the Colorado revised statutes.

For more information or for more DOLA technical assistance publications see the department's web site at <http://dola.colorado.gov/>.

### CONSTITUTIONAL CITATIONS

A specific prohibition against local government investment as a shareholder in a corporation or company is found in Article XI, Section 2, Colorado Constitution. The section prohibits a local government from becoming a shareholder in any public or private corporations or companies, in- or out-of-state. Certain exceptions are stated.

### STATUTORY CITATIONS

The authority for local governments to invest funds is found in statute pertaining to the financial powers of specified governmental entities and/or in statutes on legal investment and deposits. The following are enumerated in the local government's enabling legislation:

**Statutory Cities and Towns** CRS § 31-20-303(1)(b)

- The treasurer shall deposit all funds subject to CRS 24-75-601, et seq., in one or more state banks or national banks having their principal office in Colorado, or in savings and loan associations in compliance with CRS 11-47-101, et seq.
- The governing body, by resolution, may authorize investment of funds in compliance with CRS 24-75-601, et seq., or by any other law of the state.

**Counties** CRS § 30-10-708(1)

- The county treasurer shall deposit all funds in one or more state banks, national banks, or in savings and loan associations in compliance with CRS 11-47-101, et seq.
- The board of county commissioners, by written resolution, may authorize the county treasurer to invest funds in compliance with CRS 24-75-601, et seq.

**Special Districts** (Title 32, Article 1 Districts) CRS § 32-1-1001(1)(e) and CRS § 32-1-1101(5)

- The board of directors, for and on behalf of the district, has the power to invest any money of the special district in accordance with CRS 24-75-601, et seq.
- If a district has moneys on hand which are not then needed in the conduct of its affairs, the district may deposit such moneys in any state bank, national bank, or state or federal savings and loan association in Colorado in accordance with state law.
- A special district's moneys may be pooled for investment subject to the requirements of CRS 24-75-701, et seq.

**GENERAL PUBLIC MONEYS INVESTMENT (STATUTORY OVERVIEW).**

The investment of general revenues of local governments is prescribed in “Funds - Legal Investments,” CRS § 24-75-601, et seq. The “Funds - Legal Investments” statute addresses the following:

- definition of “public entity” (CRS § 24-75-601(1))
- definition of “public funds” (CRS § 24-75-601(2))
- definition of “security” (CRS § 24-75-601(3))
- list of eligible securities (CRS § 24-75-601.1(1))
- investment in securities with a fixed coupon rate from settlement to the maturity date (CRS § 24-75-601.1(1.3))
- firms that sell financial instruments which fail to comply (C.R.S. § 24-75-601.1(1.5))
- conformance with “prudent man standard” (CRS § 24-75-601.1(2))
- power to invest in any investment permitted under other valid law (CRS § 24-75-601.1(3)(a))
- exemption of home rule entities (CRS § 24-75-601.1(3)(b))
- exemption of pension plan funds (CRS § 24-75-601.1(4))
- validity of investments made prior to 7/1/89 (CRS § 24-75-601.2)
- divestment of securities not lawful under section (CRS § 24-75-601.3)
- liability of public officials (CRS § 24-75-601.4)
- liability for sale of unlawful investments (CRS § 24-75-601.5)



- bonds of housing authority as legal investments (CRS § 24-75-602)
- local governments may deposit funds in any state bank, national bank, or state or federal savings and loan association (CRS § 24-75-603)
- investment in bonds issued by institutions of the farm credit system (CRS § 24-75-604)
- legal investments - cities of 25,000 or more population - special funds including pension, endowment, and trust funds - limitation in class of investments (CRS § 24-75-605)

## **LIST OF LEGAL INVESTMENTS OF PUBLIC FUNDS.**

The following descriptions are summaries only. When consulting the Colorado Revised Statutes, be certain to use the most current edition. CRS § 24-75-601.1 lists the following eligible securities:

