

# CHERRY CREEK BASIN WATER QUALITY AUTHORITY TRADING PROGRAM GUIDELINES

## I. ESTABLISHMENT OF TRADING PROGRAM

- A. **Legal Basis:** The Cherry Creek Basin Water Quality Authority (“Authority”) is authorized to implement and maintain a Trading Program that allows phosphorus trading and the sale of phosphorus pounds in the Cherry Creek Watershed. The Trading Program and these trading guidelines (“Guidelines”) are developed pursuant to and consistent with the Cherry Creek Basin Water Quality Authority Enabling Act, C.R.S. § 25-8.5-101, et seq. and the Cherry Creek Reservoir Control Regulation, 5 C.C.R. 1002-72 (“Control Regulation”). The Authority will administer and oversee the Trading Program.
- B. **Purpose:** The Trading Program allows Allocatees to receive phosphorus pounds for new or increased phosphorus wasteload allocations from two distinct sources, each of which is more fully described herein: (1) the Reserve Pool in exchange for phosphorus loading reductions from nonpoint source control projects (“Projects”) built by the Allocatees or third parties; and (2) Phosphorus Credits acquired from the Authority’s Historic Credit Projects. The goal of the Trading Program is to encourage and facilitate the construction of Projects.
- C. **Scope:** The Trading Program and these Guidelines provide for two types of trading:
1. **New Trade Projects.** “Reserve Pool Trades” allow landowners, local governments, and Allocatees to construct phosphorus removal projects and receive Credits for their own use or for transfer by the Project Owner to an Allocatee (“New Trade Projects”). Two hundred sixteen (216) pounds of phosphorus allocated to the Reserve Pool are available for New Trade Projects. A Trade Ratio will be established for each Project on a project-specific basis. New Trade Projects that have final approval from the Authority shall have the traded pounds of phosphorus subtracted from the Reserve Pool and credited to the entity instituting the Project, subject to use by the Project Owner or transfer to an Allocatee.
  2. **Historic Credit Sales.** The Phosphorus Bank is comprised of 216 pounds of Credits from projects already constructed by the Authority (and approved by the Water Quality Control Commission) and can be sold by the Authority to Allocatees in the Watershed meeting the criteria set forth herein. The Historic Credit Sales included in the Bank are:
    - a. Shop Creek detention and wetlands (1991);
    - b. Quincy Drainage detention (1995);
    - c. East Shade Shelter streambank improvements and parking area retrofit (1995); and

d. Cottonwood Perimeter Road Pond (near Reservoir) (1997).

The 216 pounds of phosphorus allocated to the Historic Authority Projects are available for transfer and may be purchased from the Authority at a price established by the Authority. Pounds sold from the Historic Credit Sales are subtracted from the Historic Credit Sales total poundage and allocated to the entity acquiring the pounds, for long-term or short-term use.

**D. Definitions:** All definitions contained in the Control Regulation at 5 C.C.R. 1002-72, § 72.2 apply to these Guidelines and the Trading Program. The following definitions also apply:

1. ***Allocatees*** are point source dischargers, holders of wastewater reuse authorizations, entities providing land applications, industrial dischargers, and any entities requiring a load or wasteload allocation (“Total Maximum Annual Load” or “TMAL”) under the Cherry Creek Control Regulation.
2. ***Authority*** is the Cherry Creek Basin Water Quality Authority, as created by its Enabling Act, C.R.S. § 25-8.5-101, et seq.
3. ***Base Price*** is the minimum price for Sales of Credits from the Historic Credit Sales described in Section III.K and applied in Section III.L of these Guidelines.
4. ***BMPs*** are best management practices as set forth in the Authority’s “Stormwater Quality Requirements for the Cherry Creek Watershed,” adopted October 21, 1999.
5. ***Board*** is the Board of Directors of the Cherry Creek Basin Water Quality Authority, as established under C.R.S. § 25-85-106.
6. ***Commission*** is the Water Quality Control Commission of the Colorado Department of Public Health and Environment.
7. ***Control Regulation*** is the Cherry Creek Reservoir Control Regulation, 5 C.C.R. 1002-72, § 72.1, et seq.
8. ***Credits*** represent the pounds of phosphorus awarded a Project Owner or Allocatee as a result of a Trade under these Guidelines.
9. ***Division*** is the Water Quality Control Division of the Colorado Department of Public Health and Environment.
10. ***Empirical Modeling*** means a calculation, series of calculations, or model that quantifies the net nonpoint source phosphorus removed by a Project.

