

STATE OF COLORADO

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John W. Hickenlooper
Governor

D 2011-009

EXECUTIVE ORDER

Declaring a Disaster Emergency Due to the Imminent Threat Posed by Flooding as a Result of the Fourmile Fire in Boulder County

Pursuant to the authority vested in the Governor of the State of Colorado and, in particular, pursuant to relevant portions of the Colorado Disaster Emergency Act of 1992, C.R.S. § 24-32-2100, *et seq.*, John W. Hickenlooper, Governor of the State of Colorado, hereby issues this Executive Order declaring a disaster emergency due to the imminent threat posed by flooding as a result of the wildfire in Fourmile Canyon in Boulder County, Colorado.

I. Background and Purpose

On Monday, September 6, 2010, a wildfire ("Fourmile Fire") broke out in Fourmile Canyon, approximately 12 miles northwest of Boulder, Colorado. By the time the Fourmile Fire was extinguished on September 14, 2010, the fire had spread to more than 3,000 acres, forced the evacuation of more than 3,000 residents, and destroyed 169 homes.

In response to this disaster, Governor Ritter issued Executive Orders D 2010-012 declaring a disaster emergency and Executive Orders D 2010-013, D 2010-019, and D 2011-002, reaffirming his disaster declaration and making additional state resources available. In addition, Governor Hickenlooper issued Executive Orders D 2011-006 and D 2011-007, reaffirming the disaster declaration and making additional State resources available to support the State's response to the Fourmile Fire.

The wildfire stripped the burn area of vegetative groundcover and, as a result, according to the U.S. Geological Survey, the potential for sudden and destructive flooding and debris flow is dramatically increased. The Fourmile Emergency Stabilization Team recommends distributing groundcover on the severely burned areas in order to promote re-vegetation and to minimize erosion and debris flow during spring and summer rains. Due to steep terrain in the burn area, aerial distribution of mulch is necessary. By letter dated March 18, 2011, Boulder County requested an executive order from the Governor. The request included Boulder County's legal analysis and conclusion that, notwithstanding statutes authorizing county health department nuisance abatement and local disaster emergency declarations, Boulder County lacks authority to authorize aerial mulching in the Fourmile Fire burn area.

The Governor is responsible for meeting the dangers to the state and people presented by disasters. C.R.S. § 24-32-2104(1). The Colorado Disaster Emergency Act of 1992, defines a disaster as “the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property resulting from any natural cause or cause of human origin, including but not limited to fire, flood, ... wind, storm, ... or other water contamination requiring emergency action to avert danger or damage....” C.R.S. § 24-32-2103(1.5). Upon a rain event over the burn area, the rate of water discharge will be significantly greater than under pre-fire conditions and will produce destructive flooding and debris flow without established groundcover. The threat of spring rains in Boulder County is imminent and the proximity of burn area creeks to state lands, the city of Boulder, and residences in Fourmile Canyon means an imminent threat to life and property exists and, therefore, constitutes a disaster for the purposes of the Act.

II. Declaration and Directives

In addition to the declarations and directives contained in Executive Orders D 2010-012, D 2010-013, D 2010-019, D 2011-002, D 2011-006, and D 2011-007, I declare and direct as follows:

- A. Flooding as a result of the Fourmile Fire constitutes an imminent threat to life and property and, therefore, constitutes a disaster emergency under C.R.S. § 24-32-2103.
- B. Distributing groundcover by aerial means (aerial mulching) is necessary in order to attempt to address this disaster emergency. Due to the unpredictable timing of precipitation events, aerial mulching may not prevent flooding but early spring distribution offers the highest protection available given current soil conditions.
- C. Boulder County has received the express consent for aerial mulching of all but 7 of the approximately 325 affected private property owners in the Fourmile Fire burn area.
- D. Pursuant to C.R.S. § 24-32-2104(7)(b), Boulder County, as a political subdivision of the state, is directed to utilize available aerial mulching resources on public and private lands in the Fourmile Fire burn area as they are reasonably necessary to cope with this disaster emergency.
- E. The aerial mulching effort will expend no State funds and will be conducted using federal funding from the U.S. Department of Agriculture, Natural Resources Conservation Service. Specifically, these funds will be used by Boulder County to contract for aerial mulching in the Fourmile Fire burn area.

III. Duration

Executive Orders D 2010-012, D 2010-013, D 2010-019, D 2011-002, D 2011-006, and D 2011-007 remain in full force and effect as originally promulgated. This Executive Order shall expire 30 days from its date of signature unless extended further by Executive Order.



GIVEN under my hand and the
Executive Seal of the State of
Colorado this fourth day of
April, 2011.

A handwritten signature in blue ink, reading "John W. Hickenlooper".

John W. Hickenlooper
Governor