



United States  
Department of  
Agriculture

Risk  
Management  
Agency

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## INFORMATIONAL MEMORANDUM

**TO:** All Reinsured Companies  
All Risk Management Agency Offices  
All Other Interested Parties

**FROM:** Eldon Gould /s/ *Eldon Gould* 6/29/2006  
Administrator

**SUBJECT:** Well Shutdowns Ordered by the State of Colorado

Prior to May 5, 2006, growers served by the Central Colorado Water Conservancy District and its Water Augmentation Sub-district (WAS) in the State of Colorado had been informed that they would have 15 percent pumping quota from the wells. This information was based on above average snow packs for the winter and the expectation of normal rainfall in the spring. However, after announcing the 15 percent allotment of water, very little snow fell in April, snow packs melted and evaporated, and the normal spring rains did not materialize.

As a result of ongoing litigation regarding the WAS augmentation plan and temporary substitute water supply plan, the Court had given WAS two options for 2006 - proceed with pumping, provide replacement water, and have a hearing in which objectors could challenge the WAS 2006 plan, or cease pumping until the scheduled trial. WAS chose the second option, and agreed not to allow pumping under its plan for 2006, on the condition that it be allowed to store the water it had assembled for 2006 and save it for future years. On May 5, 2006, the State Engineer, in compliance with the Court Order, issued "cease and desist" orders to some 449 well owners. The additional water was expected to come from rainfall during the 2006 crop year that could be stored for future release.

After the order to shut down the wells, WAS sought an emergency water supply and had secured a commitment of 10,000 acre feet from the Western Slope. The Northern Colorado Water Conservancy District had agreed to exchange water from Windy Gap Reservoir near Granby for an emergency supply of Big Thompson River water. However, it appears that the water would only be available if those that filed objections to WAS' plan withdrew their objections. While some withdrew their objections, objections were maintained by the Cities of Sterling and Boulder and about 375 farmers. The objectors alleged that the 10,000 acre feet of water would not be sufficient to cover past water uses, much less be available to cover 2006 water uses, and there was no guarantee of how much water would be available or when. As a result, the deal fell through.



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From all available information, it appears that the cause of the shutting of the wells and the loss of the allotments was drought. Since drought is an insurable peril, and at least some insureds had a reasonable expectation of receiving 15 percent of their allotment of water until May 5, 2006, when the wells were shut down, such producers may be eligible for prevented planting and indemnities for planted acreage that subsequently failed.

However, any acreage in excess of what could have been irrigated with the amount of water made available in the augmentation plan could not be covered as either prevented planted or planted acreage. The inability to irrigate such acreage is not an insurable cause of loss. Further, losses on acreage planted after May 5, 2006, would not be covered because there was no reasonable expectation for receiving the 10,000 acre feet of water. The 10,000 acre feet of water was still subject to the litigation over the WAS water plan and the only way this water would have been available is if the objectors had withdrawn their objections. Until such time as all the objections were withdrawn, there could be no reasonable expectation of receiving the water.

Insurance providers must make loss determinations based on each producer's circumstances and in accordance with policy and procedural guidelines. The Risk Management Agency's (RMA) prevented planting policy provisions and the Prevented Planting Loss Adjustment Standards Handbook, FCIC 25370, must be used to make such determinations.

The RMA Topeka Regional Office has also made available a Producer Documentation Tool to assist the producer in documenting water expectations and their decision on planting based on those expectations. The tool is available through the RO's website at [http://www.rma.usda.gov/aboutrma/fields/ks\\_rso/](http://www.rma.usda.gov/aboutrma/fields/ks_rso/)

**DISPOSAL DATE:**

This Informational Memorandum will expire on December 31, 2006.