11. **Historic Credit Sales** (also known as the "Phosphorus Bank") is the 216 pounds of phosphorus allocated to the Authority Bank from existing constructed and approved Authority projects as a result of the 2001 Commission hearing and revisions to the Control Regulation. The pounds are available for Sale.
  11. **Hearings** by the Board regarding Historic Credit Sales or Trade Projects, shall be noticed as set forth in the Authority's bylaws plus notice to applicant and any affected party. The hearing shall occur at a regular or special meeting of the Board.
  13. **New Trade Projects** is the pool of 216 pounds of phosphorus for Credits for New Projects.
  14. **Phosphorus Bank** means the Historic Authority Projects.
  15. **Project** means a structural nonpoint source control project or nonstructural practice designed or intended to remove or retain phosphorus that would otherwise enter the Cherry Creek Reservoir or a tributary thereto. Examples are nonstructural practices that reduce phosphorus loads beyond required BMPs.
  16. **Project Owner** means the owner or authorized representative of the New Trade Project.
  17. **The Reserve Pool** is now known as the New Trade Project.
  18. **Sale Credits** represent the pounds of phosphorus from **Historic Credit Sales** available for transfer to Allocatees by the Authority.
  19. **Sales** are the sale of phosphorus credits from the **Historic Credit Sales** under these Guidelines.
  20. **Technical Advisory Committee ("TAC")** is the subcommittee created by the Cherry Creek Board of Directors to, among other tasks, review proposed Sales of Credits or New Trade Projects.
  21. **Trade Ratio** represents the pounds of nonpoint source phosphorus removal required by a New Trade Project to establish one pound of Credit.
- Transferred Credits** are pounds of phosphorus Credits approved by the Authority for New Trade Projects, which are held by the Project Owner or a subsequent Allocatee.

## II. NEW TRADE PROJECTS

- A. **Available Pounds for New Trade Projects:** The guidelines for New Trade Projects shall govern trading against the 216 pounds. The pounds may be allocated to new or existing Allocatees who have completed a Trade Project under this Trading Program or

acquired pounds from a Trade Project. Any Credits allocated from New Trade Projects after application of the Trade Ratio shall be subtracted from the New Trade Projects cap of 216 pounds.

**B. Potential Trading Opportunities and Limitations:** Eligible projects are those New Trade Projects which the Authority may approve. Eligible projects for trading are:

1. Additions to Existing Development. Land development activities undertaken prior to January 1, 2000 for which BMPs were not constructed during the original development activities qualify for the addition of BMPs to the project. The phosphorus removals from such added BMPs are available for trading.
2. Expanded or Retrofitted BMP Removals. Land development activities undertaken prior to January 1, 2000 which implemented required BMPs qualify for expanded or retrofitted BMPs to achieve a higher level of phosphorus removal. For such enhanced BMP removal projects, only the increase in phosphorus removal beyond the existing BMP removals is available for trading.
3. Projects Beyond Required BMPs. BMPs for new development (development subsequent to January 1, 2000) that demonstrate phosphorus reduction greater than that resulting from the implementation of the required BMPs through the provision of additional physical, biological, or chemical processes, or through enhanced operational or maintenance procedures.
4. Cooperative Authority Projects. When the Authority constructs or funds a new nonpoint source project in partnership with a third party, only that portion of the project constructed or funded by the third party shall be eligible for Trade Credits, on a pro rata basis.
5. Engineered Authority Projects. Any nonpoint source project for which the Authority has completed preliminary engineering and design may be constructed by a third party and be eligible for Trade Credits, provided the Authority agrees to the third party's construction of such project as a New Trade Project.
6. Water Supply Operations. Municipal water supply activities that are specifically modified or designed to remove phosphorus beyond the incidental reductions from regular, normal operations shall be eligible for Trade Credits for the additional phosphorus pounds removed. For example, Trade Credits may be available for additional phosphorus removals (beyond normal operations) from:
  - a. Water treatment facilities which pump and return the treated water directly to surface or alluvium; or
  - b. Interception and treatment of lawn irrigation return flows to remove phosphorus loads beyond BMP removals.

