Denver Water SDWA Variance Responsiveness Summary

I. Public participation activity conducted and matters on which the public was consulted

EPA published the proposed variance and a plain language public notice to www.regulations.gov for public review. Further, EPA directly notified interested parties and the media of the proposal to approve a variance and of the public comment period. See 40 C.F.R. Section 25.6. EPA held two virtual, public meetings on October 5th (4 to 6pm MT) and 6th (6 to 8pm MT). The public meeting included a brief presentation on the contents of the proposed variance, as well as a description of the key changes from the 2019 variance. EPA solicited verbal comments during those hearings and solicited written comment for a 30-day period. Additionally, EPA provided Spanish translated versions of all published documents as well as Spanish interpretation services for both public meetings.

II. Summary of public's views and significant comments received

The following summarizes comments EPA received during the public comment period and during the public meetings EPA held. The comments include one email and five comments received in response to EPA's proposal to approve a Safe Drinking Water Act Variance for Denver Water. Denver Water's comment letter was supported by 30 organizations.

Thirty-five commenters supported Denver Water's Lead Reduction Program and urged EPA to continue its support by finalizing the proposed approval of the variance extension request. These commenters highlighted the public health benefit that the LRPP provides by removing the primary source of lead from water, and Denver Water's performance in exceeding performance goals/milestones under the 2019 variance.

Eleven commenters supported the proposed approval of the variance extension request to avoid exacerbating nutrient pollution problems in the South Platte River.

Two commenters specifically agreed with EPA's finding that Denver Water has demonstrated its Lead Reduction Program Plan (LRPP) is "at least as efficient" in reducing lead levels in drinking water as compared to the Lead and Copper Rule Revisions (LCRR) for optimal corrosion control treatment (OCCT). The commenters noted that the LRPP was a holistic, national model that provided many layers of protection for the consumer, and they also referred to Denver Water's achievement and/or exceedance of the milestones and metrics under the 2019 variance.

One commenter agrees with EPA's proposal to add a compliance metric to ensure that the lead service line removals and filter outreach do not result in disproportionate impacts to Environmental Justice communities, explaining that "[r]equiring Denver Water to document that its LRP is not resulting in disproportionate impact on low-income or communities of color will add a layer of accountability to ensure the utility is consistently meeting its Health Equity and Environmental Justice goals. Requiring such a compliance metric is also consistent with EPA's FY 2022-2026 Strategic Plan goal of taking "decisive action to advance environmental justice and civil rights."

Additionally, two commenters expressed their support for the proposed approval on the basis that "[i]t is clear that Denver Water prioritizes reaching the hard-to-reach and underserved communities for replacement of lead service lines." The commenters also highlighted Denver Water's efforts to establish

community partnerships to promote positive and strong conversations within the community to take the steps to protect their health from lead." They also cited to these efforts in light of their understanding that "in the area that Denver Water serves, up to 25% of households receive water via lead service lines and that about 70% of households with lead service lines are in low-income and/or minority neighborhoods." One commenter supported Denver Water seeking and using infrastructure funds to enhance lead service line replacement (LSLR) : "[w]e also learned from program leadership that the state is providing Denver Water with additional funding from the Infrastructure Investment and Jobs Act to expand the program and accelerate LSL replacement, with almost half of the funding in forgivable loans. We think Denver Water has the capability, skills and attitude to make outstanding use of those funds."

One commenter asked why Denver Water can't employ more contractors to reduce the time to replace the lead service lines (LSLs) because 15 years is "way too long to keep people supplied with filters."

III. Modifications made from proposed approval

1. Modification to footnote that defines "areas with HE and EJ concerns" for purposes of the Health Equity and Environmental Justice (HE and EJ) Compliance Metric, under 6.C.
Original Language: For the purposes of this Order, areas with HE and EJ concerns are defined as any census block group with, as of the variance effective date, an 80th percentile ranking or above in EPA's EJScreen tool for any of the following indicators: low life expectancy, low income, unemployment rate, less than HS education, and linguistically isolated.

Revised Language: For the purposes of this Order, areas with HE and EJ concerns are defined as any census block group with, as of the variance effective date, an 80th percentile ranking or above (when compared to either the U.S. or State) in EPA's EJScreen tool for one or more Supplemental Index.

Rationale: EPA recently released EJScreen 2.1, an update to the Agency's publicly available environmental justice screening and mapping tool. EJScreen 2.1 makes important improvements to better meet EPA needs as well as those of our partners and stakeholders. The update features the addition of new data on US territories, supplemental indexes, threshold maps, and refreshed demographic and environmental data. The final variance incorporates these new "supplemental indexes" which reflect an additional, simplified, method to highlight vulnerable communities that may be disproportionately impacted by pollution. They use the same methodology and calculation as the EJ Indexes but incorporate a new five-factor supplemental demographic index. EPA also added "when compared to either the U.S. or State" to clarify how the 80th percentile ranking was defined.

