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MEMORANDUM

TO: House Memorial 42 Stakeholders

FROM: John Longworth, Cheri Vogel, Fred Abramowitz, Martha Franks

SUBJECT: Draft Statute/Rules/Regulations/Guidelines

DATE: October 21, 2008

§ 72-1-9. Municipal, county, member-owned community water systems, school district and state university water development plans; preservation of municipal, county and state university water supplies

A. It is recognized by the state that it promotes the public welfare and the conservation of water within the state for municipalities, counties, school districts, state universities, member-owned community water systems, special water users' associations and public utilities supplying water to municipalities or counties to plan for the reasonable development and use of water resources. The state further recognizes the state engineer's administrative policy of not allowing municipalities, member-owned community water systems, counties and state universities to acquire and hold unused water rights in an amount greater than their reasonable needs within forty years.

B. Municipalities, counties, school districts, state universities, member-owned community water systems, special water users' associations and public utilities supplying water to municipalities or counties shall be allowed a water use planning period not to exceed forty years, and water rights for municipalities, counties, school districts, state universities, member-owned community water systems, special water users' associations and public utilities supplying water to such municipalities or counties shall be based upon a water development plan the implementation of which shall not exceed a forty-year period from the date of the application for an

appropriation or a change of place or purpose of use pursuant to a water development plan or for preservation of a municipal, county, school district, member-owned community water system or state university water supply for reasonably projected additional needs within forty years.

C. Nothing herein shall be construed as limiting the State Engineer from allowing other persons or entities not specified herein from, under limited and exceptional circumstances, acquiring and holding, unused, water for an extended period of time, where public policy so requires, and where the person or entity can demonstrate an actual, non-speculative need for planning purposes to hold such water unused.

D. All persons and entities seeking to hold water unused pursuant to this section shall be required to file an application with the state engineer in a form and manner prescribed by him, and such application shall be subject to those same notice requirements as that for the filing of a new application to appropriate surface or ground water or for a change in purpose or place of use.

E. Any person or entity seeking to hold water unused shall present a water development plan in conjunction with his application which shall include a review by the applicant stating to what extent their water development plan is consistent with other relevant existing plans, including, but not limited to, regional water plans, conservation plans, subdivision requirements, comprehensive plans, and other water plans.

F. The state engineer may grant applications pursuant to this section only upon a showing by an applicant seeking to hold water unused for an extended period of time that:

1. The proposed application is non-speculative and will not result in the hoarding of water.
2. The proposed application to hold water unused is in the public interest, promotes the public good, and is not contrary to the conservation of water within the state.
3. The applicant has the present or future ability to physically store, divert or otherwise put to beneficial use the water that is the subject of the application, that the applicant has a specific plan for putting such specified amount of water to beneficial use, including reasonable timeframes, time lines or milestones, and that the applicant has the present or future financial and legal capability of carrying out his plan or project.
4. The applicant has a genuine need for an extended planning period or horizon which cannot otherwise be met, a genuine need for holding water unused pursuant to this planning period or horizon, and that the extended planning period or horizon requested by the applicant is reasonable and necessary under the circumstances.
5. The applicant's future needs can reasonably be anticipated, whether justified by reasonable population projections or other means and which shall include reasonable future conservation measures, and that the applicant has done adequate planning and has developed project timelines, milestones or time frames for carrying out the plan.

6. The applicant has a specific plan and intent to put the subject water to beneficial use, and will use due diligence in carrying out such project or plan. As used herein, "due diligence" means a consistent effort to put the subject water to beneficial use in an expeditious and efficient manner, consistent with the project or plan timelines, milestones or time frames as established in the water development plan, and exclusive of matters beyond the control of the applicant.

7. The applicant will submit to reasonable periodic updates or status reports to be submitted to the state engineer, as appropriate under the circumstances, so that the requirements of due diligence will be met and so as to present assurance that the underlying assumptions of the plan or project are still valid.

G. Upon an exceptional showing of need, supported by clear and convincing evidence, the state engineer may grant applications allowing a water use planning period in excess of forty years.

H. The state engineer shall adopt rules, regulations or guidelines concerning the criteria, content and substance of water development plans submitted in conjunction with applications filed pursuant to this section, and shall adopt such other rules, regulations or guidelines as he deems appropriate to effectuate the intent of this section.