- C. Trade Ratio and Credits:** The Trade Ratio is applied to the pounds of phosphorus removed by a Trade Project to determine the pounds of Credit. The Trade Ratio and resulting Credits are specific determinations for each New Trade Project and shall be decided on the following factors:
1. Calculation of the eligible Project's (or eligible portion of a multi-use Project) annual phosphorus removals expected.
  2. The minimum Trade Ratio is 2:1, so that for every 2 pounds of total phosphorus removed by a Project, there is 1 pound of Credits available with appropriate adjustments as described in paragraph 3 below.
  3. Trade ratios may be further adjusted to assure that:
    - a. The relative load of dissolved and particulate phosphorus between the nonpoint source loading reduced by the Project, and the point source that receives the trading Credit, are comparable; and
    - b. The fate and transport characteristics (e.g., chemical and physical transformations and time of travel) of the reduced and controlled phosphorus to be traded from a Project are similar to or pose a greater risk of impact upon the Reservoir than the phosphorus loading to be discharged from the point source receiving the Credit.
  4. Calculation of the Trade Ratio and Credits shall be determined initially upon site-specific monitoring data, empirical modeling, and/or best available scientific evidence involving similar types of Projects, so as to characterize the expected annual phosphorus loading reduction to be achieved by the Project. The phosphorus Trading Ratio may be adjusted upward.
- D. Authority Criteria in Considering Trades:** In considering whether to approve a trade proposal and the limitations, if any, to impose thereon, the Authority shall consider the following criteria:
1. Consistency with these Guidelines and the Control Regulation, including, but not limited to:
    - a. Implementation of BMPs for the Project and areas to be served by the Project;
    - b. Direct discharges which comply with the effluent concentrations in compliance with the Owner's or Allocatee's effluent limitations for phosphorus set forth in Allocatee's discharge permit, except after August 1, 2004, such phosphorus effluent concentrations shall not exceed 0.05 mg/l total phosphorus as a 30-day average; and

- c. Land application of treated wastewater that complies with the phosphorus effluent limitations set forth in § 72.3, 5 C.C.R. 1002-72.
2. Predicted effect on the water quality in the Cherry Creek Watershed and the Cherry Creek Reservoir;
  3. Completeness and technical soundness of the Project, including, but not limited to, the reliability of the nonpoint phosphorus removal technology being utilized. For new types of projects, the Project Owner shall provide information on the functioning and removals by other similar projects and engineering valuations of the Project's anticipated effectiveness;
  4. The operations, maintenance, and legal protocols to assure continuous control and operation of the Project;
  5. Extent and sufficiency of construction BMPs during construction of the Project;
  6. Adequacy of the Project proposed monitoring plan to characterize and evaluate the annual phosphorus loading reduction achieved by the Project;
  7. Financial capability of the Owner to construct the Project and viability of the Owner's plan to finance the continuous control and operation of the Project;
  8. Receipt of, or specific plans and schedules for obtaining, approvals necessary for construction, implementation, and operation of the Project, such as water rights, modifications to water decrees, and zoning or land use modifications;
  9. Evaluation and comments from the Division and the TAC, including whether the Project sponsor has addressed all concerns identified in such comments;
  10. Likelihood of completion of a New Trade Project:
    - a. If a Project has been completed, and Credits are sought, Credits may be awarded.
    - b. If a Trade Project has not been constructed, consideration shall also be given to the Project's scheduled completion date.
  11. No Trade Credits will be awarded for Projects constructed to offset penalties or required to be constructed pursuant to consent decrees or court orders, including, but not limited to, supplemental environmental projects.

**E. Applications for New Project Trades:**

1. Pre-Application Discussion. Project Owners are encouraged to consult with the TAC, which shall invite the Division to a pre-application conference to discuss a proposed New Trade Project and to consider the applicability of these Guidelines.

Prior to the Pre-Application discussion, the Project Owner must submit to the TAC a Project Summary in format and with contents shown in Appendix A, a copy of which shall be forwarded to the Division.

