



**COLORADO**

**Colorado Water  
Conservation Board**

Department of Natural Resources

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**TO:** Colorado Water Conservation Board Members

**FROM:** Amy Ostdiek, Interstate, Federal, and Water Information Section

**DATE:** July 15-16, 2020

**AGENDA ITEM:** 8 – Demand Management Update

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**Staff Recommendation:** This is an information item, with no formal Board action requested.

Attached, please find a report providing an update on progress made to date on Colorado's Demand Management Feasibility Investigation pursuant to the 2019 Demand Management Work Plan. The full report follows the Executive Summary.



### Executive Summary

The Upper Division States of the Colorado River Basin are currently investigating the feasibility of a potential Demand Management program. Demand Management is defined as temporary, voluntary, and compensated reductions in consumptive use. The Demand Management Storage Agreement, one element of the Drought Contingency Plan (DCP) finalized by the Colorado River Basin States in 2019, provides the authorization for the Upper Division States to store water created pursuant to a Demand Management program in Lake Powell. The water would only be used for Compact compliance purposes at the direction of the Upper Colorado River Commission. Whether a program is set up and how such a program would operate are still open questions. Each Upper Division State must make an initial determination that Demand Management is feasible before moving forward with creating a potential program.

The Colorado Water Conservation Board is Colorado's agency charged with setting the State's water policy, and is therefore the agency with authority to determine whether Demand Management is feasible for Colorado. Following adoption of the DCP in March 2019, the CWCB Board adopted the [2019 Work Plan](#) to help guide the initial stage of this feasibility investigation, to take place in Fiscal Year 2019-2020. The Work Plan had three primary components: (1) establish workgroups comprised of subject-matter experts and key Colorado River stakeholders, which were directed to meet publicly at least four times in Fiscal Year 2019-20, and to identify key threshold issues for board consideration; (2) regional workshops designed to facilitate the public discussion around Demand Management and provide opportunities for CWCB staff updates on the feasibility investigation; and (3) continued education and outreach. In addition, the Board directed staff to facilitate a literature review, currently underway by consultants hired following a Request for Proposal process.

The purpose of this Report is to provide an update of work done pursuant to the 2019 Work Plan. This report will assist the CWCB Board in considering the key threshold issues associated with a potential Demand Management program. The purpose of the report is not to provide guidance on next steps of the feasibility investigation. However, it may help shape the discussions and decision-making about the next phases of Colorado's feasibility investigation. While the complete report provides a full summary of workgroup discussions and other work, below is a summary of each workgroup's main discussion points.

#### Agricultural Impacts

- To encourage agricultural participation, a potential program must be viewed as equitable and proportional while remaining voluntary; furthermore, it must be adequately communicated that the potential program is necessary to achieve the objectives set out in the Upper Basin Drought Contingency Plan and will serve as an insurance policy against mandatory curtailment.
- In designing a potential program, care must be given to program design to minimize and mitigate on-farm and off-farm agronomic impacts such as reductions in crop yield and soil erosion, including the provision of technical assistance and information; furthermore, the program should account for secondary economic impacts and evaluate potential benefits.
- Non-injury to water right holders and non-participants is critical and can be achieved through the possible consideration of utilizing existing change of water use approval processes and providing additional mitigation expenses to agricultural water providers to account for potential operational impacts.
- Structuring the potential program application, review, and the contracting process should consider alignment with the timing of when producers make critical operational decisions and allow for some operational flexibility; furthermore, payments should consider all potential impacts including both agronomic and operational changes.
- In considering the design of a potential Demand Management program, current programs in place similar to a potential Demand Management program, such as the Federal Conservation Reserve Program and Colorado Fallow-Leasing Pilot Program should be further analyzed; furthermore, pilot and demonstration projects could be useful in better understanding potential impacts and effects of temporary irrigation reductions and should be explored with an effort to capture the potential diversity of projects.

## Economic Impacts and Local Government

- Any potential Demand Management program will be voluntary; those who do not wish to participate should not do so.
- In designing any potential Demand Management program, the initial goal should be to “do no harm,” meaning to minimize and mitigate any adverse impacts to communities. A number of factors should be considered in analyzing this question, including but not limited to the type of water use, the duration of the Demand Management program, the length of individual project participation, and the geographic location and concentration of projects.
- Any potential program should create benefits for individuals, the community, and the economy wherever possible. Potential benefits may include avoidance of Compact administration actions, increased revenue to local economies, environmental benefits, and opportunities to improve long-term management of water and land.
- A number of process considerations should be taken into account when considering how to assure no harm is done to communities where possible, or mitigated if there is harm.
- In operating a potential Demand Management program, the process should be transparent and collaborative.

## Education and Outreach

- Workgroup members identified many challenges in helping the State explore threshold questions related to communication, education, and outreach needs around a potential Demand Management program.
- In lieu of assisting with a communication plan for the active "investigation" process or a future program, the workgroup focused their expertise around priority considerations should the CWCB elect to continue with feasibility, project pilots, or full program development.
- While it is essential to develop a communications plan well before a Demand Management program is enacted, content substance is needed to proceed in which common terms are defined across workgroups and state partners, clear frames are developed to help unite messaging across stakeholder groups, and essential content from FY19-20 workgroups are considered by CWCB and incorporated into an agreement on a Demand Management program's general (initial/draft) shape.
- At this stage, there is a branding problem, as different stakeholders have different ideas of what a program may look like, how it can be explained, and how often communication is carried to individuals' direct communities.
- This workgroup recommends immediate messaging discussions to identify shared priority framing. Several guiding examples are presented in the workgroup's final deliverable.
- Throughout the investigation, workgroup members identified the need to help stabilize communication chains, the need for extra transparency, and the need to maintain an open line for all users to communicate concerns and ideas to/from CWCB and to/from one another.

## Environmental Considerations

- A Demand Management program could provide opportunities for projects with net environmental benefits that would not be available under potential Compact administration.
- A Demand Management program should not harm the environment, should build in considerations to minimize adverse environmental effects, and should incentivize projects that provide net environmental benefits.
- A Demand Management program should use the suggestions in the Environmental Considerations document to evaluate project environmental benefits and impacts without creating an unnecessarily burdensome process for applicants. The suggestions should also be used as part of the criteria to prioritize projects. Potential environmental benefits are location and project specific and would need to be evaluated on a case-by-case basis.
- A Demand Management program should identify project impacts and benefits to environmental resources including changes to flow regimes, instream flows, water quality standards, critical habitat, management/planning documents, and conservation needs and strategies if evaluation tools are readily available and applicable (for a more detailed list of potential resources impacted, see Environmental Considerations document).
- Research and data gaps exist for evaluating environmental benefits and impacts, such as information on changes to hydrology, return flows, and wetlands. Streamlined approaches and methods are needed to make these assessments.

## Funding

- The funding workgroup initially identified a number of questions to help frame the conversation around funding a potential Demand Management program, including how much funding would such a program require.
- To help quantify potential funding needs, workgroup members discussed factors that could affect a Demand Management program and built scenarios around them.
- The factors included: volume of water needed, cost of potential program (i.e. \$/acre-foot), percent of water savings expected from a Demand Management program (versus funded investments in infrastructure), acute or chronic need, year by which water is needed, and reservoir storage options.
- Workgroup members came up with a preliminary list of funding ideas noting that not one concept, but rather a portfolio (potentially paired with a reverse auction model) would be beneficial: statewide tax (income, sales, property), regional tax, statewide fee, Bureau of Reclamation contribution, hydropower user fee, export user fee (i.e. Front Range water user rate increase).
- Even with a diverse portfolio, COVID-19 fundamentally changed the calculus and workgroup members expect we will likely see transformations in many water use sectors and the larger economies of the Western US if hydrology continues to deteriorate and Compact Administration becomes necessary.

## Law and Policy

- There are several open legal and policy questions relating to a potential Demand Management program, and the conclusions drawn could impact how a program operates and whether it works within existing law. These key legal and policy issues include, but are not limited to:
  - Would participation in a potential program be considered a beneficial use under Colorado law?
  - What is the definition of Compact compliance?
  - How is program eligibility determined?
  - How is conserved consumptive use defined for purposes of participation in a potential program?
  - What is the appropriate definition of “temporary” in the context of a potential Demand Management program?
  - What is the appropriate procedure for project review and approval?

## Monitoring and Verification

- Quantification, measurement, monitoring, and verification must be honest, accurate, and defensible.
- Participation and monitoring and verification must be protective of other water users.
- Participation must result in added water to the system.
- Participation and monitoring and verification must be as simple, easy, and flexible as possible while still meeting the first three principles.

## Water Rights Administration and Accounting

- Any potential program should take into consideration the appropriate process for changing the use of a water right from its current use to Demand Management.
- The question of whether Demand Management is a beneficial use of water should be considered before a potential program is established.
- Changes in administration and accounting for storage should be considered in establishing a potential program.
- Appropriate scrutiny for any program should be balanced against the need for ease and flexibility.

# Colorado's Demand Management Feasibility Investigation Update

Report to the Colorado Water Conservation Board  
July 2020

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## I. Introduction

The Colorado River Basin has faced twenty years of challenging hydrology, and there is significant uncertainty relating to future hydrologic conditions. Recognizing the need for increased flexibility in managing the Colorado River System, the Upper Division States developed a plan designed to allow the States to consider and explore innovative options for maintaining certainty in water supply. One potential tool, as identified in the Drought Contingency Plan, is Demand Management - temporary, voluntary, and compensated reductions in consumptive use. Colorado is currently investigating the feasibility of such a program.

The purpose of this report is to summarize for the Colorado Water Conservation Board (CWCB or Board) the work accomplished to date pursuant to the 2019 Demand Management Work Plan (Work Plan), as adopted in March 2019. The Work Plan directed staff to report to the Board on progress made in Fiscal Year 2019-2020. To this end, this report summarizes the work completed in the first year of the investigation in an effort to help inform potential next steps to consider in the feasibility investigation. The report is separated into six sections: (1) Introduction; (2) Common Themes; (3) Workgroups: A Deeper Dive; (4) Regional Workshops; (5) Education and Outreach; and (6) Future Planning.<sup>1</sup>

### A. What is Demand Management?

Demand Management contemplates the temporary, voluntary, and compensated reduction in consumptive use in the Upper Colorado River Basin. In March 2019, the seven Colorado River Basin States executed a suite of agreements called the Drought Contingency Plan (DCP). The DCP includes Upper and Lower Basin elements.<sup>2</sup> It is beyond the scope of this report to summarize each agreement, but for purposes of this report, the relevant agreement is the Demand Management Storage Agreement (DMSA).<sup>3</sup> The DMSA authorizes the storage of up to 500,000 acre-feet of water in the Colorado River Storage Project Act Initial Units if and when a Demand Management program is set up in the Upper Basin.<sup>4</sup> The DMSA does not require that a Demand

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<sup>1</sup> This report should not be interpreted as support on behalf of the CWCB, workgroup members, or the organizations for which they work, for any of the positions or concepts discussed by the workgroups or as asserting any legal or policy positions. Rather, this report is intended to summarize information discussed by the workgroup members, in their individual capacities, as well as the feasibility investigation to date.

<sup>2</sup> Pursuant to the 1922 Colorado River Compact, the Colorado River Basin is divided into the Upper and Lower Basins. Upper Division States include Colorado, New Mexico, Utah, and Wyoming. Lower Division States include Arizona, California, and Nevada. The 1922 Colorado River Compact is an element of a body of law referred to as the Law of the River, which affects interstate and international use, management, and allocation of water in the Colorado River system. The Law of the River includes the 1922 Colorado River Compact, the 1944 Mexican Water Treaty, the 1948 Upper Colorado River Basin Compact, several United States Supreme Court decisions, the Supreme Court Decree in *Arizona v. California*, and numerous other federal statutes and regulations. The 1948 Upper Colorado River Basin Compact established the Upper Colorado River Commission (UCRC or Commission), comprised of the Upper Division States.

<sup>3</sup> Additional information relating to the DCP and the agreements can be found at <https://www.usbr.gov/dcp/index.html>.

<sup>4</sup> The Colorado River Storage Project Act of 1956 (CRSPA) facilitated the development of water in the Upper Colorado River Basin, and included authorization to construct, operate, and maintain four Initial Units of the

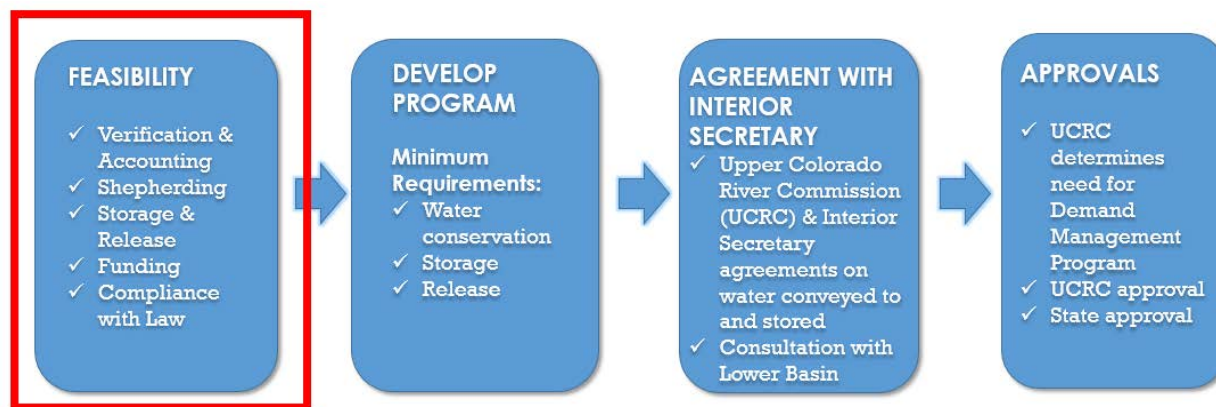


Management program be established. Rather, it provides the legal mechanism to store water conserved under a Demand Management program if, and only if, the Upper Division State Commissioners to the Upper Colorado River Commission (UCRC) agree to the feasibility and requirements of such a program after consulting with the Lower Division States and reaching agreement with the Secretary of the Interior on specific operations and determine there is a need for such a program. If no program is established, the storage space will not be used. The minimum requirements of the DMSA are highlighted below.

### 1. Minimum Conditions and Requirements for Establishment of a Program

The DMSA sets forth a set of sequential steps for considering and approving any Demand Management program.<sup>5</sup> This section provides a summary of those elements. Currently, the Upper Division States are in the initial stage of the process (Feasibility), and must make a finding of feasibility before moving on to the additional requirements.

Below is a visual representation of the steps that must be taken, as explained below, before a potential demand management program could be implemented.



#### a) Feasibility

Pursuant to the DMSA, the Upper Division States must first investigate the feasibility of developing and implementing a potential Demand Management program, and must reach consensus on the following items, among other things not specifically delineated in the DMSA, before moving to the next stage of developing a program:

- Verification of and accounting for the actual volume of conserved consumptive use;

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Colorado River storage project, which consist of dams, reservoirs, power plants, transmission facilities, and appurtenant works of the Aspinall Unit (formerly the Curecanti Unit), Flaming Gorge, Navajo (dam and reservoir only), and Glen Canyon.

<sup>5</sup> The Demand Management Storage Agreement is available at <https://www.usbr.gov/dcp/docs/final/Attachment-A2-Drought-Managment-Storage-Agreement-Final.pdf>

- Conveyance of the conserved consumptive use to appropriate destinations, and accounting for associated conveyance losses;
- Providing for storage at and release from the Colorado River Storage Project Act Initial Units of any conserved consumptive use;
- Administration of an Upper Basin Demand Management program;
- Funding of an Upper Basin Demand Management program; and
- Compliance with federal and state laws within each Upper Division State;

States are currently in the Feasibility analysis stage, and this report was developed as part of Colorado's process of analyzing the feasibility of a Demand Management program.

### *b) Program Development*

If the Upper Division States agree that an Upper Basin Demand Management program is feasible, noting all requisite elements in the section above, they then may develop the framework for a potential Demand Management program, which must include the following requirements, at a minimum:

- Water conserved will only be recognized as part of a Demand Management program if:
  - The source of conserved water is Upper Colorado River System water or imported water<sup>6</sup>;
  - The water is conserved, stored, and released for the specific purpose of helping the Upper Division States assure continued compliance with Article III of the Colorado River Compact<sup>7</sup> ;
  - If Upper Colorado River System water (as opposed to imported water), the water must have been beneficially and consumptively used under valid water rights prior to being conserved as part of an Upper Basin Demand Management program;
  - If Upper Colorado River System water (as opposed to imported water), the water must have been physically available for diversion in the year it was conserved, and would have been beneficially and consumptively used within a state or states of the Upper Division but for the conservation for the benefit of an Upper Basin Demand Management program; and

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<sup>6</sup> Imported Water is defined in the DMSA as water introduced to the Upper Colorado River System from outside the Colorado River System for the specific purpose of augmenting the supplies available for, or storing water as part of, an Upper Basin Demand Management program.

<sup>7</sup> Article III(a) of the 1922 Colorado River Compact apportions the exclusive beneficial use of 7,500,000 acre-feet per year to the Upper Basin and Lower Basin, respectively. Article III(b) apportions an additional one million acre-feet of water to the Lower Basin. Article III(c) states that any water owed to Mexico shall first be supplied to waters surplus over and above the aggregate of the quantities specified in (a) and (b), and if such surplus is insufficient for this purpose, assigns the burden of deficiency equally among the Upper Basin and Lower Basin. It further requires the Upper Division States to deliver at Lee Ferry water to supply half of the deficiency. Article III(d) states that the States of 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 period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October. Please see the Colorado River Compact to view the additional elements of Article III, available at <https://www.usbr.gov/lc/region/g1000/pdfiles/crcompact.pdf>

- The conserved or imported water has arrived at a CRSPA Initial Unit after accounting for any conveyance and associated losses.
- Any conserved or imported water to be stored in a CRSPA Initial Unit for the purposes of an Upper Basin Demand Management program shall be subject to:
  - Assessment of its proportionate share of evaporation during storage;
  - Available unfilled storage capacity;
  - An annual creation limitation at the CRSPA Initial Units combined. This volumetric limit is to be determined as part of the feasibility investigation;
  - A maximum combined storage limitation of 500,000 acre-feet at the CRSPA Initial Units;
  - Reduction, in any year in which water flows over or through the spillway at Glen Canyon Dam, by the amount of that flow on an acre-foot for acre-foot basis up to the full amount of water stored under an Upper Basin Demand Management program; and
  - Annual verification by the Upper Division States, through the Commission, and the Secretary of Interior, of the volume of conserved water created, conveyed, and stored at the CRSPA Initial Units.
- Any conserved water stored and released from a CRSPA Initial Unit under an Upper Basin Demand Management program shall:
  - Be accounted for consistent with the provisions in the section above and in this section;
  - Through the year 2057, not be released or cause a different release from Lake Powell than would have otherwise occurred under the 2007 Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead (“2007 Interim Guidelines”) or post-2026 operational rules.<sup>8</sup> This provision survives termination of the DMSA through 2057; and
  - Be subject to release from any of the CRSPA Initial Units only at the request of the Commission to help assure continued compliance with Article III of the Colorado River Compact. This provision survives termination of the DMSA through 2057.

*c) Upper Basin Demand Management Program Approval*

If and when the Upper Division States reach agreement on the framework and operation of a potential program, a number of agreements, consultations, and approvals must occur before any Demand Management program may be finalized and made operational, including:

- Upper Colorado River Commission (UCRC) findings: the UCRC must make findings that Demand Management activities are necessary to help assure continued compliance with Article III of the Colorado River Compact;

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<sup>8</sup> The Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead, available at <https://www.usbr.gov/lc/region/programs/strategies/RecordofDecision.pdf>

- Agreement and consultation: Through the UCRC, the Upper Division States and the Secretary of Interior must enter into agreements regarding the methodology, process, and documentation for verification and accounting for the creation, conveyance, and storage of conserved water to be stored in and released from a CRSPA Initial Unit as part of a Demand Management program. Consultation (on a consensus basis) with the Lower Basin States is required before entering into such agreements;
- UCRC approval: The UCRC must approve the Upper Basin Demand Management program; and
- State approval: Each Upper Division State must approve the Upper Basin Demand Management program

*d) Additional Considerations: Post-2025*

On December 31, 2025, both the DMSA, except for those provisions that survive termination of the DMSA, and the 2007 Interim Guidelines are set to expire. A potential Demand Management program is tied directly to operations of Lake Powell and Lake Mead because water created as part of a Demand Management program would not be subject to release pursuant to the terms of the 2007 Guidelines. Therefore, it is difficult to analyze how a potential Demand Management program would operate without knowing what future operations of the two major reservoirs will look like. This section of the DMSA provides that a position has not been formally expressed relating to the implementation of a potential Demand Management program after 2025.

**B. Status of the Demand Management Feasibility Investigation**

Each Upper Division State must make a finding that Demand Management is feasible before they initiate discussions to design and set up a program or take any of the following steps to establish a potential program. Each State is currently conducting this feasibility analysis.

Below are updates on the other Upper Division States' feasibility investigations:

- Wyoming: State personnel are managing demand management discussions with the public, but the University of Wyoming Extension Office has been hired to provide logistical support.<sup>9</sup> In September 2019, Wyoming held a meeting with key stakeholders (roughly 25 individuals were in attendance) in the basin, where State staff provided an explanation of and an update on the demand management feasibility investigation. During the late fall 2019, four public meetings were held at locations across the basin, as well as one meeting in Cheyenne. During these public meetings, four specific topic areas were identified that warranted in-depth discussion. Wyoming has formed four corresponding focus groups of roughly 12 people each to explore and discuss each of these issues. These groups have not yet met, as meetings are in abeyance until they may occur in person, which has not been possible to date due to the COVID-19 pandemic.

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<sup>9</sup> Information and updates relating to Wyoming's demand management activities can be found here: <http://www.uwyo.edu/uwe/wy-dm-ucrb/index.html#add>

There is hope the groups can meet in early fall 2020. Ultimately, a draft report with information and possible recommendations from water users is expected by the end of the year.

- New Mexico: In January 2020, State staff held an in-person meeting with stakeholders, including informational items and an update on the UCRC's RFP. They held a second stakeholder meeting in April 2020 for those unable to attend the January meeting. New Mexico continues to engage with organizational stakeholders, providing updates and hearing feedback.
- Utah: State personnel are leading Utah's feasibility investigations. They have considered the issues and challenges relating to a potential program, and are currently contemplating how a potential Demand Management program may relate to Utah's new water banking legislation.<sup>10</sup> Trout Unlimited is also engaged in the investigation, and while the information developed in these efforts may help inform the State's position, they are distinct from the State's efforts. Utah intends to conduct broader stakeholder outreach in the future.

In addition, the UCRC issued a Request for Proposals seeking technical assistance in considering the feasibility of Demand Management. Contracts for this work have not yet been executed. Funds received from the Bureau of Reclamation for this effort must be expended by September 30, 2022.

### C. Colorado's Demand Management Feasibility Investigation

Throughout the seven-state negotiations on the DCP, the Board received updates and feedback from CWCB staff, counsel from the Colorado Attorney General's Office, and interested water users and stakeholders. As a result of these updates and as a condition of its support for the DCP, the Board adopted the following policies and plans to direct the State's Demand Management feasibility investigation:

#### 1. November 2018 Support and Policy Statement

In November 2018, after several briefings on what became the key elements of the DCP and in particular the DMSA, and before the DCP was finalized in March 2019, the Board adopted the Support and Policy Statement regarding Colorado River Drought Contingency Plans, Demand Management, and Compact Administration, which outlined the Board's support for the DCP agreements and forthcoming Demand Management feasibility investigation. This Policy Statement was developed with significant input and collaboration with key stakeholders and water users across the state, and as ultimately adopted, incorporated most of the feedback received.

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<sup>10</sup> More information can be found at: <https://le.utah.gov/~2020/bills/static/SB0026.html>

The Support and Policy Statement identified the CWCB's responsibility and authority as the State's water policy agency to evaluate and implement mechanisms for the effective management of water within the State, including the Colorado River. The Support and Policy Statement also recognized that water rights holders and other stakeholders have a vital interest in understanding the elements and conditions of any potential Demand Management program in Colorado, as well as the State's intentions in investigating any such program.

