

Chatfield Watershed Authority

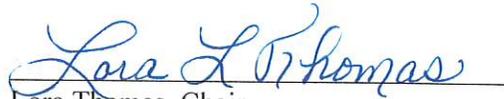
WATER QUALITY TRADING GUIDELINES

January 24, 2022



WATER QUALITY TRADING GUIDELINES

Adopted by the Chatfield Watershed Authority


Lora Thomas, Chair

02-15-22
Date

Accepted by the Colorado Water Quality Control Division

Nathan T. Moore Digitally signed by Nathan T. Moore
Date: 2022.02.15 06:53:18 -07'00'

Nathan Moore
Clean Water Program Manager

2/15/2022
Date

Water Quality Trading Guidelines

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I. ESTABLISHMENT OF TRADING PROGRAM

A. Legal Basis

The Chatfield Watershed Authority (“Authority”) implements and maintains a program for phosphorus trading in the Chatfield Watershed (“Trading Program”). The Trading Program and these Water Quality Trading Guidelines (“Guidelines”) are developed pursuant to the Chatfield Reservoir Control Regulation (5 C.C.R. § 1002-73) (“Control Regulation”). The Authority will administer and oversee the trading program in coordination with the Water Quality Control Division (“Division”).

B. Purpose

The Chatfield Watershed total maximum annual load (“TMAL”) requires every discharger and facility providing reuse water in the watershed to have a total phosphorus allocation. (See Control Regulation § 1002-73.4.) Phosphorus allocations specify the number of pounds that a source can reuse or discharge annually, and the phosphorus concentration at which that source can discharge. The Trading Program allows sources to contribute additional phosphorus pounds or increased phosphorus concentrations in exchange for phosphorus reductions from other nonpoint or point sources. Nonpoint source to point source trades are accomplished by Project Owners constructing phosphorus removal projects and receiving phosphorus trade credits. The Project Owner may apply the trade credits to its own phosphorus contributions, transfer the credits to a third party, or permanently retire them. The goal of the Trading Program is to ensure that trades involving nonpoint sources have a net water quality benefit for the Chatfield Reservoir.

C. Definitions

All definitions contained in the Control Regulation shall apply to these Guidelines and the Trading Program. The following definitions shall also apply:

1. **Allocatee** means point source dischargers, holders of wastewater reuse authorizations, entities providing land applications, industrial dischargers, and any entities requiring a load or wasteload allocation under the TMAL who are designated to receive the credits from a Trade Project.
2. **Applicant** means the person or persons applying for approval of a Trade Project.
3. **Authority** means the Chatfield Watershed Authority.
4. **Board** means the Board of Directors of the Chatfield Watershed Authority.
5. **Chatfield Watershed** means the watershed depicted on Figure 1, as amended from time to time, attached to the Control Regulation and for purposes of this program also includes the Upper South Platte portion of the Basin.
6. **Commission** means the Colorado Water Quality Control Commission.
7. **Control Regulation** means the Chatfield Reservoir Control Regulation, 5 C.C.R. § 1002-73.
8. **Credits** means the amount of phosphorus awarded a Project Owner or Allocatee as a result of a trade under these Guidelines.

9. **Division** means the Colorado Water Quality Control Division.
10. **Empirical Modeling** means a calculation, series of calculations, or model that quantifies the net nonpoint or point source phosphorus removed by a project.
11. **Guidelines** mean these Water Quality Trading Guidelines adopted by the Authority, which may be revised from time to time.
12. **New/Expanded Treatment Facility Trade Plan** means a facility's conceptual plan for trades that may be submitted with a Clean Water Plan Amendment, a Wastewater Utility Plan, or a site application for which the facility may receive preliminary approval from the Authority. However, under no circumstance will the Division approve the facility design prior to trade approval.
13. **Nonpoint Source to Point Source Trade** means the reduction of nonpoint source phosphorus load which is transferred from the nonpoint source to a point source to increase the point source wasteload allocation.
14. **Point Source to Point Source Wasteload Allocation Trade** means the transfer of a phosphorus wasteload allocation from one point source to another.
15. **Point Source to Point Source Concentration Trade** means the transfer of all or a portion of one point source's concentration level to another point source, considering the relative sizes of the facilities, where the transferring source has made treatment arrangements for reduction in its phosphorus concentration. In no case shall the transfer cause exceedances of the receiving entity's wasteload allocation.
16. **Project Owner(s)** means the party (or parties) responsible for funding the design, construction, operation and maintenance of a Trade Project in the Chatfield Watershed. If there is more than one Project Owner for a project, the agreement between the Project Owners on allocation of the trade credits shall be determinative.
17. **Trade Credits** means the phosphorus credits approved by the Authority and Division for new Trade Projects, which are held by the Project Owner or a subsequent Allocatee.
18. **Trade Projects** means projects constructed to reduce phosphorus beyond the reductions mandated by a permit or reuse authorization, or stormwater best management practices required for the site.
19. **Trade Ratio** means the ratio of pounds of phosphorus removed from nonpoint source projects to establish one pound of trade credit.
20. **Trading Program** means a program by which phosphorus credits can be created and used by the Project Owner or transferred from the Project Owner to another entity, in accordance with the Control Regulation, these Guidelines, the Colorado Pollutant Trading Policy, where applicable, and approval by the Authority and the Division.
21. **TAC** means the Technical Advisory Committee of the Chatfield Watershed Authority.

