



MARCH 4, 2020
IBCC & DM WORKGROUP
MEETING

WELCOME



COLORADO
Colorado Water

INTRODUCTIONS

WIFI PASSWORD:

Meet@ Sheraton

UnionWIFI2020

How do you feel about icebreaker questions?

- A) I generally like them - it's a good way to get to know people.
- B) I generally don't mind them (neutral).
- C) Would rather be doing anything else ...literally anything.

 When poll is active, respond at **Pollev.com/cwcb18**

 Text **CWCB18** to **22333** once to join

IBCC MEMBER PRESENTATIONS





RIO GRANDE UPDATE

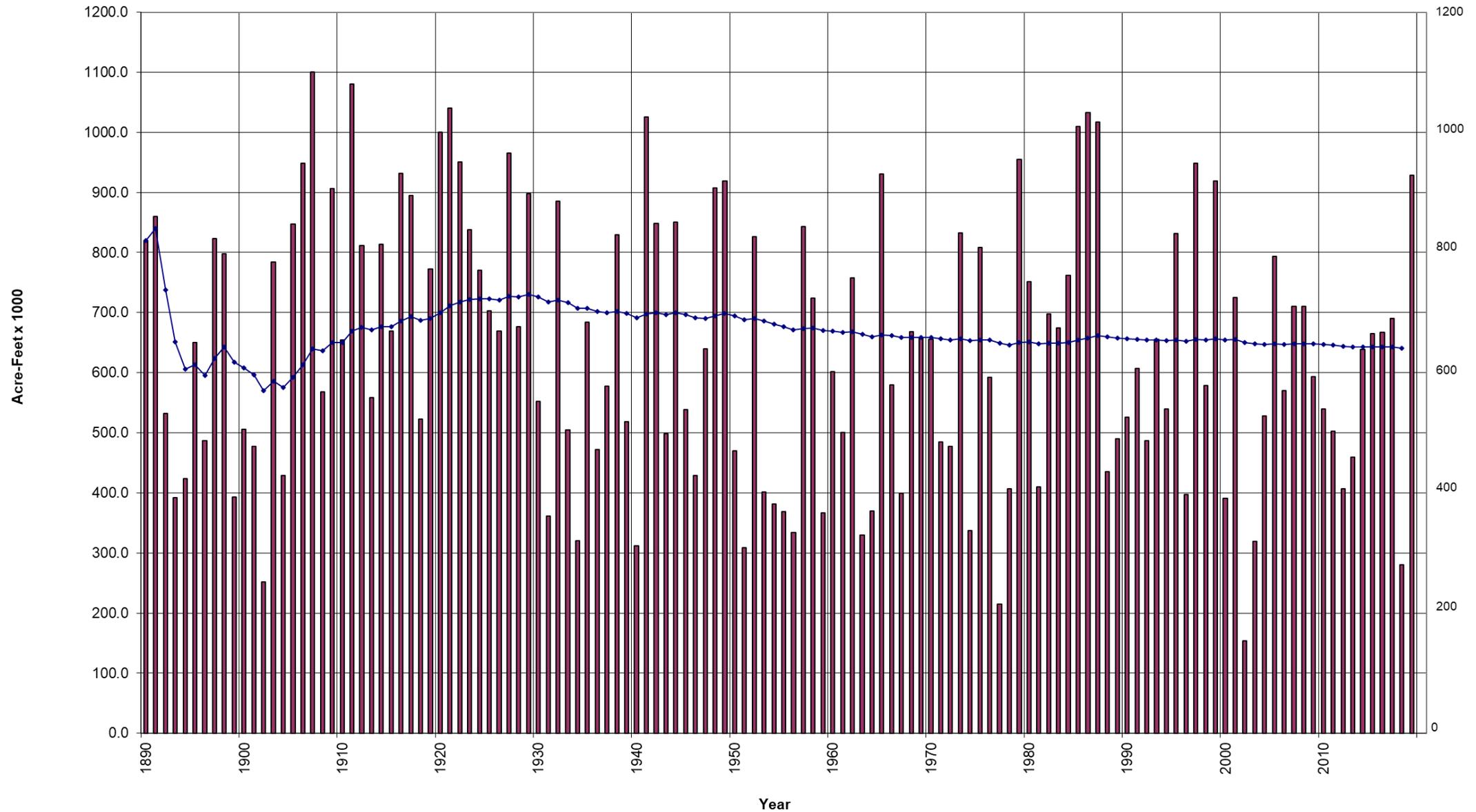
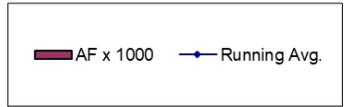
PRESENTATION

Cleave Simpson



DISCUSSING WATER RIGHTS: A WESTERN PASTIME

Rio Grande River near Del Norte, CO
Annual Calendar Year Flows



ESTIMATED ANNUAL FLOW AT DEL NORTE:

APPROX. 929,000 ACRE-FEET

OBLIGATION TO DOWNSTREAM STATES:

361,000 ACRE-FEET (39% OF INDEX)

APPROXIMATELY 50,000 ACRE FEET DELIVERED OUTSIDE
OF IRRIGATION SEASON

Estimated curtailment of ditches as a % of Indexed Flow at Del Norte gauging station

Jan. 1 - March 31 **100%**

Apr 1 - 4 **25%**

Apr 5 - May 6 **26%**

May 7 - Jun 6 **28%**

Jun 7 - Jul 3 **33%**

Jul 4 - Sep 5 **40%**

Sep 6 - 19 **35%**

Sep 20 - Oct 4 **17%**

Oct 5 -17 **12%**

Oct. 18 - Nov 1 **0%**

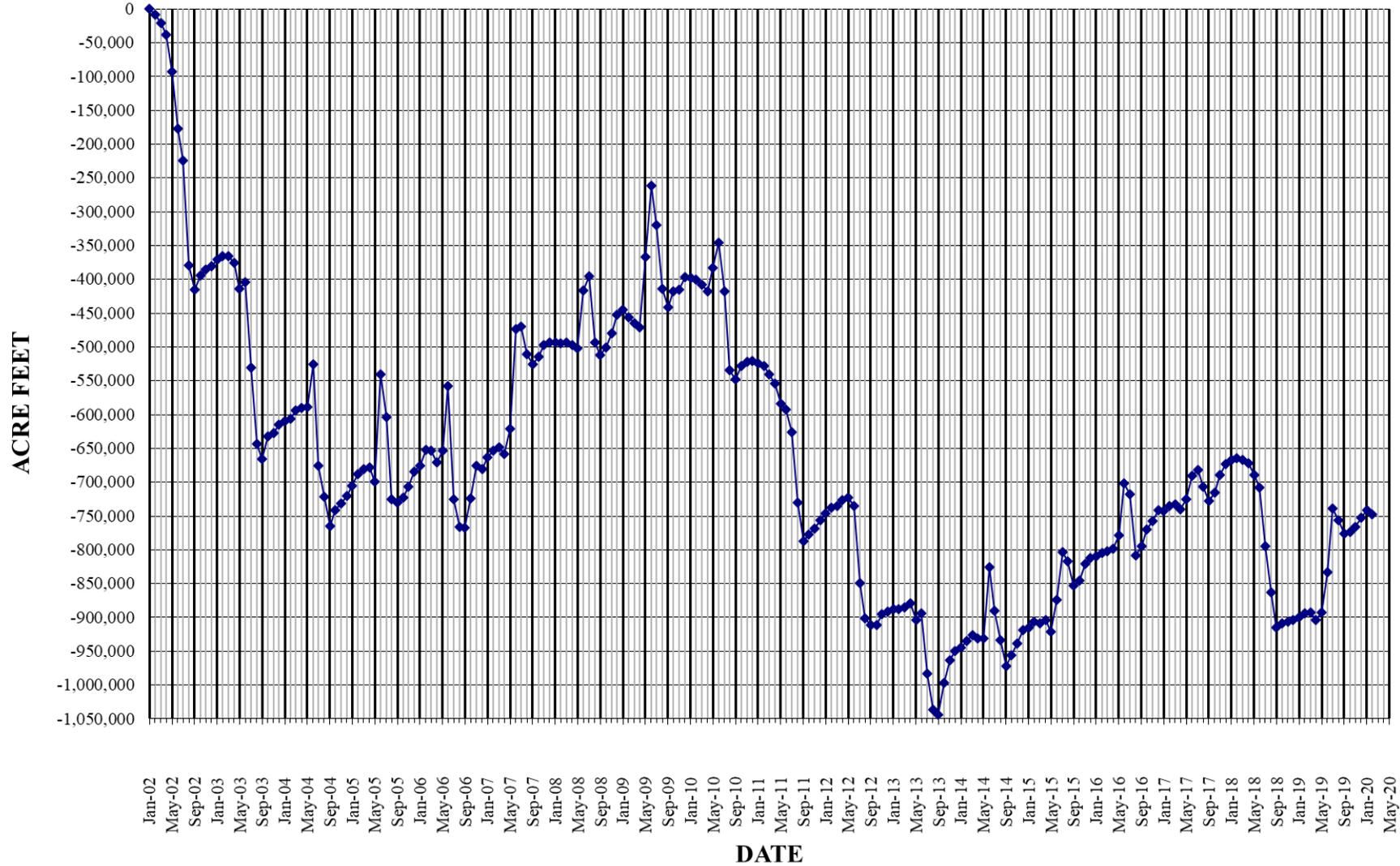
Nov 2 - 15 **recharge**

Nov 16 - Dec 31 **100%**

CHANGE IN UNCONFINED AQUIFER STORAGE YEAR 2002 - 2019

Changes: Comparing
September of each year
Year 2002 = -439,816 a.f.
Year 2003 = -250,214 a.f.
Year 2004 = -99,285 a.f.
Year 2005 = +35,612 a.f.
Year 2006 = -38,228 a.f.
Year 2007 = +242,380 a.f.
Year 2008 = +14,057 a.f.
Year 2009 = +69,864 a.f.
Year 2010 = -106,745 a.f.

