



COLORADO

**Colorado Water
Conservation Board**

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Colorado Water Conservation Board

SUPPORT AND POLICY STATEMENTS

REGARDING COLORADO RIVER DROUGHT CONTINGENCY PLANS, DEMAND MANAGEMENT AND COMPACT ADMINISTRATION

Since 2000, the certainty and security of the Colorado River water supply have been called into question. The entire Colorado River Basin is currently in the worst hydrologic cycle in the historic record. Between 2000 and 2018, the Basin has experienced the driest year on record (2002), and the driest consecutive two-year period on record (2012 and 2013). It has also experienced above-average runoff only five out of 19 years, and withstood declining storage supplies at the two largest reservoirs in the Colorado River Basin - Lake Mead and Lake Powell - to less than half of full capacity. Further, recently published data indicate a likely continuation of the trend of reduced flows and increased demand throughout the Colorado River Basin. Regardless of whether this is an extended drought or the new normal hydrology, the potential impacts to the state and its citizens could be significant.

The importance to Colorado of its namesake river cannot be overstated. Originating as snowfall high in the Colorado mountains, water from the Colorado River is put to wide range of uses by agricultural, municipal, tribal, industrial, and non-consumptive water rights holders across the state. Because no major rivers flow into the state, Colorado must satisfy all its water demands from sources within its boundaries. The Colorado River is an irreplaceable resource for the entire state.

Continued drought or worsening water supply conditions in the Upper Colorado River Basin could increase the risk of: (a) Lake Powell storage declining below critical elevations to maintain operational functionality; and (b) mandated water rights administration (involuntary curtailment of uses) to maintain compliance with the Upper Colorado River Basin and Colorado River Compacts. Both could have serious implications for Colorado.

Faced with this reality, Colorado's Commissioner to the Upper Colorado River Commission and staff at the Colorado Water Conservation Board and Attorney General's Office have been working with the other Colorado River Basin States, the Federal Government, and relevant stakeholders to develop a Drought Contingency Plan (DCP) that can help minimize and mitigate the risks associated with consistently below average water supplies in the Colorado River Basin. The DCP package includes both Lower Basin and Upper Basin components that set forth the provisions and framework within which the seven Colorado River Basin States may act in conjunction with the Secretary of the Interior



to protect their respective rights and interests while mitigating risks of extended drought consistent with the “Law of the Colorado River.”

The DCP documents were posted in final review draft form on the CWCB’s website on October 9, 2018. The seven basin states and the Department of Interior are currently in the process of publicly vetting the DCP agreements. Before the DCP agreements would be implemented in either the Upper or Lower Colorado River Basin, it is anticipated that they would be authorized by Congress and executed by the relevant signatory parties.

The Upper Basin DCP includes, among other things, a Drought Response Operations Agreement and a Demand Management Storage Agreement. The Drought Response Operations Agreement directs management of the Initial Units¹ consistent with existing operational permitting, and is intended to reduce the risk of Lake Powell declining below minimum power pool elevation. If Lake Powell were to drop below minimum power pool elevation, it would become financially and physically difficult to maintain existing water uses, compact compliance obligations, and hydropower generation. Additionally, the Upper Basin DCP includes a Demand Management Storage Agreement, which is intended to help assure compact compliance and reduce the risk of mandatory curtailment by securing the ability to store water at the Initial Units at no charge for compact compliance purposes.

The Upper Basin DCP agreements do not certify, warrant or otherwise guarantee that a demand management program will be established in the Upper Basin. The agreements only provide an opportunity for the Upper Division States (Colorado, New Mexico, Utah, and Wyoming) to use available storage space at the Initial Units if an approved Upper Basin demand management program is established. Such use would be free of charge and the water stored would not be subject to release under the 2007 Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations of Lake Powell and Lake Mead. Each Upper Division State and the Upper Colorado River Commission must first evaluate the feasibility of demand management concepts and reach agreement on a number of key points, and provide formal approvals before any demand management program could be deemed viable in the Upper Basin.

Demand management activities that could be promoted in Colorado as a result of the DCP would likely involve intentionally reducing consumptive uses from the Colorado River System, and storing the conserved water at the Initial Units to help assure the Upper Basin’s continued compact compliance. Any such actions require careful consideration of the impacts to individuals, communities, and local economies.

As the agency authorized to consider and establish the state’s water policy, the Colorado Water Conservation Board has a responsibility to evaluate and implement mechanisms for the effective management and wise administration of the Colorado River within Colorado. Specifically, it is the express responsibility and within the purview of the Board to, among other things: (a) devise and formulate methods, means, and plans for bringing about the greater utilization of the waters of the state (C.R.S. 37-60-106(1)(c) (2017)); (b) gather data and information looking toward greater

¹ The Initial Units refer to the units authorized under the Colorado River Storage Project Act, including Glen Canyon Dam, Flaming Gorge, Aspinall Unit (comprised of Blue Mesa, Morrow Point and Crystal Reservoirs), and Navajo Reservoir.



utilization of the waters of the state (C.R.S. 37-60-106(1)(d)); (c) cooperate with the other states and Federal Government for the purpose of bringing about the greater utilization of the waters of the state of Colorado (C.R.S. 37-60-106(1)(e)); (d) formulate and prepare drafts of state and federal legislation designed to assist in securing greater beneficial use and utilization of the water of the state and protection from flood damages (C.R.S. 37-60-106(1)(g)); (e) investigate and assist in formulating a response to the plans, purposes, procedures, requirements, law, proposed laws, or other activities of the federal government and other states which affect or might affect the use or development of water resources of this state (C.R.S. 37-60-106(1)(h)); and foster the conservation of the water of the state by the promotion and implementation of sound measures to enhance water use efficiency in order to serve all the water needs of the state and to assure the availability of adequate supplies for future uses, and that necessary water services are provided at a reasonable cost. (C.R.S. 37-60-106(i)(r)).