1. Direct obligations of the United States with a maximum maturity of five years from the settlement date, unless the governing body authorizes a longer maturity period.
2. Obligations of U.S. Government Agencies with a maximum maturity of five years from the settlement date, unless the governing body authorizes a longer maturity period. Specifically mentioned in the law are securities issued by FNMA (federal national mortgage association) "Fannie Mae"; by GNMA (government national mortgage association) "Ginnie Mae"; by FHLMC (federal home loan mortgage corporation) "Freddie Mac"; by the federal farm credit bank; by the federal land bank; by the export-import bank; by the Tennessee valley authority; and by the world bank.
3. Securities of entities or organizations not listed above, but created by, or authorized to be created by legislation of, the U.S. congress where the issuing agency is subject to control by the federal government at least as extensive as that which governs the agencies listed above. The period from the settlement date to its maturity shall be no longer than five years, unless the governing body authorizes a longer maturity period.
4. General obligations of any state of the United States, the District of Columbia, the territorial possessions of the U.S., or political subdivision, institution, department, agency, instrumentality, or authority of any of such governmental entities. Securities issued by the State of Colorado or any of its political subdivisions, institutions, departments, agencies, instrumentalities or authorities must carry at least two credit ratings at or above "A" or its equivalent from nationally recognized statistical rating agencies. General obligations of any other state of the U.S., the District of Columbia, the territorial possessions of the U.S., or political subdivision, institution, department, agency, instrumentality, or authority must carry at least two credit ratings at or above "AA" or its equivalent from nationally recognized statistical rating organizations. The period from the settlement date to its maturity date or optional redemption that has been exercised as of the date the security is purchased shall be no longer than five years, unless the governing body authorizes investment for a period in excess of five years.

5. Revenue obligations of any state of the United States, the District of Columbia, the territorial possessions of the U.S., or political subdivision, institution, department, agency, instrumentality, or authority of any of such governmental agencies. Securities issued by the State of Colorado or any of its political subdivisions, institutions, departments, agencies, instrumentalities or authorities must carry at least two credit ratings at or above "A" or its equivalent from nationally recognized statistical rating agencies. Revenue obligations of any other state of the U.S., the District of Columbia, the territorial possessions of the U.S., or political subdivision, institution, department, agency, instrumentality, or authority must carry at least two credit ratings at or above "AA" or its equivalent from nationally recognized statistical rating organizations. The period from the settlement date to its maturity date or optional redemption that has been exercised as of the date the security is purchased shall be no longer than five years, unless the governing body authorizes investment for a period in excess of five years.
6. The investing local government's own securities including certificates of participation and lease obligations.
7. Any interest in a local government investment pool pursuant to CRS § 24-75-701, et seq.
8. Repurchase agreements for any of the U.S. Government and agency securities listed in paragraphs one and two above, under certain conditions, including that the securities must be marketable; that the market value of such securities must be at least equal to 102% of the funds invested by the investing public entity and marked to market no less frequently than weekly; and that the title must be transferred and the securities must actually be delivered versus payment. The securities subject to repurchase agreement may have a maturity in excess of five years, however the period from the settlement date of the repurchase agreement to its maturity shall be no longer than five years unless the governing body authorizes a longer maturity period.
9. Reverse repurchase agreements for any of the U.S. Government and agency securities listed in paragraphs one and two above, subject to several conditions, including that necessary transfer documents must be transferred to the investing public entity; cash must be received by the investing public entity in a delivery versus payment settlement; that the cash received must be collateralized at no more than 105% by the investing public entity and marked to market at least weekly; that the repurchase agreement is not greater than ninety days in maturity from the date of settlement unless the governing body authorizes a longer maturity period; that the counter-party meets the credit conditions of an issuer that would qualify under paragraph thirteen below; that the value of all securities does not exceed eighty percent of the total deposits and investments of the investing public entity; and that no securities are purchased with the proceeds of the reverse repurchase agreement that are greater in maturity than the term of the reverse repurchase agreement.