Following this statement, the Board further outlined a strategy for formulating the State's position regarding Demand Management in the Colorado River Basin. This included direction to:

- Convene a process to identify and evaluate the issues the State must address as part of any potential Demand Management program;
- Operate within, and subject to, the terms of the DMSA;
- Engage in activities that further the goals expressed in Colorado's Water Plan, with specific consideration given to the principles and collaborative efforts set forth in Chapter 9.1 and Principle 4 of the Conceptual Framework in Chapter 8;
- Investigate voluntary, temporary, and compensated reductions in consumptive use of waters that otherwise would deplete the flow of the Upper Colorado River System for the specific purpose of helping assure compact compliance;
- Prioritize avoidance of disproportionate negative economic or environmental impacts to any single sub-basin or region within Colorado while protecting the legal rights of water rights holders. The Board committed to working 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;
- Comply with applicable state law, including, but not limited to the no injury rule;
- Consider and be fully informed by the input and considerations of water rights holders and stakeholders potentially impacted by a potential Demand Management program, and institute public review process for any such proposed Demand Management program; and
- Work with Colorado's Commissioner to the UCRC, the other Upper Division States, and the Department of Interior, to investigate and potentially develop a Demand Management program that considers and incorporates Colorado's Demand Management approach, and to ensure that water conserved within Colorado under any potential Demand Management program is not diverted and consumptively used by any other state

Additionally, the Board adopted a Compact Administration Policy Statement, stating that in the case that a potential Demand Management program is insufficient to ensure ongoing compliance with the Colorado River Compact, the Board would encourage and collaborate with the Division of Water Resources to engage in timely and extensive public outreach regarding development of any alternative measures or rules for compact compliance administration to fully inform and seek input from state water rights holders and stakeholders, noting that the goal would be to achieve

general consensus within the state, although it is not required. Further, the policy stated that it should not be understood as constraining the Division of Water Resources' lawful administration of water rights in Colorado to meet compact obligations.

The Support and Policy Statement is attached to this report as Attachment A.

## 2. The 2019 Work Plan

After the DCP was finalized in March 2019, the Board adopted the 2019 Demand Management Work Plan, which provided the framework and guidance for the initial stage in Colorado's Demand Management feasibility investigation. This Work Plan was informed by and consistent with the Support and Policy Statement the Board previously adopted. Like the policy statement discussed above, the Work Plan was developed with significant input and collaboration with key stakeholders and water users across the state.<sup>11</sup>

The Work Plan established a Project Management Team (sometimes referred to as the PMT or PM Team), comprised of representatives within the Department of Natural Resources (DNR) and the Attorney General's Office. The Work Plan directed the Project Management Team to implement the work plan and provide status reports and recommendations to the CWCB Board. The Work Plan covers only the initial stage of the feasibility investigation, through June 2020, at which point the Project Management Team was to seek additional guidance from the Board on the next steps of Colorado's feasibility investigation.

The Work Plan included three key components: establishing workgroups, hosting regional workshops, and engaging in continued education and outreach. The Work Plan directed that workgroups be established, comprised of subject matter experts on Colorado River issues. The workgroups were formed following an application process, with each of the workgroups directed to focus on a particular aspect of Demand Management. They were not directed to make any specific recommendations to the Board or suggestions as to how a particular Demand Management program should be designed. Rather, the workgroups were charged with identifying and framing important considerations for the Project Management Team to convey to the Board as it considers next steps in the feasibility investigation. The workgroups began meeting in August 2019 and were directed to meet at least four times before July 1, 2020. The eight workgroups ultimately established included the following:

- Agricultural Impacts
- Economic Considerations and Local Government
- Education and Outreach
- Environmental Considerations
- Funding
- Law and Policy

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<sup>11</sup> These discussions were held at the CWCB Board's March and May 2019 meetings.



- Monitoring and Verification
- Water Rights Administration and Accounting

All Workgroup meetings were open to the public and provided an opportunity for public comment. Summaries on progress made by the workgroups are included in the following sections of this report.

In addition to the workgroups, the Project Management Team has had ongoing discussions with the two federally recognized Indian tribes in Colorado - the Southern Ute and Ute Mountain Ute Tribes (“Tribes”). These discussions have been held at a government-to-government level and therefore, no reports have been published relating to these meetings. Tribal Councils of both Tribes are supportive of continued participation in the investigation of the development of a potential Demand Management program. Additional detail relating to these discussions is provided in the following section.

The Work Plan further directed the Project Management Team to conduct regional workshops throughout the course of the feasibility investigation, designed to provide an opportunity for public engagement and feedback on the ongoing work. Additionally, the Work Plan emphasized the importance of continued education and outreach throughout the feasibility investigation. Neither workgroup meetings nor regional workshops were intended to supplant the continuation of outreach and education to groups around the state, but rather augment and increase communication with particular focus on those who request it and those who may not otherwise be engaged in the discussion. The Work Plan and subsequent update identifying workgroup participants are attached to this report as Attachment B.

## II. The 2019 Work Plan to Date: Common Themes

The Interbasin Compact Committee (IBCC) met jointly with the Demand Management workgroups in March 2020. At the meeting, the workgroups had an opportunity to meet individually, as well as with other workgroups and as a larger group. As individual groups, they focused largely on identifying the core values of the groups, as well as the uncertainties that may impact whether those values can be achieved in a potential Demand Management program. This section highlights the key values that the workgroups identified, as well as the common themes that emerged throughout the course of the initial stage of the feasibility investigation. These themes were further developed as the workgroups identified several cross-cutting issues throughout their discussion. Members had a fair amount of cross-pollination in various formats, including attending other workgroups’ meetings, providing lists of issues for other workgroups to consider, sharing various work products among workgroups, and meeting directly with other workgroups.

At the March joint meeting, the workgroups were asked to develop through facilitated discussion two lists of items—(1) key values or concerns that they have related to a possible Demand Management program and (2) important uncertain factors that could impact how well a Demand



Management program would perform relative to their key values. Next, each workgroup prioritized each list by individually assigning stickers to those values and uncertainties of most interest.<sup>12</sup>

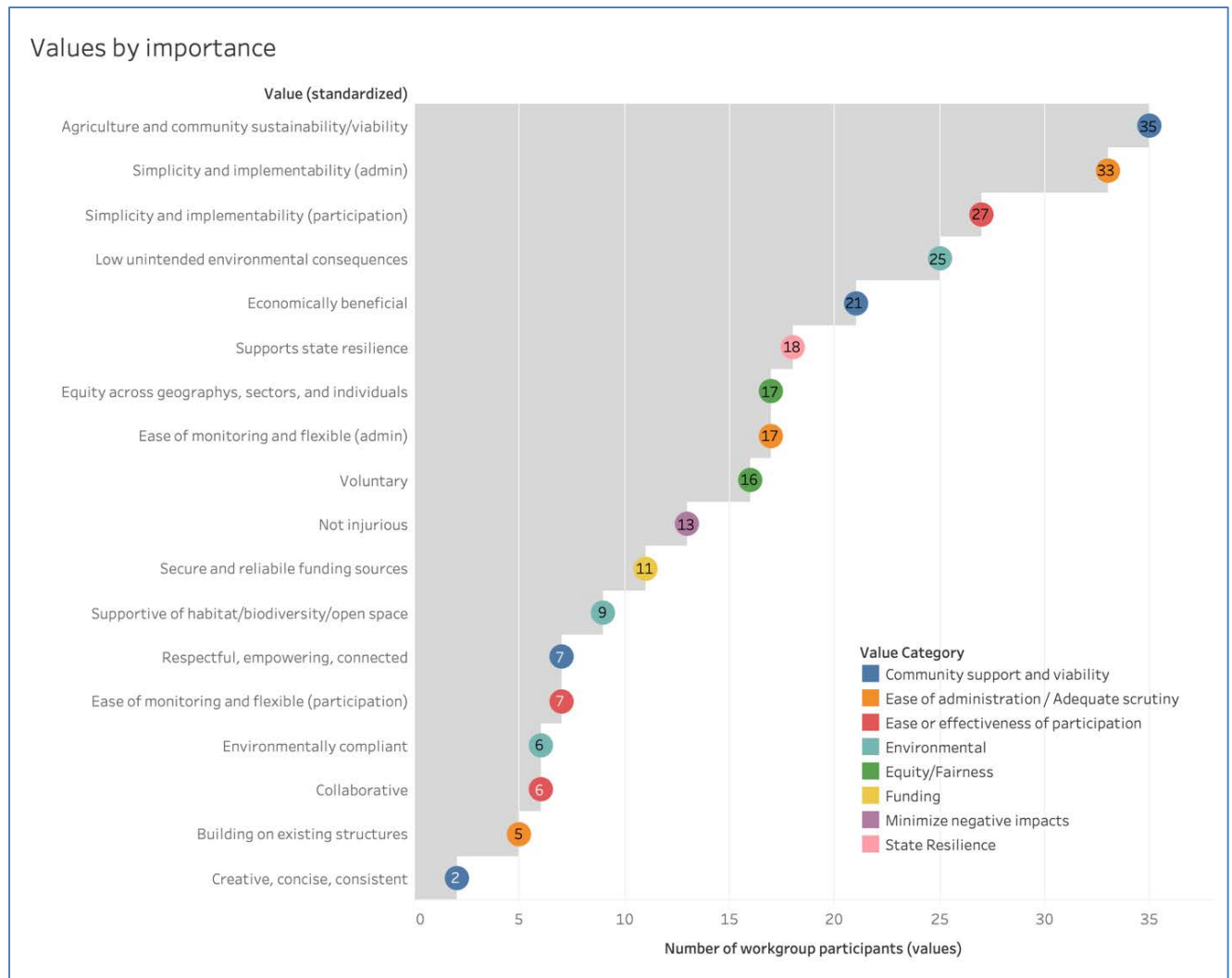
Next, the data were evaluated and a consolidated summary developed about the values and key uncertainties. An interactive tool was developed to summarize the findings from this work. Below are two visualizations summarizing the values identified by participants. The first categorizes by both the workgroup (columns) and categories defined to group similar values. The number within each symbol indicates how many workgroup participants indicated that the value was important to them. This visualization indicates significant overlap in values across the workgroups--many participants identified the same values as important. For example, most workgroups show concern about participation and equity. Three workgroups—Agricultural Impacts, Economic Impacts and Local Government, and Environmental Considerations—were mostly concerned with outcome-related values and less so with administrative and funding concerns. One interesting finding is that while the Agricultural Impacts and Economic Impacts and Local Government Workgroups emphasized values associated with community support and viability, there is also indication of the importance of some environmental goals associated with habitat and open space. The Environmental Workgroup focused on environmental-related values, understandably, but also highlighted equity and fairness values as well as a few related to the administration of the program.

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<sup>12</sup> David G. Groves, Ph.D., with RAND Corporation, a consultant hired by CWCB, assisted in facilitating this discussion and developing this portion of the report.

Overview of values by workgroup			Workgroup					
Value Category	Value (standardized)	Agriculture	Economy and Local Government	Environmental	Administration and Accounting	Education and Outreach	Funding	Monitoring and Verification
Community support and viability	Agriculture and community sustainability/viability	26 9						
	Creative, concise, consistent					1 1		
	Economically beneficial	6	15					
	Respectful, empowering, connected					3 2 2		
Equity/Fairness	Broad participation	14	7	12		4		1 6
	Equity across geographys, sectors, and individuals		2	5			3 4 3	
	Voluntary	6 10						
Minimize negative impacts	Not injurious				13			
Environmental	Environmentally compliant			6				
	Low unintended environmental consequences			1 17 7				
	Supportive of habitat/biodiversity/open space	1 5		2 1				
Ease or effectiveness of participation	Collaborative		6					
	Ease of monitoring and flexible (participation)				7			
	Simplicity and implementability (participation)		12 8		7			
Ease of administration/ Adequate scrutiny	Building on existing structures							5
	Ease of monitoring and flexible (admin)			3	5			4 5
	Simplicity and implementability (admin)				3 9			7 14
Funding	Secure and reliable funding sources						5 6	
State Resilience	Supports state resilience			5	5		8	

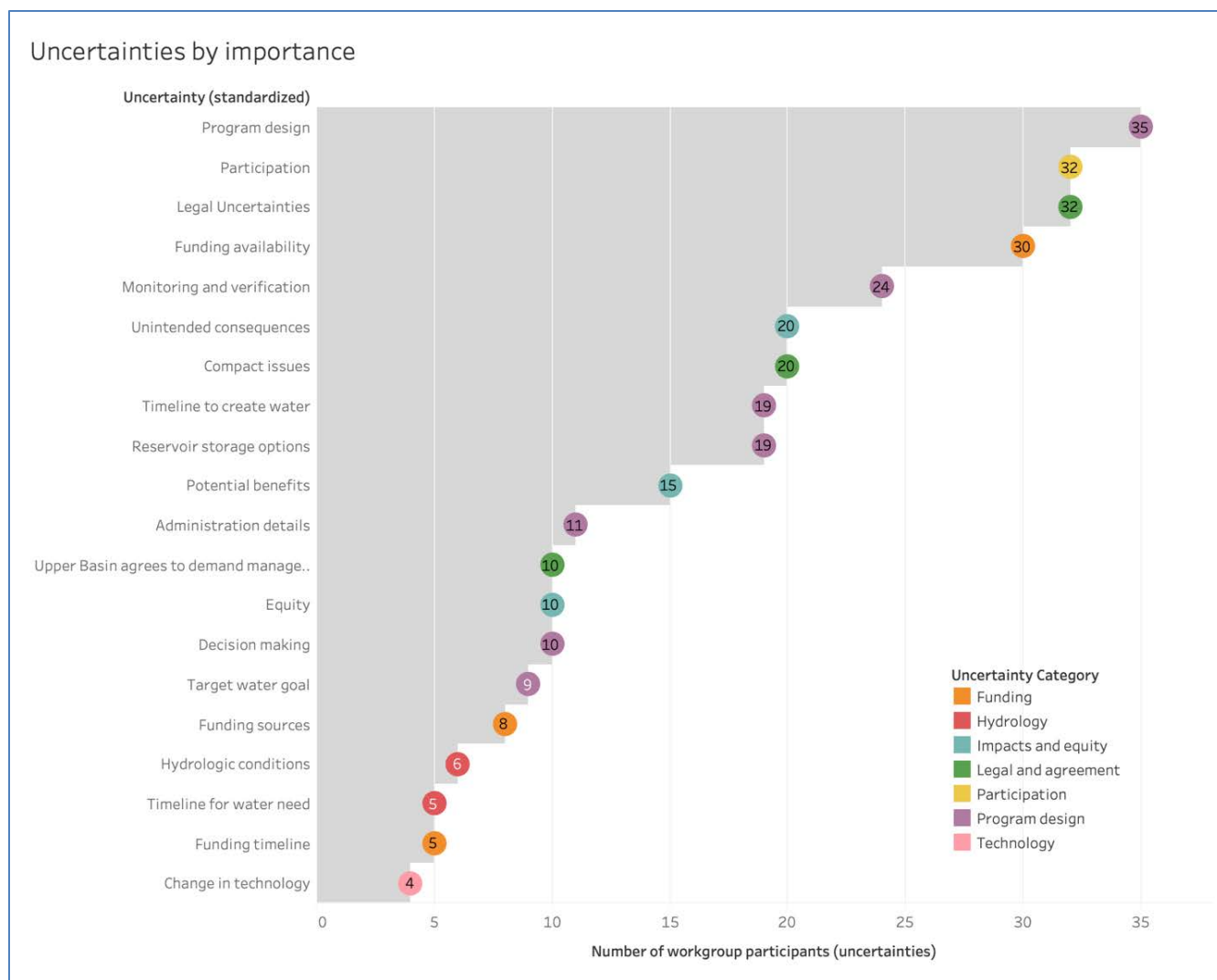
The next visualization below ranks the values overall by simply counting the number of respondents who indicate importance across all workgroups. Agriculture and community sustainability is the highest ranked value, followed by values associated with ease of participation and then environmental values.



Next, key uncertainties were considered. Using the same format as for values, the figure below summarizes the key uncertain drivers of concern to the workgroup participants. Again, we see much commonality across the workgroups. Many are concerned with funding availability. The amount and type of participation was also a key uncertainty, as it touches on the critical values highlighted above. There were also many uncertainties related to the program structure that were identified. Some of these reflect concerns about how the program would be designed. Others reflect uncertainties that would affect how the program performs.

Overview of uncertainties by workgroup								
Uncertainty Category	Uncertainty (standardized)	Workgroup						
		Agriculture	Economy and Local Government	Environmental	Administration and Accounting	Education and Outreach	Funding	Monitoring and Verification
Funding	Funding availability	19	5	1		1	3	1
	Funding sources						8	
	Funding timeline	4					1	
Hydrology	Hydrologic conditions		3	3				
	Timeline for water need			5				
Impacts and equity	Equity	10						
	Potential benefits	5 10						
	Unintended consequences			9 9 2				
Legal and agreement	Compact issues				6 14			
	Legal Uncertainties				22		7	3
	Upper Basin agrees to demand management		7			3		
Participation	Participation	8	3	14	2		5	
Program design	Administration details		11					
	Decision making	8		2				
	Monitoring and verification							11 5 8
	Program design	7		3 6 2	5			12
	Reservoir storage options	2	6		11			
	Target water goal	7					2	
	Timeline to create water	4	6 3			6		
Technology	Change in technology							4

These findings are further reinforced by the visualization below, which ranks the uncertainties by participant response. These results also highlight the concerns around legal uncertainties, monitoring and verification, and unintended impacts from the program.



Additional context regarding workgroup discussion of the key values identified, as well as other common issues and themes that have arisen in workgroup discussions, is below.

#### A. Community Viability and Local Benefits

Discussion in many groups focused on the need to ensure local impacts are considered in the development of any potential Demand Management program. Key impacts to evaluate at the local level include long-term sustainability and agricultural viability. There was recognition among the workgroup participants that a Demand Management program may provide benefits to participants, communities, and local economies, and help the State maintain compact compliance. However, a program may also create unintended secondary negative impacts. Many groups indicated that coordination with local communities will be essential to fully understand and address potential impacts. Although the avoidance of negative impacts is preferred, workgroups identified the need to consider potential mitigation in circumstances in which negative impacts may not be avoided.

## B. Participation and Project Design: Simplicity and Flexibility

Many workgroups focused on developing sets of mechanisms, criteria, or programmatic elements that may be considered in developing a potential Demand Management program. These included, for example, mechanisms for monitoring various types of project activity, or environmental considerations that may be considered for particular projects. Although many groups were able to identify robust sets of potential criteria, they also acknowledged that analysis of those criteria for individual projects could become burdensome for the applicant and/or administrator of a program. In many cases, these groups recognized some type of cost-benefit analysis would need to occur in weighing the need for sufficient scrutiny and review with the concerns of creating an overly burdensome procedure that may discourage participation or create an inefficient or expensive program.

## C. Creation of a Net-Positive Program: State Resilience and Increased Benefits

If a Demand Management program were to be implemented in Colorado, it would be strictly voluntary: nobody would be forced to participate in a program. Therefore, presumably participants would only participate if they determine it is in their best interests to do so. Moreover, many workgroups indicated that a potential Demand Management program could provide benefits to the State as a whole, including an increased ability to weather varying hydrologic conditions with greater certainty that the State will be able to maintain compact compliance and increased predictability in water management. In various iterations, the workgroups spoke of statewide resilience as an important value that a Demand Management program could further.

Nonetheless, several groups recognized the potential for unintended adverse impacts depending upon the level of participation in a particular region or sector. This led many to refer to Demand Management as a potential burden. Faced with this characterization, many workgroups were compelled to consider a potential Demand Management program as a “net-positive” for the State, and viewed their charge as considering potential mechanisms and designs that could create a net-positive program. In addition, there was recognition that though the purpose of a potential Demand Management program would be to ensure compact compliance, there may be tangential environmental, recreation, and other benefits. There was a strong desire among the workgroups to better understand those potential benefits or impacts.

## D. Equity and Fairness

The November 2018 Support and Policy Statement directed that throughout the feasibility investigation, CWCB prioritize “avoidance of disproportionate negative economic or environmental impacts to any single sub-basin or region within Colorado while protecting the legal rights of water rights holders.” It further indicated that the Board would work to promote mechanisms for “obtaining roughly proportionate contributions of water” to a potential Demand

Management program from participants on both sides of the Continental Divide. This concept has been referred to as “equity” throughout the initial Demand Management discussions. However, the precise definition of equity and methods for achieving it have not been agreed upon or fully developed.

Although the question of equity has been a part of many Demand Management discussions, including those of many workgroups, the IBCC has been tasked with specifically analyzing the question of equity, and has acted as an additional workgroup with a focus particularly on the question of equity. This is discussed in greater detail in the following section.

#### E. Funding Uncertainties

One workgroup was specifically tasked with considering funding issues associated with a potential Demand Management program. However, many groups indicated that they believe it will be important to identify secure and reliable funding sources, and to understand the various options available. Many workgroups also identified the novel challenges this element presents given the COVID-19 pandemic and associated economic impacts.

#### F. Data Gaps

Many workgroups acknowledged that significant data gaps remain relating to a potential Demand Management program and discussed mechanisms for answering some of the outstanding questions. In some cases, additional research or legal analysis may be the most appropriate approach. However, many workgroup participants acknowledged that pilot or demonstration projects may be helpful in adding to the knowledge base, particularly relating to impacts of particular types of conservation projects that have not been widely tested or researched. The Agricultural Impacts group, in particular, was interested in development of a pilot program. Other workgroups echoed this sentiment.

The funding appropriated for the current stage of the feasibility investigation cannot be used for pilot programs. However, this may be a consideration moving into the next phase of the investigation. When considering potential pilot programs, it is important to note that any water created in such a program would become “system water.” In other words, the Upper Division States would have no mechanism to protect such water, and it would therefore be subject to release to the Lower Basin pursuant to the terms of the 2007 Guidelines. The ability of the Upper Division States to store water and hold it for release for Compact compliance purposes only becomes available if all Upper Division States move through the steps of setting up a Demand Management program, as described in Section I.A.1.

#### G. Demand Management versus Compact Administration

Throughout the Demand Management discussion, the question of a potential compact administration on the Colorado River frequently arose. The purpose of any Demand

Management program would be to avoid compact administration. Demand Management presents a potential opportunity to proactively save water that could legally only be used for compact compliance purposes, and could only be released at the direction of the Upper Colorado River Commission. Nonetheless, some have expressed that it is difficult to assess the feasibility and advisability of a potential Demand Management program without knowing precisely what compact administration would look like. Some also express concern that a potential Demand Management program would “turn into” curtailment, or some sort of involuntary program. On the contrary, any Demand Management program would be strictly voluntary. No individual would be forced to participate in a program, if it were to be set up. However, whether sufficient water could be created through a Demand Management program to avoid compact administration in the Upper Basin is an open question, dependent on variable hydrology and other conditions that cannot always be predicted. Therefore, though Demand Management may be effective in reducing the need for or extent of a compact administration, we cannot be certain it will forever obviate the need for compact administration. Though related in some ways, Demand Management and compact administration are distinct concepts that should be understood as such.

### III. The Workgroups: A Deeper Dive

The Board directed the workgroups to identify and analyze the key threshold issues associated with a potential Demand Management program. The workgroups were designed to provide a forum for a grassroots discussion and initial analysis of the concept of Demand Management, with the Project Management Team directed to report findings to the Board for further consideration. The workgroup meetings were designed to encourage frank, candid discussions about the various topics implicated by the concept of Demand Management. While the Project Management Team coordinated staff from the CWCB and Attorney General’s Office to facilitate the meetings, the intent was to provide opportunities for the participants to have open-ended discussion that allowed for meaningful issue spotting. All workgroup meetings were open to the public and provided an opportunity for public comment.