Changes: Comparing
September of each year
Year 2011 = -238,480 a.f.
Year 2012 = -123,126 a.f.
Year 2013 = -133,066 a.f.
Year 2014 = +71,440 a.f.
Year 2015 = +119,469 a.f.
Year 2016 = +58,083 a.f.
Year 2017 = +66,608 a.f.
Year 2018 = -186,046 a.f.
Year 2019 = +138,209 a.f.



SUBDISTRICT #1 APPROXIMATELY 170,000 GROUNDWATER IRRIGATED ACRES

- REDUCED PUMPING FROM (2011) 300,000+ ACRE FEET TO (2019) 200,000+ ACRE FEET
- CONSERVATION RESERVE ENHANCEMENT PROGRAM – 76 CONTRACTS 8,714 ACRES, 143 IRRIGATION WELLS, 2019 PAYMENTS OF \$2,755,000
 - FALLOW PROGRAM 2,546 ACRES; VOLUNTARY, COMPENSATED AND TEMPORARY \$200 PER ACRE
- PURCHASE AND SUSPEND WITHDRAWALS OF GROUNDWATER RIGHTS RECHARGE SURFACE WATER RIGHTS



ALTERNATIVE TRANSFER METHOD
(ATM) PILOT PROJECT
PRESENTATION

Paul Bruchez



STATE ASSUMPTION
PRESENTATION

John Kolanz

State Assumption of Clean Water Act Section 404 Program Authority

An Opportunity for Colorado?

Interbasin Compact Committee

Meeting

March 4, 2020

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ATTORNEYS AT LAW



**ST. VRAIN &
LEFT HAND**
WATER CONSERVANCY DISTRICT

Introduction

➤ Clean Water Act Jurisdictional Rule

- AKA – Waters of the United States Rule; WOTUS Rule
- Proposed April 21, 2014
- Final Rule Issued June 29, 2015
- Stayed
- Not stayed
- Repealed; back to 1986 Rule
- Trump Administration’s new Navigable Waters Protection Rule
- Stayed?

PRE-PUBLICATION NOTICE: The EPA Administrator, Andrew R. Wheeler, and Mr. R.D. James, Assistant Secretary of the Army for Civil Works, signed the following final rule on 1/23/2020, and EPA is submitting it for publication in the Federal Register (FR). EPA is providing this document solely for the convenience of interested parties. This document is not disseminated for purposes of EPA's Information Quality Guidelines and does not represent an Agency determination or policy. While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule for purposes of compliance or effectiveness. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's govinfo website (<https://www.govinfo.gov/app/collection/fr>) and on Regulations.gov (<https://www.regulations.gov>) in Docket No. EPA-HQ-OW-2015-0303. Notwithstanding the fact that EPA is posting a pre-publication version, the final rule will not be promulgated until published in the Federal Register. Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

6560-50-P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 328

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 110, 112, 116, 117, 120, 122, 230, 232, 300, 302 and 401

EPA-HQ-OW-2018-0149; FRL-XXXX-X-OW

RIN 2040-AF75

The **Navigable Waters Protection Rule: Definition of "Waters of the United States"**

AGENCIES: Department of the Army, Corps of Engineers, Department of Defense; and Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency and the Department of the Army are publishing a final rule defining the scope of waters federally regulated under the Clean Water Act. The Navigable Waters Protection Rule is the second step in a comprehensive, two-step process intended to review and revise the definition of "waters of the United States" consistent with the Executive Order signed on February 28, 2017, "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule." Once effective, it

Assumable Waters Subcommittee

Recommend ways to identify those waters a state can regulate when it seeks Section 404 program authority.



Appendix E: Subcommittee Charter

INTRODUCTION

Section 404(g) of the Clean Water Act (CWA) lays out the requirements for the assumption and implementation of state and tribal CWA section 404 permitting programs. Congress, with the addition of CWA section 404(g), made clear that states and tribes wishing to assume administration of the dredge and fill permit program, could do so for certain waters. **This Subcommittee under the National Advisory Council for Environmental Policy and Technology (NACEPT) will focus on a very narrow and specific charge related to which waters a state or tribe assumes permitting responsibility for under an approved CWA section 404 program and for which waters the US Army Corps of Engineers (USACE) will retain CWA section 404 permitting authority.** To be known as the "Assumable Waters Subcommittee," (Subcommittee), the Subcommittee will be asked to provide advice and develop recommendations on how the US Environmental Protection Agency (EPA) can best clarify for which waters the state/tribe has CWA section 404 permit responsibilities, and for which waters the USACE retains CWA section 404 permit responsibility, under an approved state/tribal program. This effort is part of the Administrator's priorities as it supports states and tribes seeking to assume the CWA section 404 program by providing clarity on the scope of waters for which they would be responsible for administering the CWA section 404 program. Specifically, this effort will address the states' request to provide clarity on this issue enabling them to assess and determine the geographic scope and costs associated with implementing an approved program.

BACKGROUND

The NACEPT is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), Public Law 92-463. The EPA established the NACEPT in 1988 to provide advice to the EPA Administrator on a broad

BACKGROUND

- 1972 – “Modern Day” Act -- “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”
- “Discharge Prohibition” -- prohibits the discharge of a pollutant by any person except in compliance with a permit.



Clean Water Act

Permitting

- CWA Section 402 -- regulates wastewater discharges through the National Pollutant Discharge Elimination System (“NPDES”) program.
- Initial program authority granted to EPA.
- Allows states to petition EPA to administer their own program in lieu of the federal program.
- “[P]rimary responsibilities and rights of States to prevent, reduce, and eliminate pollution” within their borders.
- 47 states (including Colorado) exercise NPDES authority



CWA Permitting

- CWA Section 404 – primarily administered by the Corps with EPA oversight. Regulates the discharge of dredged or fill material.
- In the 1977 CWA Amendments, Congress authorized states to obtain approval to administer their own Section 404 programs.
- Only two states – Michigan (1984) and New Jersey (1994) – have assumed Section 404 program authority. Why?



Impediments to Section 404 Program Assumption

- Lack of guidance on the assumption process
- Costs and lack of federal funding for state program implementation
- Lack of partial assumption
- The potential for regulatory takings
- The need for strong public and political support

Impediments to Section 404 Program Assumption

(... those **waters** which are presently used, or susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, or mean higher high water mark on the west coast, including **wetlands adjacent thereto**)

33 U.S.C. §1344(g)(1)

Subcommittee Makeup

➤ 22 representatives of federal, state, and tribal governments, as well as environmental and regulated interests

➤ Representatives from EPA, the Corps, and the United States Fish and Wildlife Service

➤ EPA and USFWS not “recommending members”



Appendix D: List of Subcommittee Members

COLLIS G. ADAMS, CWS, CPESC
Wetlands Bureau Administrator
New Hampshire Department of Environmental Services
Land Resources Management

VIRGINIA S. ALBRECHT
Special Counsel
National Association of Home Builders
Huntin & Williams LLP

CRAG W. AUBREY
Chief, Division of Environmental Review
Ecological Services Program
US Fish and Wildlife Service Headquarters
Ecological Services, MS: ES

TREVOR BAGGIORE
Division Director, Water Quality
Arizona Department of Environmental Quality

LAUREN MONICA BOLES
NACEPT Liaison

PEG BOSTWICK
Senior Policy Analyst
Association of State Wetland Managers
Great Lakes Office

DAVID L. DAVIS, CPWD, PWS
Director, Office of Wetlands & Stream Protection
Virginia Department of Environmental Quality

JAMES P. DENOME
Tribal Consultant
Tribal Member of Bad River Chippawa Tribe
of Lake Superior
Midwest Alliance of Sovereign Tribes

TOM DRISCOLL
Government Relations Representative
National Farmers Union

DAVID S. EVANS, DEPUTY DIRECTOR
Co-Chair of the Subcommittee
Office of Wetlands, Oceans, and Watersheds
USEPA OWCOW (resigned as of 12-9-2016 due to employment change)

KIMBERLY FISH
Assistant Division Chief
Michigan Department of Environmental Quality
Water Resources Division

RICHARD D. GITAR
Water Regulatory Specialist/Tribal Inspector
Office of Water Protection
Fond du Lac Reservation

JAN GOLDMAN-CARTER
Director of Wetlands and Water Resources,
National Wildlife Federation
National Advocacy Center

MICHELLE HALE
Director, Division of Water
Alaska Department of Environmental Conservation

WILLIAM L. JAMES
US Army Corps of Engineers National Mining Expert

LES LEMM
Wetlands Section Manager
Minnesota Board of Water and Soil Resources

SUSAN D. LOCKWOOD
Environmental Specialist 4
New Jersey DEP Division of Land Use Regulation

ERIC D. METZ, P.W.S.
Planning and Policy Manager
Aquatic Resource Management Program
Oregon Department of State Lands

BARRY RABE, PH.D.
Co-Chair of the Subcommittee
Director of the Center for Local, State,
and Urban Policy
Gerald R. Ford School of Public Policy
University of Michigan

DAVE ROSS
Senior Assistant Attorney General
Wyoming Attorney General's Office
Water & Natural Resources Division (resigned as of
5-16-2016 due to employment change)

GARY T. SETZER
Policy Advisor, Office of the Secretary
Maryland Department of the Environment

MICHAEL J. SZERLOG, MANAGER
Aquatic Resources Unit
Office of Environmental Review and Assessment,
Environmental Protection Agency, EPA Region 10