10. Securities lending agreement, subject to certain conditions, including that necessary transfer documents must be transferred to the investing public entity; securities must be received by the investing public entity in a simultaneous settlement; that the market value of such securities at all times must be at least 102% the securities lent by the investing public entity and marked to market at least weekly; that the counter-party meets the credit conditions of an issuer that would qualify under paragraph thirteen below; and that in the case of a local government, the securities lending agreement shall be approved and designated by written resolution adopted by a majority vote of the governing body and recorded in its minutes.
11. Certain money market funds. Statutes impose several conditions including: registration of the fund under the federal "Investment Company Act of 1940"; that the fund seeks to maintain a constant share price; the fund charges no sale or load fees unless the governing body of the public entity authorizes such a fee at the time of purchase; the securities have maximum maturity as specified in rule 2a-7 of the federal "Investment Company Act of 1940"; the fund has assets of a certain amount; or has the highest current rating from at least one nationally recognized rating agency; and the dollar-weighted average portfolio maturity meets requirements of rule 2a-7 with additional limitations.
12. Certain guaranteed investment contracts rated in one of the two highest rating categories by two or more statistical rating organizations; with a maturity not greater than three years; contracts with a maturity of greater than three years shall only be purchased only with debt, certificates of participation, or lease-purchase agreement proceeds, but no refunding proceeds.
13. U.S. dollar denominated corporate or bank security, issued by a corporation or bank organized and operating within the United States; the debt matures within three years; at the time of purchase the debt must carry at least two ratings from any nationally recognized statistical ratings organizations. If the security is a money market instrument such as commercial paper or bankers' acceptance, then it must not be rated below "A1, P1, or F1"; any other type of security must not be rated below "AA- or AA3" by either of the two ratings used to fulfill the two rating requirement. The book value of the local government's investment in this type of debt shall at no time exceed 50% of the government's investment portfolio, or five percent of the book value if the debt is issued by a single corporation or bank unless the governing body authorizes a greater percent. No subordinated security may be purchased. No corporate or bank security that is not organized outside of the U.S. may be purchased unless the governing body authorizes such investment.

## **PRUDENT MAN STANDARD.**

Investments made pursuant to CRS § 24-75-601.1 must be made in accordance with the "prudent man (person)" standard of CRS § 15-1-304, (CRS § 24-75-601.1(2)). This requirement states that fiduciaries, such as official custodians who make investments or deposits for local governments, are obligated to exercise

... the judgment and care, under the circumstances then prevailing, which men of prudence, discretion, and intelligence exercise in the management of the property of another, not in regard to speculation but in regard to the permanent disposition of funds, considering the probable income as well as the probable safety of capital. (CRS § 15-1-304)

Another example of specific prudent standard language is found in CRS § 24-75-705 and applies to the board of trustees of local government investment pool trust funds. The board is charged with making legal investments

... with that degree of judgment and care, under the circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital and need for liquidity as well as the probable income to be derived. (CRS § 24-75-705)

Persons or entities responsible for investing funds who are not subject to a standard specifically set forth in another statute, nor subject to section CRS § 15-1-304 by a specific reference in another statute prior to July 1, 1995, must adhere to the standard set forth in the "Uniform Prudent Investor Act," CRS § 15-1.1-101, et seq.

## **WHAT YOU CAN'T INVEST IN.**

The following does not attempt to be a complete listing. Examples of some things a local government cannot invest in are the following: equities -- common or preferred stock of corporations; Certificates of Deposit (CDs) in out-of-state banks; commodity futures; collateralized mortgage obligations (CMOs), except those issued directly by government agencies; unit investment trusts (UIT); art and other collectibles.

Local governments considering investing in "Sallie Mae's," obligations of the Student Loan Marketing Association (SLMA), are strongly urged to obtain a legal opinion as to the legality of these instruments under Colorado local government investment law. Statute permits investment in any security issued by the Government National Mortgage Association (GNMA), therefore, purchasing GNMA securities from a broker is legitimate. However, derivative securities backed by GNMA securities that have been created by brokers, are not legal investments.

## **PENSION FUNDS.**

As indicated above in the General Public Moneys Investment section, pension funds are specifically exempted from the funds - legal investments section CRS § 24-75-601.1. Pension fund investment (and administration) is a specialized area of knowledge, especially as it relates to police and firefighter pension plans. There are several pension fund investment citations that note exceptions. The Division of Local Government does not represent the following to be a complete listing.

