

**WATER MARKETING POLICY OF THE
COLORADO RIVER WATER CONSERVATION DISTRICT'S
COLORADO RIVER WATER PROJECTS ENTERPRISE
FOR THE
YAMPA RIVER BASIN**

January 21, 2020

All Prior Versions Superseded

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1. PURPOSE OF MARKETING PROGRAM. The Colorado River Water Conservation District's ("District") Colorado River Water Projects Enterprise ("Enterprise") is authorized and directed to provide for the beneficial use of water available for use from the Enterprise's storage capacity in Elkhead Reservoir. The Enterprise's Board of Directors has approved the marketing of such water and other Enterprise 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 water supply contracts and assignments made pursuant to this Policy subject to the several specific reservations of Board authority stated herein. The General Counsel shall assist in the negotiation and drafting of the Water Supply Contracts.

 - b. The General Manager is authorized by the Board to execute the Water Supply Contracts made pursuant to this Policy on behalf of the Enterprise without further Board action.

 - c. The General Counsel is directed and authorized to oppose Water Court applications which propose use of the Enterprise's water supplies without the existence of a current Water Supply Contract or otherwise at variance with this Policy.

3. SOURCES AND SCOPE OF MARKETING PROGRAM.
 - a. Sources: "Yampa River Supply". Water delivered from Elkhead Reservoir, for which a storage water right decree was obtained by the River District in Case No. 02CW106, District Court for Colorado, Water Division No. 6, and for which additional storage water right decrees may be obtained in the future by the River District, and other water sources available to the Enterprise for use in its Water Marketing Program.

 - b. Geographic. The Enterprise may enter into contracts with third parties for use of Enterprise water supplies directly, or by exchange or augmentation, within Colorado Water Division No. 6, subject to site-specific determination by the District's General Manager and General Counsel of the legal and physical feasibility of such use and subject to the principles stated herein. The Enterprise will not contract to provide a water supply to any parcel of land that was previously served with water rights that were conveyed out of Water Division No. 6, absent express approval of the Enterprise Board of Directors. Contracts with third parties for use of the Enterprise water supplies outside of Colorado Water Division No. 6 or to facilitate uses outside of Water Division No. 6 (including for use outside of, or to facilitate use outside of, the District) require express approval, including pricing, by the Board of Directors.

- c. Conservancy District Programs. Several water conservancy districts are located within the District and have implemented, or plan to implement, water supply programs for the types of water use authorized by this Water Marketing Policy. In the interest of promoting maximum beneficial use of water within the District, it is appropriate to relate the Enterprise's water marketing program with the water supply programs and service areas of conservancy districts within the District in order to ensure the legal and financial integrity of all of those programs. The following principles are adopted in regard to such conservancy district water supply programs.
- i. The Enterprise recognizes the conservancy districts' first right to serve retail users within their service areas. The Enterprise may enter into contracts with that category of users within a conservancy district's service area which has an existing program to serve such users only if that conservancy district is unable or unwilling to provide service.
 - ii. Unless the Enterprise has entered into an agreement with a conservancy district by which that district will provide Enterprise supplies to wholesale users within a defined service area, the Enterprise may only enter into contracts with wholesale users which require a Water Supply Contract in excess of 50 acre-feet annually within any conservancy district's service area.
 - iii. The Enterprise may enter into contracts with the conservancy districts so that those districts can use Enterprise water in their water supply programs.
 - iv. The Enterprise will give notice to conservancy districts and other interested persons at such times when the Enterprise has entered into contracts which total approximately 50% and 75% of available Enterprise Yampa River Supply.
 - v. As a condition of the application of these principles regarding a specific conservancy district, such conservancy district's service area shall be defined by a map and explanatory information presented to the Enterprise by the conservancy district, which map and information are acceptable to the General Manager or to the Enterprise's Water Supply Projects Committee.

