

## **APPENDIX 5**

### **CRITERIA FOR EVALUATION OF ADVERSE EFFECT FROM A NON-EXEMPT NEW DEVELOPMENT, CHANGE IN USE, OR TRANSFER OF A PORTION OF THE TRIBAL WATER RIGHT**

In evaluating whether a Non-Exempt New Development, Change in Use, or Transfer of a portion of the Tribal Water Right either on or off-Reservation will have an Adverse Effect on a water right Arising Under State Law, the DNRC will use the following criteria to determine the minimum depletion caused by the original or quantified use of the portion of the Tribal Water Right. Any new use may have the same depletion without a finding of Adverse Effect. The TWRD or the applicant may provide additional information showing that a greater depletion is possible without causing an Adverse Effect. The DNRC may use the additional information in its evaluation.

Irrigation: 1.5 acre-feet of water depleted for every 1 acre irrigated

Non-irrigation: 100% depletion, unless information is provided showing less depletion

In determining the Adverse Effect of use of a portion of the Tribal Water Right held in storage pursuant to Section A.1.a.(2) of Article III of the Compact for a purpose other than irrigation, the DNRC will find no Adverse Effect due to the depletion caused by the new use if no more than 1/3 of the storage capacity of the reservoir is put to the new use and for every 1 acre-foot of storage put to the new use, 1 acre-foot is released either on a schedule that mimics return flow, or on a schedule agreed to with the TWRD. The DNRC and the TWRD may agree to establish a release schedule that provides the greatest benefit to downstream water users. The TWRD or the applicant may provide additional information showing that a larger portion of the storage may be developed, changed, or transferred to the new use or that a lesser amount may be released without causing an Adverse Effect. The DNRC may use the additional information in its evaluation.