2. Application Costs.

- a. Application Fee. An initial non-refundable fee of \$100 shall be submitted with the Pre-Application, if one is submitted, or the Application, whichever occurs first.
- b. Direct Costs. With the Pre-Application, or if no Pre-Application is submitted, with the Application, the Project Owner shall deposit \$2,500.00 with the Authority for Direct Costs. The Authority will charge the Project Owner for Direct Costs incurred by the Authority to review the Pre-Application or the Application, including costs of consultants to review the Pre-Application or Application and advise the Authority. Such Direct Costs will be assessed regardless of the outcome of the Pre-Application or Application. The Direct Costs shall be paid from the Project Owner's deposit for Direct Costs. Within 30 days following the Board's decision or the Project Owner's withdrawal of the Pre-Application or Application, the Authority shall remit to the Project Owner all amounts remaining in the deposit for Direct Costs not spent for the Application review. If the deposit for Direct Costs is insufficient to cover the Direct Costs related to the Project Owner's Pre-Application or Application, the Project Owner shall pay such additional Direct Costs. Upon request by the Project Owner, the Authority shall provide invoices or other documentation supporting the Direct Costs.

3. Application. An entity seeking approval for a New Trade Project shall file:

- a. Two (2) sets (one hard copy and one electronic file, preferably in PDF format) of its Project Application with the Authority at the office of the Authority's Administrator; and
- b. One hard or electronic copy with the Water Quality Control Division.

4. Contents of Application. Any Application for a Project shall include, at a minimum, the following:

- a. Name and address of the Project Owner;
- b. Name, address, and contact information for Project Owner's representatives;
- c. Project Summary, in format and with contents shown in Appendix A;

- d. A description of the Project and its specifications, including, but not limited to:
  - (i) General location of the Project and, if known, the Allocatee and its point of discharge;
  - (ii) A map (8-1/2" x 11" or 11" x 17") to scale, showing the location of the Allocatee's point of discharge (if known), the proposed Project, the Reservoir, and major drainageway(s) from the Project and discharge point(s) to the Reservoir;
  - (iii) Description of the type of Project, e.g., new facility or retrofit of existing facility, extended detention basin, wetlands, water reuse, or other. Some narrative may be appropriate; and
  - (iv) Sketch and/or diagram of the proposed Project.
- e. Adequate information demonstrating that the proposed Project is an eligible Project within these Guidelines and the Control Regulation;
- f. Evidence of ownership or sufficient legal controls over the Project site;
- g. Proposed Trade Ratio and estimate of Credits requested and supporting technical bases for the Trade Ratio and Credits;
- h. Explanation of why the trade should occur, addressing each of the Authority's criteria in considering Trades, Section II, to the extent not already addressed elsewhere in the Application;
- i. Schedule for final design, construction and completion of the Project. Construction must be scheduled to commence within 2 years of approval. Failure to commence physical construction within 2 years of approval will result in the automatic forfeiture of the approved Credits. Applicants may, within 2 years of approval, petition for an extension of the commencement deadline, which extension will be granted or denied at the discretion of the Authority;
- j. Operation and maintenance plans for the Project;
- k. Evidence of sufficient financial resources to construct, operate, and maintain the Project throughout its expected life;
- l. Plans for monitoring and reporting the Project's annual performance and verification of monitoring the Project to substantiate Credits. (The appropriate monitoring requirements shall be decided individually for each proposed Project and set forth in a separate document to be executed as a contract between the Project Owner and the Authority.);



- m. Payment of the Application Fee and deposit for Direct Costs and agreement to pay all Direct Costs;
- n. Certification that the Project is not mandated nor required by any enforcement action, order, or consent decree for water quality violations or exceedances, nor is the project constructed as a supplemental environmental project, mitigation, offset, or in lieu of any fine or penalty;
- o. Proposed use and disposition of the Credits by the Project Owner, Allocatee, or retention in the Trade Credit Bank; and
- p. Such other information or data as the Project Owner, the Authority, or the TAC may determine is necessary or desirable in evaluating the request.

If an Application is incomplete, it shall be returned to the Project Owner with an identification of the additional information needed to evaluate the Project. An Application shall be considered complete unless it is returned as incomplete to the Project Owner within forty-five (45) days after submittal to the Authority.

