

**CHERRY CREEK BASIN
WATER QUALITY AUTHORITY**

CHERRY CREEK RESERVOIR WATERSHED

RESERVE POOL GUIDELINES

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CHERRY CREEK BASIN WATER QUALITY AUTHORITY RESERVE POOL GUIDELINES

I. RESERVE POOL ALLOCATIONS

- A. **Legal Basis:** The Cherry Creek Basin Water Quality Authority (“Authority”) is authorized to implement and maintain the sale or lease of phosphorus pounds from the Reserve Pool. These Reserve Pool guidelines ("Guidelines") are developed pursuant to 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 Reserve Pool.
- B. **Purpose:** The Control Regulation allows Allocatees to receive phosphorus pounds for new or increased phosphorus wasteload allocations from the Reserve Pool acquired from the Authority’s Historic Trading Projects.
- C. **Scope:** These Guidelines provide for the sale or lease of phosphorus credits from the Reserve Pool.

The Reserve Pool is comprised of 216 pounds of Phosphorus 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 Reserve Pool Phosphorus Credits are based on the following historic Authority projects:

1. Shop Creek detention and wetlands (1991);
2. Quincy Drainage detention (1995);
3. East Shade Shelter streambank improvements and parking area retrofit (1995); and
4. Cottonwood Perimeter Road Pond (near Reservoir) (1997).

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

D. Definitions: All definitions contained in the Cherry Creek Control Regulation at 5 C.C.R. 1002-72, ' 72.2 (“Control Regulation”) apply to these Guidelines. 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 Sale or Lease of Credits from the Reserve Pool 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 “Cherry Creek Reservoir Watershed Stormwater Quality Requirements,” adopted February 16, 2000.
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 sale or lease under these Guidelines.
9. **Division** is the Water Quality Control Division of the Colorado Department of Public Health and Environment.
10. **Reserve Pool** consists of those wastewater facility phosphorus pounds available from historic Authority nonpoint source projects that may be awarded by the Authority to those facilities in the Cherry Creek Watershed pursuant to Control Regulation Section 72.5(2)
11. **Sale and Lease Credits** represent the pounds of phosphorus from the Reserve Pool available for transfer to Allocatees by the Authority.
12. **Sales** are the sale or lease of phosphorus credits from the Reserve Pool under these Guidelines.

13. ***Technical Advisory Committee (“TAC”)*** is the subcommittee created by the Cherry Creek Board of Directors to, among other tasks, review proposed Sales or Leases of Credits.

II. RESERVE POOL SALES OR LEASES

- A. **Sale Credits:** The Authority shall maintain a record of the 216 Sale Credits available from the Reserve Pool. 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 or Lease:** In considering whether to approve a proposed Sale or Lease 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 improvement 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 or Lease of Sale Credits:**
1. Prior to submitting an application, allocatees may consult with the TAC to discuss their proposed acquisition of Sale or Lease Credits and the applicability of these Guidelines (not required).

2. An Allocatee seeking to purchase or Lease Sale Credits shall file an Application with the Authority as follows:
 - a. two sets of its Sale or Lease 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 and electronic copy with the Water Quality Control Division.

Applications shall be filed with the Authority at least 14 days prior to the monthly Authority TAC meeting or the Authority will process the application in the following monthly meeting cycle.

3. Contents of Application. Any Application for a Sale or Lease 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 or lease summary, in format and with contents shown in Appendix A;
 - d. Demonstrated need for Sale or Lease Credits, including:
 - (i) Number of existing taps;
 - (ii) Current wasteload allocation;
 - (iii) For a lease of phosphorus credits, projected population and wastewater flows for a 20-year planning period, and
 - (iv) Projected phosphorus allocation requirements;
 - e. Explanation of why the Sale or Lease 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 or Lease 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.

4. Application Costs.

- a. Application Fee: A non-refundable Application fee of \$100 must be remitted with the Application.
- 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 to review the Application, including costs of consultants to review the Application and advise the Authority. Such Direct Costs will be assessed regardless of the outcome of the 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 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 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.

5. TAC Review: The TAC shall review all Sale or Lease Applications. The review shall include the following:

- a. Completeness Review. Applications will be reviewed for completeness;
- b. Division Comments. The TAC shall solicit and consider comments and evaluations of Sale and Lease Applications by the Division prior to making a recommendation to the Authority Board.

- c. Sale and Lease 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 Sale should be approved, conditionally approved, or denied.
6. Authority Review of Proposed Sale or Lease: Before making a final decision on a proposed Sale or Lease, 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 which 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 or Lease, the Authority Board shall vote on the proposed Sale or Lease 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 or Lease.

- 1. Decisions Approving a Sale or Lease. In decisions approving or conditionally approving a proposed Sale or Lease, the Authority Board shall specify:
 - a. The number of Credits to be subtracted from the Reserve Pool and the cost of the Sale or Lease;
 - b. That the Credits shall be allocated directly to the Allocatee when the decision is issued and payments for Credits received;
 - c. Any limitations on the Sale or Lease and the reasons for such limitations; and
 - d. The rationale for the Board's determination under these Guidelines.
- 2. Decisions Disapproving a Sale or Lease. In decisions disapproving a proposed Sale or Lease, the Authority shall specify the rationale for the Board's determination under these Guidelines.

3. Reconsideration. The Authority's decision on the proposed Sale or Lease 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 or Lease 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 or Lease 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 (e.g., lease). 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.

III. ADMINISTRATION

- A. **Oversight**: All Sales, Leases, and Credits approved under these Guidelines shall remain subject to Authority oversight.
- B. **Duration of Credits**: Credits received in approved Sales or Leases 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. **Sale Documentation**: Sales approved by the Authority shall be incorporated into these Guidelines as Appendix B.
- 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.

APPENDIX A

CREDIT PURCHASE OR LEASE SUMMARY

Purpose

Provides a project summary and basic information to be submitted to the TAC as part of a pre-application process or included with the full Application presented to the Board.

As part of the pre-application, the information in this Notice will assist the TAC in assessing whether the request complies with these Guidelines and the Control Regulation before the full application is presented to the Board. As part of the Notice to the Board, the information will summarize the proposed request such that the Board can direct the TAC to review and comment on the full application.

Assumes that some of the information will be provided in more detail or with greater technical support within the actual application.

Recommend that most information be provided in an outline format, where possible, instead of a narrative, although some narrative may be appropriate.

Applicant Information

1. Name of the applicant and contact name, phone and email address for information.
2. Basis for the request of phosphorus credits from the Reserve Pool.
3. Whether the Sale or Lease Credits will be retired or the name of Allocatee for whom the Sale or Lease Credits will be assigned.
4. The proposed period of time for use of the requested phosphorus credits.
5. Allocatee's current phosphorus allocation.
6. Allocatee's current and projected capacity, and how the Sale or Lease Credits will assist the Allocatee in complying with the wasteload allocation.

APPENDIX B

SALES APPROVED BY THE AUTHORITY *(Update with each sale)*