II. TRADING PROGRAM

A. Potential Trading Opportunities

1. Eligible projects are those Trade Projects which the Authority, in coordination with the Division, may approve. Eligible projects for trading are:
 - a. Point source to point source trades;
 - b. Nonpoint source to point source trades;
 - c. Nonpoint source to nonpoint source trades¹; and
 - d. Alternative treatment arrangements for phosphorus concentration reductions.

¹ The process for review of a nonpoint source to nonpoint source trade will be project specific. Any person contemplating a nonpoint source to nonpoint source trade must consult with the TAC and the Division for a determination regarding the application process, submittal requirements, and evaluation criteria.

III. POINT SOURCE TO POINT SOURCE WASTELOAD ALLOCATION TRADES

The Authority and the Division may consider requests from two entities with wasteload allocations to transfer all or a portion of one entity's wasteload allocation to the other entity. Point source to point source wasteload allocation trading is completed on a 1:1 ratio; therefore no modeling is necessary.

The Authority's application form for point source to point source wasteload allocation trades is attached as Exhibit A to these Guidelines. The application form identifies preliminary information needed to allow the Authority to evaluate the proposed trade and the completeness of the trade application. The Authority may request additional information from applicants at its discretion. Along with the application form, applicant(s) must agree to comply with the Authority's Cost of Review Policy.

A. The Point Source to Point Source Application Must Include:

1. Identification of the entities seeking approval of the point source trade;
2. Confirmation that the transferring party has a phosphorus allocation;
3. The quantity of phosphorus credits to be transferred;
4. The duration of the credit transfer;
5. If the transfer is not permanent, a plan and a schedule for the Allocatee to upgrade its facilities to meet its existing allocation;
6. An analysis demonstrating:
 - a. The need for the transfer;
 - b. The transferring facility can meet a reduced allocation;
 - c. The Allocatee's receiving facility can meet the new phosphorus limits and increased allocation.
7. An agreement between the parties reflecting the trade; and
8. Applicant(s) must comply with the Authority's Cost of Review Policy and provide any deposit required under that Policy.

B. Trade Application Review Process

Pursuant to the Control Regulation, the Authority reviews trade applications in coordination with the Division. The Authority reviews trade applications in the first instance and forwards its decision to the Division, which renders the final decision. The Authority considers trade applications using the following process:

1. **Applicant Files Application.** The Applicant must submit a trade application in duplicate to the Authority and the Division, along with any deposit required by the Authority's Cost of Review Policy.