Each Workgroup met at least four times, and some met more frequently. Each workgroup developed summaries and key takeaways from their meetings, which are attached to this report. Below is a summary of discussions of each workgroup, as well as explanations of the various products developed by the workgroups.<sup>13</sup>

#### A. Agricultural Impacts

*The 2019 Work Plan, as originally drafted and presented to the Board at the March 2019 meeting, did not include an Agricultural Impacts Workgroup. The intention in the Project Management Team’s drafting of the plan was that each of the workgroups would focus on*

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<sup>13</sup> The products developed by the workgroups should not be interpreted as support on behalf of the CWCB, workgroup members, or the organizations for which they work, for any of the positions or concepts discussed by the workgroups or as asserting any legal or policy positions. Rather, the documents are intended to summarize information discussed by the workgroup members, in their individual capacities.



*agricultural impacts and issues, through their various lenses. However, pursuant to Board direction, this workgroup was added, though a formal charge was never developed. The group focused broadly on potential agricultural impacts and issues associated with a potential Demand Management program.*

The Agricultural Impacts Workgroup held its first meeting in August 2019. At the initial meetings, the group focused on key threshold-level agricultural impacts issues, including the assessment of potential regional economic and ecological impacts of a Demand Management program. The Workgroup discussed various positive and negative agronomic effects that may arise from implementation of conservation activities, including changes in crop yield, soil health, and operational considerations. The group agreed that proportional program participation and avoidance of undue burden on a specific water right holder, economic sector, or geographic location would be key to building agricultural community support, and further discussed the value of developing a set of guiding criteria and principles of a potential Demand Management program speaking to these issues. Other critical issues identified included avoiding impacts of reduced return flows and material injury to water right holders, the provision of technical assistance, and the role of irrigation providers and managers in program implementation.

Throughout the initial meetings, the group heard presentations on other voluntary, temporary, and compensated conservation efforts that could inform considerations for a potential Demand Management program such as alternative transfer methods (ATMs). The Workgroup also acknowledged and discussed the significant data gaps that remain. The group thought it would be beneficial to learn more about potential effects of various conservation practices, including the implications for long-term crop production and returning fallowed land back to production. The group agreed that at some point, pilot programs could help inform some of the open questions relating to agricultural impacts of potential Demand Management activity. The group also showed interest in what ultimately became an ATM project organized by workgroup members Paul Bruchez and Aaron Derwingson. This ATM project, funding for which was approved by the CWCB Board in March 2020, is designed to analyze potential water conservation and agronomic viability issues associated with reducing irrigation on high altitude irrigated pasture. This project will likely yield information that will be helpful to the ongoing feasibility investigation.

The group identified some key themes and issues that were identified throughout the course of the workgroup meetings. The Workgroup also developed a framework for potential future pilot programs, noting that while current funding cannot be used to design or implement a pilot program, the Workgroup believed a pilot program may warrant further consideration in the next stages of the feasibility investigation. These documents, as well as meeting reports, are attached as Attachment C.

## B. Economic Impacts and Local Government

The Economic Impacts and Local Government's Workgroup charge per the 2019 Work Plan was as follows:

*Research, test (as needed), and identify potential economic impacts that may need to be considered in any Demand Management program within Colorado. Tasks for this workgroup will include, but may not be limited to, consideration of both primary and secondary economic impacts and short-term and long-term economic considerations. This workgroup will also work with the PM Team to note potential mechanisms and considerations that could economically incentivize or obstruct Demand Management participation in various parts of the state.*

This workgroup first met in August 2019, and initially focused on identifying the various possible economic impacts to communities associated with a potential Demand Management program. The group also considered the role that local governments may have in managing the impacts. The Workgroup further considered the benefits of developing parameters for participation in a potential program that would be designed to minimize adverse impacts and maximize benefits of any program. The group also expressed interest in better understanding the mechanisms for pricing of water.

Throughout the course of their discussions, workgroup members expressed concern about the rhetoric used when discussing Demand Management, including but not limited to, the reference to Demand Management as a burden. The group expressed a desire to shift towards viewing a potential Demand Management program as a tool with potential benefits. Like other Workgroups, the group noted that additional research would be helpful to better understand issues such as soil health, impacts of fallowing or deficit irrigation on high elevation agricultural operations, impacts to communities and different economic sectors, and impacts to wildfire risk. The group also identified social justice as a potential issue in a Demand Management program.

The group developed a summary of principles and issues that may be important to consider if establishing any potential Demand Management program. This summary was informed by two guiding principles: (1) do no harm; and 2) if a program is established, design a program that creates benefits. The group also developed a list of process considerations to keep in mind to further these principles. The group's summary as well as reports from meetings are attached as Attachment D.

## C. Education and Outreach

The Education and Outreach Workgroup's charge per the 2019 Work Plan was as follows:

*Develop public outreach strategies and materials regarding the topic of Demand Management within Colorado. In addition, this workgroup will coordinate with the PM Team to develop*

*consistent and informative workshops and presentations that are intended to engage with water rights holders and other interested stakeholders on the topic of Demand Management.*

This workgroup held its first meeting in August 2019, and focused on how to identify potential target audiences for Demand Management communications. It also focused on the current perception of and communication challenges associated with the workgroup process and feasibility investigation in general. The Workgroup also considered the Demand Management process as a whole, including a potential Demand Management program to be set up in the future. In their initial meetings, the workgroup articulated the importance of messaging Demand Management as a potential resilience tool to address future uncertainty, and as an opportunity for creation of a “net positive” water management approach. The group agreed that education and outreach efforts should be inclusive of all voices and efforts should be made to reach all audiences. To successfully accomplish such outreach, the group also noted the importance of understanding the obstacles and challenges that persist.

The group further considered the varying mechanisms for reaching key stakeholders across the state, recognizing the need to cater education and outreach strategies to location and type of water user. Additionally, this workgroup discussed the importance of distinguishing between outreach needs through the initial stages of the feasibility investigation and outreach needs that may arise if and when a program is set up.

The workgroup developed a document identifying the key education and outreach considerations associated with a potential Demand Management program. This document and the group’s reports are attached as Attachment E.

#### **D. Environmental Considerations**

The Environmental Considerations Workgroup’s charge per the 2019 Work Plan was as follows:

*Research, test (as needed), and identify potential environmental impacts that may need to be considered in any Demand Management program within Colorado. Tasks for this workgroup will include, but may not be limited to, consideration of existing environmental rules and regulations, and identification of short-term and long-term environmental considerations. This workgroup will also work with the PM Team to note potential environmental mechanisms and considerations that could incentivize or obstruct Demand Management participation in various parts of the state.*

The Environmental Considerations Workgroup first met in August 2019. The group recognized that the primary purpose of any potential Demand Management program would be to help avoid the need for curtailment in the state. However, in accomplishing this goal, the Workgroup emphasized that a program has potential to create either environmental benefits or impacts, depending on how the program is structured and how projects are selected and implemented. To help inform these considerations, the group further discussed potential tools for identifying and

measuring possible environmental impacts of a Demand Management program. The workgroup also evaluated existing information related to conserved consumptive use programs but found that few of these studies included environmental assessments or had sufficient information in order to do so. The group also identified environmental rules and regulations that may need to be considered in a potential Demand Management program, including the Endangered Species Act, Migratory Bird Treaty Act, Clean Water Act, and others.

The group focused on considerations to help identify Demand Management projects that could provide environmental benefits. The group developed a document summarizing key elements to consider in setting up a potential Demand Management program, including the type of information needed to analyze environmental benefits or impacts, important resource considerations, program-wide issues, and a list of potential tools for these assessments. Additionally, the group considered hypothetical Demand Management projects in an effort to consider specific benefits, impacts, and other considerations associated with particular project elements. These documents, as well as the group's reports, are attached as Attachment F.

#### E. Funding

The Funding Workgroup's charge per the 2019 Work Plan was as follows:

*Research, test (as needed), and identify potential funding sources for costs associated with implementation of a Demand Management program, including but not limited to, costs related to implementation and administration of such program within Colorado.*

The Funding Workgroup held its first meeting in August 2019, and largely focused on the question of the amount of money needed for any potential Demand Management program, and potential sources of those funds. Because the funding question is tied to the type of program and how it functions, the Workgroup also considered how a potential program may be administered, and some broader questions about how a program may be designed. These questions begged other questions, such as the value of water and the timeframe over which funding would need to be developed. The group quickly identified that it would be helpful to work within certain parameters to frame the discussion and developed conceptual scenarios to assist in considering various funding issues and options. The key drivers they identified in considering potential scenarios included: volume of water needed, cost of a potential program (cost per acre-foot), percentage of water savings expected from a potential Demand Management program, timeframe of the potential program, and reservoir storage options.

The group's following meetings focused on analyzing potential outcomes relating to these key uncertainties, and identifying potential funding sources based on what a potential program would look like under various circumstances. The group's final meeting took place in the midst of the COVID-19 pandemic, which impacted the group's analysis of funding options available, as reflected in their work product. A visual representation of the key uncertainties the Workgroup

considered as drivers for potential funding sources, and the group's reports are attached as Attachment F.

## F. Law and Policy

The Law and Policy Workgroup's charge per the 2019 Work Plan was as follows:

*Review and analyze laws, rules and regulations and relevant policy considerations to inform the range of state and federal legal and policy frameworks to follow for Demand Management implementation within Colorado. This workgroup will also coordinate with the PM Team: (1) to help inform the legal and policy questions raised by other workgroups as they investigate specific elements of Demand Management feasibility within Colorado; and (2) to assist in developing reporting and educational materials.*

The Law and Policy Workgroup held their first meeting in December 2019. The group waited to hold their initial meeting until other workgroups had time to meet and identify key topics for the Law & Policy Workgroup to consider. Their first meeting focused on developing a list of key legal and policy issues associated with a potential Demand Management program. The initial list included: legal definitions of critical terms, purpose and goal, water management and administration, governance, funding, equity/neutrality, hybrid considerations, and tribal considerations. As the group began to analyze these points, the group acknowledged that the DMSA, as well as CWCB Board's November 2018 Support and Policy Statement and further positions adopted by the Board, provide legal parameters that guide and constrain how a potential program may operate.

Based on this initial list of threshold issues, the group analyzed various legal and policy issues associated with a potential Demand Management program and ultimately developed the following documents:

- Legal disclaimer
- Policy framework, which identifies the key elements of the DMSA and CWCB's policies relating to Demand Management
- Beneficial use analysis, which analyzes whether actions taken under a potential Demand Management program can be considered a beneficial use pursuant to Colorado law
- Compact compliance analysis, which considers potential definitions of compact compliance within the context of a potential Demand Management program
- Conserved consumptive use analysis, which analyzes potential definitions of conserved consumptive use as contemplated in the context of a potential Demand Management program
- Eligibility analysis relating to participation in a potential Demand Management program
- Temporary definition analysis, identifying potential definitions of "temporary" for purposes of participation in a potential Demand Management program

- Project Review and Approval Process analysis

These documents and the group's reports are attached as Attachment H.

#### G. Monitoring and Verification

The Monitoring and Verification Workgroup's charge per the 2019 Work Plan was as follows:

*Research, develop, and test (as needed) various methods available or needed to measure and verify the volume of conserved consumptive use under any Demand Management program. This workgroup will also work with the PM Team to further examine factors related to lead time, costs and staff resources required to model, pilot or otherwise meaningfully investigate various monitoring and verification considerations for implementing Demand Management within Colorado.*

The Monitoring and Verification Workgroup held their first meeting in September 2019, with the recognition that much work has been done already on monitoring and verification issues associated with conserved consumptive use projects. Therefore, the group primarily focused on hearing presentations on and discussing previous efforts, such as the System Conservation Pilot Program and Colorado Water Court change case best practices.<sup>14</sup> The group also discussed innovative methods to estimate agricultural consumptive use such as remote sensing and streamlined State tools. The group acknowledged that there are additional challenges associated with monitoring and verifying conserved consumptive use for trans-basin diversions. A common theme throughout this group's discussion was the challenge of balancing the need for flexibility, low cost, and ease of administration of a potential program with the need for adequate scrutiny to ensure projects meet the necessary criteria of the program and to avoid injury to other water users.

Ultimately, the group focused on the key distinctions among monitoring and verification for various types of projects. The group developed documents outlining the monitoring and verification considerations and potential approaches for various project types, focusing primarily on trans-mountain diversion and agricultural projects. The group also analyzed monitoring and verification issues relating to hypothetical projects. These documents, as well as the group's reports, are attached as Attachment I.

#### H. Water Rights Administration and Accounting

The Administration and Accounting Workgroup's charge was as follows:

*Research and test (as needed) various methods or practices available or required to (1) assist in administering water rights as a result of Demand Management activities within Colorado; and*

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<sup>14</sup> For more information on the System Conservation Pilot Program: <http://www.ucrcommission.com/system-conservation-pilot-program/>

*(2) account for volume of conserved water as it is transported and stored at one of the Colorado River Storage Project's Initial Units. Tasks for this workgroup will include, but not be limited to, examination of unique administration practices and identifying actions that may incentivize or obstruct Demand Management participation in each water division. This workgroup will also work with the PM Team to further examine factors related to lead time, costs, and staff resources required to model, pilot, or otherwise meaningfully investigate water rights administration and accounting considerations for implementing Demand Management within Colorado.*

The Administration and Accounting Workgroup first met in November 2019, after giving most of the other workgroups an opportunity to initiate discussions and identify issues they would like the Administration and Accounting workgroup to consider. The Workgroup noted the significant existing knowledge base relating to administration and accounting of conservation programs, and early efforts focused primarily on familiarizing themselves with the extent and status of that existing knowledge base. Specifically, the group heard presentations on the Rio Grande Water Conservation District's conservation efforts; the System Conservation Pilot Program; and CWCB's Agricultural Water Transfer Methods (ATM) program. The group discussed similarities and differences between these and other programs and noted the administration considerations that may also arise with a potential Demand Management program.

In their next two meetings, the Administration and Accounting Workgroup focused on developing and analyzing hypothetical Demand Management projects with the intention of working through how administration might be able to work on the ground. The hypotheticals included combinations of factors including, but not limited to, the type of water right owner, type of use, and priority date of the water right. The group provided feedback on the key issues to be considered relating to administration issues, including the process for changing the use of a water right from its current use to demand management; the question of whether demand management may be considered a beneficial use of water; analysis of key points in the Board's Support and Policy Statement; the question of who has the authority to secure water for a beneficial use; storage and administration and accounting of such storage in the Aspinall Unit; and issues and mechanisms for future analysis. The report detailing these issues as well as the Workgroup's reports, are attached as Attachment J.

## **I. Interbasin Compact Committee – Equity**

In addition to the eight workgroups, the IBCC essentially served as an additional workgroup focused on the issue of equity. The concept of equity originated from the Board's November 2018 Support and Policy Statement and 2019 Work Plan, discussed above. Discussions about equity focused primarily on avoiding adverse impacts to any one sector, region, or type of water user across the state. However, the definite parameters of this nebulous concept and mechanisms for ensuring any Demand Management program is equitable have proven difficult to define.

Though the IBCC was specifically charged with considering this issue, the other workgroups also had several discussions about equity. In an effort to facilitate these cross-cutting discussions,



a joint IBCC/Demand Management Workgroup meeting was held in Denver March 4-5, 2020. The IBCC had several other discussions about equity, as well. However, IBCC members recognized that this important discussion should continue throughout the course of the feasibility investigation. A summary of IBCC's discussions relating to equity is attached as Attachment K.

#### J. Ongoing Discussions with Tribes

CWCB staff have met several times with the Tribes to discuss the willingness and interest in supporting the feasibility of the development of a Demand Management program in Colorado. These discussions have led to, as have most discussions with the workgroups, general questions about how the program would work. Other topics of importance are similar to those of the workgroups, including what parameters for participation in a potential program would be, funding source and amount of funding available, eligibility to participate, necessary legislative changes to move water as part of a potential Demand Management program, and how defining factors for qualified participants may be designed. Similar to the Monitoring and Verification and Law and Policy workgroups, the Tribes are interested in identifying the legal impediments to participation, storage water as a consumptive use, and what constitutes conserved consumptive use.

The Tribes are interested in the possibility of participating in the Demand Management workshop to take place with the Board.

#### IV. Regional Workshops

The Project Management Team facilitated two regional workshops. Although the group hoped to hold an additional workshop before June 2020, COVID-19 public health restrictions made it impossible to hold an in-person meeting. Summaries of each regional workshop are below.

##### A. Regional Workshop I: August 22, 2019, Steamboat Springs

The first regional workshop was held at the Colorado Water Congress summer conference in Steamboat Springs on August 22, 2019. This took place before several workgroups had met for the first time. As such, it served as a kickoff to the process and was largely designed as a listening session. After hearing a brief presentation from State staff on the concept of Demand Management, participants provided feedback on the key issues or questions they identified relating to a potential demand management program. The key issues identified included:

- Community impacts: how can we create a “net positive” program if one is developed?
- Monitoring and verification: how will we adequately track the water conserved as part of a program?
- Proportionality and equity: how are these concepts defined, and how do we ensure these goals are met within a fully voluntary program?
- Scale and parameters of a potential program: how much water would Colorado contribute to a potential program?



- Environmental benefits: How can we track and maximize potential environmental benefits of a program?

## B. Regional Workshop II: January 29, 2020, Westminster

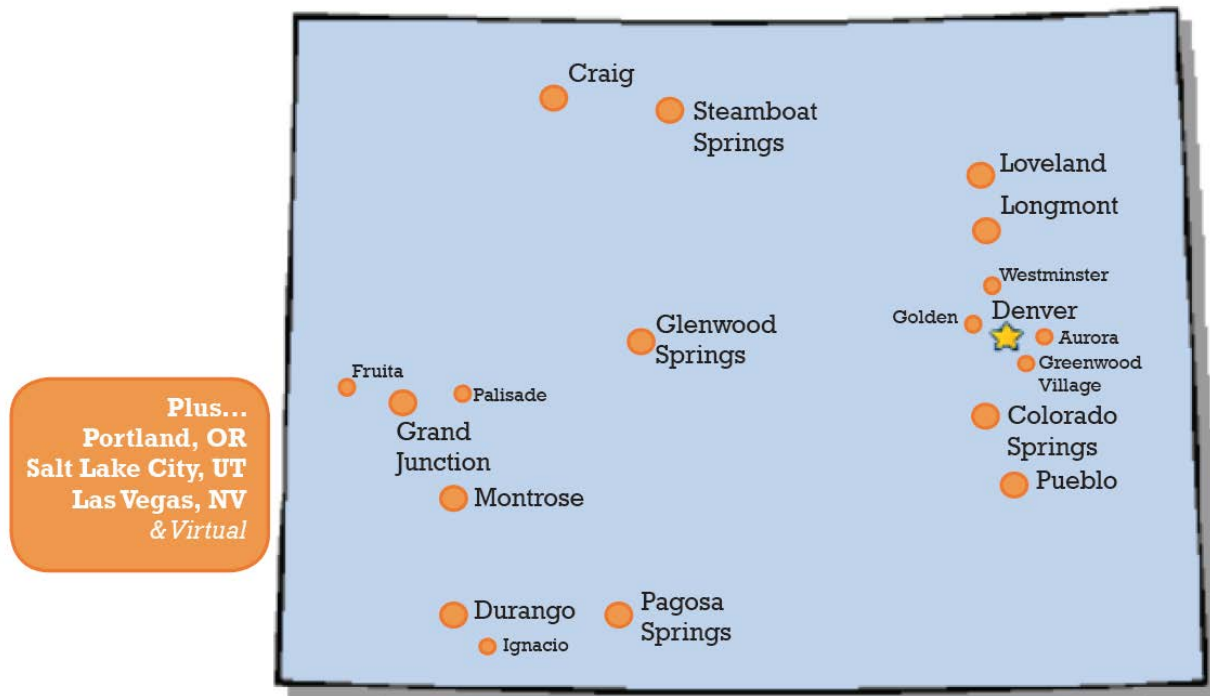
The second regional workshop was held at the Colorado Water Congress winter conference in Westminster on January 29, 2020. The Project Management Team provided an update on the feasibility investigation to date and key themes identified by workgroups, then facilitated a group exercise in which attendees considered the following questions and assigned spokespeople to report the groups' responses. Each question and key discussion notes are provided below.

- What is the best way to reach people who may not have heard about Demand Management and/or are not otherwise involved in the discussion?
  - *It is important to reach people who own the water rights.*
  - *This is not an issue unique to Demand Management. Identify the target audience, and mechanisms for reaching them.*
- What are the biggest misunderstandings around Demand Management and how may we address them?
  - *The largest misconception is that it is a foregone conclusion, and that it would be forced.*
- What are potential funding mechanisms?
  - *Fees to water users; withdrawal fee to all users; hydropower; federal funding.*
  - *Must consider education and outreach needs associated with funding issues.*
- What is the root of the perception that Demand Management is a burden?
  - *Broad concern that the impact of such a program would disproportionately impact certain types of water users.*
  - *The underlying issue is in framing of the issue.*
- How would you define temporary in the context of Demand Management?
  - *Begin by considering existing definitions of temporary in place for other programs.*
  - *"Not permanent" – even if a program itself is permanent, participation is not.*
- How can we best achieve a net positive impact from Demand Management for communities and the State?
  - *Sharing of the pain, so that no one group feels like it is the "loser."*
  - *Agricultural producers could receive a reliable stream of income, and a potential Demand Management program could benefit the entire economy.*
  - *Marrying water and energy benefits could be helpful.*
  - *Compensation is a benefit to participants, and a better alternative to curtailment.*
- What are the data gaps associated with Demand Management?
  - *The issue of how good is "good enough" for Colorado, and for the program is an open question.*
  - *There is a need for granularity, and consideration of soil and crop types, and on-the-ground considerations.*
  - *Open questions remain relating to shepherding issues.*

- What are the key threshold issues associated with Demand Management?
  - *Whether the existing statutory and legal structure is sufficient, and can accommodate a Demand Management program.*
- What are potential mechanisms for measuring potential environmental benefits?
  - *The most obvious benefit is that there will be more water in streams that otherwise would not have been there. However, timing and location are important considerations. Note that environmental benefits may be temporary since participation would be temporary.*
  - *Reliance on work done by other entities in considering environmental benefits.*

## V. Education and Outreach

Neither the workgroup meetings, nor the regional workshops, supplanted the need for continued education and outreach. State staff conducted extensive education and outreach throughout the course of the 2019 Work Plan. This included both proactively engaging various stakeholder groups and others, while also being available to discuss Demand Management and providing information in response to all requests. Staff provided updates to various groups at least twice every month of the feasibility investigation, and sometimes up to five or more presentations were given in a month. They were spread across the State. The discussions focused on providing background relating to the DCP and Demand Management, status updates on the feasibility investigation, and providing adequate time for open discussion and questions and answers. Continued education and outreach will be a key element of the feasibility investigation. Staff are committed to continuing to conduct education and outreach on a remote basis as needed, given the current COVID-19 pandemic. The following map shows where staff presented to stakeholder groups and interested members of the public. In many cases, staff presented on multiple occasions in the same location.



In addition to in-person outreach, CWCB has increased its digital coverage of agency activities, including Demand Management. Throughout the feasibility investigation, CWCB has announced workgroup and workshop events via the agency’s website calendar and bimonthly newsletter; provided live coverage of workshops through social media; and detailed updates along the way through multiple press releases and newsletter blurbs.

CWCB staff has also been committed to providing ample opportunity for public engagement and comment on the process. An e-mail address was established specifically to receive public comment on the feasibility investigation ([demandmanagement@state.co.us](mailto:demandmanagement@state.co.us)). Members of the public were also invited to attend all workgroup meetings and provide comment. Below is a summary of key public comments received throughout the process.