- 5. TAC. Following submittal of the Application, the Project Owner shall present the Project to the TAC at its next meeting.
- 6. TAC Review: The TAC shall review all Applications for New Trade Projects. The TAC review shall include the following:
  - a. Completeness Review. Applications will be reviewed for completeness;
  - b. Division Comments. The TAC shall solicit Division comments on New Trade Project Applications. The Division will submit its comments within 25 days after its receipt of the Application. The TAC shall consider responses to the timely Division comments, including whether the Project Owner has addressed all concerns of the Division;
  - c. Trade Criteria. The TAC shall consider and apply the criteria in Section II of these Guidelines in its review; and
  - d. Recommendations and Advice to the Board. Following completion of its review, the TAC shall recommend to the Board whether the proposed New Trade Project should be approved, conditionally approved, or denied.
- 7. Authority Review of New Trade Project. Before making a final decision on a proposed New Trade Project, the Authority shall hold a hearing on the Project. At least 10 days prior to the hearing, the TAC and other interested parties, if any, shall submit to the Board and the Project Owner their written recommendations and evaluations. Comments by the Division, if any, should also be submitted to the Board and Project Owner at least 10 days prior to the hearing. The Project Owner, the TAC, the Division, and any interested parties that timely submit written comments may comment on the Application at the hearing. The Project

Owner shall have an opportunity to respond to any comments or evidence presented. The Authority shall provide notice of the Project hearing through its customary mailing of its meeting agenda, which identifies a hearing on a specific proposed New Trade Project, and shall mail the meeting agenda to the Project Owner and any other specific parties that request notification.

**F. Authority Decision on Project Proposal:** After the Board's hearing on the New Trade Project, the Board shall vote on the Project in the manner governed by the voting requirements of C.R.S. § 25-8.5-107. Based on these Guidelines, the Board may approve, conditionally approve, or deny any Project. The Authority shall issue a written record of decision regarding each trade.

1. Decisions Approving a Trade. If a Project has been completed, the Authority may render a final decision on the Project. For New Trade Projects that have not been constructed, the Authority's approval shall be conditional pending timely commencement (within two years) and completion of the Project in accordance with the Project's construction plans and specifications. The Board's decision on trades shall specify:
  - a. The Credits to be awarded the New Trade Project, based on the total removals and Trade Ratio used to calculate the Credits;
  - b. The disposition of the Credits to a particular Allocatee or the Trade Credits Bank. The Project Owner may request the Trade Credits be allocated directly to the Project Owner for its own allocation. Otherwise, the Credits shall be held in the Trade Credits Bank under the name of the Project Owner for later release as authorized by the Project Owner to an Allocatee, or the Credits may be permanently retired by the Project Owner;
  - c. Any other limitations on the trade and the reasons for such limitations; and
  - d. The rationale for the Board's findings under these Guidelines.
2. Decisions Disapproving a Trade. Board decisions disapproving a proposed trade shall specify the rationale for the Board's decision under these Guidelines.
3. Reconsideration. The Authority's decision on the Project proposal is final the day the Authority's final written decision is issued. Affected parties may file for reconsideration of the Authority's decision within 20 days of an adverse Authority decision on a New Trade Project. The Authority shall thereafter reconsider the merits of its decision. No hearing is required on reconsideration. Following the Authority's vote on reconsideration, the Authority's decision on the Application is deemed final.
4. Permits. All trades are subject to the requirements of the Project Owner's or Allocatee's discharge permits, reuse permits, and other limitations on discharges.

It shall be the sole responsibility of the Project Owner or Allocatee to obtain any approvals or modifications to its discharge permits necessary to allow increased or modified phosphorus discharges.

5. Conditional Approval. Any conditional approval of a Project by the Board shall become final and unconditional upon the Project Owner or Allocatee filing with the Authority a certification by a professional engineer, landscape architect, or other professional designated by the Authority for the Project that the Project has been constructed substantially in accordance with the plans. If the construction is not in accordance with the original plans, the Project Owner or Allocatee must identify any variations from the approved plans and describe the expected effect of the variations on the phosphorus removals and the Credits to be awarded.
6. Release of Transferred Credits to Allocatee. A Project Owner with Credits not yet allocated may release some or all of its Credits to an Allocatee. To effect the transfer of Credits, the Project Owner and Allocatee must file a joint statement with the Authority containing:
  - a. Certification by the Project Owner to transfer a set number of Credits to the Allocatee and any limits on the term of the transfer;
  - b. Certification by the Project Owner that the Credits being transferred have not been previously transferred to another Allocatee; and
  - c. Acknowledgement by the Allocatee that it must utilize the Credits in accordance with the Allocatee's permit and allocations.
7. Authority Review of Request to Release Transferred Credits. Upon receipt of completed information in the transfer statement, including the certifications, the Authority shall accept the transfer of Credits. The transfer shall be documented in the Authority records for the Trade Credits Bank. Upon request by the Project Owner or Allocatee, the assigned Trade Ratio may be adjusted downward depending upon the locations of the Project and Allocatee's discharges.

