

STATE OF COLORADO

Colorado Water Conservation Board Department of Natural Resources

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TO: Colorado Water Conservation Board Members

FROM: Veva Deheza, Section Chief
Office of Water Conservation & Drought Planning

DATE: July 1, 2011

SUBJECT: **Agenda Item #8, July 12-13, 2011 Board Meeting**
Revised Guidelines for the Office to Review and Evaluate Drought Mitigation Plans

John W. Hickenlooper
Governor

Mike King
DNR Executive Director

Jennifer L. Gimbel
CWCB Director

Staff Recommendation

Staff recommends approval of the revised Guidelines for the Office to Review and Evaluate Drought Mitigation Plans, which incorporates feedback from the Board, provided at the May 2011 Board meeting, as well as public comments received.

Background

The Guidelines for the Office to Review and Evaluate Drought Mitigation Plans were adopted by the Board in May 2005. Since that time, the Office of Water Conservation & Drought Planning (Office) has developed an extensive library of technical and planning resources to assist municipal water providers in their efforts to develop drought mitigation and response plans. These resources reflect the latest knowledge on drought planning and have been vetted with numerous entities and stakeholders representing geographically diverse water users throughout Colorado. The Municipal Drought Planning Guidance Document, the cornerstone of the newly created resources, developed as part of the 2010 Colorado Drought Mitigation and Response Plan, creates a clear and concise how-to-guide for drought mitigation and response planning that previously did not exist in Colorado.

Consequently, the proposed changes to the Guidelines ensure that the tools and resources available for municipal water providers and local governmental entities to develop drought mitigation & response plans coincide with the Guidelines that will be used to review the plans once submitted to the CWCB for approval.

The Guidelines, as presented today, incorporate and address, where applicable, comments from the Board, as well as comments received during the public comment process. Public comments were received from the Colorado Department of Local Affairs and Larry Clever, General Manager, Ute Water.

**GUIDELINES FOR THE OFFICE TO REVIEW AND EVALUATE DROUGHT
MITIGATION PLANS SUBMITTED BY MUNICIPAL WATER PROVIDERS AND
OTHER STATE OR LOCAL GOVERNMENTAL ENTITIES**

1. TITLE. Guidelines concerning Drought Mitigation Plans prepared by Municipal Water Providers (as defined in Section 4 of the Guidelines) and other State and Local governmental entities, and submitted to the Office of Water Conservation and Drought Planning ("Office") for review and approval as required in section 37-60-126.5 C.R.S., shall be hereinafter referred to as the "Drought Mitigation Plan Guidelines."

2. PURPOSE OF GUIDELINES. Drought is a natural and frequent hazard that impacts some portion of the state of Colorado nine out of every ten years. Consequently, the importance of drought mitigation cannot be understated. Drought mitigation plans seek to ensure that Colorado communities are properly prepared to deal with and respond to drought in a timely and sufficient manner to reduce economic, social and environmental impacts. The Drought Mitigation Plan Guidelines as presented herein are to be used by the Colorado Water Conservation Board ("Board") and the Office when reviewing and approving Drought Mitigation Plans submitted to the Office in accordance with §37-60-126.5 (4) C.R.S. Drought Mitigation Plans may be submitted to the Office for review and approval by a "submitting entity" that consists of one of the following:

- a) Municipal Water Providers that request to have a Drought Mitigation Plan reviewed, approved and posted on the Board website by the Office; or
- b) Other state or local governmental entities that request to have a Drought Mitigation Plan reviewed, approved and posted on the Board website by the Office.

These Guidelines are intended to apply to any entity that submits a Drought Mitigation Plan to the Office for review and approval, including but not limited to, any municipality, agency, special district, or privately or publicly owned utility or other state or local governmental entity that seeks: to plan and implement actions and programs to be used prior to and during periods of unusual water scarcity to reduce the occurrence and severity of water supply shortages; and to manage water supply and water demand appropriately.

3. STATUTORY AUTHORITY. The statutory authority for the Drought Mitigation Plan Guidelines is found in §37-60-126.5, C.R.S. While the statute gives authority to review Drought Mitigation Plans, nothing in the statute shall be construed as mandating that entities must have an approved drought mitigation plan on file with the state. Nothing in these Guidelines shall be construed as authorizing the Board to deprive the people of the state of Colorado of the beneficial use of those waters available by law and interstate compact.