- Concern that given hydrologic conditions, there should be more urgency in setting up a demand management program;
- Questions relating to the concept of voluntariness: though voluntary at the participant level, concerns remain as to tenant issues, community impacts, and voluntariness of municipal participation;
- Proportionality and equity need to be further defined and assured in any program to be set up;
- Concerns about setting up a market for water, and creation of incentives for increased participation in a perceived water market; and
- Desire to ensure any potential program adequately considers and accounts for potential injury to other water users

## VI. Literature Review

In this initial stage of Colorado's feasibility investigation, the Board also directed a Request for Proposals be issued for a literature review and identification of data gaps. Consultants were selected and contracted in April 2019, and the following elements were awarded as follows:

- WestWater Research: Agricultural Impacts; Funding; Economic Impacts and Local Governments
- SGM: Environmental Considerations; Monitoring & Verification; Facilitation; Project Management
- CDR: Education & Outreach

The consultants have reviewed the reports and feedback from the workgroups and have also attended workgroup meetings to get a sense of the priorities and threshold issues identified. The consultants hold weekly check-ins and are in close communication with members of the Project Management Team and will continue working to produce a report on their literature review and identification of data gaps for the Board. The funding appropriated for this effort has been extended through June 2021. Therefore, the consultants have additional time to analyze the work to date by the workgroups and consider Board input in identifying key issues for consideration.

## VII. Future Planning

This Report is intended to provide the Board with a summary of the work performed to date pursuant to the 2019 Work Plan adopted by the Board in March 2019. It is not designed to provide recommendations as to next steps, or to provide direction as to the ultimate question of feasibility. However, staff anticipates continuation of work with consultants on the literature review, which will assist in further analyzing the various issues identified by the workgroups. Going forward, the recent cut in funds allocated to Demand Management due to COVID-19 budget impacts may reduce options available for next steps in the feasibility investigation. Of the \$1.7 million originally allocated for the initial stage of the feasibility investigation, \$866,000 was returned to the General Fund in order to backfill the revenue shortfall for Fiscal Year 2019-20. While we expect work to continue, funding availability will be a consideration going forward.

Staff looks forward to discussing this report and the work of the workgroups in greater detail with the Board at the July meeting and subsequent Demand Management workshop.

# Attachment A

CWCB Board's November 2018 Support  
and Policy Statement



**COLORADO**

**Colorado Water  
Conservation Board**

Department of Natural Resources

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John Hickenlooper, Governor

Bob Randall, DNR Executive Director

Rebecca Mitchell, CWCB Director

November 15, 2018

## **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 a decline in storage levels 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. 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 curtailment of the exercise of water rights to maintain compliance with the Upper Colorado River Basin and Colorado River Compacts. Both risks 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 is comprised of several agreements, involving the Secretary of Interior, the Upper Basin states, the Upper Colorado River Commission, and the Lower Basin states. The DCP as a whole establishes the provisions and framework within which the seven Basin States may act in conjunction with the Secretary of the Interior to mitigate risks of extended drought, while protecting their respective rights and interests 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 vetting the DCP agreements with the public. 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 Units<sup>1</sup> 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. The Demand Management Storage Agreement 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 only 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. Before any demand management program could be implemented in the Upper Basin, each state and the Upper Colorado River Commission must evaluate the feasibility of demand management concepts, reach agreement on a number of key points, and provide formal approvals.

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:

- i. 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));
- ii. gather data and information looking toward greater utilization of the waters of the state (C.R.S. 37-60-106(1)(d));

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<sup>1</sup> 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.





- iii. 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));
- iv. 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));
- v. 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
- vi. 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)).

In fulfilling its statutory obligations, the Board 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, in order to ensure 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 and robust discussions about the concept of demand management, and has developed 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 collective efforts of the seven Colorado River Basin States and Federal Government 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 its 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, and for obtaining appropriate Congressional authorization of the DCP.





## 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 Upper Basin Demand Management Storage Agreement (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 set forth in Chapter 9.1 and Principle 4 of the Conceptual Framework in Chapter 8.
- (5) Investigate voluntary, temporary, and compensated reductions in consumptive use of waters that otherwise would deplete the flow of the Upper Colorado River System for the specific purpose of helping assure compact compliance. Consistent with the Upper Basin Demand Management Storage agreement, the Board may also join the UCRC and other Upper Basin States in any evaluation of importing of waters from outside the natural Colorado River watershed to augment the Upper Colorado River System for compact compliance purposes.



- (6) Prioritize avoidance of disproportionate negative economic or environmental impacts to any single subbasin or region within Colorado while protecting the legal rights of water rights holders. The Board 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**

The Board understands that:

- 1) Investigation and development of an Upper Basin Demand Management Program will require 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 when formal action may be needed to accomplish compliance with the Colorado River Compact,

If the quantity of conserved water made available through the demand management strategies described in this policy is not sufficient to ensure Colorado's 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 and extensive public 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 Resources' lawful administration of water rights in order to meet Colorado's compact obligations.



# Attachment B

## CWCB Board's 2019 Demand Management Work Plan and Update



**COLORADO**

**Colorado Water  
Conservation Board**

Department of Natural Resources

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Jared Polis, Governor

Dan Gibbs, DNR Executive Director

Rebecca Mitchell, CWCB Director

**TO:** Colorado Water Conservation Board Members

**FROM:** Brent Newman, Interstate, Federal, & Water Information Section  
Karen Kwon, Colorado Office of the Attorney General

**DATE:** March 21, 2019

**AGENDA ITEM:** **28. Colorado River Drought Contingency Planning and Demand Management**

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## Background

Since January 2018, CWCB staff and members of the Attorney General's Office have been conducting a series of outreach presentations across Colorado regarding drought contingency planning efforts underway in the Colorado River Basin. Consistent with direction from the Board, these efforts have served dual purposes: to educate and inform interested water rights holders and other stakeholders about the status of ongoing efforts to develop drought contingency plans in the Upper and Lower Colorado River Basins, and to solicit feedback from Colorado water users regarding the concept of demand management as a potential tool for avoiding compact administration in the event of continued drought or worsening hydrology.

At the September 2018 Board meeting, staff provided an update on ongoing outreach efforts, the relationship between ongoing interstate efforts to implement DCPs in the Upper and Lower Basin, and the evaluation of demand management as a tool within Colorado. The Board heard comment from a variety of water managers, stakeholders, and members of the public regarding opinions, challenges and opportunities presented by potential implementation of demand management.

At the October 4, 2018 Special Meeting, the Board directed staff to continue this outreach, including providing information about the recently released Drought Contingency Plan (DCP) documents. The Board also directed staff to prepare a "draft policy statement" for Board review at the November meeting, to guide the assessment, feasibility analysis, and potential implementation of a demand management program within Colorado.

At the November 15, 2018 Board meeting, the Board unanimously approved "Support and Policy Statements Regarding Colorado River Drought Contingency Plans, Demand Management, and Compact Administration," which set out the Board's policy to:

"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.”

This policy statement also laid out a strategy for formulating the state’s demand management position, identifying several elements for investigation and vetting through a thorough public review process. The statement also provides initial sideboards for such an investigation, informed by Board discussion and water user input to that point.

Since November, staff has been working with the Attorney General’s Office on a draft scope of work for demand management feasibility investigation. At the January Board meeting, staff presented a draft outline with initial thoughts for a 2019 Work Plan. As part of this agenda item, staff will report out on outreach efforts since January, provide an update on DCP progress, and walk the Board through the elements of the draft scope of work. The scope of work will identify a more formal outreach and public input procedure, working groups to investigate individual elements of demand management feasibility, and objectives to meet in calendar year 2019.

This work will focus on demand management considerations within Colorado, and will continue on a parallel track with interstate efforts led by the Upper Colorado River Commission. CWCB staff will also participate in those efforts, in close coordination with Colorado’s Commissioner and staff from neighboring Upper Basin states.

#### **Staff recommendation**

Staff recommends that the Board approve the 2019 Work Plan and direct staff to begin the action items identified immediately.



## **DRAFT**

# **2019 WORK PLAN FOR INTRASTATE DEMAND MANAGEMENT FEASIBILITY INVESTIGATIONS**

## **I. INTRODUCTION**

It has never been necessary to administer Colorado's Colorado River Basin for compact compliance. Hydrology in the 21<sup>st</sup> century, however, has revealed it prudent to prepare for contingencies that consider the prospect of protecting target elevations at Lake Powell as well as the increased risk of compact administration going forward. As part of this effort, the State of Colorado has demonstrated a coordinated approach among Colorado's Commissioner to the Upper Colorado River Commission, the Colorado Water Conservation Board, and the Attorney General's Office to support and endorse the documents and agreements that comprise the Colorado River Drought Contingency Plans for both the Upper and Lower Colorado River Basins. Such support and coordination have come about only after careful consideration, collaboration and consultation with water users and other interested stakeholders throughout the state.

Within the Drought Contingency Plan documents is the authorization to store, free of charge, in the Initial Units of the Colorado River Storage Project, water that is conserved under a demand management program if approved by the Upper Colorado River Commission and each of the Upper Division States (Colorado, New Mexico, Utah, and Wyoming). The term "demand management" loosely refers to the intentional conservation of water for the purpose of helping assure compliance with the Colorado River Compact, and in so doing, avoiding the need to implement mandatory water administration strategies to fulfill the Upper Basin's compact obligations. The storage authorization, as set forth in the Drought Contingency Plan documents, does not require or mandate development or implementation of any demand management program. It merely secures the opportunity for the Upper Division States to store any water conserved under such a program should the Upper Colorado River Commission and Upper Division States ever determine it is advisable and feasible to promote and protect their interests in the Colorado River water supply.

Prior to declaring its support for the package of Drought Contingency Plan documents, staff from the CWCB and Attorney General's Office conducted extensive outreach and consultation with water users and other interested stakeholders to build a knowledge base regarding the current conditions in the Colorado River Basin and the inner workings of the law of the Colorado River. Additionally, they sought input and feedback on issues and concerns related to the concept of demand management that are important and integral to any considerations going forward. The CWCB subsequently issued the "Support and Policy Statements Regarding

Colorado River Drought Contingency Plans, Demand Management, and Compact Administration” (Support and Policy Statement) that outlines, among other things, the minimum criteria through which the state will investigate the feasibility of any demand management activities in Colorado.

The following 2019 Work Plan is a follow up to the CWCB’s Support and Policy Statement. It outlines, in general terms, the next steps that the CWCB staff will take, in conjunction with the Defense of the Colorado River Subunit at the Attorney General’s Office (funded by the CWCB), and with the involvement of other relevant state agencies and interested stakeholders to identify and evaluate whether and how demand management measures may be taken to help assure continued compact compliance, and thereby promote greater certainty and security in the Colorado River water supply for constituents throughout the state.

## II. PROPOSED TENTATIVE 2019 WORK PLAN

- a. **Purpose** - The purpose of this work plan is to set forth a process for helping develop Colorado’s position regarding whether and how any Colorado River Demand Management Program could or should operate within Colorado. Guided by the CWCB Support and Policy Statement, specific focus will be on measures that can be taken within Colorado in the 2019 calendar year to effectively and efficiently utilize staff, resources and meaningful water user and other stakeholder engagement to flesh out various elements of interest and concern related to demand management activities within Colorado. It is also intended to help inform any investigative processes facilitated by the Upper Colorado River Commission.
- b. **Tasks**
  - i. **Initial Issue Identification** – The concept of demand management may be simple to describe, but assessing its utility and how it could be implemented in a manner that respects considerations important to Colorado and remains consistent with state and federal laws is no small task. There are a number of issues that the Upper Colorado River Basin will need to assess as a whole in contemplating whether to develop a demand management program, and others that may be specific to Colorado. This task centers on identifying and prioritizing the primary legal, technical and policy issues related to demand management that Colorado may deem important to evaluate as part of any feasibility investigation. This effort may be informed by collaborating and coordinating with Colorado’s Commissioner and counterparts in other Upper Division States, consulting and discussing topics with water users and other interested stakeholders, and reaching out to



experts in specific fields who may have a familiarity and perspective on Colorado River matters that can add value and substance to the overall feasibility investigation.

- ii. **Establish Workgroups** – This task contemplates creating specific workgroups to effectively evaluate various issues related to the demand management feasibility investigation in Colorado. Each workgroup will be guided by the criteria set forth in the Support and Policy Statement in formulating a meaningful scope of work, budget and timeline for Fiscal Year 2019/2020. They will be facilitated by staff at the CWCB or Defense of the Colorado River Subunit at the Attorney General’s Office to coordinate the flow of information between workgroups and to the Project Management Team (PM Team) as appropriate. Participants from other state agencies, water user or stakeholder groups, and entities with relevant expertise may be invited to participate as needed to help develop and assess the feasibility investigations, keeping in mind the need to maintain an effective and efficient process. Probable workgroups at this time include:

*\*Law and Policy* – Review and analyze laws, rules and regulations and relevant policy considerations to inform the range of state and federal legal and policy frameworks to follow for demand management implementation within Colorado. This workgroup will also coordinate with the PM Team: (1) to help inform the legal and policy questions raised by other workgroups as they investigate specific elements of demand management feasibility within Colorado; and (2) to assist in developing reporting and educational materials.

*\*Monitoring and Verification* – Research, develop, and test (as needed) various methods available or needed to measure and verify the volume of conserved consumptive use under any demand management program. This workgroup will also work with the PM Team to further examine factors related to lead time, costs and staff resources required to model, pilot or otherwise meaningfully investigate various monitoring and verification considerations for implementing demand management within Colorado.

*\*Water Rights Administration and Accounting* – Research and test (as needed) various methods or practices available or required to (1) assist in administering water rights as a result of demand management activities within Colorado; and (2) account for volume



of conserved water as it is transported and stored at one of the Colorado River Storage Project's Initial Units. Tasks for this workgroup will include, but not be limited to, examination of unique administration practices and identifying actions that may incentivize or obstruct demand management participation in each water division. This workgroup will also work with the PM Team to further examine factors related to lead time, costs and staff resources required to model, pilot or otherwise meaningfully investigate water rights administration and accounting considerations for implementing demand management within Colorado

*\*Environmental Considerations* – Research, test (as needed), and identify potential environmental impacts that may need to be considered in any demand management program within Colorado. Tasks for this workgroup will include, but may not be limited to, consideration of existing environmental rules and regulations, and identification of short-term and long-term environmental considerations. This workgroup will also work with the PM Team to note potential environmental mechanisms and considerations that could incentivize or obstruct demand management participation in various parts of the state.

*\*Economic Considerations* – Research, test (as needed), and identify potential economic impacts that may need to be considered in any demand management program within Colorado. Tasks for this workgroup will include, but may not be limited to, consideration of both primary and secondary economic impacts and short-term and long-term economic considerations. This workgroup will also work with the PM Team to note potential mechanisms and considerations that could economically incentivize or obstruct demand management participation in various parts of the state.

*\*Funding* – Research, test (as needed), and identify potential funding sources for costs associated with implementation of a demand management program, including but not limited to, costs related to implementation and administration of such program within Colorado.

*\*Education/Outreach* – Develop public outreach strategies and materials regarding the topic of demand management within Colorado. In addition, this workgroup will coordinate with the PM Team to develop consistent and informative workshops and

presentations that are intended to engage with water rights holders and other interested stakeholders on the topic of demand management.

- iii. **Conduct Workshops** – In addition to utilizing workgroups, the work plan contemplates CWCB staff, with the assistance of the Defense of the Colorado River Subunit at the Attorney General’s Office, regularly developing and conducting public workshops to maintain open lines of communication with the public at large, provide updates and information, and receive feedback and input regarding the status of demand management feasibility investigations involving the state. Such workshops would not take the place of additional outreach efforts deemed helpful to the collaborative process. Instead, they serve to set a meaningful benchmark for which anyone interested can learn and better understand the content and status of feasibility investigations.
- iv. **Evaluate and Report** – This task contemplates the PM Team preparing regular reports to the CWCB on the progress and results of investigations conducted in Calendar Year 2019. These reports may include, but are not to be limited to, noting key findings or gaps in information identified as a result of investigations, and identifying options and issues for the CWCB to consider in formulating the state’s position on demand management feasibility. Also included would be a final status report on the work conducted pursuant to this work plan after Calendar Year 2019 has concluded.
- v. **Project Management** – This task contemplates establishing a PM Team comprised of representatives within the Department of Natural Resources and the Attorney General’s Office to facilitate the work to be conducted consistent with this work plan. To this end, the PM team will coordinate the workgroups and facilitate the distribution of information between workgroups as needed, manage funding for the feasibility investigations, prepare status reports and recommendations for the CWCB, and coordinate with Colorado’s Commissioner and counterparts at the UCRC regarding demand management considerations throughout the Upper Basin.

**III. TENTATIVE TIMELINES – subject to change – TBD following clarification of status of DCP and Upper Basin Coordination.**

April 2019: First Quarterly Workshop (TBD)

May 2019: UCRC Listening Workshop-4 States effort - TENTATIVE

June 2019: Workgroup SOWs completed and Update to UCRC

July 2019: Second Quarterly Workshop held (TBD); Update to CWCB Board

September 2019: Third Quarterly Workshop held (TBD)

November 2019: Fourth Quarterly Workshop held (TBD); Update to CWCB Board and UCRC

December 2019: Workgroup Investigation Progress reports or deliverables submitted to PM Team

January/March 2020: Draft/Final Progress Reports of Workgroup Investigations submitted to CWCB Board of Directors

**IV. DELIVERABLES – TBD following clarification of status of DCP and Upper Basin Coordination.**

Each Workgroup is tasked with submitting to the PM Team:

(1) Quarterly budget/expense reports (July; September; November)

(2) Draft Status/Progress Report of Findings and Conclusions to the PM Team no later than December 15, 2019.

**V. ESTIMATED RESOURCES / COSTS for 2019 - TBD following clarification of status of DCP, Upper Basin Coordination, CWCB funding opportunities.**



# COLORADO

## Colorado Water Conservation Board

Department of Natural Resources  
1313 Sherman Street, Room 718  
Denver, CO 80203

June 10, 2019

### Demand Management 2019 Work Plan - Update #1

The Colorado Water Conservation Board (CWCB) Project Management Team plans to release periodic updates on progress and accomplishments relating to the 2019 Work Plan for Intrastate Demand Management Feasibility Investigations. This document will serve as the first of these updates.

**The Path Forward:** Director Mitchell released a statement on the future of the demand management feasibility investigation, providing highlights of the current and upcoming steps that CWCB staff will be taking to implement the 2019 Work Plan. It includes opportunities for engagement, outlines the processes in place to inform the Board of ongoing demand management work, and information about upcoming events. Director Mitchell's letter can be found on the new "Demand Management Feasibility" section on the front page of the [CWCB website](#) or by clicking [here](#).

**First Regional Workshop Scheduled:** The first regional workshop has been scheduled for Thursday, August 22<sup>nd</sup>. This workshop will be held in conjunction with the summer conference of Colorado Water Congress, at the Steamboat Grand Hotel in Steamboat Springs, Colorado. More information about CWC's Summer Conference can be found [here](#).

**Workgroups Update:** As outlined in the 2019 Work Plan, CWCB staff has reached out to subject matter experts on various elements that must be considered relating to any potential demand management program within Colorado, and invited them to serve on a Demand Management Feasibility Investigation Workgroup. The purpose of these workgroups is to help CWCB staff identify and frame the complex issues associated with demand management feasibility for public and Board consideration. A roster of workgroup membership is attached to this Update.

**Upcoming Events:** Colorado River Drought Contingency Planning and demand management feasibility investigation will be on the agenda at the following events:

- Colorado Water Congress' POND Committee: Rockies v. Padres game June 13<sup>th</sup> in Denver. More information can be found [here](#).
- Upper Colorado River Commission Demand Management Stakeholder Workshop: Friday, June 21<sup>st</sup> in Salt Lake City, UT. Information, agenda, and registration information can be found [here](#).
- Four West Slope Basin Roundtables Joint Meeting: June 20 in Grand Junction. Registration [here](#).
- As always, keep an eye on basin roundtable agendas. Drought Contingency Planning and demand management feasibility are frequent topics. Roundtable schedules and agendas are available [here](#).

For questions, comments, or more information, visit the [CWCB website](#) or email [demandmanagement@state.co.us](mailto:demandmanagement@state.co.us).



DM 2019 Work Plan  
Workgroups Roster  
June 10, 2019

**Law and Policy**

Facilitator: Karen Kwon  
Staff Support: Brent  
Newman/Amy Ostdiek  
Andy Mueller  
Jim Lochhead  
Bennett Raley  
John McClow  
Taylor Hawes  
Anne Castle  
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**Monitoring and Verification**

Facilitator: Michelle Garrison  
Support: Brian Macpherson  
Kelley Thompson  
John Currier  
Kevin Lusk  
Tom Simpson  
Luke Gingrich  
Laura Berlander  
Perry Cabot  
Cary Denison  
Gerry Knapp  
Robert Sakata  
Carrie Padgett

**Water Rights Administration  
and Accounting**

Facilitator: Lain Leoniak  
Support: Mike Sullivan/Kevin  
Rein/Ryan Gilliom  
Frank Kugel  
Rick Marsicek  
Drew Peterneil  
Kyle Whitaker  
Dick Wolfe  
Steve Witte  
Cleave Simpson

**Environmental**

**Considerations**

Facilitator: Lauren Ris/Linda  
Bassi  
Support: Brandy Logan/Jojo  
La  
Kathy Kitzman  
Maria Pastore  
Melinda Kassen  
Abby Burk  
Matt Rice  
David Graf  
Al Pfister  
Torie Jarvis  
Mely Whiting  
Karen Wogsland

**Economic Considerations  
and Local Government**

Facilitator: Amy Moyer  
Support: Amy Ostdiek  
Chris Treese  
Alex Davis  
Seth Clayton  
Sean Cronin  
Kathy Chandler-Henry  
Barbara Biggs  
Steven Ruddell  
Patti Wells  
Liesel Hans  
Karn Stiegelmeier  
Kelly Romero-Heaney

**Funding**

Facilitator: Anna Mauss  
Support: Russ Sands  
Ted Kowalski  
Dave Bennett  
Pat Wells  
Aaron Citron  
Dick Brown  
Keith McLaughlin  
Alan Matlosz

**Education and Outreach**

Facilitator: Brent Newman  
Support: Megan Holcomb  
Jim Pokrandt  
Todd Hartman  
Chris Woodka  
Andy Schultheiss  
Hannah Holm  
Doug Kemper  
Laura Spann  
Lisa Darling

**Agricultural Impacts**

Facilitator: Alex Funk  
Support: Andrew Rickert/Erik  
Skeie  
Dave Kanzer  
Alan Ward  
Eric Wilkinson  
John Stulp  
Cindy Lair  
Mark Harris  
Aaron Derwingson  
Paul Bruchez  
Travis Smith  
Allen Distel  
Ken Curtis  
Tom Gray

# Attachment C

## Agricultural Impacts Workgroup Documents:

1. Summary
2. Pilot Concept
3. Reports

## Demand Management: Agriculture Impacts Workgroup Final Report to the Colorado Water Conservation Board

### Background and Agricultural Impacts Workgroup Charge

At the March 2019 Colorado Water Conservation Board (“CWCB”) Meeting, the CWCB Board directed CWCB staff to establish an agricultural impacts workgroup in addition to those workgroups identified in the FY 2019 Work Plan (“Work Plan”). A formal charge was never developed for the agricultural impacts workgroup, but it focused broadly on evaluating possible agricultural impacts and issues associated with a potential demand management program.

Agricultural impacts workgroup CWCB facilitation staff includes Alexander Funk, Erik Skeie, and Andrew Rickert. Agricultural workgroup membership includes Cindy Lair, Travis Smith, Ken Curtis, Aaron Derwingson, Dave Kanzer, Alan Ward, Eric Wilkinson, John Stulp, Paul Bruchez, Mark Harris, Tom Gray, and Allen Distel.

Altogether, the agricultural impacts workgroup convened five times during the FY 2019 Work Plan period. CWCB held three in-person meetings (e.g., Delta, Glenwood Springs, and Denver), and two meetings were held virtually in response to state guidelines regarding COVID-19.

### Agricultural Impacts Workgroup Threshold Issues

The Agricultural Impacts workgroup (“Workgroup”) identified several threshold issues for CWCB Board consideration concerning the potential development of a voluntary, temporary, and compensated demand management program (“DMP”) in Colorado. These key threshold issues are as follows:

- **Tension Between Equity & Voluntary** - A recurring theme throughout the workgroup discussions is that any potential DMP must be equitable, while also being voluntary and universally accessible. From the perspective of the workgroup, equity means that a possible DMP implementation must not cause any disproportionate impacts to any single geographic region, river basin, economic sector, or water right holder. Also, equitable, means that there is proportional participation and access from all regions, sectors, river basins in the State that receive Colorado River water. In particular, the workgroup underscores that eastern slope/Front Range participation is critical for programmatic acceptance and participation.

