

WATER MARKETING POLICY FOR THE ELK RIVER OF THE
UPPER YAMPA WATER CONSERVANCY DISTRICT
FOR AUGMENTATION PLAN SERVICE

ADOPTED JUNE 19, 2019

WATER MARKETING POLICY

TABLE OF CONTENTS

1.	PURPOSE OF MARKETING PROGRAM.....	1
2.	AUTHORITIES UNDER PROGRAM	1
3.	DEFINITIONS	1
4.	SOURCES AND SCOPE OF MARKETING PROGRAM	2
	a. Sources of Water available for augmentation or exchange:	2
	b. Volumetric Description:.....	3
	c. Geographic Area:	3
5.	CONTRACTING PROCESS AND TERMS.....	4
	a. Application Process.....	4
	b. Quantities	6
	c. Deliveries	6
	d. Charges and Fees.....	6
	e. Required Meters:	7
	f. Use Reporting:	7
	g. Well Permit:	8
	h. Noncompliance:	8
	i. Assignment:	8
	j. Limitation on Sale:.....	9
	k. Form of Contract, Term and Renewal:.....	9
6.	DELIVERY CONTINGENCIES AND SHORTAGE CRITERIA.....	9
	a. Shortages.....	9

1. PURPOSE OF MARKETING PROGRAM

The Upper Yampa Water Conservancy District's ("District") purpose is to conserve, develop, and stabilize supplies of water for domestic, irrigation, manufacturing, and other beneficial uses and by the construction of works for such purposes. The District also plans for and assists with the development of water resources of the District for municipal, domestic, industrial, recreational, and other beneficial uses of water resources within the District among other purposes. The District's water rights include rights to Stagecoach and Yamcolo reservoir and contract rights to Steamboat Lake water among others.

The District is authorized to appropriate water rights and initiate and implement plans for augmentation for the benefit of water users within the District's boundaries. Water is available to provide contracts to District constituents to augment their out-of-priority depletions pursuant to the Augmentation Decree of the District Court for Water Division No. 6, Case No. 15CW3058, which is defined below. The District's Board of Directors has approved the marketing of such water and other District water supplies as may be used to complement the use of such Reservoirs' water supplies through a contracting program described herein.

2. AUTHORITIES UNDER PROGRAM

- a. The General Manager is delegated the authority of the Board to implement and administer this Policy and the issuance of the augmentation contracts made pursuant to this Policy for Small Applications as defined in this Policy, and authority for assignments of all contracts issued for both Small and Large and Industrial Applications. The General Counsel shall assist in the negotiation and drafting of the contracts.
- b. The Board retains authority to approve Large Applications along with all other powers not specifically delegated.

3. DEFINITIONS

- a. "Area A": Areas described below and governed under this Water Marketing Policy; provided, that only the portions of Area A that are located within the District's boundaries may be served by the District.
- b. "Area B": Areas outside of Area A as described below.
- c. "Augmentation Decree": Decree entered in Case No. 15CW3058, District Court, Water Division 6, on July 29, 20108, as such Decree may be amended.
- d. "Augmentation Plan" or "Plan for Augmentation": Means a detailed plan to increase the supply of water available for beneficial use as defined in C.R.S. § 37-92-103(9).