4. DEFINITIONS

Acre Foot (AF): The amount of water it would take to cover an acre of land to a depth of 1 foot, approximately 325,851 gallons.

Board: Means the Colorado Water Conservation Board as defined in §§37-60-101, 103 and 104, C.R.S.

Board Office: The Colorado Water Conservation Board's office is located at 1313 Sherman Street, 7th Floor, Denver, CO 80203. The phone number is (303) 866-3441. The facsimile number is (303) 866-4474. The Board's website is <http://www.cwcb.state.co.us>.

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Colorado Water Conservation Board (CWCB): A division of the Colorado Department of Natural Resources, the CWCB was created in 1937 for the purpose of aiding in the protection and development of waters of the state. The Board's authority and role is defined in § 37-60-101, et seq., CRS. The Mission Statement of the CWCB is to conserve, develop, protect, and manage Colorado's water for present and future generations.

Covered Entity: means each municipality, agency, utility, including any privately owned utility, or other publicly owned entity with a legal obligation to supply, distribute, or otherwise provide water at retail to domestic, commercial, industrial, or public facility customers, and that has a total demand for such customers of two thousand acre-feet or more.

Drought Mitigation: Drought mitigation refers to actions taken in advance of a drought that reduce potential drought-related impacts when the event occurs.

Drought Response: Actions that will be carried out during a drought as various drought trigger points are reached. Response strategies can include anything from short-term emergency aid to government assistance programs and media relations.

Individual with the Authority to Commit Resources: Any individual within the submitting entity that has the authority to commit the organization's resources for the development and implementation of a water conservation plan. Examples include the City or County Manager, Mayor, Executive Director of a Special District, City Councilperson, etc.

Office: means the Office of Water Conservation and Drought Planning created in §37-60-124, C.R.S.

Plan Elements: means those components of Drought Mitigation Plans that address actions and programs that may be undertaken by a submitting entity to develop, implement, monitor, review, and revise its Drought Mitigation Plan.

Public Facility: means any facility operated by an instrument of government for the benefit of the public, including, but not limited to, a government building, park or other recreational facility, school, college, university, or other educational institution, highway, hospital, or stadium.

Retail Water Delivery: means all water sales, except wholesale water sales, made by the covered or planning entity except wholesale water sales through installments, credit sales, or the exchange of property, as well as, the sale thereof for money; every such transaction for a consideration, conditional or otherwise, constituting a sale; and/or the sale or furnishing of water.

Submitting Entity: means any municipal water provider or state or local governmental entity that submits a Drought Mitigation Plan for Office review and approval.

Water Conservation: means water use efficiency, wise water use, water transmission and distribution system efficiency, and supply substitution. The objective of water conservation is a long-term increase in the productive use of water supply in order to satisfy water supply needs without compromising desired water services.

Water Reuse: Use of reclaimed water for a beneficial use constitutes water reuse. Direct water reuse includes treating wastewater and piping it directly into a water system without intervening dilution in natural water bodies. Indirect reuse includes an intermediate step between the

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generation of reclaimed water and reuse, which may be through discharge, retention, and mixing with another water supply.

Water-Saving Measures and Programs: includes any device, fixture, practice, hardware, or equipment that reduces water demands and a program that uses a combination of measures and incentives that provides for an increase in the productive use of a local water supply.

5. PLAN SUBMITTAL, REVIEW, AND APPROVAL PROCEDURE

5a. Plan Submittal – Submitting entities may submit a Drought Mitigation Plan (“Plan”), or updates of a previously submitted and approved Plan, to the Office for review and approval, in accordance with §37-60-126.5. Plan submittals must include a Cover Letter that contains the name and contact information of the submitting entity seeking Office approval, the signature of an individual with the authority to commit the resources of the submitting entity seeking approval, and a copy of the submitting entity’s Plan. A checklist of the information that is required for Plan approval is provided in the CWCB’s Municipal Drought Management Plan Guidance Document.

