

Work Group Meeting Report Out

Work Group: Law and Policy Meeting #2 **Date:** February 5, 2020

Meeting Topics:

Agenda topics included: Prior Meeting Summary/Recap/ Steps for Literature Review/Other Compacts/ Review of key principles in Demand Management Storage Agreement and CWCB Summary and Policy Statement/ Review and Discussion of Proposed Definitions for Key Terms/Consideration of Application of Export Statute/Preparation of IBCC/Workgroup Meeting/ Resource-Tech Needs

Key Take Aways:

- Per the Demand Management Storage Agreement, the purpose of any Upper Basin Demand Management Program would be to help assure continued compact compliance. What constitutes “compact compliance,” and how it should be defined, therefore, is important to the structure of the entire program.
- How demand management actions will be considered a beneficial use of water will be important to define and clarify.
- Per the Demand Management Storage Agreement, the UCRC will need to identify when Demand Management Program is “turned on” and states/water users can voluntarily participate to help assure continued compact compliance. Such finding should be different and separate from a UCRC finding that an Upper Division State MUST take action to produce a certain amount of water to either get back into compact compliance or to maintain compact compliance.
- Per the Demand Management Storage Agreement, the water that fits within a demand management program must be imported into the basin or be classified as conserved consumptive use. The definition of conserved consumptive use, at this point, must include water that has been historically depleted under valid decreed rights and would continue to be depleted but for the program. Raises questions to consider regarding tribal water and augmentation water.
- How to define “temporary” under a Demand Management Program that is voluntary, temporary and compensated is highly dependent on the type of use.
- The export statute is not likely applicable so long as the water created in Colorado under a Demand Management Program is for the benefit of Colorado and its water users.

Key Discussion Points:

- 1) In defining “compact compliance,” it is important to avoid suggesting that any program will be used to exercise the State Engineer’s authority to implement anticipatory curtailment to maintain compliance with the compact. It will also be important to make sure that the definition of “compact compliance” incorporates (or does not interfere with) the concept that actions taken for compact compliance constitute a beneficial use (as already contemplated in other basins and water rights).

- 2) There are three types of compact compliance, and demand management only fits within one. First, there are compact compliance actions to cure a compact violation – triggered by UCRC Finding or Supreme Court order. Second, there are compact compliance actions that are necessary to maintain compliance in the face of a likely/imminent violation. Third there are compact compliance actions to help assure ongoing compliance. Demand management should fit within this third concept and be considered a voluntary activity.
- 3) To work within the existing water rights system, there is a need to identify how water conserved under a demand management program could be considered a beneficial use. In other basins, compact compliance activities have been considered a valid beneficial use – see Rio Grande Closed Basin Project, Republican River Compact Compliance Pipeline, Long Hollow Reservoir – water court decree, Arkansas River Irrigation Improvement Rules. Also consider the understanding that every post-compact water right is taken subject to the compact – see *Hinderlider*.
- 4) What constitutes a temporary activity under a demand management program will depend heavily on the type of use – may be different for irrigation vs. municipality. May be different for ditch companies.
- 5) Water that is eligible for a Demand Management Program must meet the minimum requirements of the Demand Management Storage Agreement.

Additional technical, informational other needs:

- Will look into lease/fallow guidelines and pilot projects for further investigation of what is considered reasonable for temporary.
- Would like to coordinate with the Water Rights Accounting and Administration Workgroup to better understand how Division of Water Resources would administer water in program.

Other: The group's next meeting will be held March 24th in Summit County. Place and time to be determined.