50 Report of the Assumable Waters NACEPT Subcommittee

Report of the Assumable Waters NACEPT Subcommittee 51

ORIGIN AND PURPOSE WORK GROUP

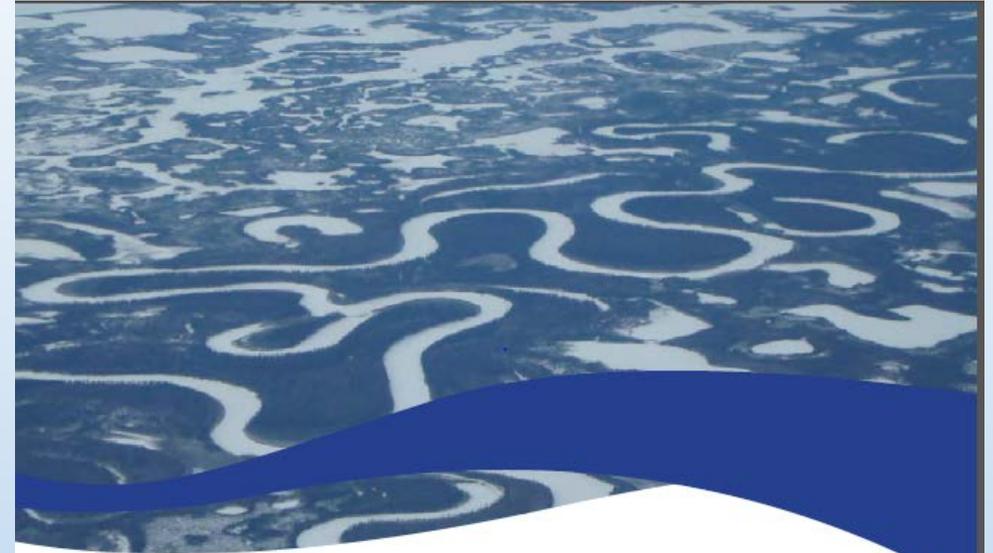
Reached the following key conclusions:

- The Legislative History shows that Congress expected states to assume Section 404 permitting authority.
- The Legislative History shows that Congress intended the Corps to retain jurisdiction over those waters it traditionally regulated under Section 10 of the Rivers and Harbors Act, except those deemed navigable based solely on historical use.
- The Legislative History provides no definitive meaning for the term “adjacent” in Section 404(g)(1) as it applies to wetlands.

SUBCOMMITTEE'S “WATERS” RECOMMENDATION

Start with list of RHA Section 10 waters for a state

- Add unlisted waters that qualify for the Section 10 list;
- Add tribal waters; and
- Subtract any waters included on the Section 10 list based solely on historical use (*e.g.*, use by fur traders).



5. Subcommittee Discussion and Recommendations for Identifying Retained Waters

MAJORITY RECOMMENDATION:

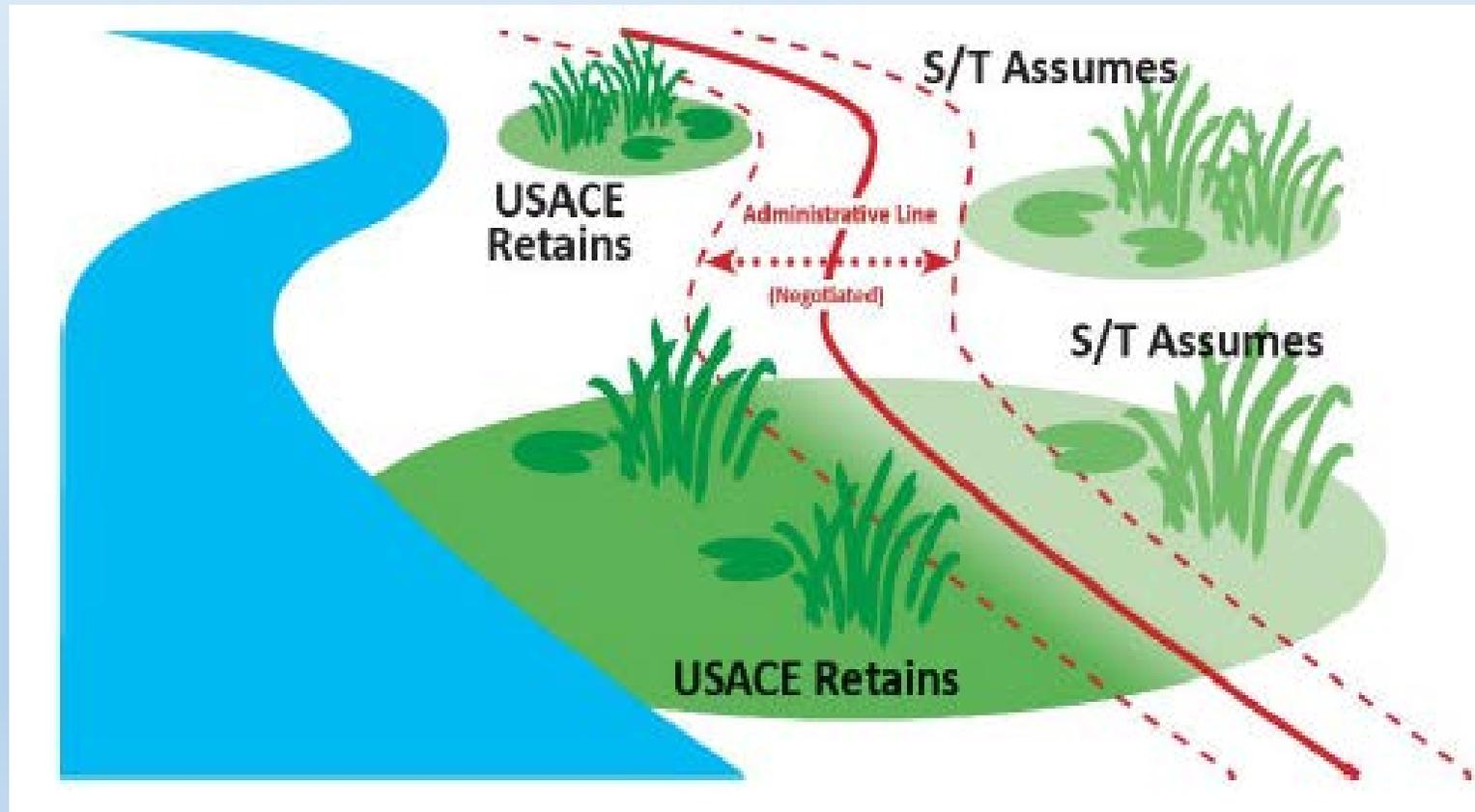
WATERS ALTERNATIVE B – Primary Dependence on RHA Section 10 Lists of Navigable Waters to Define USACE Retained Waters

After consideration of various options, all recommending subcommittee members with the exception of the USACE member recommend that EPA adopt and implement policy (guidance and/or regulations) consistent with [ALTERNATIVE B](#) to differentiate between assumable waters and those that must be retained by the USACE. The majority of the Subcommittee understands this option to have two primary advantages: clarity, and consistency with CWA Section 404(g)(1) as understood by the majority of Subcommittee members. The following discussion provides reasons for this recommendation as developed by the majority of the Subcommittee, referencing two of the criteria included in the charge to the Subcommittee and identifying a separate third criteria related to Congressional intent based on the legislative history of 404(g). These recommendations are made with the understanding that the Subcommittee is not making any recommendation that would affect the jurisdictional definition of waters of the United States.

Note that none of the Subcommittee members endorsed [ALTERNATIVE A](#) – essentially a “no action” alternative – and thus the Subcommittee provides no further discussion of this alternative.

SUBCOMMITTEE'S “**ADJACENT WETLANDS**” RECOMMENDATION

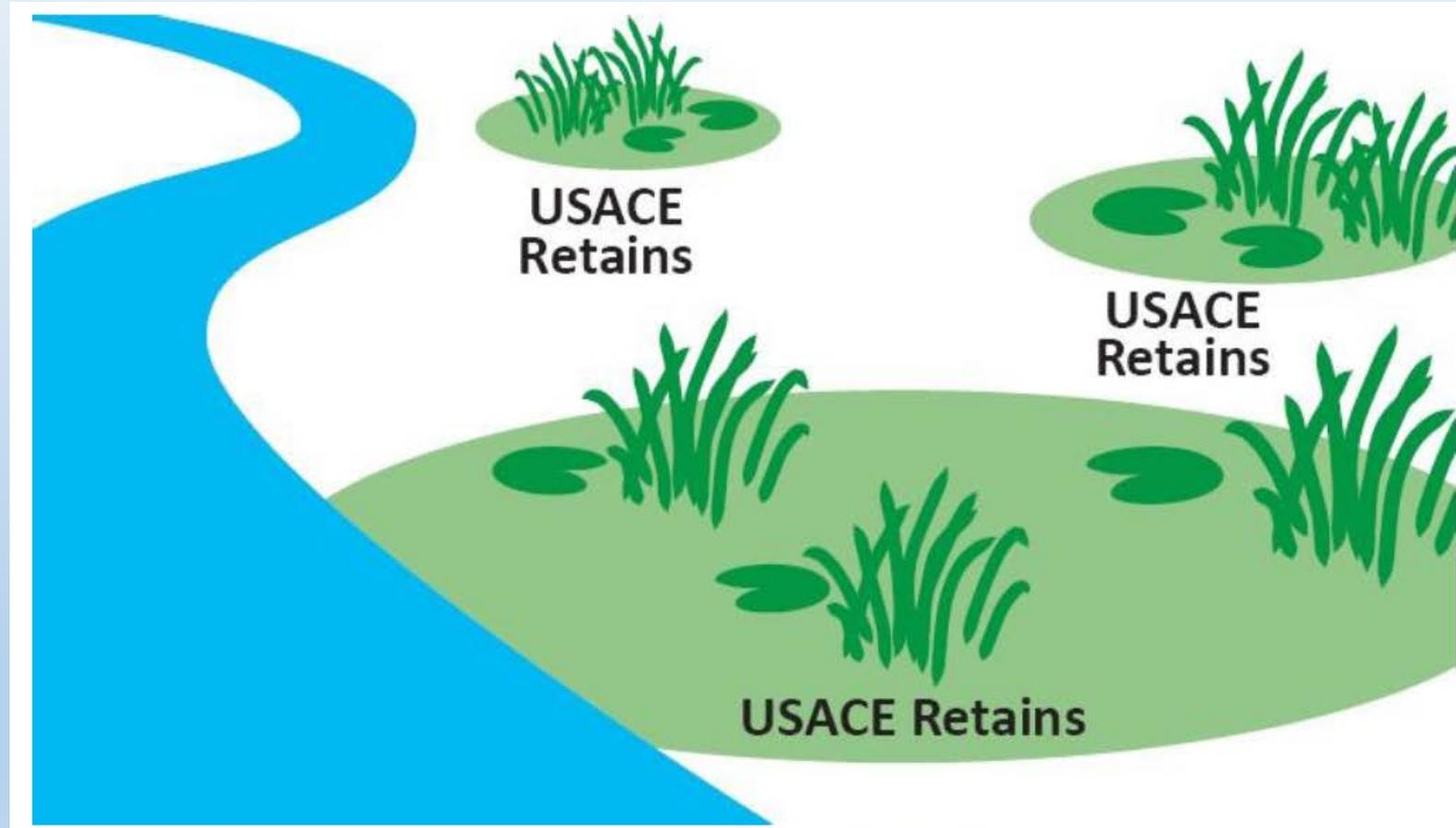
- Assume a 300-foot national administrative boundary that can shift to accommodate state-specific situations.
- Corps and state would negotiate the boundary as part of the state/Corps MOA.