5b. Timeframe for Review – Upon receipt of the Plan submittal, the Office will within 10 working days, acknowledge receipt of the Plan via a letter provided to the submitting entity. . Once all Plan submittal information has been received by the Office as specified in Section 5a, the Office will initiate Plan review and comment and return a written notice of approval, or non-approval within 90 days of receipt of submittal of the completed Plan from the submitting entity. The Office will identify any deficiencies within the plan and work with the entities to address these concerns through an iterative process until approval is achieved or such time when the entities no longer seeks approval.

5c. Approval Process –

(1) Upon completion of the review of the submitted Plan, the Office will provide a written notification to the submitting entity of the determination of the Office, as follows:

(a) **Approval** – means that the submitting entity’s Plan has met the requirements of these Guidelines, and the submitting entity is encouraged to proceed with the implementation of the Plan as submitted. The Office will post the Plan on the CWCB web site.

(c) **Disapproval with Modifications** – means that the submitting entity’s Plan is inconsistent with the Guidelines. The submitting entity has 180 days from the date the Office’s written notification was sent to complete any re-submittal of those relevant portions of the Plan to the Office for subsequent review or will be required to re-initiate the Plan submittal process in accordance with these Guidelines.

5d. Procedural Guidelines for Contesting Plan Disapproval by the Office –

(1) Whenever a submitting entity contests the determination provided by the Office regarding its submitted Plan, that entity can submit a written request for a Contested Plan Review to the Board.

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(2) In submitting a request for a Contested Plan Review, a submitting entity may raise only those issues relevant to the statutory determinations required by section 37-60-126.5 C.R.S. and the requirements of the Guidelines in full.

(3) To request a Contested Plan Review, a submitting entity must comply with the provisions of 5d. The Office must receive the request for a Contested Plan Review within 180 days of the date of the written notification letter sent by the Office to the submitting entity, pursuant to 5c, or if the 180th day falls on a weekend or holiday, on the first business day thereafter. The date of the written notification letter is the date the letter was sent, not the date it was received.

(4) A request for a Contested Plan Review shall be made in writing and contain the following information:

- (a) Identification of the person(s) requesting the review;
- (b) Identification of the plan and submitting entity at issue; and,
- (c) The contested facts and a general description of the data upon which the person(s) will rely to the extent known at that time.

(5) The Board will review the Contested Plan Review facts and arguments and make a ruling to agree or disagree with the contested issue(s). The Board, at its discretion may request the entity requesting the Contested Plan Review to appear before the Board to clarify concerns and understand the facts. The public will be given a chance to comment on the Contested Plan Review prior to the Board making its ruling, if the Board determines that such comments will support and enhance the decision-making process.

(6) The Board will provide to the submitting entity in writing the results of its review within 90 days of receipt of the request for a Contested Plan Review. The Board will also provide specific guidance in how any plan discrepancies or deficiencies need to be addressed such that the submitting entity can receive Office approval for its plan.

(7) The Guidelines of 5d are intended to assure that information is received by the Board to understand and review the contested case in a timely manner. Where these Guidelines do not address a procedure or issue, the Board shall determine the procedures to be followed on a case-by-case basis. The Board may waive the requirements of the Guidelines whenever the Board determines that strict adherence to the Guidelines is not in the best interest of fairness, unless such waiver would violate applicable statutes.

6. PLAN CONTENT REQUIREMENTS

- 6a. **Municipal Drought Management Plan Guidance Document** – CWCB strongly encourages the use of the Municipal Drought Management Plan Guidance Document available online. This document clearly outlines the elements of a drought mitigation and response plan necessary to obtain CWCB approval of a submitted plan.
- 6b. **Model Plan** – The Board will maintain a Sample Drought Mitigation Plan (“Model Plan”) online that depicts a preferred format and delineates the preferred content for a Drought Mitigation Plan that would lead to meaningful (i.e., more effective) drought planning by entities in the State and further elaborates on the necessary items noted in the Municipal Drought Management Plan Guidance Document.

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6c. **. Plan Adoption** - The manner in which the submitting entity develops, adopts, makes publicly available, and implements a Plan shall be determined by the submitting entity in accordance with the Guidelines.