At the same time, the workgroup noted the tension between equity and voluntary. For example, a requirement for achieving diverse DMP participation by basin or region could be contrary to the program's required voluntariness. Likewise, cropping patterns could limit enrollment or certain types of crops (i.e., perennial vs. annual). Research indicates that fallowing irrigated grass hay fields could have more significant, long-term agronomic impacts as compared with fallowing annual crops, posing a potential barrier to participation and opportunity.

Overall, such potential restrictions and limitations on participation while equitable, in terms of avoiding disproportionate impacts, generate questions on program accessibility and opportunity. Ultimately, the workgroup agreed that a potential DMP could not force participation of a particular basin or economic sector. It may be necessary to phase new basins or economic sectors into the program gradually and recognize that both market and social considerations will influence participation. If equity measured by any metric is to be achieved in a voluntary DMP, it may be necessary to incentivize participation and volunteerism through increased

compensation to potential program participants, thus increasing the overall cost of a potential DMP.

- **Secondary Economic Impacts** - Intentional agricultural water conservation that reduces agricultural output results in potential economic impacts, including both direct economic effects on the farmer or rancher (e.g., importing supplemental feed) and secondary, indirect potential regional economic impacts such as lower spending on agricultural inputs (e.g., equipment, fertilizer) and subsequent possible changes in business spending and jobs. Secondary economic effects for a given region or basin depend on many variables.

The potential impact on local government services resulting in a potential reduction in property taxes due to a shift from irrigated to non-irrigated parcels is a related, concern, although, (1) it is unclear whether these property tax changes would occur as a result of temporary fallowing and (2) current Colorado property taxation policy does not differentiate between full- and limited-irrigated crops.

Conversely, a properly structured DMP may provide an agricultural producer the opportunity to diversify operational income and improve the continuing economic health and sustainability for the agricultural producer's operations. The diversity of income and improved economic health of participating producers may, in turn, be an economic benefit to the local community and economy. Altogether, the workgroup agreed that any potential DMP should be structured to maximize opportunities and benefits while also taking into account, and potentially mitigating, secondary economic impacts to rural, agricultural communities resulting from any verifiable, direct, indirect, or induced economic losses due to DMP implementation.

- **Further Research on Negative and Positive Agronomic Impacts** - Additional research on both the positive and negative agronomic impacts of reduced irrigation and temporary fallowing is needed. These agronomic impacts and benefits may include changes in yield, forage quality, soil health, recovery, weeds, animal feed supplies, realized revenue sources, and the health and sustainability of agricultural operations. Additional research is necessary to inform program design features, including the creation of programmatic criteria to minimize adverse agronomic effects, optimize agronomic benefits, and structuring incentive payments.

Generally, the current research finds that many agronomic effects are subject to both site-specific conditions such as crop type, soil characteristics, elevation, and climate, timing and extent of water stress, and management decisions. For example, alfalfa generally shows full recovery when irrigation is returned following limited irrigation, while grass hayfields may require at least two years of full irrigation to recover. Research to date also finds that limited irrigation may provide some agronomic benefits such as improved quality of forage, including higher protein content. Future agronomic research should assess the broader economic impacts on the regional supply chain, such as reduced hay production on livestock operations and contractual arrangements.

- **Technical Assistance & Outreach Capacity** - The availability of technical assistance and outreach is necessary to support DMP participation and to build capacity through trusted agricultural and water resource management entities. As evidenced in previous demand management-type programs and pilots, technical assistance and outreach capacity are critical in providing potential program participants with timely information, assisting potential participants with program applicability, contracting, and monitoring and



verification. Technical assistance may be beneficial in providing information to program participants on best management practices to minimize agronomic impacts such as weeds, dust, and topsoil erosion that potentially arise with conservation activities.

Outreach to county commissioners, agricultural water providers, water conservation and conservancy districts, agricultural organizations, and other key stakeholders is also likely to be critical in supporting the implementation of a potential DMP.

Associated issues and concerns to address include, but are not limited to, (1) the identification and selection of appropriate entities to provide technical assistance (e.g., Colorado State University Extension, conservation districts, conservancy districts, non-governmental organizations, Colorado Department of Agriculture, Natural Resources Conservation Service), (2) types of information necessary for informed decision making and management, (3) information sharing with potential program participants (e.g., online resources, conservation plans, guides, peer workshops, etc.), and (4) sources of funding to support technical assistance and capacity building.

- **Addressing Impacts of Reduced Return Flows and Protection from Material Injury** - How a potential DMP (1) prevents reduced return flow impacts, (2) prevents material injury to other water right holders, and (3) avoids broader effects to non-program participants are critically important threshold issues. At the same time, the workgroup also understands that traditional legal, material injury determinations can lead to lengthy review processes that can significantly increase program transaction costs, increase program implementation times, and yet do not adequately address the broader concerns regarding impacts to non-participants.

Additional considerations for the CWCB Board on these matters include use of existing resources such as the Colorado Lease Fallow Tool (LFT), which was developed to simplify and streamline the evaluation of historic depletions and return flows, to inform terms and conditions to avoid material injury may be helpful and demonstrated. Alternative transfer methods projects, such as the Catlin Canal Fallowing-Leasing Pilot, can provide examples of expedited water transfer application and approval processes that avoid injuring other water rights holders, including non-participating ditch shareholders.

- **Role of Water Providers and Managers** -Irrigation water providers and managers such as private mutual ditch companies, water conservancy and conservation districts, the Bureau of Reclamation, Tribal interests, and related entities must have a defined role in a potential DMP. Such water management entities maintain certain restrictions on water use and changes of use within their service areas. These restrictions may include, but are not limited to, transfers, water use within a service area, and requiring conditions to avoid material injury to other users and system operations, and maintaining oversight/approval over changes. Federal and Tribal projects, likely require further consultation regarding project approval and honor agency and Tribal protocols and practices. Therefore, DMP design and implementation will likely require the involvement and engagement of water management entities to be successful.

Previous pilot projects such as the Grand Valley Water Users Association Conserved Consumptive Use Pilot Project demonstrate the value of having agricultural water management entities engaged in temporary agricultural fallowing programs. The CWCB Board should consider how best to encourage participation and engagement of water management entities, including consideration of entity by-laws, consultations with Federal and Tribal partners, and perhaps even delegating some DMP programmatic

roles to these entities to encourage participation and incorporation of programmatic criteria consistent with particular service areas.

- **Infrastructure:** There is a need for significant investments in infrastructure to meet the potential requirements of, and accomplish the goals of the DMP. Possible infrastructure improvements/additions include but are not limited to, the installation of flumes and other measuring devices necessary to measure historical diversions, return flows, and consumptive use. Additionally, augmentation structures to replace return flows to avoid material injury, and structural improvements to assist with water delivery and shepherding are essential components to facilitate a potential DMP and to minimize associated impacts. Water delivery and management entities may require additional infrastructure or administrative requirements to account for DMP participation more effectively. Failure to address the potential infrastructure issues may present an equity challenge, as water rights holders or providers with sufficient infrastructure or resources needed to address these concerns may more easily participate in a potential DMP to the disadvantage of others.
- **Funding:** Securing adequate, sustainable funding is a critical threshold issue to the successful development and implementation of a potential DMP. Compensation for program participation is an essential equity driver as funding may be needed to help invest in and to mitigate potential agronomic and secondary impacts and ideally encourage more active diverse DMP participation. Without adequate, sustainable funding, there will likely be no incentive for an agricultural producer and water managers to participate in the DMP. Ideally, funding for the potential DMP will be secured through diverse sources. Furthermore, equity of funding is critical to the creation of a meaningful and successful DMP. Equity of funding means that funding should be available to all interested participants without bias or favoritism. Ultimately, any potential DMP must make agronomic business sense to the agricultural producer.

Additional issues that may present potential barriers or consideration for individual DMP participants and projects include:

- **Federal Crop Insurance:** The United States Department of Agriculture (USDA) Risk Management Agency does not issue crop insurance for limited-irrigation crops. A producer intending to implement limited crop irrigation cannot insure it as an irrigated asset. More information and conversation with USDA are needed to better understand if and how crop insurance may be a potential barrier to program participation.
- **Absentee landowners** - Many farms and ranches in Colorado have absentee landowners and are farmed by long-term lease tenants. Additional economic impacts may affect tenant producers if the landowner decides to participate in demand management activities without collaborating with the lease tenant. A key issue then is whether a potential DMP should include guidelines or additional requirements that provide a mechanism for landowners and tenants to maintain a beneficial relationship and avoid displacing tenant farmers and ranchers.
- **Conservation Easements:** Another issue raised by the workgroup is that many conservation easements that preserve working agricultural lands include restrictions on the ability to remove water from the protected property for other uses such as compact compliance. The CWCB Board should consider this potential implication and

involve key land management stakeholders, including Colorado Parks and Wildlife, Great Outdoors Colorado, USDA, and land trusts in addressing this concern.

### **Proposed Actions for CWCB Consideration**

- **Program Framing** - The CWCB, as the State's water policy agency, should develop a messaging framework regarding a DMP to address common concerns, build trust, and encourage participation. Public perception of the need for a DMP, and acceptance by the agricultural community for a DMP are likely to be critical in achieving adequate agricultural participation levels. Several members of the workgroup find that the CWCB should promote the DMP as an "insurance policy," and that there must be a consideration to whether agricultural participation in a voluntary, temporary, compensated DMP will be sufficient to make a difference to stave off mandatory compact curtailment.

Due to problematic long-term trends in supply and demand that indicate on-going imbalances and the timeframe needed to develop agricultural conservation programs, the CWCB should design the DMP as a long-term program, available under dry, normal, and wet conditions.

The workgroup also underscores that in discussing the DMP, CWCB should be clear about the DMP's purpose (i.e. "done for the right reasons," "not serving as a backdoor to permanent dry-up of irrigated agriculture," "not a new source of water for the Lower Basin and elsewhere.") and that the DMP allows for maintaining compact compliance/reservoir levels while allowing for continued consumptive use. Ideally, DMP considerations will also appropriately inform the renegotiation of the 2007 Interim Guidelines.

- **Guided market vs. free-market program** - A significant and essential element that the CWCB Board must consider as part of a voluntary, compensated DMP is a mechanism to adequately fund and facilitate water user participation in such a program. An adequate funding source is even more critical to program success to achieve "equity" goals and objectives. The workgroup agreed that a potential DMP would likely need to be a "managed market" coordinated by a "market-maker" to ensure equity and to avoid a "run" on, or by, any specific region or sector and associated potential disproportionate impacts or benefits. At the same time, the market-maker would recognize that participation in a voluntary, temporary, and compensated DMP is ultimately market-driven and informed by free-market/economic conditions. The market maker would be responsible for meeting any imposed "equity" targets by providing the necessary economic incentives to solicit and secure the required participation to achieve the equity targets through a market-driven system.
- **Programmatic Criteria and Guidelines** - The workgroup supports further consideration by the CWCB of the adoption of DMP goals and guidelines that would minimize or eliminate adverse agricultural effects, maximize potential net benefits, and encourage agricultural sector participation/opportunity, and ultimately "do no harm." Some possible criteria for additional consideration are as follows:
  - ***Equitable, proportionate program participation*** - A potential DMP must be fair and provide for proportionate program participation while remaining voluntary. Such criteria that may be further considered by the CWCB may include:

- Geographic/basin quotas or caps (e.g., based on number of participants, acreage);
- Ensuring proportional participation by Western Slope and Front Range water users, senior/junior water right holders, economic sectors;
- Limiting participation to active farm operators and agricultural producers with a recent documented history of agricultural practices within a certain number of years; and
- Setting acreage requirements and enrollment limitations per operation (for example, minimum acres operated to participate, a maximum acreage cap, or temporary fallowing may not exceed a certain percentage of a single irrigated farm).

The example goals and guidelines provided above are to maintain agricultural viability during participation in the potential DMP. The CWCB should discuss all of the above equity considerations among key Federal, Tribal, State, and local government entities and water conservancy or conservation districts. These equity goals may serve as guidelines or as a floor that the DMP manager could then supplement or modify to address more basin or location-specific concerns. Ultimately, the agricultural impacts workgroup agreed that many of these goals/considerations should be locally-driven and therefore, may vary by region and may be site-specific within established guidelines.

- ***Structuring agricultural producer and water provider payments.*** The group discussed incentive payments (e.g., cost per-acre foot or payment per action). The workgroup suggests that participant payments should be determined via negotiation between participants or the DMP managing entity within overarching guidelines and limitations, using standard parameters provided by the market-maker, managing entity, and/or technical service provider. These parameters may include compensation for lost productivity in both the year of reduced irrigation and long-term recovery, the adoption of best management practices to mitigate agronomic impacts, costs associated with idle equipment and labor, other operational expenses such as a need to purchase supplemental feed or reduce the size of cattle herds, and disrupted business relationships.

In addition to producer-specific compensation, a potential DMP would also compensate agricultural water providers such as mutual ditch companies for minimizing and mitigating any operational, administrative, and transactional costs associated with changes in operations due to shareholder participation in the DMP and to provide additional technical capacity if the agricultural water provider is engaged in the program on a ditch-wide or regional basis.

- ***Mitigate on-farm and off-farm agronomic impacts*** - Agronomic impacts will likely be site-specific. A potential DMP should provide technical resources, advice, and guidance to program participants to mitigate the agronomic effects such as weeds, pests, and soil erosion and to improve recovery times to achieve full or increased productivity levels. A potential consideration would be for a technical service provider to work with each program participant and, where applicable, agricultural water providers. Technical service providers can assist in developing management plans for the enrolled farm and ranch parcels that identify applicable best management practices, which may include, but not be

limited to, the establishment of a cover crop or other erosion control measures, weed control, and crop recovery practices. Additional considerations may include offering potential DMP participants pre-process consulting with a technical service provider who can provide the producer with information regarding potential agronomic impacts and revenue projections based on their local conditions and operation. The CWCB should consider pursuing additional information on best management practices for managing farms and ranches experiencing reduced irrigation and provide such information equitable to all interested participants.

- ***No material injury to other water rights holders or impacts to non-participants; no intent of abandonment and consumptive use analysis*** - A potential DMP must not cause material injury to water right holders or adverse effects on non-participants. The CWCB should develop, define, and apply required judicial or regulatory processes to ensure protection from legal and material injury and minimize related adverse impacts on non-participants. All DMP participants must receive protection against abandonment. Water right administrators and regulators (i.e., commissioners, referees, and judges) must not consider any decrease in water use resulting from participation in a potential DMP in determining the amount of historical consumptive use in any related legal or administrative proceeding.
- ***Operational flexibility & management*** - Care should be taken to ensure that the timing of the application, review, and approval process align with when producers make decisions. Contracting must be flexible to account for specific operations and economic conditions. Previous demand management type programs and pilots have provided some flexibility in allowing program participants to select appropriate agricultural conservation techniques suitable for their unique operations. Contracting should occur with adequate timing to allow for a producer to make critical operational decisions and to provide for some adjustments to changing economic conditions each growing season. Efforts should be made to expand technical assistance to help participants navigate the DMP application/contracting process and access to decision-making tools, such as the Colorado State Extension Agricultural Lease Evaluation Tool (AgLET), to estimate impacts to crop yield, production costs, and participation revenues. Also, the potential DMP should consider requirements to notify water providers when there is participation in their service areas, providing water providers and managers adequate time to make operational adjustments if necessary.
- ***Minimize regional, socioeconomic impacts*** - Any potential DMP should account for and minimize adverse socioeconomic regional effects. Possible mitigation strategies may include further incentivizing selective temporary fallowing of marginal agricultural lands versus prime agricultural lands, allowing for the option of alternative cropping or conserved crop rotations to generate conserved consumptive use water, developing a mitigation fund, and project selection/criteria such as basin enrollment quotas.
- ***Maximization of other programmatic benefits*** - Where feasible, DMP managers and participants should track or highlight potential programmatic benefits such as increased hydropower production, water quality improvements (e.g., salinity, selenium, nutrient load reductions), and environmental and

recreational flow enhancement. Monetizing such benefits of potential DMP implementation may also present an opportunity to generate additional funding to support the rehabilitation and modernization of aging, agricultural infrastructure. CWCB should conduct further research to better understand how comprehensive programmatic benefits may accrue to various sectors and users, providing avenues to “win-win-win” solutions.

- **Successful Program Models** - In considering potential DMP design features/frameworks, the workgroup recommends the CWCB consider successful, voluntary, temporary, and compensated agricultural water conservation programs as possible program models. Such current models include completed alternative transfer method projects in the South Platte, Arkansas, Colorado, and Gunnison Basins. The Agricultural Impacts literature review document provides further examples. Some commonly cited/discussed examples by the workgroup include:
  - ***Grand Valley Water Users Association Conservation Consumptive Use Pilot Project*** - The Grand Valley Water Users Association, as part of the broader System Conservation Pilot Program, offered a temporary agricultural water conservation program for two years to test the mechanisms necessary for a Western Slope irrigation water provider to intentionally reduce consumptive use and gauge producer interest in the opportunity. Key program considerations include setting requirements for program participation to avoid injury and broader socioeconomic impacts and providing program participants with a menu of program activities ranging from full season to partial season fallow.
  - ***Catlin Canal Fallow-Leasing Pilot Project*** - The Catlin Canal Pilot Project was approved by the CWCB Board in 2015, under House Bill 13-1248, to test the feasibility of leasing-fallowing as an alternative to permanent irrigated agricultural dry-up. The Catlin Canal Pilot Project has been operating five years under an expedited administrative approval without injuring other water users. Key program considerations include using the Lease Fallow Tool to simplify and streamline historic consumptive and return flow analysis, the development of a spreadsheet-tool to track parcels fallowed during operation to ensure compliance with statutory limits on the frequency and extent of fallowing and contractual requirements to maintain soil health.
  - ***Conservation Reserve Program*** - The Conservation Reserve Program (CRP) is a land conservation program managed by USDA-Farm Service Agency. The goal of the CRP program is to remove environmentally sensitive land from agricultural production and plant species that will improve environmental health and quality. Contracts for land enrolled in CRP are typically 10-15 years in length. In Colorado, CRP has been utilized through a special sub-program known as the Conservation Reserve Enhancement Program (“CREP”) in the Rio Grande and Republican River Basins to promote voluntary permanent retirement of a water right to meet compact compliance or groundwater sustainability objectives. Workgroup members highlighted that the Colorado CREP programs' experiences might be informative, or serve as a potential model, for the possible development of a DMP. However, it is essential to note that CREP involves the permanent retirement of irrigated agricultural land, while a potential DMP would not. Key program considerations include enrollment caps based on acreage, sign-up processes, structuring incentive payments to target

enrollment, and requiring land management practices to achieve environmental benefits and avoid soil degradation.

- **Pilot/demonstration projects** - Throughout several workgroup meetings, participants repeatedly called for reliable, trusted information to be gathered from demand management pilot and demonstration projects. The workgroup believes that additional CWCB and partner supported demonstration projects could help address remaining information gaps, expand the diversity of project examples, and demonstrate program success, thus encouraging DMP participation. In particular, the workgroup believes pilot and demonstration projects should seek to address the following issues:
  - Long-term recovery impacts of reduced/limited irrigation on high-elevation hay production operations and interrelated irrigated pasturing of cattle/livestock operations;
  - Secondary off-farm benefits (e.g., water quality, instream flows) and impacts;
  - Impact of reduced irrigation on nearby farms or residential property owner (e.g., groundwater, weed, and pest management);
  - Costs, benefits, and impacts of crop switching and deficit irrigation as demand management activities;
  - Geographic diversity in project selection and participation;
  - Additional related unresolved questions - including how to conduct appropriate managed market systems, addressing undefined overhead costs, and defining technical assistance and outreach needs; and
  - Improving monitoring and verification, administration, ability to deliver water to the state line, Lake Powell, and eligible Colorado River Storage Project reservoirs.

**Colorado Water Conservation Board**  
**1313 Sherman St., Room 718**  
**Denver, CO 80203**

**Dear Board Members,**

On behalf of the Agricultural Impacts Demand Management Workgroup, please find attached a conceptual proposal for a Programmatic Pilot for your consideration. It was created to advance the DM investigation by providing potential actions that the CWCB might pursue to inform the next steps.

This proposal builds from the candid and productive conversations among our workgroup and the many folks who joined us, and it is intended to address the specific questions, comments, and concerns that were raised in those discussions. We would suggest that a multi-year Programmatic Pilot is our best opportunity in the systematic exploration of those questions and concerns, as well as those raised by other workgroups and interested parties.

A two phased approach is described in the proposal with the intent to enable groups across all water sectors and geographies that rely on water from the Colorado River basin to dig deeper into these issues at an appropriate pace and work through local conditions and tough issues. The suggested Pilot would engage in multiple activities to directly address questions posed by many perspectives, hopefully leading to a programmatic approach that meets multiple objectives identified by State, agriculture, and other economic and resource communities.

We recognize that Demand Management is a challenging and controversial subject. However, recent experience and current science related to the imbalance between Colorado River water supply and demand clearly indicate that there is an urgent water supply challenge in the Colorado River Basin. The Ag Impacts Workgroup strongly supports additional actions be taken to address this challenge through the continued use of pilot projects to further explore and evaluate potential demand management activities.

As the work continues on demand management, the members of the Ag Impacts workgroup remain committed to finding creative solutions to current and future water challenges that support critically important and productive agriculture and its multiple benefits for all Colorado now and in the future.



### **Demand Management: Programmatic Pilot**

**Goals:** Building on the work of the CWCB Demand Management (DM) Workgroups and other efforts to date, a focused programmatic pilot is a potential important next step that would help test technical and non-technical components of statewide water conservation and advance multiple goals, including:

- Informing the timeline and process for the State of Colorado, the CWCB, and other stakeholders to determine the feasibility of a demand management program.
- Outlining the necessary components and criteria for implementation of a demand management program, including what level of DM is feasible/desirable given cost, available funding, Compact risk, secondary impacts, and other considerations.
- Providing critical information on demand management and other related elements for the upcoming negotiations on the Interim Guidelines.
- Informing and developing additional structure to a potential DM program via multiple projects in diverse geographies that support common, well-defined goals and objectives.

Note, while the workgroup's focus is on agriculture, the programmatic pilot approach should also accommodate municipal and industrial projects, including projects involving transmountain diversions.

#### **Key steps:**

- CWCB establishes a 3-year programmatic pilot, supporting a “learning by doing approach” where the State, water users, and other stakeholders can systematically **test** a programmatic approach to demand management, **evaluate** the outcomes, and **inform** next steps and a potential future program based on lessons learned.
- Determination of Feasibility: The ultimate determination of demand management feasibility as outlined in the Demand Management Storage agreement involves the UCRC, DOI, and the Upper and Lower Division States. However, the ability to store and account for water savings during this programmatic pilot would help advance Colorado's understanding of multiple aspects of a demand management program, potentially generating interest from a broad array of water users. The State of Colorado and the CWCB can use this programmatic pilot as an opportunity to make their own findings and advocate for allowing Colorado to store consumptive water savings, not only in Lake Powell and CRSP facilities but possibly in other private/public facilities in Colorado during this 3 -year pilot.
- Recognizing that the unprecedented budget challenges the State is currently facing impacts their potential to fund further work, stakeholders should discuss the top priorities for a potential programmatic pilot. Furthermore, a programmatic pilot could be structured to provide Phase 1 funding for project development in differing geographies and water use sectors and due diligence, and Phase 2 funding for actual implementation.

#### **Program Structure:**

- Participation in the program is open to any qualifying water users within Colorado that beneficially uses water diverted from the Colorado River or its tributaries. As a goal, the

program seeks to encourage program participation that would provide opportunities for participation from multiple geographies while avoiding disproportionate impacts to any community, basin, or region.

