

## **APPENDIX D: COLORADO'S WATER CONSERVATION PLANNING STATUTE**

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[http://www.state.co.us/gov\\_dir/leg\\_dir/olls/HTML/colorado\\_revised\\_statutes.htm](http://www.state.co.us/gov_dir/leg_dir/olls/HTML/colorado_revised_statutes.htm)

Colorado Statutes : TITLE 37 WATER AND IRRIGATION : WATER CONSERVATION BOARD AND COMPACTS : General and Administrative : ARTICLE 60 COLORADO WATER CONSERVATION BOARD : PART 1 GENERAL PROVISIONS : 37-60-126. Water conservation and drought mitigation planning - programs - relationship to state assistance for water facilities - guidelines.

(1) As used in this section and in section 37-60-126.5, unless the context otherwise requires:

(a) "Covered entity" means each municipality, agency, utility, including any privately owned utility, or other publicly owned entity with a legal obligation to supply, distribute, or otherwise provide water at retail to domestic, commercial, industrial, or public facility customers, and that has a total demand for such customers of two thousand acre-feet or more.

(b) "Office" means the office of water conservation and drought planning created in section 37-60-124.

(c) "Plan elements" means those components of water conservation plans that address water-saving measures and programs, implementation review, water-saving goals, and the actions a covered entity shall take to develop, implement, monitor, review, and revise its water conservation plan.

(d) "Public facility" means any facility operated by an instrument of government for the benefit of the public, including, but not limited to, a government building, park or other recreational facility, school, college, university, or other educational institution, highway, hospital, or stadium.

(e) "Water conservation" means water use efficiency, wise water use, water transmission and distribution system efficiency, and supply substitution. The objective of water conservation is a long-term increase in the productive use of water supply in order to satisfy water supply needs without compromising desired water services.

(f) "Water-saving measures and programs" includes a device, practice, hardware, or equipment that reduces water demands and a program that uses a combination of measures and incentives that allow for an increase in the productive use of a local water supply.

(2) (a) Within five years after June 4, 1991, each covered entity that does not have a water use efficiency plan satisfying the provisions of subsection (4) of this section shall, subject to section 37-60-127, develop, adopt, make publicly available, and implement a plan pursuant to which such covered entity shall encourage its domestic, commercial, industrial, and public facility customers to use water more efficiently. Any covered entity that makes an initial determination that it has satisfied

subsection (4) of this section shall, within five years after June 4, 1991, give public notice of such determination at an official meeting of the appropriate governing body of the covered entity.

(b) The office shall review previously submitted conservation plans to evaluate their consistency with the provisions of this section and the guidelines established pursuant to subsection (7) of this section.

(c) On and after July 1, 2006, a covered entity that seeks financial assistance from either the board or the Colorado water resources and power development authority shall submit to the board a new or revised plan to meet water conservation goals adopted by the covered entity, in accordance with this section, for the board's approval prior to the release of new loan proceeds.

(3) The manner in which the covered entity develops, adopts, makes publicly available, and implements a plan established pursuant to subsection (2) of this section shall be determined by the covered entity in accordance with this section. The plan shall be accompanied by a schedule for its implementation. The plans and schedules shall be provided to the office within ninety days after their adoption. For those entities seeking financial assistance, the office shall then notify the covered entity and the appropriate financing authority that the plan has been reviewed and whether the plan has been approved in accordance with this section.

(4) A plan developed by a covered entity pursuant to subsection (2) of this section shall, at a minimum, consider the following plan elements:

(a) The water-saving measures and programs to be used by the covered entity for water conservation. In developing these measures and programs, each covered entity shall, at a minimum, consider the following:

(I) Water-efficient fixtures and appliances, including toilets, urinals, showerheads, and faucets;

(II) Low water use landscapes, drought-resistant vegetation, removal of phreatophytes, and efficient irrigation;

(III) Water-efficient industrial and commercial water-using processes;

(IV) Water reuse systems;

(V) Distribution system leak identification and repair;

(VI) Dissemination of information regarding water use efficiency measures, including by public education, customer water use audits, and water-saving demonstrations;

(VII) Water rate structures and billing systems designed to encourage water use efficiency in a fiscally responsible manner;

(VIII) The department of local affairs may provide technical assistance to covered entities that are local governments to implement water billing systems that show customer water usage and that implement tiered billing systems;