2. **Public Notice.** Upon receipt of a trade application, or once the application is determined to be complete, the Authority will publish a copy of the application (or a summary thereof) on its website. The Authority may update the application as published on its website from time to time, including after additional materials are provided by the Applicant. The Authority will provide notice of meetings when the Board or the TAC will be considering the application by including it as an item on the agenda for the meeting and may include copies of the application (or a summary thereof) in public meeting packets. The Applicant and interested parties may provide comments on the application at Board and TAC meetings where the application is under consideration.
3. **Initial Completeness Review.** Upon receipt of a trade application, the Authority staff will conduct an initial review of the application for completeness. An application is considered complete if it contains the information required by the Control Regulation, these Guidelines and other applicable laws and authorities. A determination of completeness does not preclude the Authority from requesting additional information and clarification from the Applicant later in the application review process, including during the substantive review of the application. Review of trades may be delayed or suspended during the time while the Applicant needs to provide additional information or respond to questions from the Authority and/or the Division.
4. **TAC and/or Board Review.** Once Authority staff find that the application is complete, or as otherwise at its discretion, the TAC will review the application at its next meeting. The TAC may act on the application itself, on behalf of the Authority, by approving, denying, or conditionally approving the application, or may refer the application to the Board with a recommendation to the Board. If the TAC refers the application to the Board, the Board may approve, deny or conditionally approve the application, or may refer the application back to the TAC for further evaluation. The TAC and the Board may also defer action on trade applications while they collect additional information. The Applicant will be afforded notice and an opportunity to be heard at the TAC or Board meeting at which the Authority renders its decision on the application.
5. **Appeals, Forwarding Decision to Division.** The TAC's or Board's decision on an application is subject to the appeal procedures set forth at § VII(A) of these Guidelines. Once the period to file an appeal expires (i.e., 30 days after the TAC's or the Board's decision on the application), the TAC's or the Board's decision will be considered the final decision of the Authority, and both the Authority and the Applicant will forward the Authority's decision, as well as any revisions made to the original application that formed the basis for the Authority's decision, to the Division. The Division's review process for an application is set forth in the Control Regulation.

C. Criteria

1. Reliability that both entities will be able to attain their revised phosphorus allocations following the transfer;
2. Confirmation that the point source trade will not increase total allowable point source phosphorus load above the total allocated to both facilities; and
3. Use by the Division and the Authority of the Colorado Pollutant Trading Policy for issues not addressed in these Guidelines, including, but not limited to, antibacksliding or antidegradation.
4. Any other criteria required by applicable laws, regulations and authorities, including but not limited to the Control Regulation and the Colorado Pollutant Trading Policy.

IV. POINT SOURCE TO POINT SOURCE CONCENTRATION TRADES

The Authority and the Division may consider requests from two entities with a phosphorus concentration limit to reduce the concentration limit for the transferring entity and increase the limit for the receiving entity, considering the relative sizes of the facilities. In no case shall the transfer cause exceedances in the receiving entity's wasteload allocation. A concentration trade is an alternative treatment arrangement, as contemplated by Section 73.3(2) (f) of the Control Regulation.

The Authority's application form for point source to point source concentration trades is attached as Exhibit A to these Guidelines. The application form identifies preliminary information needed to allow the Authority to evaluate the proposed trade and the completeness of the trade application. The Authority may request additional information from applicants at its discretion. Along with the application form, applicant(s) must agree to comply with the Authority's Cost of Review Policy

A. The Concentration Trade Application shall include:

1. Identification of the entities seeking approval of the concentration trade;
2. The concentration level to be transferred;
3. The duration of the concentration transfer;
4. If the transfer is not permanent, plans and a schedule for the Allocatee to upgrade its facilities to meet the underlying concentration limit contained in the Allocatee's permit;
5. An analysis demonstrating the need for the transfer; the effect, if any, of the concentration transfer on the transferring entity's facilities and operations; and demonstration that the transferring facility can meet a reduced concentration limit;
6. Confirmation that the Allocatee will not exceed its wasteload allocation as a result of the concentration transfer; and
7. An agreement between the parties reflecting the concentration trade.
8. Applicant(s) must comply with the Authority's Cost of Review Policy and provide any deposit required under that Policy.

B. Trade Application Review Process

Pursuant to the Control Regulation, the Authority reviews trade applications in coordination with the Division. The Authority reviews trade applications in the first instance and forwards its decision to the Division, which renders the final decision. The Authority considers trade applications using the following process:

1. **Applicant Files Application.** The Applicant must submit a trade application in duplicate to the Authority and the Division, along with any deposit required by the Authority's Cost of Review Policy.