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- e. "Contract": A water allotment contract issued by the Upper Yampa Water Conservancy District for delivery of water consistent with this Water Marketing Policy for the Elk River.
 - f. "District": The Upper Yampa Water Conservancy District, a political subdivision of the State of Colorado, its Board of Directors, employees and agents.
 - g. "Division Engineer": The engineer assigned to oversee the water matters for Water Division No. 6 as specified under C.R.S. § 37-92-202.
 - h. Equivalent Residential Unit ("EQR"): Equal to 350 gallons per day.
 - i. "Large Applications": A contract application to the District to augment uses, other than industrial uses, with a planned average daily diversion rate in excess of 112 gallons per minute (0.25 c.f.s.) or that identifies planned total annual diversions exceeding thirty (30) acre feet per year.
 - j. "Industrial Applications": A contract application to the District to augment industrial uses that either exceeds a planned average daily diversion rate of 15 gallons per minute or for which the following commercial EQR ratings do not apply:
 - Single family home = 3.5 persons using 100 GPCD (gallons/capita/day) = 350 gallons per day = 1 Equivalent Residential Unit (EQR)
 - Apartments = 0.75/EQR unit
 - Mobile Homes = 0.75/EQR unit
 - Office = 0.6 EQR/1,000 square feet
 - Warehouse – 0.30 EQR/1,000 square feet
 - Retail Sales = 0.60 EQR/1,000 square feet
 - k. "Small Applications": A contract application to the District to augment uses that *do not* exceed a direct flow or storage diversion demand for groundwater or surface water of greater than 0.25 c.f.s. or 30 acre-feet annually.
 - l. "Water Court": The District Court in and for Colorado Water Division No. 6 as defined in C.R.S. § 37-92-201.
4. SOURCES AND SCOPE OF MARKETING PROGRAM
- a. Sources of Water available for augmentation or exchange:

- i. “In-Basin Supply”: Water delivered from Steamboat Lake, for which the District has a Water Lease with Colorado Parks and Wildlife for storage water right decrees were obtained in Case No. 90CW01 and 95CW142 District Court for Colorado Water Division No. 6, and for which additional storage water right decrees may be obtained in the future by the District, water available from the District’s contractual right to water deliveries, and other water sources available to the District for use in its Water Marketing Program for the Elk River.
- ii. “Stagecoach Reservoir Supply”: Water delivered from Stagecoach Reservoir, for which storage water right decrees were obtained by the District in Cases No. CA3538, W-414-72, W-946-76, W-1091-76, 94CW149, 95CW78, 97CW84, and 01CW41, District Court for Colorado Water Division No. 6, and for which additional storage water right decrees may be obtained in the future by the District, water available from the District’s contractual right to water deliveries, and other water sources available to the District for use in its Water Marketing Program for the Elk River.
- iii. “Yamcolo Reservoir Supply”: Water delivered from Yamcolo Reservoir, for which storage water right decrees were obtained by the District in Case Nos. W-946-76, 82CW211, 01CW41, and 03CW58, District Court for Colorado Water Division No. 6, and for which additional storage water right decrees may be obtained in the future by the District, water available from the District’s contractual right to water deliveries, and other water sources available to the District for use in its Water Marketing Program for the Elk River.

b. Volumetric Description:

The total maximum amount of augmentation or exchange water involved in and committed to the District in this plan for augmentation is 360 acre feet or such lesser amount available pursuant to retained jurisdiction or future board direction. The amount needed by any individual Contractor will depend on the nature and amount of its uses and, in some situations, the location of its diversions and return flows in relation to senior diversions.

c. Geographic Area:

Area A encompasses portions of the Elk River below its confluence with Willow Creek including the West Fork of the Elk River and Willow Creek from its confluence with the Elk River extending to locations upstream from Steamboat Lake where use of the water rights in the Augmentation Decree can fully augment structures developed by District Contractees. **Exhibit A.** All areas outside of the below described areas are referred to as Area B. The augmentation plan allows direct augmentation on the Elk River and Yampa Mainstem and exchange augmentation on the Elk River Tributaries.