As the Board fulfills its statutory obligations, it also recognizes that water rights holders and other stakeholders have a vital interest in understanding the elements and conditions of any possible demand management program in Colorado, as well as the state's intentions in investigating and potentially pursuing such a program within Colorado, with the ultimate goal of ensuring that their rights, respective interests, and communities are valued and protected.

At the January 2018 meeting, the Board directed staff to proactively engage in a state-wide discussion regarding demand management. Since that time, CWCB staff has initiated outreach with interested water rights holders and stakeholders to conduct robust discussions about the concept of demand management and to develop a greater understanding of various perspectives, concerns, and considerations regarding demand management within Colorado.

The Board has also heard directly from interested water rights holders and stakeholders on demand management considerations via letters and public testimony at its September 2018 meeting.

With this contextual background, the Colorado Water Conservation Board sets forth the following Support and Policy Statements Regarding Colorado River Drought Contingency Plans, Demand Management, and Compact administration.

STATEMENT OF SUPPORT

The Colorado Water Conservation Board expressly endorses the seven Colorado River Basin States and Federal Government in their collective efforts to plan and prepare for drought contingencies in the Colorado River Basin. Furthermore, the Board joins with Colorado's Commissioner to the Upper Colorado River Commission to present unified and full support for finalizing the Colorado River Basin Drought Contingency Plan documents in substantial conformance with the final review draft documents posted on the CWCB website on October 9, 2018.

DEMAND MANAGEMENT POLICY STATEMENT

In consideration of the past, present and potential future hydrologic conditions confronting the Colorado River Basin, and in light of the above considerations, it will be the Colorado Water Conservation Board's policy to:



- (1) Develop the state's position and approach on whether and how to develop any Upper Basin Demand Management Program that could potentially be implemented within Colorado consistent with state law to avoid or mitigate the risk of involuntary compact curtailment and to enhance certainty and security in the Colorado River water supply.

Furthermore, in formulating the state's demand management position, it will be the Board's strategy to:

- (2) Convene a process to identify and evaluate the issues the state must address as part of any potential demand management program to be considered in Colorado and the Upper Basin.
- (3) Operate within, and subject to, the terms and conditions of the interstate Agreement Regarding Storage at Colorado River Storage Project Act Reservoirs Under an Upper Basin Demand Management Program, including, but not limited to, the express understandings that:
 - a. Any water conserved under an Upper Basin Demand Management Program will be stored at the Initial Units without charge;
 - b. Any water conserved and stored under an Upper Basin Demand Management Program will be solely for the purpose of helping assure compliance with the Colorado River Compact;
 - c. Any water conserved and stored under an Upper Basin Demand Management Program shall not be released from Lake Powell except at the request of the Upper Colorado River Commission for the exclusive purpose of helping assure compact compliance; and
 - d. Any water conserved and stored under an Upper Basin Demand Management Program will be subject to evaporation assessments and volumetric limitations.
- (4) Engage in activities that further the goals expressed in Colorado's Water Plan, with specific consideration given to the principles and collaborative efforts to help assure continued compact compliance as set forth in Principle 4 of the Conceptual Framework and described in Chapters 8 and 9.1.
- (5) Investigate the voluntary, temporary, and compensated reductions in consumptive use of waters that otherwise would deplete the flow of the Upper Colorado River System, or the importation of waters from outside the natural Colorado River watershed to augment the Upper Colorado River System, for the specific purpose of helping assure compact compliance.
- (6) Prioritize avoidance of disproportionate, negative economic or environmental impacts to any single subbasin or region within Colorado while protecting the legal privileges of water rights holders. The CWCB will work with water rights holders and stakeholders to assess the feasibility of and promote mechanisms for obtaining roughly proportionate contributions of water consumptively used from the Colorado River System to a Demand Management program over a given timeframe from participants on each side of the Continental Divide.
- (7) Comply with applicable state law, including, but not limited to, the requirement that no action related to demand management cause material injury to other water rights holders.



- (8) Consider and be fully informed by the input and considerations of water rights holders and stakeholders potentially impacted by application of demand management strategies within Colorado, and institute a public review process for any such proposed demand management program.
- (9) Work with Colorado's Commissioner to the Upper Colorado River Commission to cooperate with the other Upper Division States of Wyoming, Utah, and New Mexico, as well as the Department of the Interior, to investigate and potentially develop a regional demand management program that considers and incorporates Colorado's demand management approach, and to ensure that water conserved within Colorado under any demand management program is not diverted and consumptively used by any other state.

COMPACT ADMINISTRATION POLICY STATEMENT

Understanding that:

- 1) Investigation and development of an Upper Basin Demand Management Program will require exploring and resolving numerous technical, legal, economic, and policy questions with multiple water rights holders and stakeholders over an extended period of time; and
- 2) Continuation of the current trend in the Colorado River Basin's hydrologic cycle could hasten the time within which the action may be needed to accomplish compliance with the Colorado River Compact,

If the quantity of conserved water made available through the strategies above is not sufficient to ensure compliance with the Colorado River Compact, it will be the Board's policy to:

Encourage and collaborate with the Division of Water Resources to engage in timely public meetings and extensive outreach regarding development of any alternative measures or rules for compact compliance administration to fully inform and seek input from intrastate water rights holders and stakeholders with interests in the Colorado River. Such process would be with the goal, but not the requirement, of achieving general consensus within the state, without constraining the Division of Water Resource's lawful administration of water rights in order to meet Colorado's compact obligations.