2. **Public Notice.** Upon receipt of a trade application, or once the application is determined to be complete, the Authority will publish a copy of the application (or a summary thereof) on its website. The Authority may update the application as published on its website from time to time, including after additional materials are provided by the Applicant. The Authority will provide notice of meetings when the Board or the TAC will be considering the application by including it as an item on the agenda for the meeting and may include copies of the application (or a summary thereof) in public meeting packets. The Applicant and interested parties may provide comments on the application at Board and TAC meetings where the application is under consideration.
3. **Initial Completeness Review.** Upon receipt of a trade application, the Authority staff will conduct an initial review of the application for completeness. An application is considered complete if it contains the information required by the Control Regulation, these Guidelines and other applicable laws and authorities. A determination of completeness does not preclude the Authority from requesting additional information and clarification from the Applicant later in the application review process, including during the substantive review of the Application. Review of trades may be delayed or suspended during the time while the Applicant needs to provide additional information or respond to questions from the Authority and/or the Division.
4. **TAC and/or Board Review.** Once Authority staff determine that the application is complete, or otherwise at its discretion, the TAC will review the application at its next meeting. The TAC may act on the application itself, on behalf of the Authority, by approving, denying, or conditionally approving the application, or may refer the application to the Board with a recommendation to the Board. If the TAC refers the application to the Board, the Board may approve, deny or conditionally approve the application, or may refer the application back to the TAC for further evaluation. The TAC and the Board may also defer action on trade applications while they collect additional information. The Applicant will be afforded notice and an opportunity to be heard at the TAC or Board meeting at which the Authority renders its decision on the application.
5. **Appeals, Forwarding Decision to Division.** The TAC's or Board's decision on an application is subject to the appeal procedures set forth at § VII(A) of these Guidelines. Once the period to file an appeal expires (i.e., 30 days after the TAC's or the Board's decision on the application), the TAC's or the Board's decision will be considered the final decision of the Authority, and both the Authority and the Applicant will forward the Authority's decision, as well as any revisions made to the original application that formed the basis for the Authority's decision, to the Division. The Division's review process for an application is set forth in the Control Regulation.

C. Criteria

1. Reliability that both entities will be able to attain their revised phosphorus concentrations following the transfer;
2. Confirmation that the concentration trade only increases the receiving entity's total phosphorus concentration by the amount of the transferring entity's reduction, while considering the relative facilities sizes; and
3. Use by the Division and the Authority of the Colorado Pollutant Trading Policy for issues not addressed in these Guidelines, including, but not limited to, antibacksliding or antidegradation.
4. Any other criteria required by applicable laws, regulations and authorities, including but not limited to the Control Regulation and the Colorado Pollutant Trading Policy.

V. NEW/EXPANDED FACILITY TRADE PLAN APPROVALS

In connection with a request for a Clean Water Plan (“CWP”) amendment, to construct a new wastewater treatment or reuse facility, or a wastewater utility plan (“WUP”) or amendment thereto, an Applicant may need to provide evidence that a sufficient phosphorus wasteload allocation will be available to support the proposed request. In these circumstances, the Authority may provide preliminary approval of the new/expanded facility trade plan. New/expanded facility trades can be used when a facility has a nonpoint source project that will remove phosphorus.

A. Application

1. The Application (or CWP amendment, WUP, or site application) shall address:
 - a. The capacity and type of wastewater treatment facilities;
 - b. The quantity of phosphorus credits or wasteload allocation required for the new wastewater treatment facilities;
 - c. How the credits will be derived, as specified in the Control Regulation;
 - d. The proposed Project Owner.

B. Application Review Process

Pursuant to the Control Regulation, the Authority reviews applications for phosphorous allocations in coordination with the Division. The Authority reviews applications for allocations in the first instance and forwards its decision to the Division, which renders the final decision. The Authority considers will consider applications using the following process:

1. **Applicant Files Application.** The Applicant must submit the application in duplicate to the Authority and the Division, along with any deposit required by the Authority’s Cost of Review Policy.
2. **Public Notice.** Upon receipt of the application, or once the application is determined to be complete, the Authority will publish a copy of the application (or a summary thereof) on its website. The Authority may update the application as published on its website from time to time, including after additional materials are provided by the Applicant. The Authority will provide notice of meetings when the Board or the TAC will be considering the application by including it as an item on the agenda for the meeting and may include copies of the application (or a summary thereof) in public meeting packets. The Applicant and interested parties may provide comments on the application at Board and TAC meetings where the application is under consideration.
3. **Initial Completeness Review.** Upon receipt of the application, the Authority staff will conduct an initial review of the application for completeness. An application is considered complete if it contains the information required by the Control Regulation, these Guidelines and other applicable laws and authorities. A determination of completeness does not preclude the Authority from requesting additional information and clarification from the Applicant later in the application review process, including during the substantive review of the application. Review of the application may be delayed or suspended during the time while the Applicant needs to provide additional information or respond to questions from the Authority and/or the Division.