- i. Area A-1 includes structures that will divert water from within that portion of Area A encompassing all areas tributary to the Elk River and its tributaries in a stream reach extending from a downstream terminus at the confluence of the Elk River with the Yampa River to an upstream terminus located on the Elk River just upstream of its confluence with Willow Creek, a distance of approximately 27 miles. The boundaries of Area A-1 are depicted on the map that is attached hereto as **Exhibit A**. The total amount of augmentation water available for Area A-1 is 360 acre feet. The rate of exchange within Area A-1 is 1.4 c.f.s. for the entire area A-1 and not to exceed 0.3 c.f.s., with the exception of Salt Creek not to exceed 0.5 c.f.s., within any one of the seventeen major tributaries and watersheds: (1) Farnsworth Creek, (2) Trull Creek, (3) Dry Gulch, (4) Salt Creek, (5), Deep Creek, (6) Long Gulch, (7) Dutch Gulch, (8) McPhee Creek, (9) Sand Creek, (10) Cottonwood Gulch, (11) Greenville Creek, (12) Franz Creek, (13) Taylor Canyon, (14) Keller Ditch Area Watersheds, (15) Wither Ditch Area Watersheds, (16) Willow Creek Basin, and (17) Lester Creek.
- ii. Area A-2: Area A-2 includes structures that will divert water from within that portion of Area A encompassing all areas tributary to the West Fork of the Elk River and its tributaries in a stream reach extending from a downstream terminus at the confluence of the West Fork of the Elk River with the Yampa River to an upstream terminus located where the West Fork of the Elk River branches off the Elk River, a distance of approximately 1.9 miles. The boundaries of Area A-2 are depicted on the map that is attached hereto as **Exhibit A**. The total amount of augmentation water available for Area A-2 is 50 acre feet. The rate of exchange within Area A-2 is 0.2 c.f.s. for the entire area A-2, and not to exceed 0.2 c.f.s. within major tributary listed below. This amount does not include the amount of exchange for Area A-1. The tributary is: (1) DeCora Gulch.

5. CONTRACTING PROCESS AND TERMS

a. Application Process

- i. Written Application: Prospective Contractees shall make written application to the District on forms prepared by District staff and approved by the General Manager and General Counsel. Such completed application forms shall be accompanied by the Applicant's non-reimbursable payment to the District of the application fee for processing of the application for approval. Application fees for contract applications that are denied by the District or the Division Engineer shall not be refunded.
- ii. Served Property: Applicant must use the water allotted pursuant to its Contract for beneficial purposes by diversion at Applicant's point of diversion under the District's direct flow water rights and/or for use by augmentation or exchange. Applicant must use the water allotted by the

District within or through facilities or upon lands owned, operated, or served by Applicant, which are described in the Contract Application. Applicant shall provide proof of ownership of, or legal right to use, the property and facilities to be served by the Contract. All lands, facilities, and areas served by the Contracted Water shall be situated within the boundaries of the District. Unless waived in writing by the General Manager, the Application shall include both a legal description suitable for recordation in the property records and accurate and legible map of the actual location of use if that location is part of a larger undivided property owned or controlled by the Applicant.

- iii. Verification of Need: The application process shall include a description by the Applicant of the nature of its water service, its places of use, its available water rights and supplies, and need for Contracted Water. The need of the Applicant for program water in the quantity requested shall be verified by the General Manager, in consultation with the General Counsel as necessary. If the General Manager determines that all or any portion of a Water Contract request is not based upon legitimate need, the General Manager shall report that finding to the District Board, which shall make the final decision, and the Board will allow the Applicant to present written information in support of its claimed need. The Board's decision on such matters shall be final.
- iv. Review by Division Engineer: All applications submitted to the District will be submitted to and may be reviewed by the Division Engineer. The Applicant shall be responsible for providing the information required in Paragraph 8.7.2 of the Augmentation Decree to the extent applicable. Large and Industrial Applications will also be provided to the Opposers listed in Exhibit B of the Augmentation Decree for informational purposes only. The Opposers may communicate specific concerns to the District, the Division Engineer, or both. The Division Engineer shall review the Application to determine whether any existing water right will be injured, or whether the calculated amount of depletions is reasonable, or whether the site-specific conditions described in any lagged depletion analysis is reasonable. The Division Engineer has sixty-three (63) days to provide written specific objections to the District. If no objections are made within said 63-day period, the District may issue a Water Contract. If the Division Engineer, within the 63-day period, provides written objection to the approval of such large application, the District must deny such application.
- v. Contract Execution - The Applicant for a Water Supply Contract shall have sixty-three (63) days after mailing or electronically transmitting the final Contract document to them in which to execute the final Contract and deliver the executed originals to the District's offices. If such execution and delivery are not accomplished in that time, the Applicant shall be deemed to have rejected the District's offer to contract.