MINORITY RECOMMENDATIONS

Corps was sole proponent:

- Add “Traditional Navigable Waters,” as described in 33 CFR §328.3(a)(1), to the list of waters the majority approach would retain.
- Apply the concept of “adjacency” used to make jurisdictional determinations, with no administrative limit (*i.e.*, boundary).



IMPLICATIONS FOR COLORADO

- Colorado evaluated state assumption in the early 1990s – did not pursue.
- The Subcommittee's recommendations dramatically change the amount of waters that the State could regulate under an assumed program. Colorado stakeholders need to understand the magnitude of the change.
- Time to reevaluate assumption?

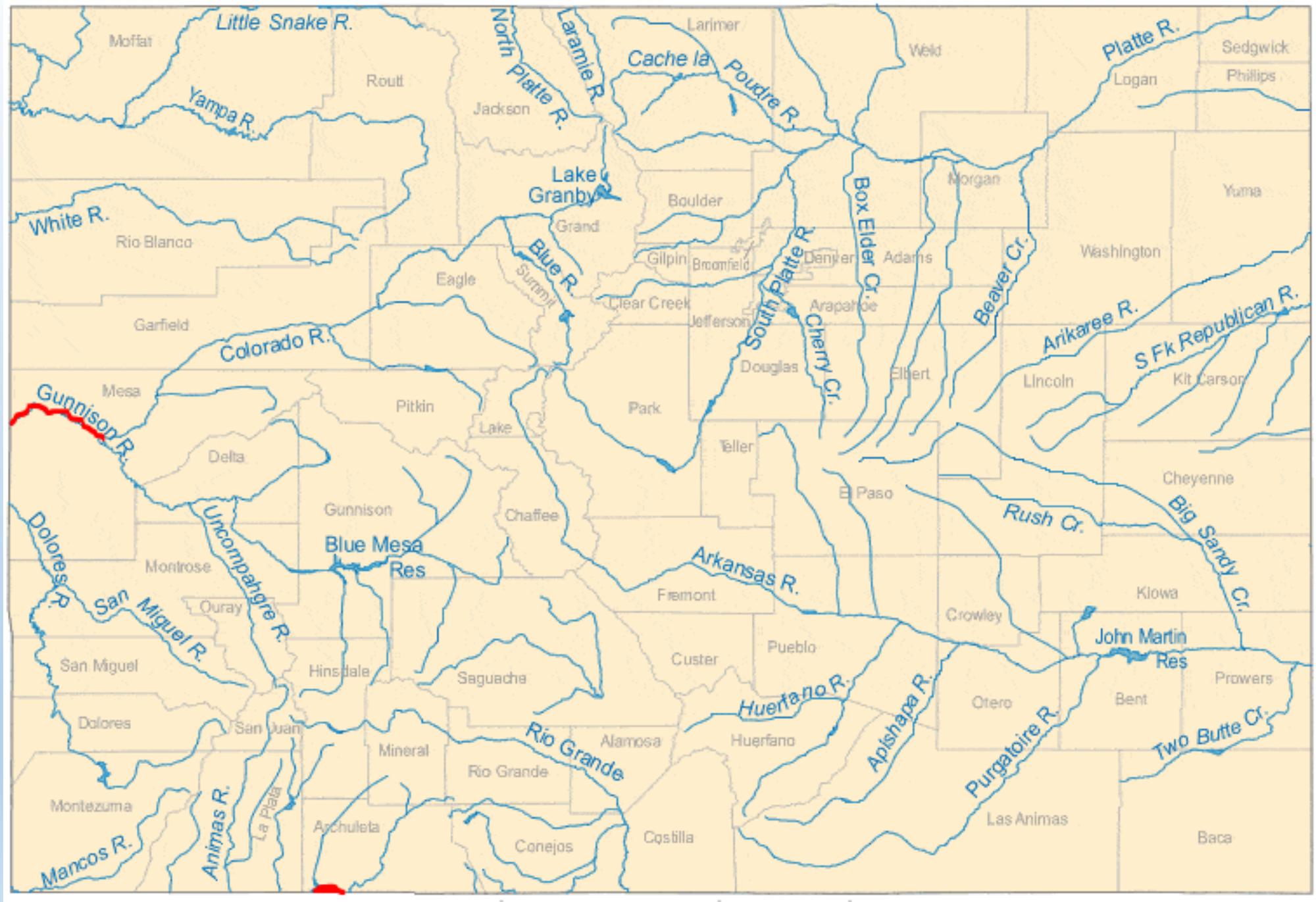
IMPLICATIONS FOR COLORADO

Traditional Approach

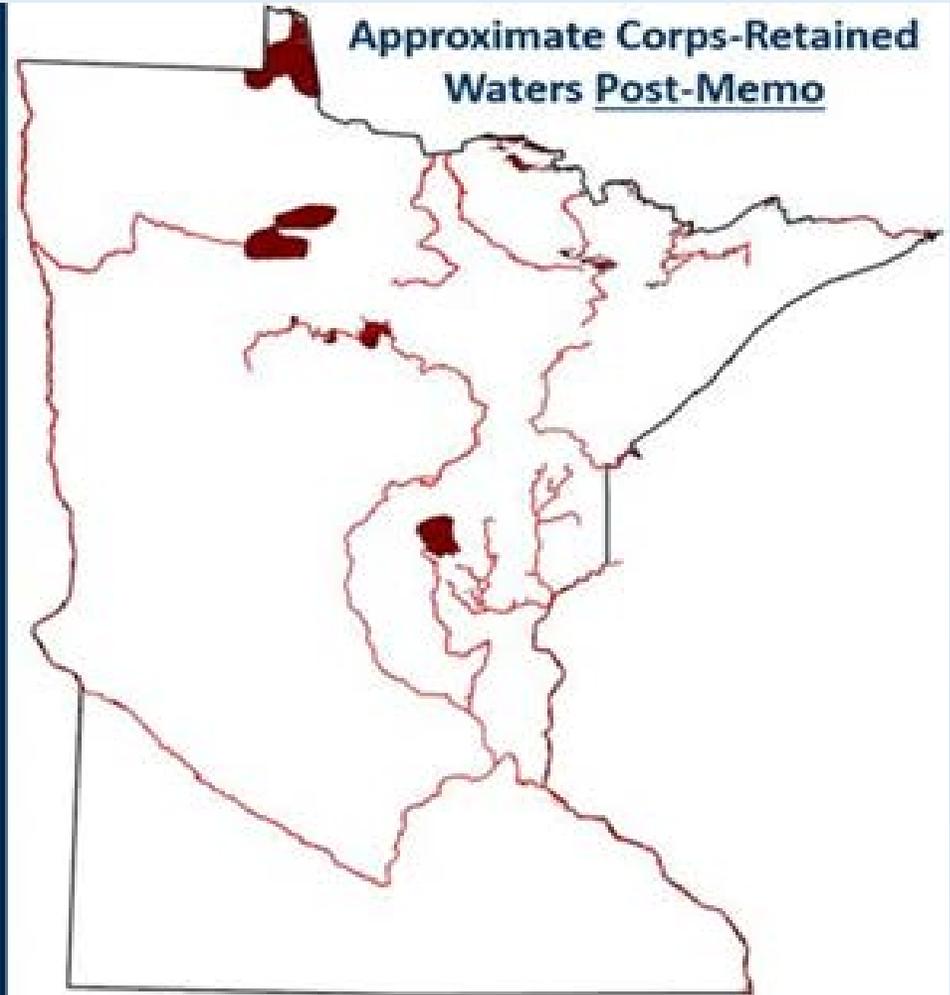
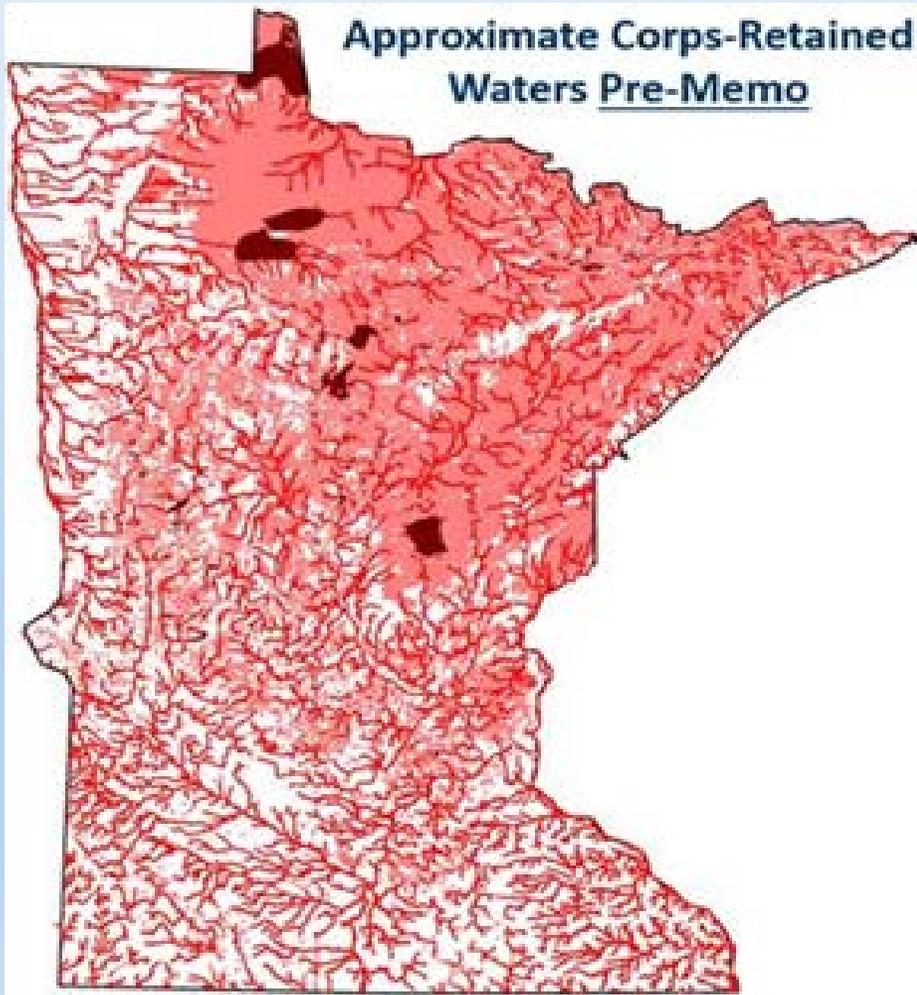
- Captures large stretches of numerous Colorado streams, such as the Taylor, Gunnison, South Platte, Cache la Poudre, Yampa, Arkansas, of Colorado, and even small streams like St. Vrain Creek (1,000s of miles of streams).
- Adds wetlands adjacent to these waters by applying the jurisdictional concept of adjacency (can extend great distances).