- Program will strive for a roughly proportional distribution of funding across geographies.
  - Program goal will be to develop projects from multiple water use sectors, including agriculture, municipal, and industrial sectors, in multiple geographies, at multiple scales.
  - Program will provide an equitable opportunity for all water users to participate
  - Clearly defined and described participation eligibility
  - Universal and legally supported protections for participating entities and their water rights against forfeiture and reduced HCU.
  - Providing support though funding and capacity for project due diligence.
- Eligible entities will be invited to submit proposals that describe:
  - General project description and structure
  - Proposed water use reductions and estimated volume of CCU
  - Proposed operational mechanism for how water savings can remain in, or be returned to, the river or storage facility for administration
  - Proposal for monitoring and verification
  - Timeframe (1-3 years)
  - Total cost, including use of any matching funds
- Additional project criteria should include:
  - How the project will assess, address and/or mitigate, as needed the environmental, recreational and agricultural criteria, including impacts to return flows and irrigation-influenced wildlife habitat
  - How the project will address community and regional criteria, including potential secondary impacts?
  - Other factors TBD (e.g. ranking of proposals related to how the project addresses other priority questions from DM workgroup process, innovative methods for generating water savings, etc.)
- Program goal will be to coordinate with SEO to administer water rights from participating projects for Compact security purposes.
- An advisory committee that includes representatives from across geographies, water use sectors, and other interest groups will evaluate and rank proposals based on the above factors.
- The State should consider technical assistance via provider and consultant support to manage program/process and evaluate program effectiveness, benefits, impacts.

## **Work Group Meeting Report Out**

**Work Group:** Agricultural Impacts Meeting #1 **Date:** August 8, 2019

### **Meeting Topics:**

Agenda topics included: background on demand management and drought contingency planning; process and expectations of the work groups; initial issue identification; and public comment.

The group spent the majority of the meeting identifying the key big-picture issues associated with agricultural impacts of a potential demand management program and discussing the scope of the workgroup's future discussions.

### **Key Take Aways:**

The workgroup discussed the need for research on best management practices for managing agricultural lands temporarily fallowed through a potential demand management program. The availability of technical assistance (e.g. conservation districts, Natural Resources Conservation Service, Colorado State University Extension, and other research institutions) to provide information on conservation practices, management techniques, the effects of temporary fallowing on future land management practices and long-term crop production and returning fallowed lands back into production.

The group discussed the connection between other workgroup efforts particularly local governments and economic impacts and the environmental workgroups. Specifically, that there needs to be an assessment of the potential regional economic and ecological impacts of a potential temporary, voluntary, compensated demand management program. There was a consensus to explore development of a program that avoids an undue burden on a specific water right holder, economic sector, or geographic region.

All members of the workgroup voiced support for conducting further scenario planning and conducting pilot projects to help answer questions to these potential issues and inform the investigatory process.

### **Questions/Concerns to Raise:**

The group identified some threshold questions and issues to consider going forward, including:

- How to avoid injury to non-participants on ditch systems and water right holders
- How to structure a potential demand management program to address barriers to participation such as design contracting to fit needs of ag participants
- The need for research on best management practices for managing agricultural lands enrolled in a demand management program and the availability of technical assistance

### **Additional technical, informational other needs:**

The group discussed opportunities to utilize contractor assistance such as conducting a literature review to review results from other programs and investigation efforts, including the System Conservation Pilot Program and various alternative transfer method projects. The workgroup also discussed the need to collect information regarding studies assessing on-farm and operational impacts (e.g. crop yield, forage quality, crop rotations, soil management) associated with temporary fallowing and other conservation practices such as deficit irrigation including the results of studies done by Colorado State University and other research institutions on methods to temporarily reduce irrigated crop consumptive use.

### **Other:**

The group will identify a next meeting date in the November timeframe to be held on the Western Slope

## **Work Group Meeting Report Out**

**Work Group:** Agricultural Impacts Meeting #2 **Date:** November 4<sup>th</sup>, 2019

### **Meeting Topics:**

Agenda topics included: review of workgroup report outs for cross-cutting issues, issue identification and prioritization; and overview of voluntary, temporary, and compensated models for a potential demand management program.

The group spent the majority of the meeting hearing presentations on pilot project results and research findings from the System Conservation Pilot Program, Colorado River Water Bank Working Group, and Grand Valley Water Users Association Conserved Consumptive Use Pilot Project. Through these presentations, the workgroup discussed key findings and identified remaining issues to be further explored through the development of a literature review and other methods.

### **Key Take Aways:**

The workgroup reviewed the report outs from the other demand management workgroups. Some of the cross-cutting issues identified included:

- Develop a better understanding of the secondary economic impacts of a potential demand management program and assess strategies/approaches to mitigate potential impacts such as project selection criteria that maximize potential benefits. The workgroup discussed a need for more information on the economic impacts/benefits of a potential demand management program on eastern slope agriculture.
- How will projects address environmental concerns/issues such as return flows and wildlife habitat? Could a potential demand management program be designed to generate “stackable benefits” or provide a source of mitigation for other water projects?
- What role do canal companies play in determining who may participate in the potential demand management program? How will states coordinate methods for determining historical consumptive use? How could an education or outreach component of a potential demand management program encourage participation?

The workgroup spent a portion of the meeting discussing the development of more defined parameters, or guiding principles, to address concerns and encourage participation in a potential demand management program. Some of these parameters included equitability and no material injury to other water users. The workgroup expressed a desire to work with the state DMP contractor to further develop these guiding principles.

The workgroup continued to discuss conceptually developing a framework for potential demonstration projects. The workgroup believes that demonstration projects could help address information gaps such as the impacts of temporary fallowing on high elevation pasture/hay operations and inform overarching program guiding principles and feasibility considerations.

### **Other:**

The agriculture workgroup will convene on March 3<sup>rd</sup> in Denver, Colorado prior to meeting with other workgroups during the upcoming Interbasin Compact Committee Meeting to be held March 4<sup>th</sup> and 5<sup>th</sup>, 2020.

## **Work Group Meeting Report Out**

**Work Group:** Agricultural Impacts Meeting #3 **Date:** March 3<sup>rd</sup>, 2020

### **Meeting Topics:**

Agenda topics included: review of workgroup report outs for cross-cutting issues with focus on Monitoring and Verification, issue identification and prioritization; preparation for IBCC meeting.

The group spent the majority of the meeting refining priority issues and threshold questions concerning agricultural impacts associated with a potential demand management program, discussing cross-cutting issues with members of the monitoring and verification workgroup, and discussing the development of a “model” demand management program for further discussion purposes. A key theme of the discussion was that any demand management program should be offered as an insurance policy versus curtailment.

### **Key Take Aways:**

- The group discussed current state funding limitations concerning the development of demand management pilot programs, but agreed that other efforts including the Colorado River Basin Roundtables’ Kremmling project assessing agronomic impacts of alternative transfer methods on high elevation hay and pasture operations will be informative.
- The group discussed that east slope participation by both agriculture and municipal water users would be essential in terms of equity under a demand management program. However, the group discussed that east slope projects would potentially present several challenges that would need to be addressed including monitoring and verification and issues concerning Federal approval.
- The group began discussing various parameters or features of a demand management program that would help minimize agricultural impacts and maximize benefits for producers and rural communities. Some of these parameters include modeling a demand management program after the United States Department of Agriculture Conservation Reserve Program, which includes certain enrollment quotas per county and incentive payments to manage the enrolled land to maintain soil health and other environmental attributes. These parameters could be modified under a potential demand management program to set enrollment quotas by river basin, number of participants, or other factors such as a percentage of irrigated acreage for a given geographic region. Discussion also included how to best make participation in a demand management program available to producers who may view the program as an opportunity or benefit and who may otherwise be precluded from participation by potential imposed quotas or limitations. The group also discussed how best to determine pricing for participation including both free market and managed market approaches.
- The group discussed topics to include in an agricultural impacts and benefits literature review including socioeconomic regional effects of demand management and regional land conservation programs, the effects of temporary fallowing and deficit irrigation on high elevation agricultural operations, and alternative transfer method programs.

### **Other:**

The group agreed that a minimum of two more meetings would be useful. Given current public health concerns over COVID-19, these meetings may be held virtually with public access. As a result, there may be more opportunity for different workgroups to meet together. A key focus of the next agricultural impacts meeting will be to discuss each workgroup member’s “model” demand management program to minimize agricultural impacts/maximize benefits and/or a collective demand management “model” based on discussions had at the March 4<sup>th</sup> and 5<sup>th</sup> IBCC meetings.

## Work Group Meeting Report Out

**Work Group:** Agricultural Impacts Meeting #4    **Date:** May 14<sup>th</sup>, 2020

### **Meeting Topics:**

Agenda topics included: review of workgroup report outs for cross-cutting issues; issue identification and prioritization; discussion of agricultural impact literature review; and discussion of potential demand management framework and criteria to address agricultural impacts and provide opportunity for agricultural community participation.

The group spent the majority of the meeting refining priority issues and threshold questions concerning agricultural impacts associated with a potential demand management program, discussing cross-cutting issues with members other workgroups, and discussing the development of a “model” demand management program for further discussion purposes and to inform Colorado Water Conservation Board considerations.

### **Key Take Aways:**

- The group discussed topics to include in an agricultural impacts literature review, including socioeconomic regional effects of demand management and regional land conservation programs, the effects of temporary fallowing and deficit irrigation on high elevation agricultural operations, and alternative transfer method programs.
- Building on the conversation from the March Interbasin Compact Committee (IBCC) meeting, the workgroup spent a considerable portion of the meeting discussing a “model” framework and criteria regarding a potential demand management program that would minimize agricultural impacts, while providing benefits to agricultural producers and communities reliant on agricultural production to sustain their economies. Some of the framework considerations discussed by the workgroup include:
  - **Balancing program equity and accessibility, while avoiding disproportionate impacts on any one region, basin, or economic sector.** This goal includes striving for proportional participation in a potential demand management program from both Western Slope agriculture and Front Range municipalities.
  - **Developing a guided DMP program with baseline criteria** designed to minimize and mitigate potential agricultural impacts, while maximizing potential benefits. The potential DMP program would be guided by a “market-maker” that would manage the program with the dual objectives outlined in the Upper Basin Drought Contingency Plan, while maintaining the viability of agriculture and rural communities. Criteria would possibly include setting certain enrollment caps or quotas to avoid significant impacts on particular basins and spread out participation, providing mitigation or financial assistance to impacted agricultural water providers such as ditch companies to offset operational changes due to program participation, and offering technical assistance to program participants to address on-farm and off-farm agronomic impacts.

### **Other:**

The final agricultural impacts meeting under the 2019 Work Plan will be held on June 17<sup>th</sup>, 2020. The focus of the June meeting will be to review the Agricultural Impact Workgroup’s final report to the Colorado Water Conservation Board regarding threshold agricultural issues for further consideration.

# Attachment D

## Economic Impacts and Local Government Workgroup Documents:

1. Summary
2. Reports

## **Economic Impacts and Local Government Workgroup Final Report**

### **A. General Principles**

1. Ensure project does not create negative impacts that cannot be mitigated.
2. Support projects that avoid irreparable harm/accomplish goals, while producing some net benefit if possible.
3. Remember that the program is voluntary. Those who do not wish to participate should not do so.

### **B. “Do no harm” - Minimize and mitigate any adverse impacts to communities.**

The following factors should be considered:

1. Type of water use – ag, municipal, industrial, environmental.
2. Consider the duration of the demand management program – shorter program would probably result in temporary or short term effects, which could be mitigated more easily if they were negative.
3. Consider limiting the length of individual project participation.
  - a. Projects longer than one year could potentially create negative impacts for some participants.
  - b. Impacts of project participation length will vary by, for example, geographic location, type of water use, and crop type.
  - c. Direct and secondary economic impacts (positive or negative) may vary depending upon type of hydrologic year occurring before, during or after period of participation (wet or dry year) and will create variation in economic impacts.
4. Consider the positive and negative impacts of geographic location and concentration of projects
  - a. Geographic distribution of projects is not inherently valuable, but location of a project may determine whether the project is feasible.
  - b. Identify where geographic concentration of projects may cause negative impacts and avoid or mitigate negative impacts where possible.
  - c. Geographic concentration might be beneficial in some circumstances, like multiple participants in ditch system.
  - d. Projects should have an equitable opportunity to participate in program regardless of geographic location.
  - e. Projects in relatively isolated locations may result in different economic impacts from other projects.



5. Potential impacts should be broadly defined.
  - a. Impacts not limited to holders of other water rights, i.e. impacts on local governments.
  - b. Lessees of water would be impacted by non-use of water right.
    - i. What impacts would occur to tenants when water right owners participate and what is appropriate role of the state in addressing those impacts?
    - ii. Project application process should identify whether participant has tenants.
  - c. Consider the impact of non-resident project participants that lease their lands and the impact of money potentially leaving the local community, including secondary economic impacts of money lost from a community, and tax payer money not returning to the community, among others. This is of particular concern relating to water speculators, noting the State's anti-speculation doctrine.
  - d. Funding may have impacts.
    - i. If public funds are shifted to DM and away from other State programs there may be negative impacts to the community and State.
    - ii. To avoid public funding leaving the local community, program may want to prioritize locally owned projects.
  - e. Consider the varying impacts of foregone TMD including the impact of more water being in the river on west slope, but less return flow in the river on the east slope or the user basin which could be significant.
6. Consider the need for additional research or studies to inform analysis of potential adverse impacts including but not limited to:
  - a. Potential impacts due to length of participation.
  - b. Potential localized impacts of projects and various "tipping points" based on the water use type and duration of the projects.
  - c. Options and approaches for mitigation measures or programs.
7. Consider the need for coordination with land use restrictions such as conservation easements.
8. As discussed above, consider concerns relating to participation from nonresident corporate water rights owners.

**C. Program should create benefits for community and economy if possible.**

The impacts of DM projects need not be adverse. Projects could provide benefits to the affected community. Below are some examples of potential benefits.

1. Avoidance of curtailments. Compact curtailment will cause adverse impacts, and avoidance of curtailment is therefore a benefit. The benefits of avoidance should be identified and explained as part of the DM program.
2. Opportunity to improve long-term management of water and land presented by the pause in normal water use operations.
  - a. Opportunity with ag project to switch to organic farming or change cropping patterns.
  - b. Opportunity to improve infrastructure, equipment, or fixtures.
  - c. Implicates definition of “temporary”.
3. Management for threatened or endangered species.
4. Potential increased revenue to local economies.
  - a. Encourage projects where funds to participants make their way to local economies.
5. Increased streamflow.
  - a. May support west slope recreational economy and aesthetics with regard to tourism.
  - b. Benefit to environment and habitat.
    - i. Higher flows may create beneficial impacts to aquatic and riparian habitat in some circumstances.
  - c. Additional flow may improve water quality and regulatory compliance via dilution.
  - d. Stream management planning occurring around the State can further inform benefits.
6. Understanding complexity of determining benefits.
  - a. Rural and urban areas will experience impacts differently.
  - b. Programs may need to be tailored to account for varying economic impacts.
  - b. Implications of timing on benefits.
    - i. High flows may make certain activities more dangerous or less desirable.
    - ii. Important to be able to time releases for maximum benefits.
  - c. Need a balancing approach and holistic analysis when considering potential benefits and adverse impacts of projects.
    - i. Single project may have positive and negative impacts, depending on the subject matter being considered. For example, increased streamflows for recreation, but increased fire danger from drier land.

- ii. Nuance of divergent interpretations of positive and negative impacts.
    - 1.a.viii. For example, reducing use of water for mature landscape in municipalities may have a positive impact on volume of water use, but could have a negative economic impact on value of a home and air and water quality.
- d. Accommodate as many feasible projects as wish to participate, as long as adverse impacts not created.

**D. Utilize a transparent and collaborative process in operating DM program.**

1. Manage administrative costs associated with demand management and understand cost-benefit analysis on multiple levels, including on a project basis, as well as on a statewide, and programmatic/basin-scale.
  - a. Need high-level administrative organization of program, considering amount of wet water created, management of costs.
  - b. Given limited resources, consider cost-benefit analysis at programmatic level and a project/mitigation-of-impacts level.
  - c. Direct the program to take these issues into consideration.
2. Engage stakeholders in the process.
  - a. Emphasize inclusiveness.
  - b. Ensure adequate education/outreach channels are in place.
3. Ensure adequate communication is in place to adequately identify potential impacts and benefits of projects.
4. Ensure adequate transparency of the program through communications and technology.
5. Application process should support goals of program.
  - a. Similar application processes are in place in other state programs.
  - b. Project applicant should make initial and high level identification in proposal of:
    - i. Potential negative impacts and mitigation strategies.
    - ii. Potential benefits of project.
    - iii. Location within conservancy district.
    - iv. Other water rights holders who may be impacted.
  - c. Try to minimize burden on applicants.
    - i. Provide assistance to applicants in filling out application.
    - ii. Make available studies that will inform applicants on particular impacts.

- iii. Provide flexibility in process that will encourage innovation in project proposals, while minimizing potential negative impacts of projects.
  - iv. Develop mechanisms to identify potential impacts and consider implications for process and application.
- 6. Levels of approval.
  - a. CWCB
  - b. State Engineer's Office
  - c. UCRC
- 7. Potential levels of review.
  - a. Goal to assure that there is local fact-checking of applications and identification of potential impacts.
  - b. Provide opportunity for review/comment at local level
  - c. General need to incorporate local input in analyzing potential projects
  - d. Ensure sufficient review to identify, define, mitigate as needed
  - e. Conservancy District analysis/input
  - f. County commissioners and city councils
  - g. Basin Roundtable review/comment

## **Work Group Meeting Report Out**

**Work Group:** Economics and Local Government Meeting #1 **Date:** August 9, 2019

### **Meeting Topics:**

Agenda topics included: background on demand management and drought contingency planning; process and expectations of the work groups; initial issue identification; and public comment.

The group spent the majority of the meeting identifying the key big-picture issues associated with economic impacts of a potential demand management program and discussing the scope of the work group's future discussions.

### **Key Take Aways:**

The group discussed the connection between local governments and demand management economics. Specifically, there may be economic impacts to a local community and local government. The local government may participate in managing these impacts.

The group expressed a desire to consider all economic impacts of a potential demand management: positive and negative impacts.

The group brainstormed economic impacts and impacts to communities identifying both impacts to specific sectors (ie tourism, agriculture, open space, etc) and economic considerations when designing a potential demand management program (ie transaction costs, net benefit opportunities, scale, etc).

### **Questions/Concerns to Raise:**

The group identified some threshold questions and issues to consider going forward, including:

- A better understanding of the timing and timeframe of creating demand management water to assess the economic impacts of a potential demand management program.
- Whether and what kind of parameters should be developed in a program to minimize adverse impacts and maximize beneficial impacts on local communities.
- Various methods and considerations for valuing/pricing water.

### **Additional technical, informational other needs:**

The group discussed opportunities to utilize contractor assistance such as conducting a literature review to examine results from other demand management programs and investigation efforts.

### **Other:**

The group will identify a next meeting date in the September - October timeframe to be held in the Denver Metro area

## **Work Group Meeting Report Out**

**Work Group:** Economics and Local Government Meeting #2 **Date:** November 7, 2019

### **Meeting Topics:**

Agenda topics included: a summary of public comment and the group's first meeting; presentations on the Water Bank Working Group Secondary Economic Impact Study and economic research from the Upper Gunnison, continued discussion of threshold issues, and a discussion on threshold parameters from an economic and local government perspective.

### **Key Take Aways:**

- Rhetoric matters – the group continued to support a shift towards viewing demand management as a tool that includes a discussion of both positive and negative impacts.
- Proportionality and fairness continue to be top of mind, threshold issues.
- Social justice is important to communities. Access to open space, green space, aesthetics, and parks must be considered.

### **Key Discussion Points:**

The group split into two groups to explore screening criteria and threshold parameters from an economic and local government perspective. These discussions will continue to be refined in future meetings, but included:

Group 1 - Parameters	Group 2 - Screening
<ul style="list-style-type: none"><li>• Differential compensation (regional + sector)</li><li>• Transaction costs</li><li>• Program administration</li><li>• Proportionality</li><li>• Property tax designation</li><li>• Water right priority and firmness</li><li>• Measuring injury</li></ul>	<ul style="list-style-type: none"><li>• Potential Water Savings by Economic Sector</li><li>• Ability to participate</li><li>• Water saving potential</li><li>• Who might be affected (short-term + long-term)</li><li>• Actions necessary to mitigate</li><li>• Costs to mitigate</li></ul>

### **Additional technical, informational other needs:**

- Adding additional capacity to research impacts to soil health, impacts of fallowing or deficit irrigation on high elevation agriculture operations, impacts to communities and different economic sectors, and impacts to wildfire risk.
- Various pricing mechanisms need to be explored to incentivize voluntary participation, ensure proportionality, and minimize costs to the taxpayer.

### **Other:**

The group's next meeting will be held January 29<sup>th</sup> at the Westin Westminster beginning at 1pm.

## **Work Group Meeting Report Out**

**Work Group:** Economics and Local Government Meeting #3 **Date:** January 29, 2020

### **Meeting Topics:**

Agenda topics included: a summary of public comment and parking lot issues received from other workgroups; update on scenario planning concept developed in Funding Workgroup, an update on the Water Plan Technical Update provided by CWCB staff, discussion of upcoming IBCC/Demand Management meeting, a discussion of threshold issues, and opportunity for public comment.

### **Key Discussion Points:**

- The group discussed the work of other workgroups, including the Funding workgroup's scenario planning concept/thought exercise.
- There was discussion around how market forces may impact a Demand Management program, and how to consider and account for those issues.
- Discussion returned to issues around definitions, such as the issue of absentee landowners and what constitutes "voluntary" participation. Continued discussion around the concept of equity and importance of recognizing unique basin-by-basin issues.
- The group also discussed data gaps and potential next steps for increasing understanding of temporary, voluntary, compensated programs, including potential pilots.

### **Key Take Aways & Next Steps:**

- The group would like to further develop the concept of scenario planning, and consider ways the group's considerations could fit into the work the Funding workgroup has developed. This will be discussed further at the March IBCC/Demand Management Workgroups meeting.
- There was discussion around how market forces may impact a potential Demand Management program, and how to consider and account for those issues. The group thought a presentation focused on these issues as related to the System Conservation Pilot Program would be helpful.
- Discussion returned to issues around definitions, such as the issue of absentee landowners and what constitutes "voluntary" participation. Further discussion would be helpful in understanding how these concepts interact and how to manage them in a potential Demand Management program.

### **Other:**

The group will meet next at the joint IBCC/Demand Management Workgroups meeting in March and will work on scheduling additional meeting after that.

## **Work Group Meeting Report Out**

**Work Group:** Economics and Local Government Meeting #4 **Date:** May 11, 2020

### **Meeting Topics:**

Agenda topics included: a summary of public comment and parking lot issues received from other workgroups and update on IBCC joint meeting; revisiting the workgroup's charge; a presentation on the System Conservation Pilot Program; scenario planning discussion; discussion of deliverables and summary of work; next steps; and public comment.

### **Key Discussion Points:**

- The group discussed the System Conservation Pilot Program, including how the program functioned, levels of participation, and impacts of the program. The group also discussed differences in how the SCPP operated and how a potential Demand Management program may operate.
- In recapping the IBCC meeting, the group discussed the scenario planning exercise developed by the Funding Workgroup, ultimately determining the structure provided by that workgroup would not fit directly what this workgroup is hoping to analyze.
- The workgroup moved on to discussion of the key principles and points they'd like to capture with respect to economic impacts and local government issues of a potential Demand Management program and spent much of the meeting time further developing this as a potential work product.

### **Key Take Aways & Next Steps:**

- The group thought it would be helpful to hear more about impacts relating to the SCPP, and has requested a presentation to occur at the next meeting.
- The group will work on the key principles and points and further refine this at the next meeting.

### **Other:**

The group will meet one final time to finalize their message and work product.



## **Work Group Meeting Report Out**

**Work Group:** Economics and Local Government Meeting #5 **Date:** May 28, 2020

### **Meeting Topics:**

Agenda topics included: a review of other workgroups' progress and draft work products; a presentation on System Conservation Pilot Program Grand Valley research; work on the group's work product document; next steps; and public comment.