b. Quantities

- i. Minimum: The minimum amounts of water that may be contracted pursuant to this Policy shall be 0.1 acre feet annually.
- ii. Maximum: The maximum amount of water that may be contracted for the benefit of any single property on a case-by-case basis shall be 10 acre feet without prior Board approval.
- iii. Water Contracts shall be rounded off in one-tenth acre foot units.
- iv. Changes per DEO review or retained jurisdiction: The District reserves the right to change quantities in a Water Contract per orders from the Division Engineer or Water Court as allowed under the Augmentation Decree.

c. Deliveries

- i. Project Year: The basis for calculating payment and delivery obligations shall be “Project Year” or multiples thereof, which shall be the period from April in one year through March in the succeeding year.

d. Charges and Fees

i. Application Fees:

- i. The Board shall determine application fees annually.
- ii. The application fee for a Water Supply Contract shall be determined annually by the Board for each application type. An application will not be processed until the appropriate application fee has been received. Initial fees shall be as follows:
 - (a) Small Application: \$600
 - (b) Large Application: \$2,000
 - (c) Industrial Application: \$2,000
- iii. The General Manager will impose a fee of \$600 for contract assignments.
- iv. Request for contract amendments must initiate new application process and pay associated Application fees as indicated above.

- ii. Rates for Classes of Users: The price for each type of water shall be reviewed and set annually by the Board of Directors. Any approved Contract is subject to change in price as annually determined by the District. The price is a “take or pay” price and is payable with respect to

the maximum allotted contract amount allotted to the user, whether or not in any year such user in fact takes and uses all of the contracted water. The initial approved pricing per acre foot of water for the current Project Year is as follows:

Supply Pricing	
Large Applications	\$204.75 per AF/year
Industrial Applications	\$204.75 per AF/year
Small Applications	\$204.75per AF/year

- iii. Minimum Charges: The minimum annual contract charge will be \$204.75.
- iv. O&M Assessments: Contractor shall pay any special assessment levied by the District on Contractor to recoup expenses from extraordinary maintenance incurred by the District.
- e. Required Meters:

Applicant agrees to provide, at its own expense, a totalizing flow meter, or other device as required by the District, to continuously and accurately measure at all times all water diverted pursuant to the terms of Applicant's water right and the terms of this Contract. On or before November 5 of each year, or more frequently if required by the Division Engineer, Applicant will provide accurate readings from such device or meter (recorded on a monthly basis for the period November 1 through October 30 of each year) to District, the Division Engineer and Water Commissioner. Applicant acknowledges that failure to comply with this paragraph could result in legal action to terminate Applicant's diversion of water by the State of Colorado Division of Water Resources.

- f. Use Reporting:
 - i. Commencement of Service: Service will commence upon execution of the Water Contract, payment of applicable fees, and approval as may be required under the Augmentation Decree by the Division Engineer or Water Court. Contractor must record water use at commencement of service.
 - ii. Periodic Reporting per District Requirements: Contractor shall maintain an accounting of its use of all water used or supplied by Contractor on forms acceptable to the District specifically for the purpose of enabling the District to prove the use of project water rights and to administer and operate the project and water right decrees and/or administrative approvals related to Contractor's use of Contracted Water. Contractor

shall submit its accounting forms and records to the District promptly upon request and shall assist the District as it may reasonably request in presenting and/or verifying such evidence of use in court or before administrative agencies by testimony of Contractor or its authorized and informed officers or agents.