4. NATURE OF WATER SERVICE.

- a. Contract Form. The Enterprise shall provide water supply for agricultural and for municipal and industrial uses pursuant to contracts in the form attached hereto as Appendix A. That form of the Water Supply Contract shall be used for all Contract applications made on and after the date of the adoption of this Policy as revised, and that form also may be used for Contract applications which are in progress as of such date if the Contract applicant agrees. The Board reserves the authority to modify the substance of the Water Supply Contract on a case-by-case basis. The

General Manager and General Counsel may make non-substantive changes to the Contract on a case-by-case basis in order to tailor that Contract to specific situations.

- b. Type of Service. Service is “wholesale,” which means that the Enterprise will deliver water at the outlet of the Enterprise’s storage facilities into a stream system and that the user is responsible at the user’s sole cost for arranging and obtaining the legal use or credit.
- c. Primary Sources of Supply. As previously described in subparagraph 3.a. above, the Enterprise’s supply of water for the program described herein is anticipated to derive substantially from the following sources of supply:
 - i. Yampa River Supply. The Enterprise’s portion and share of the yield of Elkhead Reservoir, located on Elkhead Creek, a tributary of the Yampa River.
- d. Alternate Sources of Supply. The Enterprise may, in its discretion, provide water from alternate sources, provided that the releases from alternate facilities are suitable to physically meet the calling water right.

5. CONTRACTING PROCESS AND TERMS.

- a. Timing. As to particular sources of supply, the Enterprise shall not execute any contracts until that source has been legally acquired by the Enterprise and all needed permits satisfactory to the General Manager have been issued by appropriate agencies and received by the Enterprise. Pending legal acquisition of and the receipt of all permits for a particular source of supply, the Enterprise will process contract applications for such source but will defer contract execution.
- b. Applications and Fees.
 - i. Prospective Contractors shall make written application to the Enterprise on forms prepared by Enterprise staff and approved by the General Manager and General Counsel. Such completed application forms shall be accompanied by the Contractor’s non-reimbursable payment to the Enterprise of \$250.00 as the fee for the Enterprise’s processing of the application for approval, but, if the Contractor has filed a Water Court application without having executed a Water Supply Contract and the District has opposed that Application as provided in subsection 2.c. above, at the General Manager’s discretion the Contractor’s application fee shall be \$500.00.

- ii. The General Manager will impose a fee of \$250.00 for contract amendments and assignments. At the General Manager’s discretion, the assignment and/or amendment fee for clerical, non-technical changes for qualified non-profits (*i.e.*, 501(c)(3) type organizations) may be waived.
- c. Verification of Need. The application process shall include a description by the contract 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 contract 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 Enterprise Board, and the Board will allow the contract applicant to present written information in support of its claimed need. The Board’s decision on such matters shall be final.
- d. Consistency with Conservancy District Programs. The General Manager and General Counsel shall review all contract applications for consistency with the principles stated herein and in any separate agreements regarding water conservancy district water supply programs.
- e. Minimum and Maximum Quantities. The minimum amounts of water which may be contracted pursuant to this Policy shall be not less than 0.1 acre foot annually. The maximum amounts of water which may be contracted to each entity pursuant to this Policy shall be as set forth below unless otherwise approved by the Enterprise Board on a case-by-case basis.

Source	Maximum
Yampa River Supply	250 AF

- f. Project Year. The basis for calculating payment and delivery obligations shall be “Project Year” or multiples thereof, which shall be the period from July 1 in one year through June 30 in the succeeding year.
- g. Terms of Contracts. Three options are available for Contract terms.
 - Full Term: Contracts for five years to a maximum of 40 years from the date of execution of the Contract, with right to renew for a secondary term of 35 years, shall be considered full-term contracts.
 - Interim: Contracts for five (5) years or less from the date of execution of the Contract shall be considered interim-term contracts. Water for out-of-basin uses will be offered on an interim basis only.
 - In-Channel Use: Contracts shall be limited in duration to one (1) Project Year and any renewal will require the written approval of the River District.