### III. ADJUSTMENTS AND REVOCATIONS

- A. Upward Adjustments: At any time after approval or conditional approval of a Project Trade, the Project Owner or Allocatee may apply for an increase in Credits. An application for a Credit increase is subject to the same conditions and requirements set forth in Section II for New Trade Project applications. If, based on monitoring on other relevant information, the Authority concludes that an adjustment of the Credits is warranted, the Authority may, in its discretion, approve all or any portion of the requested adjustment and the concomitant increase in Credits.
- B. Annual Report: The Project Owner or Allocatee shall file annually with the Authority a certification that the Project Owner or qualified professional has inspected the Project and that the Project is operating and that any appropriate or necessary maintenance has been

completed. Annually, the Project Owner or Allocatee may be assessed a Project Review and Inspection fee, to be set by the Board.

- C. **Downward Adjustments and Revocations:** If the Project Owner fails to provide the required annual certification of operation or reports that the Project is no longer operable or is not being maintained, the Authority may reduce or revoke the Credits previously awarded.
- D. **Hearing on Adjustments:** Before making a final decision to adjust, revoke, or otherwise modify a previously approved New Trade Project, the Authority shall provide notice to the Project Owner and Allocatee and hold a hearing on the proposed adjustment. At least 10 days prior to the hearing, the TAC, the Division, and any other interested parties shall submit their written recommendations or comments, if any, to the Board. The Project Owner, the Allocatee, the TAC, the Division, and any interested parties that timely submit written comments may comment of the proposed modification at the hearing. The Project Owner and Allocatee shall have the opportunity to respond to any comments or evidence presented. The Authority shall provide notice of the hearing through its customary mailing of its meeting agenda and shall mail the meeting agenda to the Project Owner, the Allocatee, and any other specific parties that request notification.
- E. **Rectifying Downward Adjustments of Credits:** After the Authority has made a final decision on a downward adjustment or revocation of Credits, the Authority shall allow the Project Owner or Allocatee to rectify the downward adjustment by reviving the Project that was the subject of the prior trade or by initiating a New Trade Project. Any revival of an existing Project or New Trade Project shall be subject to the applicable provisions of sections II and III of these Guidelines. If the Project Owner or Allocatee does not initiate an application for reviving the Project or a New Trade Project within 1 year of the Authority's final decision to adjust or revoke the Credits, the Project Owner and Allocatee shall irrevocably lose the Credits.

#### IV. PHOSPHORUS BANK SALES

- A. **Sale Credits From Historic Credit Sales:** The Authority shall maintain a record of the 216 Sale Credits available from the Historic Credit Sales. The purchase or lease of any Sale Credits shall be subtracted therefrom and recorded by the Authority.
- B. **Sale of Original Pounds:** The Authority may sell or lease Sale Credits to any Allocatee.
- C. **Authority Criteria in Considering a Proposed Sale:** In considering whether to approve a proposed Sale and the limitations, if any, to impose thereon, the Authority shall consider the following criteria:
  - 1. Whether the Allocatee qualifies or will qualify as a discharger in the Cherry Creek Watershed, is a holder of a reuse permit, or otherwise engages in activities or operations requiring a wasteload allocation;
  - 2. Consistency with these Guidelines and the Control Regulation;

3. Net effect on the water quality in the Cherry Creek Watershed and Cherry Creek Reservoir;
4. The Allocatee's demonstration that past effluent limitations have been and will be complied with and that adequate designs and operations exist to meet future effluent limitations; and
5. Comparative assessment of the need of the Allocatee (taking into account treatment capacity, facility expansion plans, population forecasts, and timing for expansion) with the present and future needs of other Allocatees in the Cherry Creek Watershed, and the present and future availability of phosphorus allocations for all Allocatees.