4. **TAC and/or Board Review.** Once Authority staff determine that the application is complete, or otherwise at its discretion, the TAC will review the application at its next meeting. The TAC may act on the application itself, on behalf of the Authority, by approving, denying, or conditionally approving the application, or may refer the application to the Board with a recommendation to the Board. If the TAC refers the application to the Board, the Board may approve, deny or conditionally approve the application, or may refer the application back to the TAC for further evaluation. The TAC and the Board may also defer action on an application while they collect additional information. The Applicant will be afforded notice and an opportunity to be heard at the TAC or Board meeting at which the Authority renders its decision on the application.
5. **Appeals, Forwarding Decision to Division.** The TAC's or Board's decision on an application is subject to the appeal procedures set forth at § VII(A) of these Guidelines. Once the period to file an appeal expires (i.e., 30 days after the TAC's or the Board's decision on the application), the TAC's or the Board's decision will be considered the final decision of the Authority, and both the Authority and the Applicant will forward the Authority's decision, as well as any revisions made to the original application that formed the basis for the Authority's decision, to the Division. The Division's review process for an application is set forth in the Control Regulation.

C. Final Trade Approval

1. Prior to obtaining final approval of design plans and specifications for the proposed wastewater treatment facilities, the Applicant must:
 - a. Submit a complete Application for trade approval,
 - b. Complete the trade review process, including public notices, for each source of credit Applicants will rely on; and
 - c. For all trades that make up the allocation for the facilities, obtain final approval of the trades from the Authority and Division pursuant to Section 73.3(2) of the Control Regulation, these Guidelines, and the Colorado Pollutant Trading Policy, if applicable.
 - d. Satisfy all other requirements set forth in applicable laws, regulations and authorities, including but not limited to the Control Regulation and the Colorado Pollutant Trading Policy.
2. Notwithstanding preliminary approval of trade, no entity shall undertake construction of wastewater treatment facilities if trade credits will be required, until the Authority and Division have granted final approval of the trade. The Division may deny or postpone approval of site applications or condition site application approvals pending final approval of trades.
3. If Applicant intends to derive credits from a nonpoint source to point source trade, in order to obtain final approval of a trade, an Applicant must meet the criteria and follow the processes outlined in Section VI of these Guidelines.

VI. NONPOINT SOURCE TO POINT SOURCE TRADES

A. Trade Ratio and Credits

Nonpoint source to point source trades are subject to a trade ratio. Pursuant to Section 73.3(2)(e) of the Control Regulation, the Trade Ratio will be 2:1 for all Trade Projects unless the applicant requests an exemption of the 2:1 trade ratio based on adequate water quality data collected on a project-specific basis. The 2:1 trade ratio means that for every two pounds of phosphorus removed from a nonpoint source, one pound of phosphorus credit is created which can be used by the Trade Project Owner, transferred to an Allocatee, or retired.

The Authority's application form for nonpoint source to point source trades is attached as Exhibit A to these Guidelines. The application form identifies preliminary information needed to allow the Authority to evaluate the proposed trade and the completeness of the trade application. The Authority may request additional information from applicants at its discretion. Along with the application form, applicant(s) must agree to comply with the Authority's Cost of Review Policy.

B. Application for Nonpoint Source to Point Source Trades

1. Applications must contain the following in order to be complete:
 - a. Name and address of Project Owner(s);
 - b. Name and address of the party or parties to receive trade credits, either Project Owner or Allocatee;
 - c. A technical report that describes the proposed Trade Project;
 - d. Plans, design and specifications of the project;
 - e. Estimated number of pounds of phosphorus to be removed by the Trade Project and the technical basis for such estimates, including any monitoring data, if available, or empirical modeling results;
 - f. Proposed number of trade credits, calculated from estimated phosphorus to be removed by the project upon application of the trade ratio;
 - g. Schedule for completion of the project;
 - h. Commitment of sufficient financial resources to complete the Trade Project on schedule;
 - i. Proposed monitoring and reporting requirements;
 - j. Proposed operation and maintenance protocols to maintain phosphorus levels at the Trade Project into the future;
 - k. Analysis of the net effect of the Trade Project on water quality in the Chatfield Watershed, including empirical modeling or calculations and a technical report as outlined below. If empirical modeling is used to support a trade, the Applicant shall provide the Authority and the Division with all models, data, and documentation as part of the Application; and