**Fire and Police Pension Plans:** The firefighter and police pension plan statutes are frequently amended. In May 1996 legislation amended and relocated parts three through ten

of article 30, Title 31, CRS, Fire - Police - Sanitation. The statutes make several distinctions between pension plans for “old hires” and for “new hires” and between paid and volunteer firefighters. Both old hire and new hire employers may elect to affiliate with the Fire and Police Pension Association (FPPA) to administer and manage the plans and funds. Visit <http://www.fppaco.org/> for more information. Police officers and firemen's pension fund investment is addressed in:

- Fire - Police - Old Hire Pension Plans - Investments - Insurance (CRS § 31-30.5-501) [investment]. This applies to the pension funds created by municipal employers of police officers or firefighters and special district or county improvement district employers of firefighters hired on or before April 7, 1978. Investment restrictions are no longer related to the population of the employing jurisdiction.
- Fire - Police - Old Hire Pension Plans - Exempt Plans (CRS § 31-30.5-803) [investment]. This section applies to any municipality, fire protection district, or county improvement district that established an exempt alternative police officer/firefighter pension benefit program or a combination pension and insurance benefit program prior to January 1, 1980.
- Fire - Police - New Hire Pension Plans - Fire and Police Members' Benefit Fund (CRS § 31-31-302 (1) and (6)) [investment]. The Fire and Police Members' Benefit Fund consists of the assets of fire and police benefit plans including the statewide defined benefit plan (CRS § 31-31-401, et seq.); the old hire plans affiliated with FPPA (CRS § 31-30.5-701, et seq.); exempt plans (see CRS § 31-30.5-803, above) affiliated with FPPA, and volunteer firefighter pension plans affiliated with FPPA (CRS § 31-31-705).
- Fire - Police - Sanitation - Volunteer Firefighter Pension Act (CRS § 31-30-1113) [investment]. This act provides for the creation of a volunteer firefighter pension fund in any municipality or special district or county improvement district that maintains a regularly organized volunteer fire department. The board of trustees of the pension fund, with the voted concurrence of 65 percent of both active and retired members, may also invest in certain insurance policies (CRS § 31-30-1114).
- State Funds - Funds - Legal Investments (CRS § 24-75-605) [investment]. This section applies to special funds of cities of 25,000 or more population. Moneys in policemen or firemen's pension funds may be invested in limited amounts in certain classes of investments (Class 1 - 6). It is lawful to invest in these classes of investments if this authorization to invest moneys does not affect the administration of or control over these funds.

### **Local Government Employees and Officers Pension:**

Pension plans for local government employees who are not police or firefighters and local government officers are addressed as follows:

- County, Municipal, and Special District Officers' and Employees' Retirement Systems (CRS § 24-54-101, et. seq.)
- Any county, municipality and special district may, by itself or in conjunction with any other like government, establish and maintain a general plan or system of retirement benefits for its members. Municipalities and special districts may also join with a county to establish a plan. The entities will form an association to purchase, establish or procure a group annuity retirement plan or a non-insured trust retirement plan. (CRS § 24-54-106). When the retirement board of such a joint county, municipal or

special district retirement system determines to participate in a non-insured trust retirement plan with a bank or trust company, the plan's trustee will invest as specified in CRS § 24-54-112. (CRS § 24-54-108(2)(b)). If the retirement board determines to participate in a non-insured trust retirement plan, the treasurer of the most populous county, municipality, or district of the association establishing the retirement plan shall be the treasurer ex-officio of the association. That individual shall invest as specified in CRS § 24-5-112. (CRS § 24-54-108(2)(c) and (4)).

- An individual county, municipal or special district retirement plan's board shall select a plan from among the same choices of type of plan as enumerated above for joint retirement plans. The requirement to make investments pursuant to CRS § 24-54-112 also applies to individual entity plans. (CRS § 24-54-108.5) A group association or an individual entity may also select to participate in the public employees' retirement association. (CRS § 24-54-108(2)(d) and CRS § 24-54-108.5 (2)(d)).
- The Colorado County Officials and Employees Retirement Association ("CCOERA") is an association organized under this statute. <http://www.ccoera.org/>
- Public Employees' Retirement Association ("PERA") - Affiliation by Public Entities (CRS § 24-51-309) [investment]. This section permits any political subdivision within the state to apply for affiliation with PERA. If membership through affiliation is approved by the PERA board, the contributions of the local government membership may be invested pursuant to CRS § 24-51-206. <https://copera.org/>
- State Funds - Funds - Legal Investments (CRS § 24-75-605) [investment]. This section applies to special funds of cities of 25,000 or more population. Moneys in pension funds may be invested in limited amounts in certain classes of investments (Class 1 - 6). It is lawful to invest in these classes of investments if this authorization to invest moneys does not affect the administration of or control over these funds.