**D. Applications for Purchase of Sale Credits:**

1. An Allocatee seeking to purchase Sale Credits shall file an Application with the Authority as follows:
  - a. Two sets of its Sale Credit Application (one hard copy and one electronic file preferably PDF format) with the Authority at the office of the Authority's Administrator; and
  - b. One hard or electronic copy with the Water Quality Control Division.
2. Contents of Application. Any Application for a Sale shall include, at a minimum, the following:
  - a. Name and address of the Allocatee;
  - b. Name, address, and contract information for Allocatee's representatives;
  - c. Credit purchase summary, in format and with contents shown in Appendix A;
  - d. Demonstrated need for Sale Credits, including:
    - (i) Number of existing taps;
    - (ii) Current wasteload allocation;
    - (iii) Projected population and wastewater flows; and
    - (iv) Projected phosphorus allocation requirements;
  - e. Explanation of why the Sale is being requested;

- f. Description of the Allocatee's plans for new or modified facilities and the schedule for completion of such facilities;
- g. An explanation of whether the Allocatee's permit allows for the increased allocation, or when and how the Allocatee plans to seek a modification or issuance of such a discharge permit;
- h. Adequate information demonstrating why the Sale should occur;
- i. Payment of Application Fee and deposit for Direct Costs, and agreement to pay all Direct Costs associated with the Application; and
- j. Such other information or data as the Allocatee, the Authority, or the TAC may determine is necessary to evaluate the request.

Incomplete Applications shall be returned to the Allocatee with an identification of the additional information needed to evaluate the proposal.

3. Application Costs.

- a. Application Fee: A non-refundable Application fee of \$100 must be submitted for Pre-Application Discussions, if any, or with the Application, whichever occurs first.
- b. Direct Costs. The Allocatee shall deposit \$500.00 with the Authority for Direct Costs. The Authority will charge the Allocatee for the Direct Costs incurred by the Authority for the Pre-Application Discussion and to review the Application, including costs of consultants to review it and advise the Authority. Such Direct Costs will be assessed regardless of the outcome of the Pre-Application Discussion or Application. The Direct Costs shall be paid from the Allocatee's deposit for Direct Costs. Within 30 days following the Board's decision on the Application or Allocatee's withdrawal of the Pre-Application or Application, the Authority shall remit to the Allocatee all amounts remaining in the deposit for Direct Costs which were not spent for Direct Costs. If the deposit for Direct Costs is insufficient to cover the Direct Costs related to the Allocatee's Pre-Application Discussion and Application, the Allocatee shall pay such additional Direct Costs. Upon request by the Allocatee, the Authority shall provide invoices or other documentation supporting the direct costs.

4. TAC Review: The TAC shall review all Sale Applications. The review shall include the following:

- a. Completeness Review. Applications will be reviewed for completeness;
- b. Division Comments. The TAC shall solicit Division comments on Sale Applications. The Division will submit its comments within 25 days of after its receipt of the Sale Application. The TAC shall consider responses

to the timely Division comments, including whether the Allocatee has addressed all concerns of the Division;

- c. Sale Criteria. The TAC shall consider and apply the criteria in Section IV of these Guidelines in its review; and
  - d. Recommendations and Advice to the Board. Following completion of its review, the TAC shall recommend to the Board whether the proposed Sale should be approved, conditionally approved, or denied.
5. Pre-Application Discussion: Allocatees may consult with the TAC, which shall invite the Division, to discuss their proposed acquisition of Sale Credits and to consider the applicability of these Guidelines. Prior to the pre-application discussion, the Allocatee must submit to the TAC a fully completed Sale Credit Summary in the format set forth in Appendix A, a copy of which shall be forwarded to the Division.
6. Authority Review of Proposed Sale: Before making a final decision on a proposed Sale, the Authority shall hold a hearing on the requested Sale Credits. At least 10 days prior to the hearing the TAC shall submit to the Board and Allocatee its written recommendations. Comments by the Division, if any, should also be submitted at least 10 days prior to the hearing to the Board and Allocatee. The Allocatee, TAC, the Division, and any interested parties that timely submit written comments may comment on the Sale Credits application at the hearing. The Allocatee shall have an opportunity to respond to any comments or evidence presented. The Authority shall provide notice of the hearing through its customary mailing of its meeting agenda and shall notify all dischargers within the Watershed.
- E. Authority Decision on Proposed Sale**: After the hearing on the proposed Sale, the Authority Board shall vote on the proposed Sale Credits as governed by the voting requirements of C.R.S. § 25-8.5-107. The Authority may approve, conditionally approve, or deny any proposed Sale. The Authority shall make a record of any decision regarding a proposed Sale.
1. Decisions Approving a Sale. In decisions approving or conditionally approving a proposed Sale, the Authority Board shall specify:
    - a. The number of Sale Credits to be subtracted from the Historic Credit Sales and the cost of the Sale;
    - b. That the Credits shall be allocated directly to the Allocatee when the decision is issued and payments for Sale Credits received;
    - c. Any limitations on the Sale and the reasons for such limitations; and
    - d. The rationale for the Board's determination under these Guidelines.