- l. Information that responds to each of the criteria listed in Section VI (D).
 - m. Applicant(s) must comply with the Authority's Cost of Review Policy and provide any deposit required under that Policy.
2. Empirical modeling or calculations, if used, shall demonstrate the net effect of the trade on phosphorus loading to the Chatfield Watershed based upon consideration of the following factors:
 - a. The quantity of phosphorus estimated to be removed at the proposed Trade Project on an average annual basis;
 - b. The quantity of phosphorus estimated to be discharged on an average annual basis at the proposed point of discharge by the party receiving phosphorus trade credits;
 - c. The proximity of the point of discharge to the proposed Trade Project and the proximity of each to the Chatfield Reservoir;
 - d. Effect of trade on water quality parameters other than phosphorus.
 3. The technical report shall describe proposed new or modified wastewater treatment facilities or other facilities of the Allocatee including, at a minimum, the following information:
 - a. Sufficient evidence to demonstrate that the Allocatee satisfies each of the criteria for treatment efficiency in compliance with effluent limitations in the Control Regulation and the requirements enumerated in these Guidelines;
 - b. Descriptions of plans for the Trade Project(s) by the Allocatee and the schedule for construction;
 - c. Financial capability and commitment to operate and maintain the Trade Project(s);
 - d. An agreement among Project Owners or other parties for the allocation of the trade credits; and
 - e. Such other information or data as the Authority, the Division, or the TAC may determine is necessary to evaluate the request for a trade.
 4. The Authority may approve new/expanded facility trade plans prior to submittal and consideration of a formal application. This new/expanded facility trade plan is subject to final approval by the Authority and the Division pursuant to the Control Regulation Section 73.3(2) and these Guidelines.

C. Trade Application Review Process

Pursuant to the Control Regulation, the Authority reviews trade applications in coordination with the Division. The Authority reviews trade applications in the first instance and forwards its decision to the Division, which renders the final decision. The Authority considers trade applications using the following process:

1. **Applicant Files Application.** The Applicant must submit a trade application in duplicate to the Authority and the Division, along with any deposit required by the Authority's Cost of Review Policy.

2. **Public Notice.** Upon receipt of a trade application, or once the application is determined to be complete, the Authority will publish a copy of the application (or a summary thereof) on its website. The Authority may update the application as published on its website from time to time, including after additional materials are provided by the Applicant. The Authority will provide notice of meetings when the Board or the TAC will be considering the application by including it as an item on the agenda for the meeting and may include copies of the application (or a summary thereof) in public meeting packets. The Applicant and interested parties may provide comments on the application at Board and TAC meetings where the application is under consideration.
3. **Initial Completeness Review.** Upon receipt of a trade application, the Authority staff will conduct an initial review of the application for completeness. An application is considered complete if it contains the information required by the Control Regulation, these Guidelines and other applicable laws and authorities. A determination of completeness does not preclude the Authority from requesting additional information and clarification from the Applicant later in the application review process, including during the substantive review of the Application. Review of trades may be delayed or suspended during the time while the Applicant needs to provide additional information or respond to questions from the Authority and/or the Division.
4. **TAC and/or Board Review.** Once Authority staff determine that the application is complete, or otherwise at its discretion, the TAC will review the application at its next meeting. The TAC may act on the application itself, on behalf of the Authority, by approving, denying, or conditionally approving the application, or may refer the application to the Board with a recommendation to the Board. If the TAC refers the application to the Board, the Board may approve, deny or conditionally approve the application, or may refer the application back to the TAC for further evaluation. The TAC and the Board may also defer action on trade applications while they collect additional information. The Applicant will be afforded notice and an opportunity to be heard at the TAC or Board meeting at which the Authority renders its decision on the application.
5. **Appeals, Forwarding Decision to Division.** The TAC's or Board's decision on an application is subject to the appeal procedures set forth at § VII(A) of these Guidelines. Once the period to file an appeal expires (i.e., 30 days after the TAC's or the Board's decision on the application), the TAC's or the Board's decision will be considered the final decision of the Authority, and both the Authority and the Applicant will forward the Authority's decision, as well as any revisions made to the original application that formed the basis for the Authority's decision, to the Division. The Division's review process for an application is set forth in the Control Regulation.