## **SPECIAL FUNDS.**

The investment of special funds such as trust funds and endowment funds is cited in CRS § 24-75-605 "Legal investments - cities of twenty-five thousand or more population."

Municipalities with populations less than 25,000 persons and other local governments should seek legal advice regarding investment of special fund moneys.

## **PUBLIC DEPOSIT PROTECTION.**

Statute addresses the protection of public moneys deposited in banks and savings and loan associations. The legal requirements provide for the preservation and protection of all public funds on deposit in these institutions which are not insured either by, or in excess of the insured limits of, federal deposit insurance or the federal savings and loan insurance.

Further, in the event of a default, statutes provide for the expedited repayment of deposited funds. Local governments, including home rule entities, are subject to these public deposit protection acts:

- Local governments may deposit moneys only at banks which are "eligible public depositories" pursuant to the Public Deposit Protection Act, CRS § 11-10.5-101, et seq.

- Local governments may deposit moneys only at savings and loan associations which are “eligible public depositories” pursuant to the Savings and Loan Association Public Deposit Protection Act, CRS § 11-47-101, et seq.

Any official custodian of public moneys seeking to open a bank account in an eligible depository in Colorado must obtain public deposit account identification numbers from the Colorado Division of Banking. The Division of Banking designates and certifies a bank as an “eligible public depository.” A local government seeking to use an eligible public depository should request a copy of the bank’s “eligible public depository designation certificate.” PDPA questions may be addressed to the Colorado Division of Banking: <http://dora.colorado.gov/>.

Savings and Loan Association Public Deposit Protection Act questions may be addressed to the Colorado Division of Financial Services: <http://dora.colorado.gov/>.

Note: Deposits, including Certificates of Deposit (“CDs”) are permitted only in “eligible public depositories”. Out-of-state banks are not “eligible public depositories”. However, CRS § 24-75-603(4) allows deposits of qualifying amounts in out-of-state banks through “eligible public depositories”. The eligible public depository arranges for redeposit of funds initially deposited in the eligible public depository in excess of FDIC insured amounts into other banks or savings and loan associations in the United States. The accounts in the other banks must be fully insured by FDIC. The eligible public depository acts as the custodian for the public entity with respect to the deposit in the public entity’s account.

### **Public Depository Investment on Behalf of Local Governments:**

Banks and savings and loan associations which are eligible depositories pursuant to the above referenced public deposit protection statutes may act as agents on behalf of any official custodian of public moneys and invest said moneys.

- A bank which is an eligible public depository may act as an agent and invest public funds pursuant to CRS § 11-10.5-111(6).
- A savings and loan association which is an eligible public depository may act as an agent and invest public funds pursuant to CRS § 11-47-118(3).

Any investments made by these institutions on behalf of local governments must be in securities authorized by CRS § 24-75-601.1. (CRS § 11-10.5-111(6) and CRS § 11-47-118(3)). The banks and savings and loan associations engaged to invest on behalf of local government clients must keep accounting records that clearly distinguish between the investment activity on behalf of local governments and investment activity to meet the public depositories’ eligible collateral requirements. **Note:** moneys invested by an eligible public depository acting as an agent for a local government are not insured by the FDIC.

### **LOCAL GOVERNMENT INVESTMENT POOLS.**

Pursuant to CRS § 24-75-701, et seq., local governments may pool moneys they do not immediately need in a “local government investment pool trust fund.” The pooling of moneys permits local governments to take advantage of short-term investments for which they



individually may not have sufficient minimum capital and to maximize net interest earnings. The pool trust funds may only invest in securities that all participating local governments may individually invest in. (CRS § 24-75-704(1)) The investment pool trust fund is created by resolution, drafted and adopted by each participating government's governing body.

- The resolution must state the investment objectives of the trust.
- The resolution will provide a description of, and credit standards for, eligible trust fund investments; and, indicate allowable maturity ranges of the fund investments.
- Portfolio concentrations for types of securities owned by the fund must be described.

The following must also occur:

- A supervisory board of trustees is created from local officials of participating local governments.
- An administrator is appointed.
- A custodian of the fund is appointed.
- A financial advisor is appointed.