### **Key Discussion Points:**

- The group discussed the work products of other workgroups, and staff provided an update on how the report and attached workgroup documents and reports are coming together.
- The group then heard a presentation and had discussion on the System Conservation Pilot Program, particularly Dr. Perry Cabot's research on secondary impacts of participation in the SCPP in the Grand Valley.
- The workgroup spent the majority of this meeting finalizing their work product for inclusion with the July 2020 report to the Board, and discussing outstanding issues of framing.

### **Key Take Aways & Next Steps:**

- The group determined it would be helpful to assign a drafting committee to make final changes to the group's work product. This group was to finalize the group's work product for final review by the larger group.

### **Other:**

This was the final meeting of this workgroup.

# Attachment E

## Education and Outreach Workgroup Documents:

1. Summary
2. Reports



## Education & Outreach Workgroup

### Demand Management Feasibility Investigation

### Final Report

**Document Objective** // In the context of the Colorado Water Conservation Board’s investigation into the feasibility of a potential Upper Basin Demand Management program, this document aims to summarize many hours of workgroup conversations related to communications, education, and outreach considerations.

Contents of Final Report	
<a href="#">Section A</a>	Priority Considerations for CWCB
<a href="#">Section B</a>	Messaging and Framing Recommendations
<a href="#">Section C</a>	Information Networks and Public Involvement
<a href="#">Section D</a>	Meeting Summaries and Participation List

#### Section A // Priority Considerations for CWCB

Workgroup members quickly identified many challenges in helping the State explore threshold questions related to communication, education, and outreach needs around a potential demand management program. This group was asked *not* to develop a communications plan for the feasibility investigation process itself, *nor* to develop a communications plan for a future potential program. In lieu of assisting with structuring communication for the active process or a future program, the workgroup focused their expertise on discussion around priority considerations should the CWCB elect to continue with feasibility, pilots, or program development.

While it is essential to develop a communications plan well before a demand management program is enacted, content substance is needed to proceed in which common terms are defined across workgroups and state partners, clear frames are developed to help unite messaging across stakeholder groups, and essential content from FY19-20 workgroups are considered by CWCB and incorporated into an agreement on a demand management program’s general (initial/draft) shape.

#### Priority Considerations:

- Develop a communications plan with clear target audiences for each clearly defined stages of program development

- Aim to help each stakeholder group, at the beginning of each phase of program development, answer ‘the why’ with clarity: “Why are we doing demand management?”
- Strong need for confident, honest communication at each stage of program concept. Communication plans will look different during feasibility investigation, than in early program development, than during active program management.
  - For example: It is extremely challenging, and perhaps wasted energy, to explain “why” the state is designing a concept that is only a draft for anyone **external** to the workgroup participants.
- Determine target audiences and existing communication channels
  - **Essential first task:** Explore a water industry “[network actor map](#)” or [social network analysis](#) with the goal of identifying major public facing communicators (individuals and organizations) with strong (well-established) communication pathways, or those with weak (limited audience) pathways
  - Mapping communications networks could help highlight where program participants may have gaps in tools (e.g. computer access)
  - Consider partnering with Water Education Colorado’s near term Freshwater News survey efforts (Dec 2020), Statewide Water Education Action Plan implementation work (which includes mapping a network of water educators) or the CWCB Statewide Survey (2021)
- Prioritize transparency and diverse engagement
  - Explore options for web-based public engagement such as collecting public comments, utilizing existing podcasts, radio shows, op eds, or short informational videos to increase program engagement and understanding
  - Consider utilizing a network of messaging ambassadors who have direct lines of communication to and from CWCB (for clarity in questions and messaging) as well as to and from their established communities (those who would engage with a program)
- Define key terms and regularly review message consistency
  - Early need to define common terminology across working groups and for external parallel discussions (e.g. roundtable-centric DM discussions)
  - Find a more inclusive, positive, or engaging term than “demand management”
  - It is essential for there to be an overall positive tone and frame created from each workgroup in order to translate workgroup efforts into a “net positive” program for the state. “Net positive” inherently recognizes (takes ownership of) negative impacts from a potential program which should also be highlighted. DM is an opportunity for “net positive” water management.
- Timing Considerations
  - In the context of current economic and public health conditions, consider when target audiences have bandwidth to engage in new management tools.
  - Consider timing as it relates to other public water-related campaigns (BIP, Water Plan)

## Section B // Messaging and Framing Recommendations

The idea of various interests working together as a larger group to explore demand management feasibility presents a new planning paradigm with benefits and challenges. At this stage, a branding problem exists as different stakeholders have different ideas of what a program may look like, how it can be explained, and how often communication is carried to individuals' direct communities. As a result, there are, currently, widely varied framings of a potential program and negative tones within the water community. This workgroup recommends immediate messaging discussions to identify shared, priority framing. Several examples are listed below - many of which can be tied to theme areas in the Water Plan.

People want to know that leadership is moving in a predictable trajectory without changing on a whim. Until CWCB communicates confidence in a program direction for Colorado, messaging will be challenging to control. There is also a need to directly address the elephant in the room: Another state could say "no" and an upper basin DM program would not materialize. However, Colorado could still proceed as a state to address our own resilience and water scarcity challenges and framing can help support this.

### Possible Frames:

- Another Tool: A DM program is simply the next step or tool in a long history of successful resilience strategies in Colorado. "One more tool in heavy toolbox of water management"
- Equity frame: DM program helps to share the water shortage burden
- Opportunity "control" frame: DM program can seize Colorado future/destiny
- Common Enemy frame: DM program can build true resilience in face of climate change
- Investment frame: Investment in water security versus the cost of inaction
- Global Leader frame: Colorado is viewed by other states as being able to solve big problems
- Cooperation frame: People expect water to be a huge fight. This is an opportunity to change that narrative.
- Shared limited-resource frame: "The Colorado River is an important source of water for municipal and domestic suppliers on both the West Slope and Front Range."
- Food Security frame: Viable agriculture in Colorado supports food security
- Ecosystem Service frame: Environmental flows are system health and major economic "streams"
- Minimize Risk frame: "A DM program is a way to minimize individual risk and increase water certainty/predictability."

Once a demand management program has been established, consider identifying many statewide "ambassadors of messaging" the CWCB (or communication work group) could regularly communicate with, answer questions, and provide clarification. Demand management representatives in each region, from all sectors, could help with consistent framing while messaging in a way their communities trust, receive, and respond to.

#### Messaging Considerations:

- Regardless of core statewide framing, different groups require unique, tailored communications centered on clear, positive benefits.
- Success story telling is a key component for communication, including interviewing communities about examples that resulted in avoiding negative impacts through program benefits
- Clear need to reset the story and articulate common goals to overcome early negativity
- A potential DM program will not secure public funds unless the public understands the issue. A variety of frames will need to be used to communicate with different publics about a program's funding needs.
- Look outside the water industry for other programs with similar communications needs/challenges (complex issues that take extensive introduction to frame the issue in order to determine which background information is critical for different publics). E.g. energy sector, coal-plant shut down
- Examine cultural values and lenses to communicate effectively in different spaces
- Message should directly address the "status quo alternative" deterrent to DM participation

#### **Section C // Information Networks and Public Involvement**

Throughout the investigation, workgroup members identified the need to help stabilize communication chains, the need for extra transparency, and the need to maintain an open line for all users to communicate concerns and ideas to/from CWCB and to/from one another.

#### Considerations:

- Until an actual program is pursued, the need to communicate broadly with a public audience, beyond water community, is minimal.
- Need for regular messaging ambassador "check-ins" with all sectors to ensure stakeholders are still in agreement and onboard throughout development stage of a program
- Cross-pollination of communication would break down distrust and keep conversation consistent across regions.
- Building bridges of communications between slopes is necessary to address united statewide PEPO coordination. Regarding PEPO (Public Education Participation & Outreach) meetings, the West Slope has created a network of communications related to DM while the East Slope has yet to create strong messaging and communications tools. There is also fracturing within groups of either Slope (creating smaller segmented groups).
- Educators and communicators will increasingly feel the need to have concrete messaging and tools to disseminate information from a common platform in the future.

## Section D // Meeting Summaries and Participation List

**Meeting #1** // August 15th, 2019 // Salida Steam Plant // [\[LINK TO SUMMARY #1\]](#)

**In attendance:** Andy Schultheiss (CO Water Trust), Doug Kemper (CO Water Congress), Hannah Holm (MesaU), Jim Pokrandt (CRD), Laura Spann (SWWCD), Lisa Darling (South Metro), Scott Williamson (WEco), Todd Hartman (Denver Water); CWCB: Brent Newman, Megan Holcomb

**Meeting #2** // February 10, 2020 // Denver Botanic Gardens // [\[LINK TO SUMMARY #2\]](#)

**In Attendance:** Andy Schultheiss (CO Water Trust), Doug Kemper (CO Water Congress), Hannah Holm (MesaU), Laura Spann (SWWCD), Lisa Darling (South Metro), Scott Williamson (WEco), Todd Hartman (Denver Water); CWCB: Megan Holcomb, Ben Wade, Sara Leonard, Amy Ostdiek

**Meeting #3** // March 5, 2020 // Sheraton Denver West Hotel // [\[LINK TO SUMMARY #3\]](#)

**In Attendance:** Andy Schultheiss (CO Water Trust), Hannah Holm (MesaU), Lisa Darling (South Metro), Scott Williamson (WEco), Todd Hartman (Denver Water); CWCB: Megan Holcomb, Ben Wade, Sara Leonard, Amy Ostdiek

**Meeting #4** // June 4, 2020 // Virtual // [\[---ADD LINK---](#)]

**In Attendance:** Andy Schultheiss (CO Water Trust), Hannah Holm (MesaU), Laura Spann (SWWCD), Lisa Darling (South Metro), Scott Williamson (WEco), Todd Hartman (Denver Water); CWCB: Megan Holcomb, Ben Wade, Sara Leonard, Amy Ostdiek, Jim Pokrandt, (Colo River Dist.), Chris Woodka (SECWCD)

## **Education & Outreach Demand Management Workgroup (Meeting 1)**

Thursday, August 15th, 2019 10 am - 2 pm

Salida Steam Plant (220 W Sackett Ave, Salida, CO 81201)

### **Meeting Topics:**

Agenda topics included updates on the current status of drought contingency planning (presentation by Brent Newman); an overview of the CWCB directive and work plan; discussion of workgroup expectations; initial scope and mission ideation; and public comment period that included a presentation of “Risk Study Phase 3” findings/new questions (by Jim Pokrandt).

### **Key Takeaways:**

The group spent the majority of the meeting identifying key big-picture questions associated with determining potential target audiences for demand management (DM) communications and discussing current perception and communication challenges related to the workgroup process (current) and demand management process as a whole (future).

- Need for message consistency and resources that could include DM is (1) an evolving process, (2) one more resilience tool to address future uncertainty, (3) an opportunity for “net positive” water management.
- Need for extra process transparency and inclusive program development that facilitates the ability for all water users to communicate questions, concerns, and ideas.
- Need to develop a common understanding of phrasing and intention. Words matter.

### **Questions/Concerns to Raise:**

The group identified some threshold questions and issues to consider going forward, including:

- Multiple scales of communication this group *could* address. Decide if the primary goals are to help facilitate communication of the workgroup process, of an active DM program, or engage with and respond to current media outlets.
- Is there a more inclusive, positive, or engaging term than “Demand Management”?
- Aim to help stakeholders answer the why with clarity and transparency: “why are we doing demand management?”

### **Additional technical, informational other needs:**

The group discussed several potential next steps to explore, including the following:

- Explore “Bleiker Consent Building” course for transparent consensus and conflict resolution training.
- Develop a distributable demand management “one-pager” for water users with FAQs.
- Explore options for web-based public engagement such as collecting public comments, utilizing existing podcasts, radio shows, op eds, or short informational videos
- Explore a water industry “systems map” with the goal of identifying major public facing communicators, strongest communication pathways, and strengthening weak communication links

### **Other:**

The group will identify a next meeting date in early 2020.



## **Education & Outreach DM Workgroup Meeting Report Out**

**Work Group:** Education & Outreach Meeting #2 **Date:** February 10, 2020

**Meeting Topics:** Agenda items included a recap and summary of the work of other workgroups, a discussion of exercises other workgroups are engaged in, a brainstorming session relating to regional messaging, development of guidance for a literature review, and preparation for the March joint Interbasin Compact Committee/Demand Management meeting.

### **Key Discussion Points:**

- Discussion covered the need for message consistency, stabilizing communication chain, need for extra transparency, open line for all users to communicate concerns and ideas.
- “Ambassadors of messaging” discussion around shifting the conversation about Demand Management to communities at the regional and local levels. Need to have more frequent check-ins among different workgroups, and have workgroup members’ organizations support State communications to their respective publics.
- Ongoing efforts discussed relating to surveys of how water educators communicate; mapping communications networks and addressing gaps. Potential for this workgroup’s work to inform/be informed by these efforts.
- Discussion around complications of communicating about a concept, not a concrete program.
- The group brainstormed on guidance for literature review.

### **Key Take Aways & Next Steps:**

- Workgroup members will share information and ideas about education and outreach-relevant literature to bring to consultant’s attention for inclusion in literature review, including examples outside of water industry.
- Workgroup members to prepare for March IBCC/DM meeting, particularly cross-cutting discussions and issues, asks of other workgroups.

### **Other:**

The group will meet next at the joint IBCC/Demand Management Workgroups meeting in March and will work on scheduling additional meeting after that.

## **Education & Outreach Demand Management Workgroup (Meeting 3)**

March 5th, 2020

Sheraton Denver West Hotel (360 Union Blvd, Lakewood, CO)

### **Meeting Topics:**

Discussion illuminated a continued need for clarity in this workgroup's objectives. There was recognition that it is still too early in the investigation process to clearly define a communication role (external to the workgroup process). First, terms should first be defined by technical-focused workgroups, and intent to continue is needed from the State. Education & Outreach Workgroup expertise can support other workgroups.

### **Key Takeaways:**

- What is the communication frame? Potential frames include: Equity (to share water shortage burden); Opportunity (to seize Colorado future/control destiny); Common Enemy (to develop resilience in face of climate change); Investment (vs cost of in-action)
- Need to define common terms across other working groups and for external parallel discussions (e.g. roundtable-centric DM discussions)
- Need clarity from CWCB on scope/timeframe: Does Ed/Outreach work really begin after this process to assist with consistent and intentional statewide messaging?
- Colorado is viewed by other states as being able to solve big problems - Communication should highlight DM program simply next step in long history of resilience/success
- Echoed in Environmental and Agriculture workgroup discussions: Clear need to reset the story and articulate common goals to overcome early negativity. Need for regular, expected "check-ins" (if a program is to be developed) with all sectors to ensure stakeholders are still in agreement/onboard. People expect water to be a huge fight; this is opportunity to change that narrative. West is over built. Ag is food. Envl flows are system health and major economic "streams." Regardless of core statewide framing, different groups require unique, tailored communications centered on clear, positive benefits.

### **Questions/Concerns to Raise:**

The group identified some threshold questions and issues to consider going forward, including:

- What can the ed/outreach group do to help support other workgroups? If we craft a communication framework or create boilerplate language, there has to be transparency and details (which is more than a "quick fact sheet").
- A potential DM program won't have public funds unless the public understands the issue. Need all useful frames to talk to the public. (e.g environmental considerations front & center in program development; DM one more tool in heavy toolbox of water management)
- It's essential to have communications plan *before* a DM program is decided upon, but need substance to proceed.

### **Other needs:**

- If Ed/Outreach group is to meet again, what is the specific deliverable need? Either from CWCB or other workgroups?

## **Education & Outreach Demand Management Workgroup (Meeting 4)**

June 3, 2020

Virtual meeting

### **Meeting Topics:**

Agenda topics included a discussion of the report going to the Board in July and work products of the other workgroups to be included; discussion of the Education and Outreach Workgroup's final deliverables concepts; a group review of the final deliverables; a discussion of individual needs statements; and public comment.

### **Key Takeaways:**

- The group spent most of the time at this meeting working towards consensus on how to capture the workgroup's work and discussions to date for a final deliverable to go to the board in July, as an attachment to the report to the Board.
- The group focused on the common education and outreach themes they have covered throughout discussions, including communication support and needs for the continued feasibility investigation; consideration of messaging and framing; and existing information networks and public involvement.
- The group identified that it is important to consider the communications needs in relation to timing of the investigation and any potential program. Additionally, the group discussed the ongoing importance of defining the audiences for education and outreach on demand management issues.
- The group also discussed offering individual statements, reflecting individual group participants' specific thoughts outside of the group summary documents, and highlighted the importance of capturing group discussions in an inclusive and holistic manner.

### **Other:**

- This was the final meeting of the Education & Outreach Workgroup.

# Attachment F

## Environmental Considerations

### Workgroup Documents:

1. Summary
2. Reports

# **Environmental Considerations for Evaluating a Demand Management Program or Project\***

**June 17, 2020**

## **Introduction**

The Environmental Considerations workgroup approached a demand management program as a potentially important tool for the State of Colorado that, if established, could provide environmental benefit. As such, this workgroup examined how to ensure that, if Colorado sets up a program, it have as a secondary goal achieving, as much as feasible, a net environmental benefit over time, and across hydrologic conditions and geographies. Because achieving environmental and other positive impacts from a demand management program will be more difficult with fewer participants, the Environmental Considerations workgroup also encourages a program structured to ensure robust participation.

## **Background**

Colorado is considering whether to set up and participate in a demand management program to reduce consumptive water use in the Colorado River Basin on a temporary, voluntary, compensated basis. The 2019 Colorado River Basin Drought Contingency Plan allows such a program, and also provides for the free storage of up to 500,000 acre-feet of water in Lake Powell of water conserved in a demand management program upon agreement of all Upper Basin states.

While the purpose of a demand management program would be to avoid a compact call, the program, or individual transactions in the program, may have positive or negative effects to Colorado's rivers, fish and wildlife resources. Therefore, the state should explore measures to minimize adverse environmental effects and ways to incentivize environmental benefits. The considerations below describe a framework for exploring individual transactions and the demand management program overall with an aim to protect and result in an overall net benefit to Colorado's rivers, fish (aquatic) and wildlife (terrestrial) resources.

**Potential Information Needed (\*see note below regarding need to adjust environmental review to the size of a demand management program or project)**

- Project location or suite of locations
- Nature of demand management practice(s), e.g., full season/split season following, no call, bypass point of diversion within irrigation system, forego storage, release from storage, etc.
- Duration of demand management practices implementation, i.e., from a single season to as long as program continues.
- Source and amount of water conserved
- Storage implications for storage above or below project
- Environmental resources that may be affected both in the immediate area, or in the watershed, e.g., flow, stream temperature and water quality, affected species, associated irrigation supported wetlands), and extent to which resources affected are a priority for protection by a federal, state or local entity. To answer, must know:
  - The area resources and current water management regime, i.e., known flow needs, current timing and rates of diversion, etc.
  - Whether a federal, state or local entity has identified priority resources, data gaps, including ones that can be filled in a timely way given the demand management program process, and ones that cannot.  
Critical habitat for threatened and endangered species and state species of greatest conservation need including the status and recovery needs of individual candidate, threatened, or endangered species.
- How the proposed project or the demand management program more broadly, may affect these resources.
- Tradeoffs identified in terms of resource impacts, i.e., positive for one but negative for another.
  - May be desirable to have a process that engages relevant stakeholders to validate results
- Predicted changes to a proposed project's environmental outcomes by modifying its design to avoid adverse environmental effects, or if avoidance is not possible, to minimize the adverse effects, and if neither is feasible, to mitigate the adverse effects in the area where they occur, or if mitigation is not possible, to offset or otherwise compensate for the adverse effects.
  - E.g., Evaluate if conserved water could be retimed/left in river or bypassed through ditches, to avoid adverse effects and if not, to mitigate them, or, if there would be unavoidable adverse effects, whether retiming could provide other environmental benefits.
- Measuring impacts, mitigation, offsets or uplift must be done in a “proportional” way so that the evaluation is not so complicated that it dissuades participants because of complexity or cost.

### **Demand Management Program-Wide Considerations**

At a higher, whole program level,

- Operate the demand management program with a goal of no net loss to overall environmental services, recognizing that tradeoffs between birds and fish, or fish and boating, are inherently value-laden/driven.
- Build in incentives for projects that provide net environmental benefits,
  - E.g., projects that include additional non-consumptive uses of enrolled water rights (Instream Flows, recreational in-channel diversions, hydropower, etc.)
  - Encourage partnerships that add environmental value to demand management projects

### **Potential Resources Impacted**

A demand management program may have positive or negative impacts to riverine areas and hydrologically connected wetlands.

A river's flow regime is key for sustaining its biodiversity and ecological integrity. Flows in most western rivers are naturally highly variable. The range of a river's flow magnitude, frequency, duration, timing and rate of change will also encompass extreme hydrologic events, such as floods or low flows, necessary to biodiversity and ecosystem integrity. Changing any one of these components will impact a river's ecologic system, biologically or in other ways.<sup>[1]</sup> So, by defining flow regimes with these five elements, one can then examine the ecological consequences of specific activities that modify one or more component.<sup>[2]</sup>

For environmental considerations within each proposed transaction, or the program overall, need to identify and evaluate impacts (positive or negative) to:

- Instream Flows (or other available flow target data for reaches without appropriated Instream Flows)
- Stream Management Plan or Water Management Plan objectives or proposed projects
- Critical habitat and flow recommendations
- State species of greatest conservation need
- Water quality standards, including temperature
- Basin Implementation Plans/Identified Projects and Processes (IPPs)
- Colorado River Cut Throat Conservation Strategy
- Other known community or entity environmental priorities

<sup>[1]</sup> [Ecological responses to altered flow regimes: a literature review to inform the science and management of environmental flows. Poff et al. 2010](#)

<sup>[2]</sup> [The Natural Flow Regime. Poff et al. 1997](#)

## **Potential Tools**

Tools that exist and could be used, or modified for use to help identify environmental benefits appear in this link [[https://docs.google.com/spreadsheets/d/1-Jc4JJZ75\\_Fr03-10MoHyduRJ\\_FCvr3GD1dHcWVSSY/edit#gid=0](https://docs.google.com/spreadsheets/d/1-Jc4JJZ75_Fr03-10MoHyduRJ_FCvr3GD1dHcWVSSY/edit#gid=0)] data tool spreadsheet, and include:

- [The Colorado Water Plan tech update environmental flow tool](#)
- [StateMOD](#) for [Instream Flows](#)
- Colorado River Support System for large river target flow
- [Colorado Natural Heritage Program data](#)
- [State Wildlife Action Plan](#)
- [U.S. Fish and Wildlife Service Environmental Conservation Online System](#)
- GIS databases and layers by Colorado Parks and Wildlife, U.S. Fish and Wildlife Service, [Colorado Water Conservation Board](#), and other entities

**\*NOTE:** These considerations relate to the **substance** of environmental evaluations. As part of setting up a demand management program in Colorado or the Upper Basin, there would need to be a separate conversation about the **process** for evaluating the program, or individual projects, including, for example, how to right-size an environmental considerations review commensurate with the size (volume of water conserved) of an individual project. Any process must designate who would be responsible for an environmental review, whether there would be a dedicated review entity and who would have the responsibility to gather the information required for such a review.

To assist a demand management program project applicant's ability to consider environmental benefits during their project planning and implementation, the Environmental Considerations workgroup recommends that the state provide an Environmental Considerations checklist and tools on any future demand management Program website. Both the checklist and tools should be readily available for use at an applicant's discretion. The checklist may include items identified in the Potential Resources Impacted. The tools may include the items identified in the Potential Tools.