Subcommittee Approach

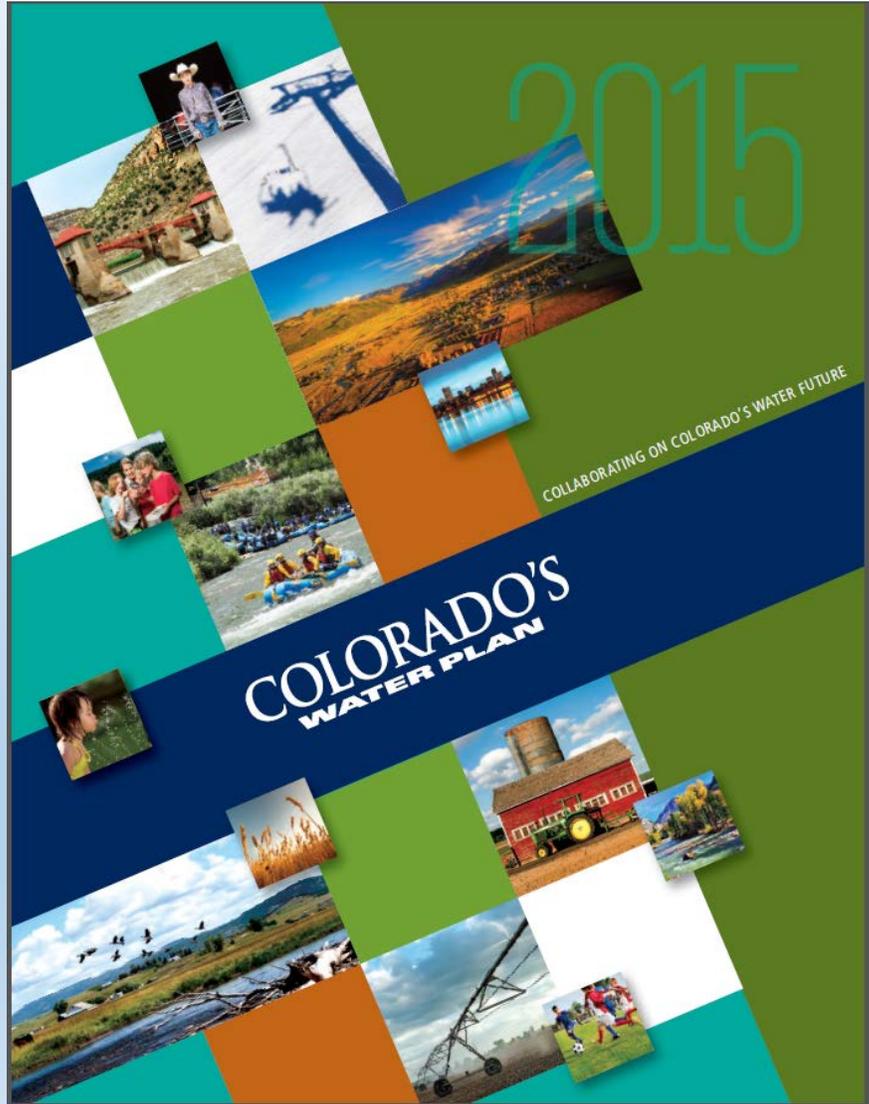
- Captures 39 miles of the Colorado River from Grand Junction downstream to the State line, and the Colorado portion of Navajo Reservoir.
- Adds wetlands, or portions thereof, lying between the administrative boundary and the retained water (a presumed distance of 300 feet).



Minnesota Before/After



COLORADO WATER PLAN



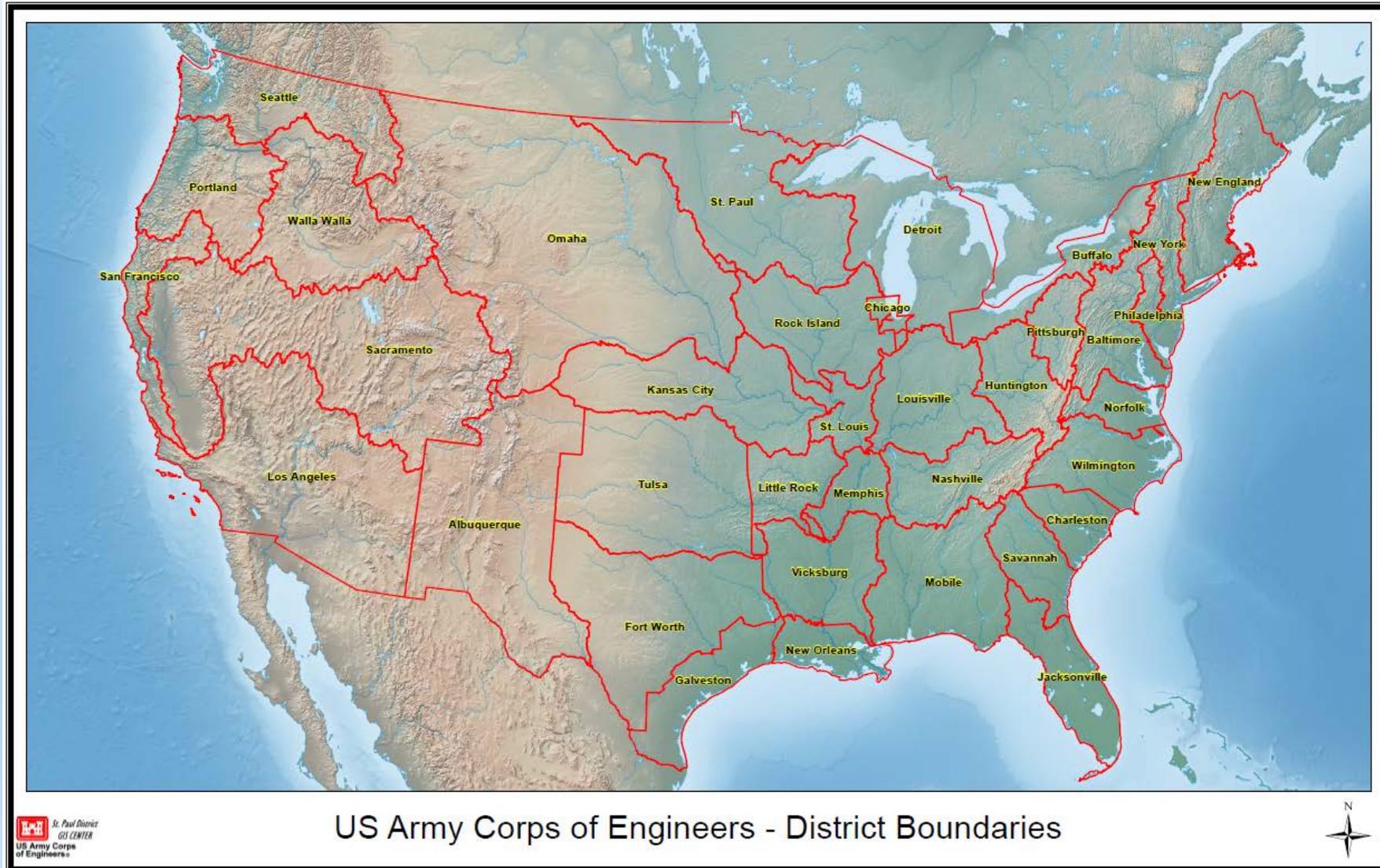
➤ Section 7.3 Water Quality

“Colorado’s water quantity and quality questions can no longer be thought of separately. Each impacts the other and our state water policy should address them conjunctively.” Executive Order D 2013-005 (page 7-17)

➤ Section 9.4 Framework for a More Efficient Permitting Process

- More Efficient
- More Colorado Centric
- More Consistent

CONSISTENCY



Efficiency



“While conservation is a key strategy to narrowing the gap across the state, it alone cannot solve the problem. Scenario planning indicates that at least 80 percent (350,000 acre-feet) of already-planned projects need to be implemented, and many of these still need to go through the permitting process.”

- Colorado Water Plan, p. 9-34

Efficiency

- CWA Section 401 Certification
- National Environmental Policy Act
- Endangered Species Act
- National Historic Preservation Act
- Fish and Wildlife Mitigation and Enhancement Plan (C.R.S. 37-60-122.2)



Efficiency?



“[I]n my opinion, expanded state assumption of the CWA §404 program would generally be counter-productive to the goal of protecting aquatic resources.”