- iii. District Right to Enter and Verify: Applicant acknowledges that District representatives or agents have the right to enter upon property that Applicant represented in the Application for which the Contract Water is to be used. The District may verify water use in conformance with the Water Contract and Policy, including, but not limited to amounts, locations used, types of use, and accuracy of flow meters.

g. Well Permit:

If Applicant intends to divert through a well, then Applicant must provide to District a copy of Applicant's valid well permit before the District is obligated to deliver any water hereunder, and it is the Applicant's continuous duty to maintain a valid well permit. Applicant shall also comply with all restrictions and limitations set forth in the well permit obtained from the Colorado Division of Water Resources pursuant to C.R.S. §37-90-137. The Applicant must comply with any other statutory or regulatory requirements for issuance of well permits to be augmented pursuant to this plan, including the 600-foot spacing requirement of C.R.S. § 37-90-137(2)(b). Compliance with said statutory well-spacing criteria shall be an express condition of the extension of service hereunder, and the District shall in no way be liable for an Applicant's failure to comply. Applicant agrees to mark the well in a conspicuous place with the permit number.

h. Noncompliance:

- i. Report to DEO: Breach of the Contract by the Contractor will result in the District reporting the noncompliance to the District Engineer.
- ii. Curtail releases: The District may withhold deliveries of Contracted Water in the event of Contractor's nonpayment for Contracted Water or any other breach of the Contract by Contractor. Such remedies shall not be the exclusive remedies in the event of such a breach.

i. Assignment:

- i. The water right allotted under any Water Contract shall be beneficially used for the purposes and in the manner specified in the Application. The Water Contract is for the exclusive benefit of the Applicant's property and shall inure to the benefit of any successor in interest to the fee title to said property upon written assignment and notice thereof to the District, and subject to proof of eligibility as provided in

the District's Water Marketing Policy, said assignment to be made using the District's approved form. The restrictions on assignment contained herein shall not preclude the District from holding the Applicant, or any successor of the Applicant, responsible for the performance of all or any part of the Applicant's covenants and agreements contained in the contract.

- ii. The Board shall determine assignment fees annually. The initial fee for a contract assignment shall be \$600.

j. Limitation on Sale:

Applicant may not sublet, sell, donate, loan or otherwise dispose of any of its rights to a Water Contract or Contracted Water separate from the property that it serves without prior written notice to, and the written approval of, the District as provided in the Contract. The District will approve such disposition in all instances where the transfer is made to an entity such as a homeowners' association or special district created to serve the property originally represented to the District to be served with the Contracted Water. Any disposition of an Applicant's rights to a Contract or Contracted Water must be by written instrument signed by the District. As provided above, a fee will be imposed for each contract assignment.

k. Form of Contract, Term and Renewal:

Contracts shall be made in the form approved by the Board, as the same may be revised from time to time in the discretion of the Board. The form of contract approved as of the date of this Policy is attached at Exhibit B. The term of such contracts shall be for 40 years commencing on January 1st of the year in which such contract is executed.

6. DELIVERY CONTINGENCIES AND SHORTAGE CRITERIA

a. Shortages:

Delivery of water is subject to limitations of the hydrological conditions, availability of water under the Augmentation Decree including limitations on exchanges, and the provision for curtailment below. In the event that the District is unable, because of either legal or physical reasons (including but not limited to, hydrologic shortages and operational restrictions), to deliver any or all of the full amount of water contracted from the District, the District reserves the right to apportion the available water among its several contractors. If the District is to apportion the available water among its contractors as provided herein, the District shall notify the respective Contractors in writing of such fact by August 1st of that year. Water shortages among the District's Contractors shall be apportioned in the following sequence:

- i. Large or Small Contracts used for solely for irrigation purposes are pro-rata shorted up to 100%.
- ii. Large and Industrial contracts are then pro-rata shorted up to 100%.
- iii. Small contracts then are shorted as necessary on a pro-rata basis.

Replacement of depletions using the decreed appropriative exchanges shall require that said exchange(s) be in priority and have water physically and legally available in the exchange reach(es) from the exchanged from point to the exchanged-to point(s) in the amount(s) to be exchanged. Out-of-priority diversions not meeting this requirement shall be subject to curtailment.