(IX) Regulatory measures designed to encourage water conservation;

(X) Incentives to implement water conservation techniques, including rebates to customers to encourage the installation of water conservation measures;

(b) A section stating the covered entity's best judgment of the role of water conservation plans in the covered entity's water supply planning;

(c) The steps the covered entity used to develop, and will use to implement, monitor, review, and revise, its water conservation plan;

(d) The time period, not to exceed seven years, after which the covered entity will review and update its adopted plan; and

(e) Either as a percentage or in acre-foot increments, an estimate of the amount of water that has been saved through a previously implemented conservation plan and an estimate of the amount of water that will be saved through conservation when the plan is implemented.

(5) Each covered entity shall follow the covered entity's rules, codes, or ordinances to make the draft plan available for public review and comment. If there are no rules, codes, or ordinances governing the covered entity's public planning process, then each covered entity shall publish a draft plan, give public notice of the plan, make such plan publicly available, and solicit comments from the public for a period of not less than sixty days after the date on which the draft plan is made publicly available. Reference shall be made in the public notice to the elements of a plan that has already been implemented.

(6) The board is hereby authorized to recommend the appropriation and expenditure of such revenues as are necessary from the unobligated balance of the five percent share of the operational account of the severance tax trust fund designated for use by the board for the purpose of the office providing assistance to covered entities to develop water conservation plans that meet the provisions of this section.

(7) By July 1, 2005, the board shall adopt guidelines for the office to review water conservation plans submitted by covered entities. The guidelines shall define the method for submitting plans to the office, how the office will prioritize the distribution of moneys, and the interest rate surcharge provided for in paragraph (d) of subsection (9) of this section.

(8) A covered entity may at any time adopt changes to an approved plan in accordance with this section after notifying and receiving concurrence from the office. If the proposed changes are major, the covered entity shall give public notice of the changes, make the changes available in draft form, and provide the public an opportunity to comment on such changes before adopting them in accordance with subsection (5) of this section.

(9) (a) Neither the board nor the Colorado water resources and power development authority shall release loan proceeds to a covered entity unless such covered entity provides a copy of the water conservation plan adopted pursuant to this section; except that the board or the authority may release such loan proceeds if the board or the authority, as applicable, determines that an unforeseen emergency exists in relation to the covered entity's loan application, in which case the board or the authority, as applicable, may impose a loan surcharge upon the covered entity that may be rebated or reduced if the covered entity submits and adopts a plan in compliance with this section in a timely manner as determined by the board or the authority, as applicable.

(b) The board and the Colorado water resources and power development authority, to which any covered entity has applied for financial assistance for the construction of a water diversion, storage, conveyance, water treatment, or wastewater treatment facility, shall consider any water conservation plan filed pursuant to this section in determining whether to render financial assistance to such entity. Such consideration shall be carried out within the discretion accorded the board and the Colorado water resources and power development authority pursuant to which such board and authority render such financial assistance to such covered entity.

(c) The board and the Colorado water resources and power development authority may enter into a memorandum of understanding with each other for the purposes of avoiding delay in the processing of applications for financial assistance covered by this section and avoiding duplication in the consideration required by this subsection (9).

(10) Repealed.

(11) (a) Any new restrictive covenant that prohibits or limits the installation or use of drought-tolerant vegetative landscapes is prohibited.

(b) As used in this subsection (11), "restrictive covenant" means any covenant, restriction, or condition applicable to real property for the purpose of controlling land use, but does not include any covenant, restriction, or condition imposed on such real property by any governmental entity.

**Source:** **L. 91:** Entire section added, p. 2023, § 4, effective June 4. **L. 99:** (10) repealed, p. 25, § 3, effective March 5. **L. 2003:** (4)(g) amended and (11) added, p. 1368, § 4, effective April 25. **L. 2004:** Entire section amended, p. 1779, § 3, effective August 4.

**Editor's note:** This section was contained in a 2004 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

**Cross references:** (1) In 1991, this entire section was added by the "Water Conservation Act of 1991". For the short title and the legislative declaration, see sections 1 and 2 of chapter 328, Session Laws of Colorado 1991.

(2) For the legislative declaration contained in the 2004 act amending this section, see section 1 of chapter 373, Session Laws of Colorado 2004.