Lance D. Wood



COLORADO-CENTRIC PROGRAM

“Ideally, the permitting process ensures the implementation of projects that best meet Colorado’s water values—which are to support vibrant and sustainable cities, viable and productive agriculture, a robust tourism industry, efficient and effective infrastructure, and a strong environment.”

- Colorado Water Plan. p. 9-34



➤ Means to address unique resources that may currently lack protection.

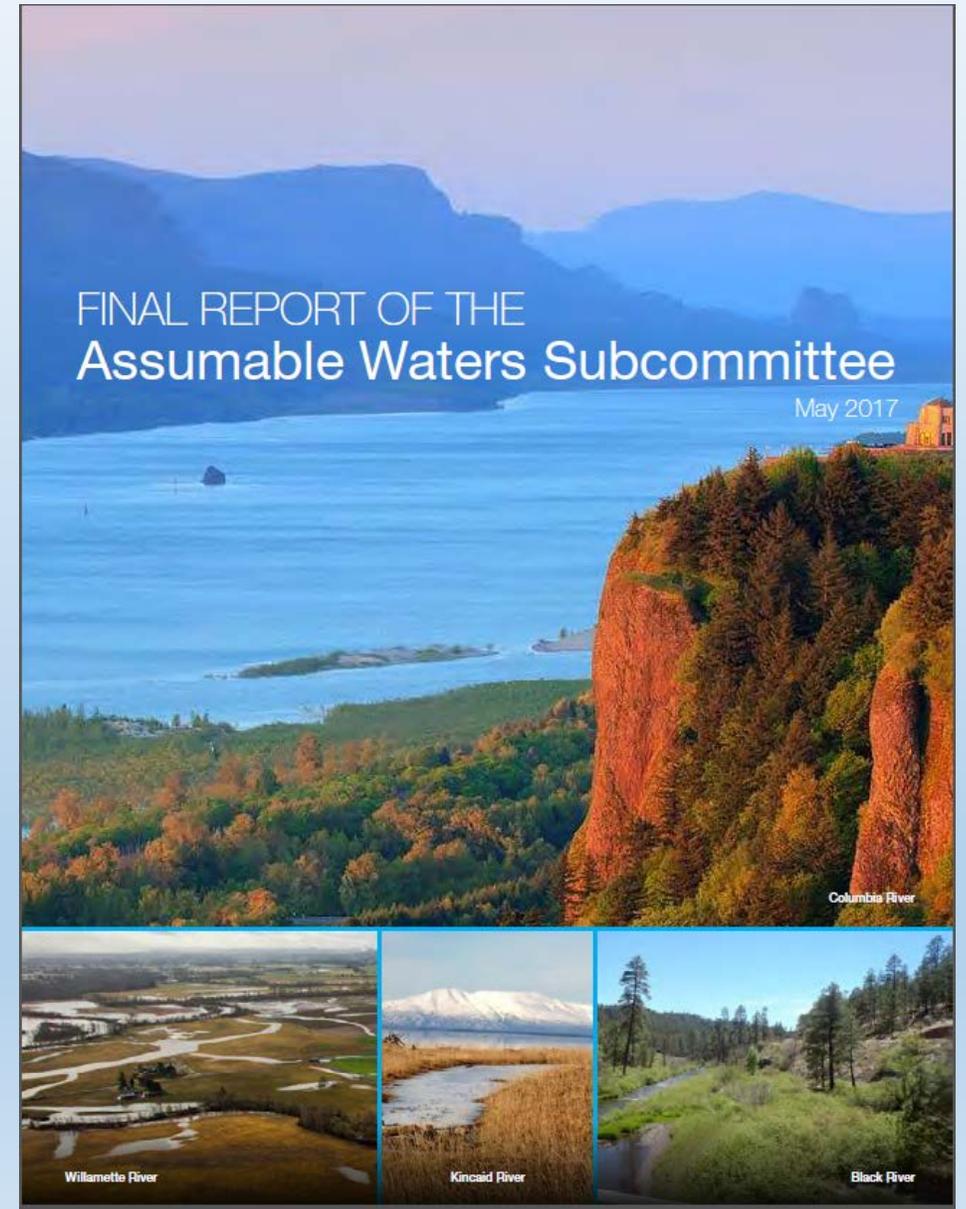
➤ Means to address resources no longer protected at the federal level.

➤ Means to encourage multifunction projects.



WHERE THINGS STAND

- Subcommittee submitted final report to EPA in June 2017.
- July 30, 2018 Corps memorandum adopting majority's recommendations effective immediately.
- EPA to issue notice of proposed rulemaking in April 2020.
- EPA to issue final rule in April 2021



Some Issues For Upcoming EPA Rulemaking

- Partial Assumption
- Existing EPA/Corps Policy
- Funding
- Permit Review Waiver
- State lead agency role for projects requiring other federal approval
- Permitting Exemptions
- Tulloch Considerations

CONCLUSION

The State and other stakeholders should understand the implications of the Subcommittee's recommendations and be prepared to comment on EPA's upcoming rulemaking in a way that preserves options and enhances potential returns, should the State eventually decide to assume the program.



BEYOND DM: WEATHER MOD & MORE



DEMAND MANAGEMENT FEASIBILITY INVESTIGATION UPDATE



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources



COLORADO'S 2019 DEMAND MANAGEMENT WORK PLAN

*DEMAND MANAGEMENT: ONE **POTENTIAL** TOOL IN OUR TOOL KIT.*

GOALS

- IDENTIFY AND ANALYZE THE **THRESHOLD** ISSUES ASSOCIATED WITH A POTENTIAL DEMAND MANAGEMENT PROGRAM IN COLORADO.

ELEMENTS

- WORKGROUPS
 - WORKSHOPS
 - CONTINUED OUTREACH
- 



WORKGROUPS

- LAW AND POLICY
 - MONITORING AND VERIFICATION
 - WATER RIGHTS ADMINISTRATION AND ACCOUNTING
 - ENVIRONMENTAL CONSIDERATIONS
 - ECONOMIC CONSIDERATIONS
 - FUNDING
 - EDUCATION AND OUTREACH
 - AGRICULTURAL IMPACTS
- 

WORKGROUPS: THE COMMON THEMES

- DON'T WANT TO RE-INVENT THE WHEEL → LITERATURE REVIEW
- HOW ARE WE DEFINING TERMS?
- CREATING A NET-POSITIVE PROGRAM
- IMPORTANCE OF DIFFERENTIATING BETWEEN A VOLUNTARY, PROACTIVE PROGRAM V. POTENTIAL CURTAILMENT (INVOLUNTARY)

THE COMMON THEMES, CONTINUED

- WHAT IS **EQUITY**?
- WHAT ARE THE **DATA GAPS**, AND HOW SHOULD WE ADDRESS THEM?
- WHAT ARE THE **PARAMETERS** WE ARE WORKING WITHIN?
- DESIRE FOR DISCUSSION OF **CROSS-CUTTING ISSUES**

WORKSHOPS AND CONTINUED OUTREACH



- WORKSHOPS:
 - FIRST HELD IN AUGUST 2019
 - SECOND HELD IN JANUARY 2020
 - TWO MORE TO COME
- CONTINUED EDUCATION AND OUTREACH:
MANY WAYS TO GET INVOLVED!
- AN ONGOING, ITERATIVE PROCESS

PUBLIC OUTREACH: HOW TO GET INVOLVED

- DEMAND MANAGEMENT E-MAIL ADDRESS: DEMANDMANAGEMENT@STATE.CO.US
- DEMAND MANAGEMENT WEBSITE
 - LINK FROM HOMEPAGE (CWCB.STATE.CO.US)
 - REPORT-OUTS FROM ALL WORKGROUP MEETINGS
 - LIST, LOCATION, AGENDAS FOR UPCOMING MEETINGS
- WORKGROUP MEETINGS
 - ALL OPEN TO PUBLIC
 - OPPORTUNITY FOR PUBLIC COMMENT
 - REVIEW OF PUBLIC COMMENTS RECEIVED TO DATE AT ALL MEETINGS
- WORKSHOPS

THE FEASIBILITY INVESTIGATION: NEXT STEPS

- COLORADO'S INVESTIGATION
 - CONTINUED WORKGROUP MEETINGS
 - REPORT OUT TO CWCB BOARD IN SUMMER 2020 AND CONSIDER NEXT STEPS
- UPPER BASIN COORDINATION
 - EACH UPPER BASIN STATE IN MIDST OF THEIR OWN DEMAND MANAGEMENT FEASIBILITY INVESTIGATION
 - COORDINATION ON UPPER BASIN-LEVEL DEMAND MANAGEMENT ISSUES



PRESENTATION & LISTENING SESSION WITH THE

STATE ENGINEER

Compact Administration

Colorado River Basin

Kevin Rein, P.E., State Engineer
Division of Water Resources

IBCC-Demand Management Meeting
March 4, 2020

“Four Takeaways for Today”

1. Compact Administration versus Curtailment
2. What influences Compact Administration?
3. Current activity of the State Engineer’s Office
4. Compact Administration, one scenario

“Compact Administration”

Why are we talking about Compact Administration, why not Compact Curtailment?

- *A discussion about curtailment only:* Common assumption
 - If and when Colorado is “out of compliance,”
 - the State and Division Engineers need only curtail water use according to priority of appropriation,
 - Colorado is again “in compliance,”
- The actual discussion, and potential course of action is more complex



“Compact Administration”

But what does the
Upper Colorado River Compact say?

- If curtailment becomes necessary “in order that the flow at Lee ferry shall not be depleted below that required by article III of the Colorado river compact...
- “...the extent of curtailment by each state of the consumptive use of water apportioned to it...shall be in such quantities and at such times as shall be determined by the commission...”
- Each individual state determines how to proceed/meet obligation
- How does Colorado achieve that “curtailment?”
- *Compact Administration*



“Compact Administration”

Why are we talking about Compact Administration, why not Compact Curtailment?

- *Compact Administration:*
 - Multi-faceted, holistic approach,
 - Direction from the UCRC that “curtailment” “shall become necessary,”
 - It is the process by which we will work to protect Colorado’s water rights, minimize reductions in our use, and maintain compliance.