2. Decisions Disapproving a Sale. In decisions disapproving a proposed Sale, the Authority shall specify the rationale for the Board's determination under these Guidelines.
3. Reconsideration. The Authority's decision on the proposed Sale is final the day the Authority's written decision is issued. Affected parties may file for reconsideration of the Authority's decision within 20 days. The Authority shall thereafter reconsider the merits of its decision. No hearing is required on reconsideration. Following the Authority's vote on reconsideration, the Authority's decision on the Application is deemed final.
4. Permits. It shall be the sole responsibility of the Allocatee to obtain any approvals or modifications to its discharge permits, reuse permits, or allocations necessary to allow increased or modified phosphorus discharges.

**F. Calculation of Base Price for Sale of Original Pounds:**

1. The Authority shall establish, by resolution, a Base Price for the Sale Credit, and may request assistance from the TAC in formulating the Base Price. The purpose of the Base Price is to establish a minimum price that will ensure that the payment, if used to fund other Authority nonpoint source projects, will accomplish, on average, the same phosphorus removal, and thus the same benefit to the water quality in the Cherry Creek Reservoir. At its discretion the Authority may annually revise the minimum Base Price.
2. Payment for Sale Credits : The total purchase price for the approved Sale Credits is due within 30 days from the Board's final decision, unless the Board has authorized a different payment schedule or terms. The Authority may, in its discretion, approve a payment in lieu of cash, if the form of the proposed payment has a readily determined monetary value and if the payment is in a form that may be applied directly to an activity required of the Authority under the Control Regulation.

**V. ADMINISTRATION**

- A. **Oversight:** All Trades, Sales, Projects, Trade Ratios, and Credits approved under these Guidelines shall remain subject to Authority oversight.
- B. **Duration of Credits:** Credits received in approved Trades or Sales shall remain valid in perpetuity, subject to adjustments, modifications, or revocation by the Authority as set forth herein; actions or decisions by any other state or federal governmental body or court; or changes in state or federal law.
- C. **Trade Documentation:** Trades or Sales approved by the Authority shall be incorporated into these Guidelines as Exhibit A.



- D. Review of Guidelines:** Upon motion by the Authority, and consistent with the Control Regulation, the Authority may review and propose revisions to these Guidelines at any time.
- E. Non-Liability:** Neither the adoption of these Guidelines nor the Trading Program (collectively the “Guidelines”) provided for herein, shall create any duty on behalf of the Authority to any person, firm, corporation or other entity with regard to the enforcement or non-enforcement of the Guidelines. No person, firm, corporation, or other entity shall have any civil remedy against the Authority, or its officers, employees, or agents, for any damage arising out of or in any way connected with the adoption, enforcement, or non-enforcement of the Guidelines. Nothing in these Guidelines shall be construed to create any liability, or to waive any of the immunities, limitations, or liabilities, or other provisions of the Governmental Immunity Act, C.R.S, Section 24-10-101, et seq., or to waive any immunities or limitations on liability otherwise available to the Authority, or its officers, employees, or agents.
- F. No Vested Property Rights:** Notwithstanding any other provision contained in these Guidelines to the contrary, no act, circumstance, award, transfer or sale of Credits, either from the Reserve Pool or the Phosphorus Bank shall be deemed to constitute or create any vested property right in any Allocatee or Transferee. All Credits transferred or allocated under these Guidelines constitute a license to discharge, in accordance with these Guidelines and any applicable discharge permit, the pounds of phosphorus represented by such Credits. All such Credits shall at all times remain subject to the regulatory power of the Authority to administer the Guidelines for the benefit of the Cherry Creek Reservoir and the Cherry Creek Basin Watershed.