- h. Pricing. The price for each type of water will be reviewed and set annually by the Enterprise's Board of Directors (which decision normally will be made prior to March 1 each year). Any annual increase in the contract price shall not exceed the then-current published Consumer Price Index (CPI) plus New Growth Index (NGI). The approved pricing for the current Project Year is as follows:

SUPPLY PRICING	
Yampa River: M&I	\$194.00 AF/year
Yampa River: Agricultural (full-term: 5-40 years)	\$194.00 AF/year
Yampa River: Agricultural (interim: 1-5 years)	\$32.75 AF/year
Yampa River: In-Channel Use (1-year only)	\$32.75 AF/year

- i. Minimum Charges. The charge for water will be based upon the amount contracted times the applicable price, except that the minimum annual billing for any type of Supply shall be \$50.00, which amount shall escalate in the same manner as provided in subparagraph h. above.
- j. Payment after Renewal. If after the expiration of the initial 40-year term of the Contract, Contractor shall have the right to renew this Contract for the same Contracted Water amount for a secondary term of thirty-five (35) years, upon such terms and conditions as the River District is offering at that time, provided that the River District is offering up the full amount of Contracted Water for lease. In the event that the River District, on a non-discriminatory basis, decides not to offer up the full amount of the Contracted Water for lease, Contractor shall have the right to renew for a secondary term of thirty-five (35) years such lesser portion of the Contracted Water as may be offered by the River District.
- k. Assessments. Contractor shall pay any special assessment levied by the River District on Contractor to recoup expenses from extraordinary maintenance incurred by the River District or assessed upon the River District by its third party suppliers.
- l. Contract Execution. The applicant(s) for a Water Supply Contract shall have sixty (60) 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.
- m. Limitation on Disposition. Contractors may not sublet, sell, donate, loan or otherwise dispose of any of its rights to a Contract or Contracted Water without prior written notice to, and the written approval of, the Enterprise. The Enterprise will approve such disposition in all instances in which a permanent transfer of the Contract is to be made to a successor in interest of Contractor by reason of the transfer of the title or other legal right to use the property served by the Contracted

Water, or 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 Enterprise to be served with the Contracted Water. Any disposition of a Contractor's rights to a Contract or Contracted Water must be by written instrument signed by the Enterprise. An example of a Contract Assignment form is attached hereto as Appendix B. As provided in subparagraph 5.b.ii. above, a \$250.00 fee will be imposed for each contract assignment.

- n. Pricing upon Assignment. Assignment of a Contract will be subject to review and approval by the Enterprise, along with the then-current pricing and policy in effect at the time of the assignment.
6. SHORTAGE CRITERIA. Water shortages among the Enterprise's Contractors shall be apportioned in the following sequence:
- a. Non-firm contracts, when and if authorized by the Board, are pro-rata shorted up to 100%
 - b. One-year and out-of-basin contracts are then pro-rata shorted up to 100%.
 - c. Interim agricultural contracts for two to five years are then pro-rata shorted up to 100%.
 - d. Interim M&I contracts for two to five years are then pro-rata shorted up to 100%.
 - e. All remaining contracts then are shorted as necessary on a pro-rata basis.
7. DELIVERY CONTINGENCIES. There are several assumptions upon which the Enterprise's ability to deliver water pursuant to this Water Marketing Policy are contingent.
- a. Terms and conditions of applicable Water Court decrees for the sources of supply.
 - b. Terms and conditions of permits for all of said sources of supply and their related facilities.
 - c. The River District's and Enterprise's authorities pursuant to the River District Organic Act, C.R.S. §37-46-101, *et seq.*, and other applicable Colorado Constitutional and statutory provisions, including the Water Activity Enterprise Act, C.R.S. § 37-45.1-101, *et seq.*
 - d. Terms and conditions of any substitute supply plans and plans for augmentation or exchange regarding Contractors' use of the sources of supply.