The statute describes the duties and liabilities of the board of trustees. The statute also enumerates “unlawful activities” for the board of trustees, the administrator, the custodian and the financial advisor. (CRS § 24-75-705, 706, 707, and 708, respectively).

The Colorado Commissioner of Securities administers and enforces the requirements of creating and operating a local government investment pool (CRS § 24-75-709). The securities commissioner's office maintains a list of active local government investment pool trust funds. See <http://dora.colorado.gov> for the Division of Securities.

## **PUBLIC PORTFOLIO MANAGEMENT**

### **Sound Investment Practices**

Sound investment policies and practices will assist a local government in prudent, legal investing. Policies serve to protect public moneys and the organization's staff and elected officials as they carry out their duties. Answering the following questions will help a local government gain an overview of its current investment situation:

- Why do we invest? What are our investment objectives?
- What do we invest in? Do our investments reflect our policy and our purpose for investment?
- Do we have an investment policy? Is it a written document? What does it say? Who approved it?
- Who has the authority to invest?
- Who has oversight responsibility before and after investments are made?
- What are our investment constraints?

### **Develop a Strategy:**

To develop an investment strategy appropriate to its financial size and needs, a local government will want to utilize its financial and cash management resources. Evaluating a government's cash management/investment needs will require, among other activities, a review of the government's operational and financial condition and any existing legal constraints. The local government then will be able to:

- Clarify any legal and other limitations on public money investment including home rule charters, existing ordinances, state constitutional and state and federal statutory restrictions
- Identify preferences for investing locally or out-of-community
- Identify suitable legal investment instruments
- Determine investment objectives
- Establish policies
- Identify and implement necessary systems of internal control to:
  - segregate duties
  - establish authorization for transactions
  - ensure proper reporting for transactions (a reliable accounting system)
  - establish a purchasing system
  - identify who maintains custody and safekeeping of funds and securities
- Establish bank and broker relationships through a RFP process and with formal agreements
- Monitor, report and analyze investment activity
- Be prepared to respond to internal and market changes

For example, as part of its operational review, the local government should determine its cash flow by examining its funds (the general fund, the capital improvement fund, the debt service fund, the pension fund, the special assessment fund, etc.). To do this, list on a monthly or weekly basis when the cash from each of these sources is received. It is important to identify which revenues come from recurring sources (local taxes, fees, intergovernmental payments) and those that are special, non-recurring revenues (grants, bond and lease proceeds, restricted use revenues, gifts).

Similarly, when expenses are tracked by amount due, type of expense and due dates, the local government can reasonably anticipate how much revenue is needed for disbursement deadlines. From this information the investment portfolio can be structured to have securities mature as disbursement needs occur. For some local governments this information may also identify times when it might become necessary, as a last resort, to borrow funds for the "short-term," in anticipation of a known, future period of revenue collection.

**Adopt an Investment Policy:** Having thought through and discussed the processes for each of the items listed above (and any others the entity may have discovered as relevant), the governing body is strongly urged to adopt an investment policy tailored to that entity's specific needs. The policy will guide the investment activities. The above-itemized elements address specific concerns that are recommended to be included in a policy. These include statements as to what the policy applies to, that is, its "scope"; the "objectives" of investment described below by the acronym "SLY"; the standard of care to be used in investment (i.e., the prudent person standard); the safekeeping and custody of the securities; suitable and

legal investment types; the portfolio structure -- addressing maximum maturities and diversification; monitoring, evaluating and reporting on the investment portfolio status and performance; and the manner of reviewing and amending the investment policy.

- A [sample investment policy](http://www.gfoa.org) to use as a beginning point for drafting your own policy is available from the Government Finance Officers Association (GFOA). In 2010 GFOA published a Best Practice for creation of an investment policy, which is available at <http://www.gfoa.org>.
- Many Colorado local governments are willing to share examples of their policies. These sample/examples can be used as a starting point to ask and answer the questions needed to develop a policy specific to your entity.
- The Association of Public Treasurers of the United States and Canada offers an Investment Policy Certification Program which recognizes outstanding examples of written policies and provides professional guidance and assistance in developing or improving existing investment policies. <http://www.aptusc.org/>

### **SLY:**

The acronym “SLY” should guide local government investment.