“Compact Administration”

- Consider the South Platte River Compact:
 - Flows at Julesburg less than 120 cfs, April 1 - October 15?
 - Curtail all diversions in WD 64 junior to June 14, 1897
 - Colorado is in compliance



“Compact Administration”

- Consider the La Plata River Compact:
 - From February 16 - November 30, determine flows at Hesperus gauge
 - If flow at the gauge is less than 100 cfs
 - Curtail diversions (in priority) to ensure delivery of one half that amount at the state line on the following day
 - Colorado is in compliance



“Compact Administration”

- Consider the Colorado River Compact:
 - The states of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of ten consecutive years...
 - That is the recognized (Upper Basin States) standard for maintaining compact compliance,
 - What is compliance? How do we maintain it?
 - How does that influence Compact Administration?



Colorado River Compact Administration

- What influences Compact Administration:
 - Potential that UCRC, including Colorado, would need to take action to maintain compliance; effect of reservoir operations,
 - Upper Colorado River Compact; UCRC role,
 - Develop an approach,
 - Implement Compact Administration.

Colorado River Compact Administration

- What influences Compact Administration:
 - Potential that UCRC, including Colorado, would need to take action to maintain compliance; effect of reservoir operations,
 - Upper Colorado River Compact; UCRC role,
 - Develop an approach,
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What Influences Administration?

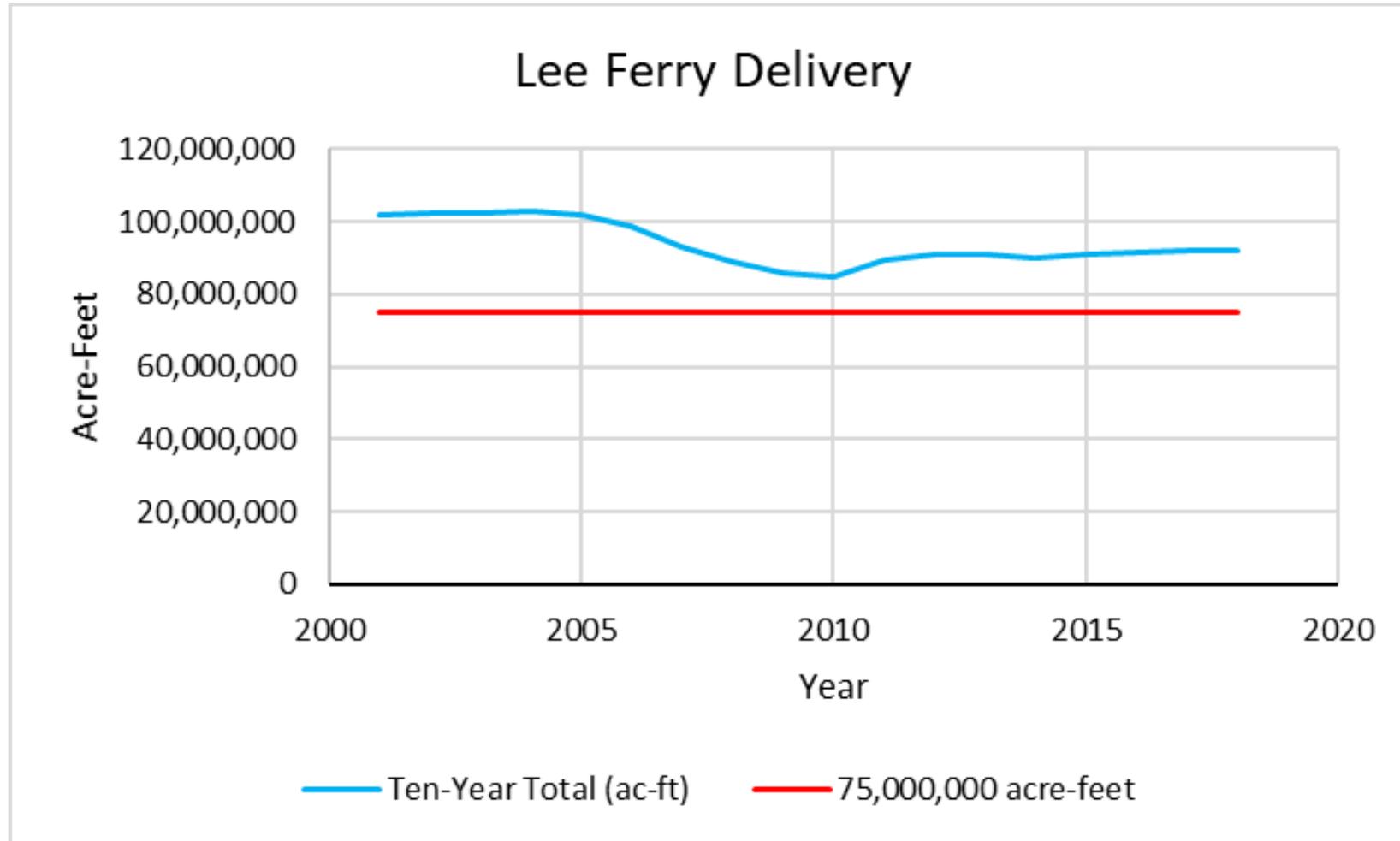
- Potential for need to take action to maintain compliance;
 - Currently (2018) the Upper Basin States' delivery stands at 92,124,000 acre-feet,

What Influences Administration?

Year	Annual Lee Ferry Flow (ac-ft)	Ten-Year Total (ac-ft)
2000	9,530,000	101,754,000
2001	8,361,000	101,983,000
2002	8,348,000	102,308,000
2003	8,372,000	102,543,000
2004	8,348,000	102,585,000
2005	8,395,000	101,738,000
2006	8,508,000	98,716,000
2007	8,422,000	93,265,000
2008	9,180,000	89,004,000
2009	8,406,000	85,870,000
2010	8,436,000	84,777,000
2011	13,227,000	89,643,000
2012	9,534,000	90,829,000
2013	8,289,000	90,746,000
2014	7,590,000	89,988,000
2015	9,157,000	90,750,000
2016	9,138,000	91,380,000
2017	9,175,000	92,133,000
2018	9,171,000	92,124,000



What Influences Administration?



What Influences Administration?

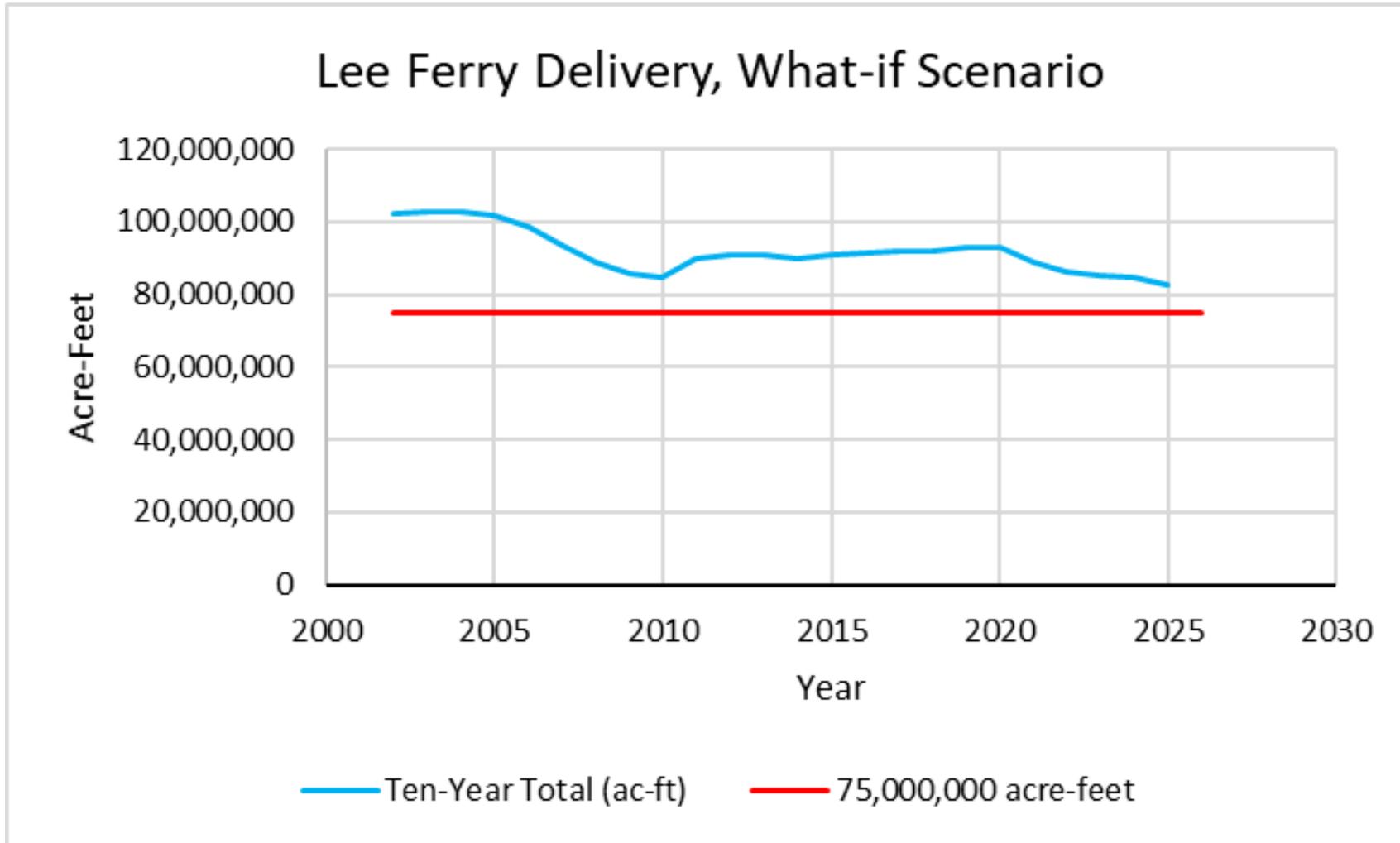
(What-if Scenario)

- 2017-2018 Actual Totals
- 2019-2021; Current projection, November 2019 24-Month Study*
- 2022-2025; Minimum release under '07 Guidelines = 7,000,000 acre-feet*
- Acknowledge Mexico “obligation”

* Consider 150,000 ac-ft gain in river, Powell to Lee Ferry

Year	Annual Lee Ferry Flow (ac-ft) (Year Ending September 30)	Ten-Year Total (ac-ft)
2017	9,175,000	92,133,000
2018	9,171,000	92,124,000
2019	9,150,000	92,867,000
2020	8,380,000	92,811,000
2021	9,150,000	88,734,000
2022	7,150,000	86,350,000
2023	7,150,000	85,211,000
2024	7,150,000	84,771,000
2025	7,150,000	82,764,000

What Influences Administration?



