

# **Use of Colorado-Big Thompson Project Water in Substitute Water Supply Plans and Plans for Augmentation**

## **INTERIM RULE**

NORTHERN COLORADO WATER CONSERVANCY DISTRICT

May 2005

### Factual Background

The Northern Colorado Water Conservancy District (District), pursuant to the Water Conservancy Act (C.R.S. §§ 37-45-101 et seq.) and the contract with the United States for the construction of the Colorado-Big Thompson Project (Project) dated July 5, 1938 (Repayment Contract), supplies supplemental water to areas of northeastern Colorado for agricultural, municipal, domestic and industrial uses. Project water is allocated on an annual basis by the District's Board of Directors (Board) to holders of Project water allotment contracts (allottees). Allottees and the use of Project water are governed by the provisions of the Water Conservancy Act, the rules, regulations and policies of the Board, and the Repayment Contract.

Under Article 19 of the Repayment Contract, all return flows from the use of Project water are claimed and reserved by the United States for use by the District to capture, recapture and re-use such return flows. In addition, such return flows from the use of Project water, if and when they exist, are first to be allocated only to irrigable lands within the District already being supplied with water for irrigation. If excess Project return flow waters exist, such return flows shall be rented, sold, or disposed of for domestic, irrigation, and industrial uses within the District and upon such terms as the Board may determine. The Board recognizes, however, that not all initial or subsequent uses of Project water induce return flows.

Due to the annual variations in water supply available to each Project allottee, coupled with the variations in water demand of each Project allottee, all water allocated in any particular water year may not be used by Project allottees. To create the greatest benefit of the Project to the region, the Board allows and encourages Project water to be rented or leased by an allottee to another water user within the District. Without this rental or lease of Project water, the Project water allocated may not be fully used or produce return flows during the water year in which it is allocated. In addition, since Project water is almost always allocated on the basis of water need within the District, and not on water availability within the Project, such rented or leased water would not necessarily be used to supply allotments in future years.

The District recognizes the importance of innovative water management strategies that ultimately enhance and maximize the beneficial use of water supplies within its boundary. Under Colorado water law, Substitute Water Supply Plans (as defined in C.R.S. § 37-92-308) and Plans for Augmentation (as defined in C.R.S. § 37-92-103(9))

offer water users short-term and long-term legal mechanisms to increase the supply of water available for beneficial use. Such plans often include various sources of replacement water supplies, all of which are required to insure that all out-of-priority depletions are replaced in time, location, and amount so as to prevent injury to other vested water rights and decreed conditional water rights. The purpose of this Interim Rule is to set out the conditions under which Project water may be used as a water source to replace depletions in Substitute Water Supply Plans or Plans for Augmentation, and to do so in a manner which will not materially adversely affect the amount of return flows that result from the use of Project water, and is furthermore consistent with the provisions of the Water Conservancy Act, the rules, regulations and policies of the Board, and the Repayment Contract. This Interim Rule repeals, supersedes and replaces all previous District rules, regulations, policies and resolutions concerning the use of Project water to replace depletions in Substitute Water Supply Plans and/or Plans for Augmentation.

### Terms and Conditions

Project water can only be used to replace depletions in Substitute Water Supply Plans (as defined in C.R.S. § 37-92-308) or Plans for Augmentation (as defined in C.R.S. § 37-92-103(9)) as follows:

- I. Project Water within Substitute Water Supply Plans (SWSP)
  - a. For use within a SWSP, Project water may only be used to offset depletions that are the result of a beneficial use of water within the District.
  - b. Only Project water that is rented or leased may be used to offset depletions within a SWSP. Project water rented or leased for such purposes must be delivered directly from the Project to the SWSP applicant, and within the water year in which the Board allocated the said Project water. Project water released for use within a SWSP may be placed to beneficial use within the water year in which it was released or in any subsequent water year if initially delivered from the Project to temporary storage. All Project water released for immediate or future use within a SWSP may not be used for any other purpose.
  - c. Project allottees may not use Project water as a replacement supply to their own SWSP, or to a SWSP in which an allottee is a beneficiary. Furthermore, reciprocal renting/leasing by Project allottees to use such rented or leased Project water as a replacement supply in a SWSP is prohibited. Reciprocal renting/leasing is defined as two or more Project allottees renting/leasing Project water to one another for subsequent use in a SWSP
  - d. To insure return flows occur following the initial use of Project water within a SWSP, applicants will only be allowed to account for a portion of the Project water released from the Project toward offsetting a like amount of depletions within their respective SWSP. All Project water released will first be reduced by the administrative conveyance shrink that occurs between the point of release and the