1. “S” - Safety - “S” has primary importance. The local government must understand the importance of preserving capital. It must, therefore, define all risk associated with any security by reviewing credit risk (the possible default of the security issuer) and interest rate risk (falling value due to market conditions).
2. “L” - Liquidity - “L” is of secondary importance. The local government must understand investment maturity. It must determine whether the maturity is within legal guidelines and whether the investment maturity will coincide with anticipated, as well as unexpected, cash needs. Securities with active secondary markets and money market mutual funds are useful in order to respond to unanticipated cash needs. Penalties, sometimes large, are usually assessed for early redemption of less liquid securities.
3. “Y” - Yield - “Y” has the least importance. Staff and elected officials must discuss how maximizing return fits into the government's investment plan. While generating income may be a desirable goal of investment, the overarching goal should be to ensure safety and liquidity. An objective of the investment plan should be to attain a market rate of return for the type of investment used. A local government must understand the percentage rate of interest an investment will yield and track actual rates of returns on investments to compare them with the market rate of return for securities of similar risk. If the monthly, or more frequent, reports of investment returns show earnings higher than the going market rate of return, high-risk investments are probably in the portfolio.

### **RULES OF THUMB:**

- Don't make investments you don't understand.
- Don't allow yourself to be pressured into buying a security. If a salesperson says an investment is “too good to pass up,” it should be passed up. Interest rates, even a

few percentage points above market rates, may signify speculative, high-risk investments. The security is probably illegal under the above cited statutes.

- Obtain/solicit competitive price and yield quotations from different banks and brokers for the securities you are considering purchasing.
- Take into account any costs related to the transaction(s).
- Thoroughly investigate any broker- dealer offering any securities being considered for purchase. The Financial Industry Regulatory Authority's (FINRA) free tool called FINRA BrokerCheck® provides Central Registration Depository (CRD) information including work history, past customer disputes, and licensing status of brokers and broker-dealer firms: <http://www.finra.org/Investors/ToolsCalculators/BrokerCheck/>. You may also contact the Colorado Division of Securities at [dora.colorado.gov](http://dora.colorado.gov) with questions about broker-dealers or unfamiliar investments.
- Many local governments retain the services of an investment adviser. Investment advisers can help provide expertise and time resources not available to a local government internally. Local governments should be deliberate and thoughtful with the selection an investment advisor, understand cost of the services, and have a written agreement. Fiduciary responsibility of public funds remains with the local government and local government officials should remain active in the investment process to ensure compliance with statutes and investment policy. The Government Finance Officers Association's publication "An Introduction to Investment Advisers for State and Local Governments" provides detailed information on investment advisers. Thoroughly investigate any investment adviser before retaining services. FINRA BrokerCheck® provides SEC Investment Adviser Public Disclosure (IAPD) information on the professional backgrounds of investment adviser representatives and investment advisory firms: <http://www.finra.org/Investors/ToolsCalculators/BrokerCheck/>. The Division of Securities also regulates investment advisory activities in Colorado: [dora.colorado.gov](http://dora.colorado.gov).

## **ACCOUNTING AND FINANCIAL REPORTING FOR CERTAIN INVESTMENTS AND FOR EXTERNAL INVESTMENT POOLS**

### **GASB No. 31**

The Governmental Accounting Standards Board (GASB) released standard number 31 in the spring of 1997. The standard establishes accounting and reporting standards for investments held by local governments. It became effective for accounting periods beginning after June 15, 1997. This standard requires local governments to report investments at "fair value" in their financial statements. The reported gains or losses are unrealized if the investments have not been sold; therefore, local government officials need to be able to inform users of the financial statements of the apparent, but not actual, positive or negative impact of the reported gains or losses on the financial condition of the local government. The Government Finance Officers Association recommends local governments determine market value of investments at least quarterly.

## OTHER RESOURCES

- Colorado Revised Statutes: <http://www.lexisnexis.com/hottopics/michie/>
- Glossary of Municipal Securities Terms, published by the MSRB (Municipal Securities Rulemaking Board): <http://www.msrb.org/glossary>
- Government Finance Officers Association Best Practices: <http://gfoa.org/best-practices>
- Government Finance Officers Association Publications: <http://gfoa.org/publications>