

# Colorado River Compact Curtailment Alternative

Southwestern Water Conservation District

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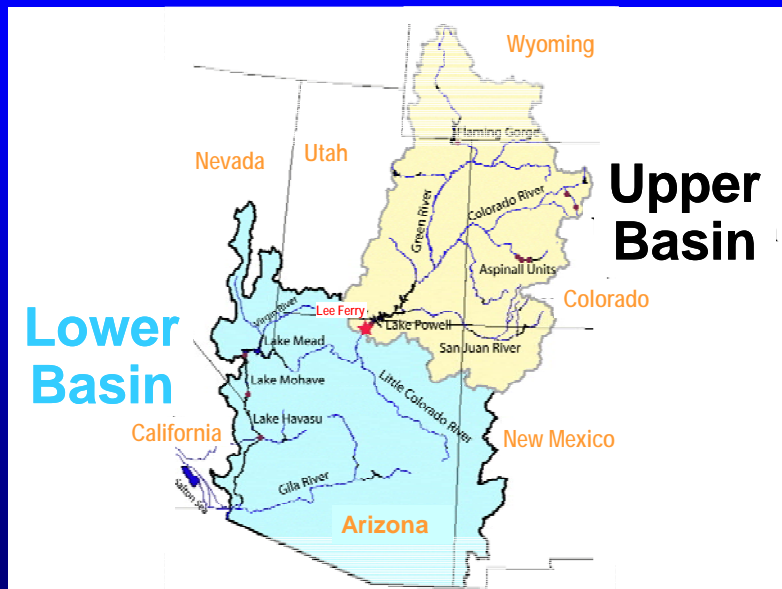


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## Colorado River Basin



## Colorado River Compact of 1922

Colorado, like all Upper Division states, shares obligations to the Lower Division

- III (d) the Upper Division shall “not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any ten consecutive years.”
- III (c) regarding Mexico...the Upper Division must “deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d).”



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## Upper Colorado River Basin Compact of 1948

*Purposes of the 1948 Compact include:*

- “...equitable division and apportionment of the use of the waters...apportioned in perpetuity to the Upper Basin”
- “...establish the obligations of each State of the Upper Division with respect to deliveries of water required to be made at Lee Ferry”
- procedures and methodology for determining how much water Colorado would have to provide in the event the “curtailment of the use of water...becomes necessary in order that the flow at Lee Ferry shall not be depleted below that required by Article III (of the 1922 Compact).”



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## Important Implications

Article VIII of the 1922 Compact:

“...present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact.”

Article IV(c) of the 1948 Compact:

excludes water rights perfected prior to Nov. 24, 1922 from curtailment

NOTE: The 1964 *Arizona v. California* Supreme Court decree includes a definition of “present perfected rights” that MAY apply.



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## Important Considerations

- **Colorado hydrology highly variable**

Paleohydrology suggests past droughts have been more severe than what we've experienced the last 100 years.

- **Drier future**

Climate science, including the recent CWCB report, suggests a drier future.

- **Curtailment probability**

The chance of a curtailment in the next decade or two is extremely remote. In the last 10 years, we've delivered MUCH more than 75,000,000 acre-feet at Lee Ferry.

- **Legal matters**

Difficult legal issues will have to be resolved before a curtailment could ever occur.



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## Objectives of the Plan

1. Develop Colorado's remaining compact entitlement while minimizing risk
2. Avoid compact curtailment
3. Preserve and protect Colorado's pre-compact rights
4. In event of curtailment:
  - cooperatively address impacts and satisfy critical post-compact water rights
  - mitigate the secondary impacts of temporary water transfers (e.g., local economy, water quality, in-stream flows)



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## Plan Assumptions

- It's legal to use the consumptive use credits from pre-1922 rights to replace depletions made by critical post-1922 rights. (definition of "critical" is an important statewide issue)
- A curtailment could be significant and protracted, impacting all post-1922 rights.
- Within Colorado, pre-1922 rights would be administrated by priority.



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## **Plan Assumptions** (con't)

- Water stored by post-1922 rights in the nine years prior to the curtailment would be excluded from curtailment.
- The State Engineer would issue rules and regulations covering a Colorado River Compact curtailment.



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## **Plan Assumptions** (con't)

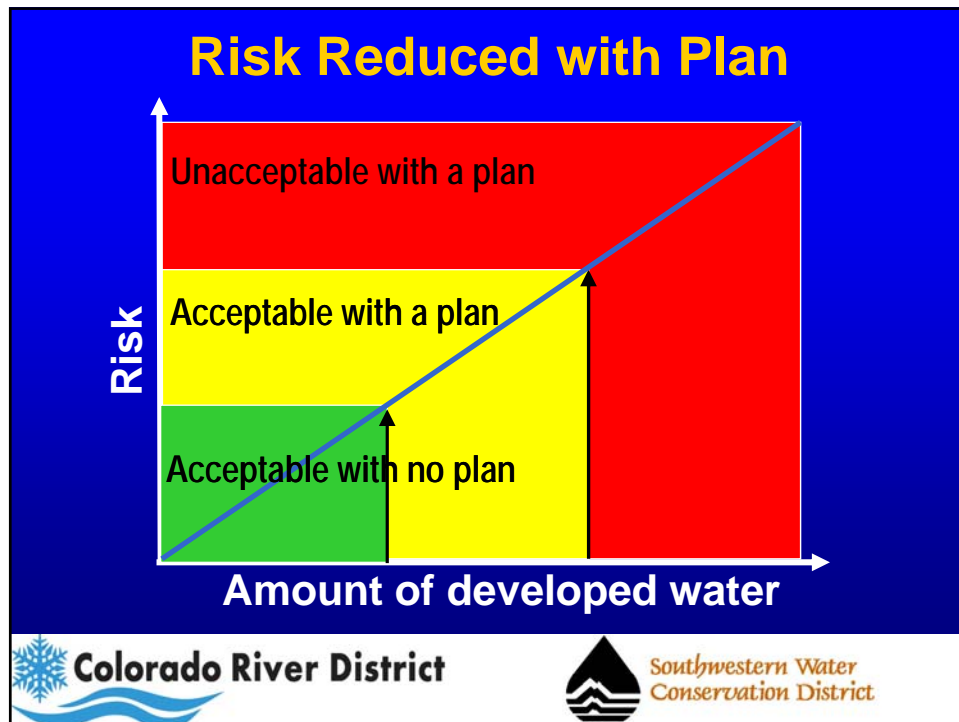
- State plan will be integrated with the Upper Colorado River Basin process.
- A compact curtailment is not likely to be a sudden or unexpected event.



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### Elements of the Plan - #1

#### *1. Operation of a pre-1922 water bank*

- Willing lessor basis
- Cover critical post-1922 uses, east and west slopes
- Resolve numerous legal issues on a seller basis
- Limit purpose of the water bank to compact curtailment

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## Elements of the Plan - #2

### *2. Protection of Colorado's pre-1922 Colorado water rights*

- Work together to protect and preserve these valuable rights
- Once a right is abandoned through non-use, it is gone forever.
- Use variety of tools: education, legislation, financial and technical assistance



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## Elements of the Plan - #3

### *3. Management of secondary impacts*

Address local impacts such as:

- effects on local economic
- water quality
- In-stream flows



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## More Unresolved Issues

- Governance
- Funding
- Necessary powers
- State legislation?



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## Important Questions

**Is sufficient water available  
to cover critical uses?**

**Is the compact curtailment  
plan feasible?**



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*Can we sell insurance  
before the fire?*



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