What Influences Administration?

- Potential for need to take action to maintain compliance;
 - Currently (2018) the Upper Basin State's delivery stands at 92,124,000 acre-feet,
 - The reservoir operations direct deliveries at least in amounts that exceed the “What-if Scenario.”



What Influences Administration?

- What influences Compact Administration:
 - Potential that UCRC, including Colorado, would need to take action to maintain compliance; effect of reservoir operations,
 - Upper Colorado River Compact; UCRC role,
 - Develop an approach,
 - Implement Compact Administration.

What Influences Administration?

- Upper Colorado River Compact; UCRC Role;
 - The need for curtailment is determined by the Upper Colorado River Commission, which includes Colorado's Commissioner, due to imminent need,
 - Colorado limited by Upper Colorado River Compact.



What Influences Administration?

- What influences Compact Administration:
 - Potential that UCRC, including Colorado, would need to take action to maintain compliance; effect of reservoir operations,
 - Upper Colorado River Compact; UCRC role,
 - **Develop an approach,**
 - Implement Compact Administration.



What Influences Administration?

- Develop an approach;
 - Priority administration?
 - Acquire relevant information, data, rules?

What Influences Administration?

- Develop an approach;
 - Simple priority administration may not be enough. Why?
 - Use available information, data, rules?

What Influences Administration?

- Develop an approach
 - Simple priority administration? Can we do more?
 - Use available information, data, rules?
 - Informed, contemplated, more precise,
 - Stakeholder involvement,
 - Allows for planning, develop options,
 - Acknowledge legal concerns.

What Influences Administration?

- Use available information, data, rules?
 - Compact Compliance Study,
 - Renegotiation of '07 Guidelines,
 - Data (Measurement Rules),
 - Demand Management (consider the outcome of the workgroups),
 - Compact Administration Rules.



What Influences Administration?

- Use available information, data, rules?
 - Compact Compliance Study,
 - Renegotiation of '07 Guidelines,
 - **Data (Measurement Rules),**
 - Demand Management (consider the outcome of the workgroups),
 - Compact Administration Rules.



What Influences Administration?

- Why Measurement Rules?
 - Consider administration in other basins,
 - Data is critical; accuracy is critical,
 - Consider as an important first step,
 - What would Measurement Rules entail?

What Influences Administration?

- Use available information, data, rules?
 - Compact Compliance Study,
 - Renegotiation of '07 Guidelines,
 - Data (Measurement Rules),
 - Demand Management (consider the outcome of the workgroups),
 - Compact Administration Rules.

What Influences Administration?

- What could Compact Administration Rules look like?
 - Guide the State Engineer in Compact Administration
 - Define process
 - Acknowledge UCRC and its role, interaction with UCRC
 - Monitoring methodology
 - Guidance on strict application of priority
 - Guidance on enforcement
 - Consider “Present Perfected Rights,” how that influences administration
 - Mechanisms for allowing diversion by water rights that would otherwise be curtailed



What Influences Administration?

- What influences Compact Administration:
 - Potential that UCRC, including Colorado, would need to take action to maintain compliance; effect of reservoir operations,
 - Upper Colorado River Compact; UCRC role,
 - Develop an approach,
 - **Implement Compact Administration.**



What Influences Administration?

- Implement Compact Administration;
 - Certain direction from UCRC,
 - Reliable data is available,
 - Certain process if Compact Administration Rules are developed,
 - Precise, focus to maintain compliance while avoiding over-delivery.



Current Activity of the State Engineer's Office

- The need for Compact Administration is not imminent
- Then why all this activity right now?

Current Activity of the State Engineer's Office

- Then why all this activity right now?
 - Drought Contingency Plan; why?
 - Demand management; why?
 - Measurement Rules, why?
 - Compact Administration; why, why not?
 - Developing the Compact Administration plan now is not helpful
 - Not needed now, too much information is pending
 - However, understanding the scope of Compact Administration now is important to all the other activities



Current Activity of the State Engineer's Office

- Compact Administration is not imminent
- We continue to learn
- Consider beginning with Basin Measurement Rules
- Refine our understanding:
 - Coordination with CWCB and UCRC
 - Scope of Compact Administration
 - Available Tools
 - Investigate and Plan: Scope and Process for Rulemaking; Structure of Rules
- Incorporate this information into a Compact Administration plan; communicate with Colorado stakeholders

Compact Administration, a Scenario

- Upper Colorado River Commission determination
 - Curtailment is necessary to maintain compliance
 - Colorado obligation, time and amount
- State Engineer's Office implements Compact Administration,
 - Potential guidance from rules
 - Status of CRSPA Reservoirs influences administration
 - Present perfected rights influences the administration
 - Rules provide for consideration of priority
 - Rules provide for other mechanisms;
 - Potential availability of Demand Management water
 - Administration is guided by the outcome of studies of water use
- Result is precise, informed, legally sound administration (which may include curtailment) that is targeted toward compliance while avoiding over-delivery





MARCH 4, 2020
IBCC & DM WORKGROUP
MEETING

STATUS UPDATE

- Basin Implementation Plan Updates
- Water Supply Reserve Fund (WSRF) Group
- IBCC PEPO



IBCC DISCUSSION

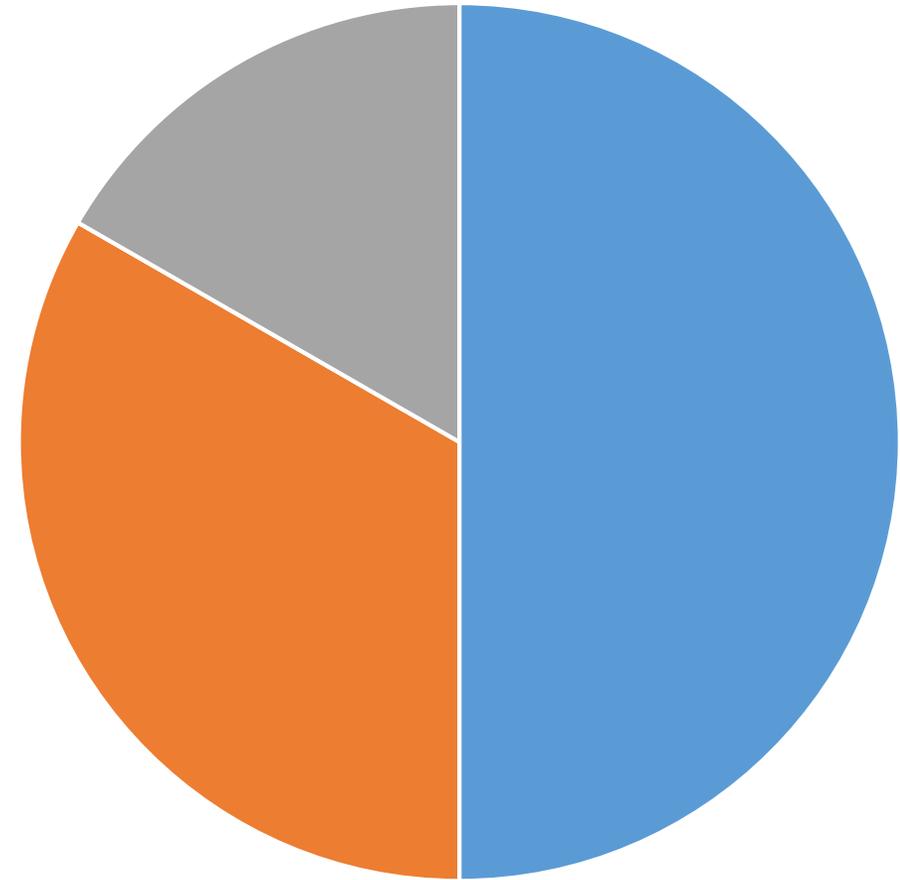
INPUT & EQUITY RECAP

IBCC had a robust discussion about equity:

- “There is distrust about whether a voluntary, temporary, and compensated demand management program can happen or not.”
- “Trust is a large factor. The question of whether there is enough trust between water users and communities to implement a demand management program is an important one.”
- “One of the largest issues is how to build trust in a demand management program.”

- “Equity is in the eye of the beholder”
- How do we make things more equitable and avoid unintended consequences?

Can a DM Program be equitable?



■ YES ■ NO ■ Maybe

IBCC BREAKOUT EXERCISE

- 
- What is beyond our control/unknown?
 - What is important to me?
 - How do I know that I achieved success?
 - How might a response create unintended consequences?

Could we create a program we think is equitable that ends up creating inequity?

“Equity is related to a sense of fairness.”

“Equity should only be considered between the West Slope and the Front Range.”

“To minimize the risk of inequity, there need to be proportional impacts between basins”

Things to Think About:

- Did your group make things more or less fair?
- What specific issues make greater or less equity?
- How do I know that equity was achieved and monitor it long-term.

1. A DM Program has equal participants from the east slope and west slope.
2. A DM Program has 30 slots open to participants in each basin.
3. A DM Program is open to anyone first come first served until “X” volume is achieved.
4. No DM Program is created but people want to participate.
5. A DM Program is open to anyone but limits the number of participants by county.
6. A DM Program is created with goal of enrolling “proportional” participation of eligible water use sectors (e.g., Agriculture, Municipal, Energy).
7. A DM program is created where participation is moderated to minimize significant socio-economic impacts through prescriptive measures (e.g., acreage enrollment limitation, 3 out of 10, etc.)
8. A DM program that provides differing payments to participants depending upon certain criteria?