D. Criteria for Nonpoint Source to Point Source Trades

When considering whether to approve a Trade Project proposal, the Authority and the Division shall consider, *inter alia*:

1. Reliability and certainty of calculating nonpoint source phosphorus removals;
2. Removal technology and efficiency;
3. Technological specifications of project;
4. Reliability of project operations and maintenance;
5. Extent and sufficiency of stormwater best management practices required for any new development served by the project;

6. Extent and sufficiency of stormwater best management practices during construction of the project;
7. The net effect of the project on phosphorus loads and overall water quality in the watershed;
8. Reliability of project maintenance and operations;
9. Consistency with these Guidelines and the Control Regulation; and
10. Any other factors the Authority and the Division deem necessary to evaluate the proposal.
11. In reviewing an Application, the Authority and the Division shall use the criteria outlined in these Guidelines. To the extent that these Guidelines do not address an issue, the Colorado Pollutant Trading Policy, adopted by the Division, will govern.

VII. RECONSIDERATION AND APPEALS

A. Adversely Affected or Aggrieved by Authority's Recommendation

Any person or party who is adversely affected or aggrieved by the TAC's or the Board's decision on an application may file a written request for reconsideration with the Board. Requests for reconsideration shall be filed in writing within thirty (30) days of the decision and must state the reasons why the Applicant believes the TAC or the Board erred. An appeal must be filed at least 10 days prior to the Board's next quarterly meeting to allow the Board to consider the appeal at that meeting. Appeals are also governed by provisions of the Authority's bylaws, including §§ 9.3.3 and 9.3.4.

B. Trades May Affect Effluent Limits and Wasteload Allocations in Discharge Permits

Trades may affect effluent limits and wasteload allocations in discharge permits. Therefore, approved trades must be incorporated into permits, where applicable. To encourage trading and to avoid duplicative appeals of trades, where the affected discharge permits have been amended to expressly allow for incorporation of future Division-approved trades without further public notice, such trades shall be incorporated into the permit in such manner. In such case, the adjustment to the wasteload allocation and/or concentration limit for phosphorus will be incorporated into the relevant permit(s) after the period for appeal of the Division's approval of a trade has passed.

C. Adversely Affected or Aggrieved By a Final Decision of the Division

Any person who is adversely affected or aggrieved by a final decision of the Division on a trade may request an adjudicatory hearing on the decision before the Water Quality Control Commission in the following situations: (1) when the trade will be incorporated into the affected discharge permits without further public notice, as explained in paragraph (B) above; or (2) when the trade will not be incorporated into any discharge permit.

D. Adjudicatory Hearing on the Final Permit

Any person who is adversely affected or aggrieved by a final decision of the Division on a trade may request an adjudicatory hearing on the final permit before a CDPHE hearing officer or an administrative law judge pursuant to Section 61.7 of the Colorado Discharge Permit System Regulations in the following situations: (1) when the trade is incorporated into an existing permit where the affected permit(s) have not been amended to expressly allow for incorporation without further public notice, as explained in paragraph (B) above; or (2) when the trade is incorporated into a newly-issued discharge permit.

VIII. ADMINISTRATION

A. Trading Project Status

The Authority will maintain documentation, updated as part of the Annual Report, to reflect trade credits that have been transferred to or from each discharger, by trade. The Authority shall maintain a spreadsheet tracking trades approved by the Authority and the Division, which shall include the name of the Applicant, the project title, the quantity of trade credits, the trade ratio, the state of final approval, and the status. Trades approved by the Authority and the Division shall be incorporated into the Authority's Annual Report.

B. Project Annual Report and Fee

A Project Annual Report on the efficacy of each approved and implemented Trade Project must be filed with the Authority annually. This report prepared and signed by a qualified professional who has education and experience in the relevant field, must verify that the monitoring associated with the Trade Project demonstrates that the project meets the required phosphorus reduction. If monitoring is not feasible for the Trade Project, the annual certification must verify that the Trade Project has been constructed and implemented according to the approved project Application, and that it is operating in a structurally sound manner. The Project Annual Report must be filed by January 31 each year so that it can be reviewed and inserted into the Authority's annual report to the Commission, and shall be accompanied by an annual fee in an amount to be determined by the Board. The Project Annual Report shall include:

1. The amount of phosphorus removed pursuant to the Trade Project,
2. The amount of phosphorus discharged from each source receiving trade credits from the Trade Project,
3. The basis of the trade, the designated trade ratio, and any other information that would provide needed background information, and verify that the Trade Project is meeting requirements, and
4. Verification that the annual fee has been paid to the Authority.