2. Modification to Paragraph 8.A in the General Provisions section of the variance:
Original Language: Authority. Beginning on the Effective Date, [the Colorado Department of Public Health and Environment] CDPHE has primary implementation and enforcement authority over the variance, subject to EPA oversight. CDPHE may make recommendations to EPA to revoke this variance. Revocation is discussed in 8.E. EPA has the ultimate authority to determine whether to revoke this variance.

Revised Language: Authority. Beginning on the Effective Date, CDPHE has primary implementation authority over the variance, subject to EPA oversight. CDPHE may make recommendations to EPA to revoke this variance. Revocation is discussed in 8.E. EPA has the ultimate authority to determine whether to revoke this variance.

Rationale: EPA struck "and enforcement" because CDPHE does not have enforcement authority over a federal order. However, subsequent to issuance of the federal variance, CDPHE anticipates issuing a modification to its 2019 modification order under state law--the contents of which CDPHE would be able to enforce under state law.

IV. Responses to comments received

1. Several commenters indicated their support for the proposed approval of the variance extension request to avoid exacerbating nutrient pollution problems in the South Platte River:

Response: EPA recognizes commenters' concerns about the potential impacts of increased levels of phosphate in discharges from the Denver Water service area and increased nutrient levels in receiving waters. EPA's approval of the variance is based on an assessment of the "at least as efficient as" standard and the strength of Denver Water's LRPP in protecting public health from sources of lead in drinking water, which is the sole criteria for a 1415(a)(3) variance under the Safe Drinking Water Act. But, EPA does recognize that additional ecological and public health benefits can accrue from limiting new sources of nutrients into surface water, particularly when the surface water – the South Platte River – is a wastewater effluent dominated stream with limited options to effectively control nutrient levels.

2. One commenter asked: "*Why can't the city of Denver employ third-party contractors to reduce the time it's going to take to replace these pipes? The last I heard it was 15 years. That's way too long to keep people supplied with filters. Just my opinion."*

Response: The original variance required Denver Water to replace all LSLs in 15 years or by December 2035 based on the rate of lead service line replacements that Denver Water estimated it could achieve using internal staff as well as third-party contractors. Until all LSLs are replaced, Denver Water provides water filters certified to remove lead to all homes with confirmed and likely lead service lines and galvanized service lines requiring replacement. Under the Lead Reduction Program Plan, customers are provided filters until either the service line is confirmed to be non-lead or six months after the lead service line is replaced. The intent of the filter program is to provide equitable public health protection to Denver Water customers until the completion of all LSLR. The new variance maintains the deadline of 2035 for Denver Water to complete all LSLRs.

The Biden-Harris Administration announced in December 2021 that it stands ready to work together with local, state, and federal partners to accelerate the

replacement of lead pipes in the next decade. Denver Water's pace for LSLR under the new variance aligns with the timeframe of this national goal.

From the outset, Denver Water has employed third-party contactors, in addition to its own staff, to replace LSLs in the required timeframe. Further, CDPHE has approved Denver Water to receive $76 million through the Bipartisan Infrastructure Law to employ additional third-party contractors to replace LSLs. These funds will allow Denver Water to remove more LSLs and potentially shorten the time to remove all LSLs from the original 15 years.

3. Several commenters supported renewal of the variance for the remainder of the 15-year variance. For example, one commenter stated, "[i]t is imperative that EPA move swiftly to extend the variance for the full length of the program to ensure human health and water quality remain protected." Another stated support for "extension of the [LRPP] for the full 15 years of the program."

One commenter further explained: "[We] did not agree with EPA's decision in December 2019 to require a three-year renewal process for the variance. We saw this renewal process as duplicative since Denver's program has built in corrective actions the utility must take should it fail to meet certain performance benchmarks, and the variance could be terminated should the action level for lead be exceeded for two monitoring periods. Not only does Denver Water's Lead Reduction Program clearly work, the utility is consistently exceeding all program milestones."

Response: EPA is finalizing the proposed variance, subject to the modifications described above. Section 8.B of the variance establishes that the term of the variance will be 12 years, unless EPA revokes, modifies, or terminates the terms of the variance. Section 8 describes in further detail in what instances the variance may end before the full 12-year term, including expiration of the variance based on EPA's revisions to the lead and copper rule revisions, termination of the variance based on Denver Water's completion of the lead service line removal program prior to the 12-year term, and/or EPA's revocation of the variance.