6d. **c. Plan Elements** - A Plan developed by a submitting entity pursuant to subsections(2) and (4) of section 37-60-126.5, C.R.S. must provide adequate information and narrative to indicate that the following Plan Elements, which are composed of various actions and programs, were considered and included, as appropriate, in the submitting entity's Drought Mitigation Plan:

- (1) *Stakeholders and Plan Objectives and Principles* – Focuses on the preliminary steps necessary to initiate the development of a drought management plan. This includes developing a planning team, securing stakeholder involvement, and developing plan objectives and operating principles.
- (2) *Historical Drought and Impact Assessment* – Evaluation of the severity of historic droughts and corresponding effects on a provider's water supply system and service area demands. This step also includes the identification of specific drought-related impacts and an evaluation of historic drought mitigation measures and response strategies. This information is useful for the screening and selection of future drought mitigation and response strategies in Step 4.
- (3) *Drought Vulnerability Assessment* – Review of water supply reliability planning efforts. Information from water supply reliability planning may be useful in identifying drought trigger mechanisms and response targets in Step 5. This step also includes the identification of potential drought impacts and perceived severity of impacts. This information is useful when identifying drought mitigation and response strategies in Step 4.
- (4) *Drought Mitigation and Response Strategies* – Selection of a combination of mitigation and response strategies. Drought mitigation is ideally implemented prior to a drought to avoid and/or reduce potential future drought impacts. Drought response strategies will be further refined in Step 6 in accordance with individual drought stages (severity). This step also includes guidance for the development of a public education and awareness strategy.
- (5) *Drought Stages, Trigger Points, and Response Targets* – Identification of drought stages and corresponding drought trigger points and response targets. These may be specific criteria adhered to during a drought or simply Guidelines that a provider can incorporate into the drought monitoring and response efforts.
- (6) *Staged Drought Response Program* – Development of the specific drought response measures for each drought stage using the response strategies developed in Step 4. These response measures should describe the actions necessary for water providers and customers to take to reduce water demand and enhance water

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supplies during each individual drought stage. This step may also include the development of a public drought education campaign plan.

- (7) *Implementation and Monitoring* – Implementation of the drought management plan, which includes an action plan for: mitigation; monitoring of drought indicators; drought declaration protocol; implementation and enforcement of the staged drought response program; revenue planning; and monitoring of the drought response effort.
- (8) *Plan Review and Updates* – Establish formal processes to review, approve, and update the drought management plan. This may include a public review process, review and approval by the local government (e.g., city council/board), adoption of necessary policy, and a plan for future updates.

6e. **. Plan Public Review** - Each submitting entity may follow the entity's rules, codes, or ordinances to make the Draft Plan available for public review and comment. If there are no rules, codes, or ordinances governing the submitting entity's public planning process, then each entity may publish a Draft Plan, give public notice of the Plan, make such Plan publicly available, and solicit comments from the public for a period of not less than sixty days after the date on which the Draft Plan is made publicly available. Reference may be made in the public notice to the elements of a Drought Mitigation Plan that have already been implemented. The submittal to the Office shall include a description of the public review and comment process if conducted, including a list of the public comments received, if any, and how the comments were addressed. . Copies of the public notice should also be included in the submittal.

7. PLAN UPDATING

7a. – Plan Updates – A submitting entity may at any time adopt changes to an approved Drought Mitigation Plan in accordance with these Guidelines after notifying and receiving written or verbal concurrence from the Office. If the proposed changes are major, as determined by the Office, the submitting entity should give public notice of the changes, make the changes available in draft form, and provide the public an opportunity to comment on such changes before adopting them in accordance with these Guidelines.

8. – REVISING AND UPDATING THE GUIDELINES

8a. – Board Authority – The Board has the authority to revise and update the Guidelines at their discretion in response to new and changing needs of the State, and its citizens, or to improve upon the Guidelines. The most recent version of the Guidelines will be posted on the CWCB website.

9.– PRIORITIZATION OF THE DISTRIBUTION OF MONEYS

9a. – Guidelines for Financial Assistance to Municipal Water Providers and Other State and Local Governmental Entities –

In section 37-60-126.5, C.R.S. The board is hereby authorized to expend revenues from the water efficiency grant program cash fund and to recommend the appropriation and expenditure of such revenues as is necessary from the unobligated balance of the five-percent share of the operational

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account of the severance tax trust fund designated for use by the board for the purpose of assisting entities and other state or local governmental entities to develop drought mitigation plans identified as sufficient by the office.

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