C. Adjustments and Revocations

1. Periodic Review: From time to time, the Authority shall review the Trade Projects, including estimates of phosphorus removals for each project, the basis for the trade, and designated trade ratio. If appropriate, the Authority and Division may make necessary adjustments to trade credits for each project. The bases for adjustment include:
 - a. Revisions: Any revisions to the allocations contained in the Control Regulation;
 - b. Upward Adjustments: At any time after approval or conditional approval of a Trade Project, the Project Owner or Allocatee may apply for an increase in credits. If, based on monitoring or other relevant information, the Authority and Division conclude that an adjustment of the credits is warranted, the

Authority and Division may, in their discretion, approve all or any portion of the requested adjustment and the concomitant increase in credits. This adjustment would follow the same procedures described in the Control Regulation Section 73.3(2) and herein; and

- c. Downward Adjustments of Discharge Credits: If the Project Owner fails to sustain the required removals, provide the required annual certification of operation, or reports that the Trade Project is no longer operable or is not being maintained, the Authority and/or Division may reduce or revoke the credits previously awarded. The Authority and the Division shall notify each other if information indicates a need to adjust or revoke a trade agreement. A reduction or revocation of trade credits will require modification to the discharge permit(s).
2. Hearing on Adjustments: Before making a final decision to adjust, revoke, or otherwise modify a previously approved Trade Project, the Authority shall provide notice to the Project Owner, Allocatee's and Division and hold a hearing on the proposed adjustment, to take place at a regular Board meeting. At least ten (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, Allocatee, the TAC, the Division, and any interested parties who timely submit written comments may comment on 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 customary distribution of its meeting agenda and shall mail the meeting agenda to the Project Owner, the Allocatee, and any other specific parties that request notification. Moreover, the Authority shall post notice of the hearing on its website. The determination of whether or not to adjust trade credits shall be by a coordinated effort between the Authority and the Division.
3. Rectifying Downward Adjustments of Trade Credits: After the Authority has made a final decision on a downward adjustment or revocation of Trade Credits, the Authority shall allow the Project Owner or Allocatee to rectify the downward adjustment by reviving the Trade Project that was the subject of the prior trade or by initiating a new Trade Project. Any revival of an existing Trade Project or request for a new Trade Project shall be subject to the applicable provisions of these Guidelines requiring the submittal of an Application and approval thereof by the Authority and the Division. If the Project Owner or Allocatee does not initiate an Application for reviving the existing Trade Project or a new Trade Project within 1 year of the Authority's final decision to adjust or revoke the Trade Credits, the Project Owner and Allocatee shall irrevocably lose the Trade Credits, which credits may only be granted again through submittal of a new Application and conformance with the entire review process outlined in these Guidelines.

D. Duration of Credits

Trade Credits received in approved trades shall remain valid in perpetuity subject to modifications or revocation by the Authority and/or the Division, actions or decisions by any other state or federal governmental body or court, changes in state or federal law or compliance with the Control Regulation and Chatfield Reservoir standard.

E. Not a Property Right

Trade Credits are not a property right, meaning they may be modified through reallocation or revoked. However, Trade Credits may be purchased and sold provided notice and approvals are completed pursuant to these guidelines.

F. Review of Guidelines

Upon motion by the Authority, subject to voting provisions of the Authority Bylaws and consistent with the Control Regulation and the Colorado Pollutant Trading Policy, the Authority may review and propose revisions to the trading program or these Guidelines. Revisions to these Trading Guidelines will be subject to Division review and acceptance.

G. Triennial Review

The terms and conditions of the trading program, as reflected in the Control Regulation, are subject to the triennial review process under 5 C.C.R. § 1002-21, § 21.3(M)(7). A review of the need for revisions to the Trading Guidelines will be undertaken by the Authority and the Division within one year following each triennial review of the Control Regulation. Changes agreed to by the Authority and the Division will be made following the review of the proposed changes.