point of delivery as determined by the State Engineer and/or the Division One Engineer. Losses due to administrative conveyance shrink and any physical losses incurred while Project water is temporarily stored may not be used to offset depletions within a SWSP. Once Project water is delivered to the reach of the stream in which it is used to replace depletions, the net yield of such Project water to a SWSP will be defined as follows:

- i. If said Project water was rented or leased from a municipal Account Entity (generally comprised of Class B and Class C [domestic] allottees), net yield of Project water to the SWSP for the purposes of this Interim Rule will be defined as fifty percent (50%) of the net Project water delivered.
  - ii. If said Project water was rented or leased from a agricultural Account Entity (generally comprised of Class C [irrigation] and Class D allottees), net yield of Project water to the SWSP for the purposes of this Interim Rule will be defined as seventy percent (70%) of the net Project water delivered.
- e. Within any given water year, the total amount of Project water released from the Project for the purpose of offsetting depletions within all SWSP's will not exceed 15,000 acre-feet. All requests to the District for SWSP uses that result in annual Project water releases to exceed 15,000 acre-feet will be denied. The 15,000 acre-foot annual limitation will be considered for approval as requests are submitted.
  - f. In no circumstance shall Project water be released from the Project for utilization within a SWSP and delivered to a groundwater recharge facility. Project releases for SWSP purposes can only be utilized to offset instantaneous river/stream depletions OR released to a storage facility specifically for subsequent releases to offset instantaneous river/stream depletions that arise during the term of the SWSP.
  - g. Water users desiring to acquire Project water through the rental/lease market for use within a SWSP must notify the District and receive approval for such use prior to taking delivery of said Project water. Notification must include the specific use of the water within the SWSP and a description of the process by which the replacement water supply will be accounted for by the water user and the State Engineer and/or the Division One Engineer. Upon review of the request and said notification, the District will approve or disapprove the use of Project water within said SWSP in accordance with the standards set out in this Interim Rule.
  - h. Administration and accounting for any such Project water once released by the District and utilized within a SWSP, will be the joint responsibility of the SWSP applicant and the State Engineer and/or the Division One Engineer. To facilitate the tracking of Project water used within a SWSP, SWSP applicant must provide to the District an

accounting summary illustrating how such Project water is being utilized. In particular, accounting must demonstrate that the use of Project water in no way results in the direct or indirect benefit to water users outside of the District's boundary. An accounting summary must be provided to the District within 30 days of the Project water being released and every month thereafter, until such a time that all Project water released has been utilized to replace stream depletions within the SWSP.

## II. Project Water within Plans for Augmentation

- a. The utilization of Project water, regardless of the manner in which it is or has been delivered, to replace depletions within either: 1) a Court adjudicated Plan for Augmentation, or 2) other adjudicated water right or decree, is presently prohibited. This prohibition also shall apply to Project water that has been delivered, but which has not yet been beneficially used.
- b. The District recognizes, however, that unknown conditions may arise in the future that may prompt the Board to reconsider the prohibition of the use of Project water to replace depletions within a Plan for Augmentation. For this reason, the District will not object to: 1) applications for Plans for Augmentation, 2) decrees for Plans for Augmentation, or 3) other adjudicated water rights or decrees, that list Project water as a potential source to replace depletions; provided that the application and the decree contain the following language:

“*[water user]* shall not use Colorado-Big Thompson Project water as a replacement water supply within the Plan for Augmentation herein, unless, prior to such use *[water user]* notifies and obtains written approval from the Northern Colorado Water Conservancy District specifically allowing such use.”

By not objecting to such language the District does not imply that the use of Project water in a Plan for Augmentation or other decree is or will be permitted.

## III. Future Modifications

The Board may modify the provisions of this Interim Rule by a resolution duly adopted at any regular Board meeting, except that the Board states its intention that it will only modify the provisions of Section II above pursuant to a public rule-making proceeding.