**Attachment:** Environmental Considerations Workgroup Hypothetical Exercise Summary



## Environmental Considerations Workgroup Hypothetical Exercise Summary

June 17, 2020

A subcommittee of the Environmental Considerations (EC) Workgroup developed four potential hypothetical demand management scenarios for discussion purposes. In developing the hypotheticals, the subcommittee assumed that Demand Management (DM) water would be monitored and tracked. At its June 2, 2020 meeting, the EC Workgroup broke into four subgroups and applied the Environmental Considerations for Evaluating a Demand Management Program or Project, developed by a separate EC Workgroup subcommittee, to the four hypotheticals. Each subgroup answered the following questions for one of the hypotheticals:

1. Identify potential environmental benefits and impacts of each project using the Environmental Considerations document as guidance.
2. Identify any missing factors in the Environmental Considerations document that relate to your hypothetical project.
3. Identify technical issues, data gaps (what are the issues that need more study/analysis), or factors that would require more analysis that relate to your hypothetical project.
4. How burdensome was this project to assess against the Environmental Considerations document?

Full notes from this discussion exercise are available at

[https://docs.google.com/document/d/1C\\_2CqRBj5o9\\_IGH1H3w3k6qgJW0MWZjU8Us-xB2H-zU/edit](https://docs.google.com/document/d/1C_2CqRBj5o9_IGH1H3w3k6qgJW0MWZjU8Us-xB2H-zU/edit). The hypotheticals are listed below:

### Hypothetical #1

Up to 5,000 AF may be available from Colorado River tributaries in southwest Colorado, mainly for irrigation of row crops. Return flows, compact issues, and shareholder values are also imbedded in this example. For the purposes of the EC workgroup, consider these three discrete outcomes:

1. 5000 AF is available from conserved consumptive use from direct flow rights, with points of diversion primarily in the lower basins, but also scattered up tributaries.
2. 5000 AF is available from conserved consumptive use through non-diversion/ use of storage rights; assume this water is available for release throughout a given water year.
3. A 50/50 split, i.e., 2500 AF is from direct flow water rights and 2500 AF is in storage and available for later release.

### **Hypothetical #2**

Large transmountain diversion water right with post-compact adjudication date, pre-compact appropriation date, with contribution to DM program in foregone eastern slope diversions. This hypothetical is also exploring issues of timing related to implementation of a DM program and its effect on previously stored water. For the purpose of the EC workgroup, we assumed ‘large’ = 10,000 AF, and that this water was stored in multiple headwater western slope reservoirs, tributary to the Colorado River. Consider:

1. All 10,000 AF of TMD storage to be used in one year.
2. 10,000 AF of TMD storage can be used over a three year period.

### **Hypothetical #3**

500 AF of Eagle River water stored in upstream reservoirs (1991 priority) made available through administration of augmentation plans and via exchange. The Administration and Accounting workgroup hypothetical examines questions of how the exchanges might operate, or how unadjudicated exchanges factor into DM water availability. For this hypothetical, the EC workgroup should consider:

1. 500 AF of water stored in headwater reservoirs available for use without timing restrictions;
2. 500 AF of water stored in headwater reservoirs where the timing of release is affected in dry or average-dry years by lack of exchange potential within the Eagle River basin.

### **Hypothetical #4**

120 AF of pre-compact consumptive use water is made available from seasonal and split-season fallowing in the Upper Gunnison. This water would be available for downstream storage and release from Blue Mesa. The hypothetical presented by Administration and Accounting includes consideration of dependence of junior rights above Blue Mesa on local return flows. For the EC Workgroup to consider:

1. 120 AF of water is available within one specific sub-basin to the Gunnison above Blue Mesa; local availability for instream flow use purposed via foregone diversion in time and place, and 120 AF can be re-released from Blue Mesa within the water year.
2. A total of 120 AF of water is available but split within multiple sub-basins to the Gunnison above Blue Mesa, subject to direct-flow timing restrictions but also available for release below Blue Mesa;
3. 120 AF is NOT much water for instream purposes on larger streams, especially considering potential return flow needs. Is there a ‘threshold’ value for consideration of DM water for environmental purposes under a headwaters DM program?

After the hypothetical exercise, the EC Workgroup noted that the four subgroups had identified some commonalities when answering the questions for their respective hypotheticals, which are listed below:

#### **Potential Environmental Benefits**

- Water released from storage may provide flexibility on timing and more opportunities to manage water releases for different types of benefits, including:
  - Generating flushing flows
  - Benefitting endangered fish
  - Helping meet decreed instream flow rates
  - Addressing late summer low flows and high temperatures
  - Benefitting riparian vegetation
- Potential reductions of selenium loading due to reduced irrigation and split season fallowing.
- Water quality and treatment, including permitting.
- Could offset depletions from someone else's diversion that would have more negative impacts on the stream.
- Potential recreational flow benefits.

#### **Potential Environmental Impacts**

- Impacts from changes in return flow pattern could include:
  - Diminished late season flows; potential impacts to critical habitat
  - Impacts to wetlands that were created by the return flows
  - Dry up of upland areas for wildlife
  - If transmountain diversions foregone, loss of return flows on East Slope could result in adverse aquatic and terrestrial impacts in South Platte and Arkansas River basins.
- Possible negative impacts if stored water is released at less beneficial times.
- 15-Mile Reach: Changes to how water is released could affect the benefits that are built into the existing system.
- Increased need to treat drinking water.
- On/off-farm impacts to wetlands and wildlife (food, forage, shelter).

#### **Factors Missing from Environmental Considerations Document**

- Understand complexity of the subject water right, e.g., one single point of diversion versus multiple points of diversion.
- Desire to understand any change in operations on future years' reservoir administration and storage and release patterns, and impacts on exchange potential.
- On/off farm wetland delineations.

- How/when timing of release of stored water will occur. Consider maximum timing for beneficial uses, including instream flow use.
- Desire more information about return flow considerations.
- Unknown magnitude and duration (e.g. daily versus seasonal).

#### **Technical Issues or Data Gaps**

- Are listed species involved (including terrestrial where applicable, such as sage grouse)? What are the flow needs and timing? Is designated habitat tied to critical habitat?
- Wetlands assessments
- Return flow analyses
- Desire to understand the hydrology in all affected areas. Explore whether any “rules of thumb” can apply for certain geographic areas without detailed analysis.
- Impacts to other reservoir operations, including relatively small, in-basin reservoirs.

#### **How Burdensome Compared to Potential Benefits?**

- Desire fast and simple ways to assess return flow impacts.
- Conducting environmental review of considerations could be burdensome to applicants.
- Variable year types could have different environmental benefits and impacts making project planning and assessment difficult
- Resources needed for review of small amount of water may not be necessary
- On/off-farm wetland delineation could be burdensome.

## **Environmental Considerations Work Group Meeting Report Out**

**Meeting Number: 1**

**Date:** August 29, 2019

### **Meeting Topics:**

Agenda topics included: background on demand management and drought contingency planning; process and expectations of the work groups; initial issue identification; and public comment.

The group spent the majority of the meeting identifying important issues associated with environmental considerations for a potential demand management program.

### **Key Take Aways:**

The group discussed many different aspects of potential environmental impacts and benefits, such as:

- Will projects with higher environmental benefits be prioritized?
- Can criteria be developed to quickly assess potential environmental benefits or impacts for specific projects?
- How can environmental benefits be measured or quantified to better demonstrate positive impacts?
- How can environmentally beneficial projects be incentivized?
- What are the environmental impacts and benefits associated with potential agricultural demand management activities?
- What type of flows will provide benefits and how will flows be impacted?
- What types of tools may be necessary or available?
- Are there any examples or case studies of demand management that include an assessment of environmental concerns?

### **Questions/Concerns to Raise:**

The group identified some questions and issues to consider going forward, including:

- How to balance equitable distribution of a potential demand management program with desire to prioritize project selection based on environmental benefits.
- How to best learn from previous work and demonstration projects.

### **Additional technical, informational other needs:**

The group discussed potentially having a contractor conduct a number of tasks in a phased approach to better understand the environmental impacts or benefits of a demand management program. This approach could include a literature review of

existing information to understand what is already known, assess information gaps, and prioritize potential benefits through criteria. Next steps could include identifying protection mechanisms and systematic project monitoring efforts.

**Other:**

The group identified two additional meeting dates and locations on October 30<sup>th</sup> in Salida and November 22<sup>nd</sup> in Frisco.

## **Environmental Considerations Work Group Meeting Report Out**

**Meeting Number: 2**

**Date:** November 22, 2019

### **Meeting Topics:**

Agenda topics included: an overview of the workgroup processes; a review of other workgroup discussions; an update on the CWCB Demand Management Feasibility Investigation RFP; a summary of the Upper Colorado River Commission's (UCRC) System Conservation Pilot Program (SCPP); next steps; and public comment.

Please note that this meeting was limited to informational presentations only due to inclement weather. The planned agenda discussion items on prioritizing workgroup efforts and potential environmental criteria were delayed until the next Environmental Considerations in-person workgroup meeting.

### **Key Take Aways:**

The group heard updates and presentations related to the following:

- CWCB staff provided an update on the Demand Management Feasibility Investigation, which included a discussion of common themes arising out of workgroup meetings, upcoming Demand Management meetings and events, and a summary of other workgroups' discussions as they relate to the Environmental Workgroup. Upcoming Demand Management events include a regional workshop at the Colorado Water Congress January meeting, the morning of January 29; and the joint IBCC/Demand Management workgroup meeting March 3-4, 2020. The group discussed convening at least two additional Environmental workgroup meetings before July 2020.
- Group members provided updates on their discussions relating to Demand Management that have occurred outside of the workgroup.
- Aaron Derwingson, The Nature Conservancy, presented information on the SCPP including examples from several different projects. The presentation included general information on how the projects worked and what was learned. A summary was also provided on the impacts to streamflows and the environment, when the information was available.

### **Next Steps**

The group discussed the following workgroup tasks:

- Consider which studies and reports should be included in a literature review.
- Review previous studies and information relating to water conservation efforts, as well as existing environmental rules and regulations.

### **Other:**

The group discussed holding the next meeting in February and convening at least two meetings before June 2020.

## Environmental Considerations Work Group Meeting Report Out

Meeting Number: 3

Date: April 9, 2020

### Meeting Topics:

Agenda topics included: an overview of the workgroup process, the November meeting, and the joint workshops at the Colorado Water Congress and Interbasin Compact Committee; an update on the CWCB Demand Management Feasibility Investigation RFP; a recap of Scenario Planning; a presentation on a preliminary literature review; a discussion of homework on potential environmental impacts, mechanisms, rules and regulations, and research needs or data gaps; a prioritization exercise; and a discussion on criteria.

### Key Takeaways:

The group discussed the following topics:

- Developing hypothetical or scenario planning concepts: The group refined uncertainties and values associated with a potential demand management program. CWCB staff will provide updates about other workgroup scenario planning at the next Environmental Considerations meeting.
- Monitoring: The group discussed the potential and need to monitor environmental impacts, including impacts to wildlife, related to agricultural alternative transfer methods projects.
- Relevant literature and potential data gaps related to environmental considerations: The group discussed resources with the most information related to environmental considerations.
- 2019 Demand Management Investigation Work Plan: The group identified broad examples of potential environmental impacts, mechanisms, rules and regulations, and research needs or data gaps through homework documents based on the main issues identified during the group's August 2019 meeting.
- Prioritization: The group discussed the importance of criteria to assess environmental impacts or benefits, as a priority. Exploring ways to incentivize participation was also discussed as a priority. A number of potential resources were identified that could assist in developing criteria. A small subgroup was formed to start summarizing potential criteria from existing literature and sources.

### Questions/Concerns to Raise:

The group identified some questions and issues to consider going forward, including:

- Indirect effects to water balance as a result of a potential demand management program.
- Uncertainty of defining impacts of a potential demand management program before knowing what a demand management program would look like.



- The need to understand and learn from agricultural alternative transfer method projects.

#### **Additional Technical, Informational Other Needs:**

The group discussed the potential for the contractor to assist with development of initial criteria for assessing environmental impacts and benefits of potential demand management projects, based on existing literature.

#### **Public Comment**

- A question was raised about what entity will be tasked with addressing equity.
- There was also a question about the representativeness of the Kremmling alternative transfer method study.

#### **Other:**

The group discussed convening at least one and potentially two additional environmental workgroup meetings before July 2020. The group plans to convene remotely on May 7<sup>th</sup>. The group identified June 2<sup>nd</sup> as an available date to meet, if needed.

## Environmental Considerations Work Group Meeting Report Out

Meeting Number: 4

Date: May 7, 2020

### Meeting Topics:

Agenda topics included: a review of the Demand Management workgroup processes and updates about the activities of other Demand Management workgroups, criteria discussion, scenario planning discussion, review of preliminary data and tools, and consultant needs and direction.

### Key Takeaways:

The group discussed the following topics:

- Demand Management Review: The group revisited the purpose of a potential Demand Management program to ensure compact compliance. CWCB staff reviewed workgroup tasks such as the need to identify key policy issues and the potential to assess the potential pros and cons of different approaches. Staff also provided updates about other workgroup scenario planning efforts and listed examples of the type of products that other workgroups are generating.
- Criteria Discussion: The subgroup provided an overview of the draft document they produced related to potential environmental considerations for a Demand Management Project. The group agreed that the document describing environmental considerations, needed additional context, and decided to continue to refine the document before meeting again in June.
- Scenario Planning Discussion: The group discussed the efforts of other workgroups and considered a number of different uncertainties that could be used to formulate scenarios. The subgroup will refine hypothetical examples of types of potential Demand Management projects for discussion at the next meeting.
- Preliminary Data and Tools Review: An inventory of potential environmental resources and tools that may be helpful were presented and the group was asked to make suggestions if others should be included.
- Consultant Needs and Direction: Representatives from the Demand Management contractor were introduced. The workgroup asked a number of questions to clarify the purpose of the literature review and the extent of the investigation.

### Questions/Concerns to Raise:

The group identified some questions and issues to consider going forward, including:

- Questions about the potential to conduct more technical analyses such as determining how often certain criteria are met in critical habitat or the amount of dry up needed to achieve different volumes of water.
- A general lack of riparian and wetland information was identified as a data gap.

#### **Additional Technical, Informational Other Needs:**

The group discussed the potential for the contractor to assist with development of initial criteria for assessing environmental impacts and benefits of potential demand management projects, based on existing literature.

#### **Public Comment**

- A suggestion was made for the Environmental Considerations workgroup to use hypothetical project examples rather than scenario planning.

#### **Other:**

The group discussed timelines for a subgroup to develop a draft document on hypothetical examples and for revisions to the Environmental Considerations document. The group plans to convene remotely on June 2nd.

## Environmental Considerations Work Group Meeting Report Out

Meeting Number: 5

Date: June 2, 2020

Meeting Topics:

Agenda topics included: a review of the Demand Management workgroup process and updates, an update from SGM on the status of the literature review, an environmental considerations discussion, hypothetical projects exercise, and discussion of the workgroup deliverables and next steps.

Key Takeaways:

The group discussed the following topics:

- Demand Management Process: CWCB staff provided an overview of what the Project Management Team's plans to report to the CWCB Board. Staff also provided updates about other workgroup efforts, and notified the group about a Demand Management Workshop to be scheduled in August if schedules permit.
- SGM Update on Literature Review: Staff from SGM presented an update on their work on the literature review focusing on environmental considerations. Most of the studies they have reviewed did not directly measure environmental benefits. Key data gaps include information about the resulting changes to streamflow, which limits assessments of potential environmental benefits or impacts.
- Environmental Considerations Discussion: The subgroup reviewed changes to the document and agreed to accept the changes that were made. Revisions included adding an introduction, adding information from Poff (1997) to the section on potential resources, clarifying certain technical language, and drafting suggestions that would improve the process for applicants to any potential Demand Management program.
- Hypothetical Project Exercise: The subgroup reviewed the four hypothetical projects they developed. The full workgroup broke out into four smaller groups to discuss potential benefits, impacts, missing factors, technical or data gaps, and how burdensome assessments would be compared to potential benefits for each hypothetical project. The full workgroup then reviewed the results and discussed the outcomes.
- Deliverables Discussion: The group discussed two documents to include as deliverables to the CWCB Board: 1) Environmental Considerations, and 2) Environmental Considerations Workgroup Hypothetical Exercise Summary.

Questions/Concerns to Raise:

The group identified some questions and issues to consider going forward, including:

- The workgroup is interested in more information about the timeline for the Board to make decisions.

- The need to more fully understand a project's impact on hydrology, including return flows, is critical to understand potential environmental impacts or benefits.

#### Additional Technical, and Informational Needs:

The group discussed the need for efficient methods to assess return flows to determine how projects would alter hydrology.

#### Public Comment

- A member of the public commented that the hypothetical exercise is valuable because it provides important examples for the CWCB to seriously consider before specific Demand Management projects are initiated, and recommended it be included in the final work packet.

#### Other:



































This meeting marks the fifth and final meeting of the Environmental Considerations Workgroup as envisioned under the CWCB's 2019 Work Plan for Intrastate Demand Management Feasibility Investigations.

# Attachment G

## Funding Workgroup Documents:

1. Summary
2. Reports

# DRAFT CONCEPT: Funding Working Group Demand Management (DM) Narrative Scenarios

Narrative Scenario Number	SCENARIO 1	SCENARIO 2	SCENARIO 3	SCENARIO 4	SCENARIO 5
Upper Basin Agrees to DM	NO	YES	YES	YES	YES
Thousands of Acre-feet (KAF) of Water Made Available by:					
• Investment in Other Mechanisms that Support Compact Compliance*	20 KAF	—	—	—	—
• Lease for a DM Program (voluntary, temporary, compensated)**	—	259 KAF	500 KAF	500 KAF	500 KAF <small>Plus Transit Loss &amp; High Evaporation</small>
Cost per Acre-foot (AF) of Water					
Interest in DM Lease Program	N/A				
Acute (🕒) or Chronic (🕒)					
Reservoir Storage Options: All CRSP Units vs. Only Powell					
Year To Reach Total KAF	10 YEARS	5 YEARS	10 YEARS	5 YEARS	15 YEARS
Estimated Annual Costs (Including Administrative Support)	\$14 M <small>(Including Interest)</small>	\$11 M	\$10 M	\$41 M	\$40 M
Percent of 500 KAF Storage Pool Filled	0% <small>(Equivalent to 4% of Storage Pool)</small>	51.75%	100%	100%	100%
Climate Change & Evaporative Loss					
Population & Tourism					
Economy***	GOOD	POOR	GOOD	VERY GOOD	GOOD

"The DM Funding Workinggroup estimated the assumed maximum costs that Colorado might pay for DM were it to have to meet the full DM storage pool allocated under the 2019 Drought Contingency Plan.(500,000 acre-feet). This is shown in scenarios 3 through 5. However, Colorado's 51.75% allocation under the Upper Colorado River Basin Compact could be another basis for estimating costs; this was used in scenario #2. To offer a comparison, if the 51.75% value was applied to the other assumptions in scenarios 3, 4 and 5, the approximate costs in those adjusted scenarios would come down to \$5.2 million, \$21.5 million, and \$21 million a year, respectively."

\*\*Investments in other mechanisms create ownership which, outside of any associated administrative, programmatic or maintenance needs, could make the long-term economics of investment options more attractive when compared to leasing options that could have the same or greater costs in perpetuity. Additionally, investments may create opportunities for reducing risk in ways that leasing may not. For these reasons, the DM Funding Workinggroup considered that some level of investment should be considered as a part of any DM scenario to build-in resilience and offset leasing costs over time.

\*\*\*The DM Funding Workinggroup acknowledges that COVID-19 is a "black swan event" that significantly alters funding discussions for the foreseeable future. The impacts from COVID-19 on the state economy are such that this is the lens that all funding discussions must now be viewed through. Increased volatility in the market results in needing more tools, wider parameters and more flexibility for funding.

## **Work Group Meeting Report Out**

**Work Group:** Funding Workgroup, Meeting #1 **Date:** August 8, 2019

### **Meeting Topics:**

Agenda topics included: background on demand management and drought contingency planning; process and expectations of the work groups; initial issue identification; and public comment.

The group spent the majority of the meeting identifying the key big-picture issues associated with funding of a potential demand management program and discussing the scope of the work group's future discussions.

### **Key Take Aways:**

The group discussed a few big-picture questions and issues relating to funding a potential demand management program, such as:

- How much money would a potential demand management program require?
- Where would funds come from, and what are potential pros and cons of various funding sources?
- How would funds for a demand management program be administered?
- What are sideboards and issues surrounding who would be able to participate in a potential demand management program?
- What types of projects would be eligible for funding under a Demand Management program? i.e. front range reuse and infrastructure connected to reductions in transmountain diversions)?
- Can this group consider other investments to address long-term water supply risks (i.e. forest health and watershed treatments)?
- How should water be valued, and what are the factors in making this determination?
- How does equity in participation and administration of a potential demand management program factor in to this discussion?

### **Questions/Concerns to Raise:**

The group identified some threshold questions and issues to consider going forward, including:

- What parameters should be considered in analyzing issues around funding of a potential demand management program?
- What are the mechanisms or factors to be considered in determining how to value water?

### **Additional technical, informational other needs:**

The group discussed potentially having a contractor conduct a literature review of existing information on funding programs similar to a potential demand management program.

### **Other:**

The group will identify a next meeting date in the October – November timeframe to be held in the Denver Metro area.



## Workgroup Meeting Report Out

### **Work Group:**

Funding Workgroup Meeting #2 **Date:** December 3, 2019

### **Meeting Topics:**

Agenda topics included: recap of meeting #1, evaluation of “parking lot” comments from other workgroups, a visioning exercise around scenario planning; and a public comment period.

Building from the question raised at the first meeting – What parameters should be considered in analyzing issues around funding of a potential demand management program – the group spent the majority of the meeting brainstorming major factors that could affect a possible demand management program and discussed building scenarios around these factors.

From that effort, a table of five high-level, conceptual scenarios were developed that could be shared with other workgroups to help share some of the high-level issues this group has been wrestling with and to allow an apples-to-apples comparison of analysis of various conceptual planning pathways across DM workgroups. From there, the group began to brainstorm what funding-specific nested scenarios might be developed and what high-level drivers from the Colorado Water Plan’s scenarios (e.g. climate change; population growth; economic downturns) might impact any possible solutions. Due to time constraints at this meeting, that next phase of conversation will be teed-up for Funding Workgroup Meeting #3.

### **Key Take Aways:**

The brainstorm session generated a range of categories as a starting point for scenario planning. From a set of scenarios the group will work to identify policy questions to consider related to funding a potential demand management program. The scenarios identified included:

- Volume of water needed
- Cost of potential program (i.e. \$/acre-foot)
- Percent of water savings expected from a demand management program (versus funded investments in infrastructure)
- Acute or chronic need
- Year water is needed by
- Reservoir storage options

Additionally, some funding-specific conversations revisited ideas from Meeting #1 surrounding potential tax solution, how to protect funding, etc.

### **Questions/Concerns to Raise:**

The group identified some threshold questions and issues to consider going forward, including:

- How much water can be conserved by replacing existing infrastructure?
- What lessons can we learn from the System Conservation Pilot Program?

### **Additional technical, informational other needs:**

The group discussed potentially having a contractor help refine the scenarios identified. Ideally these scenarios would be broken down into a set for all demand management workgroups to consider and additional scenarios specific to this workgroup.

### **Other:**

The group expects to convene again on January 30, 2020 in Westminster.

## Workgroup Meeting Report Out

### **Work Group:**

Funding Workgroup Meeting #3 **Date:** January 30, 2020

### **Meeting Topics:**

Agenda topics included: recap of meeting #2, evaluation of “parking lot” comments from other workgroups and public comments received; scenario planning refinement; and a public comment period.

The five high-level, conceptual scenarios developed at meeting #2 were reviewed to be sure the ideas were captured and to revisit the concepts with the intention of identifying one funding mechanism to vary across all scenarios. David Groves with the RAND Center on Decision Making Under Uncertainty attended the meeting to gather background on the scenarios to help facilitate a conversation with other workgroups at the IBCC/Demand Management meeting in March 2020.

### **Key Take Aways:**

The group came up with a preliminary list of funding ideas noting that not one concept, but rather a portfolio would be beneficial. The group discussed looking for pros/cons and picking one option to run through the scenarios as a next step to help identify strengths and weaknesses in funding options. Ideas listed included: statewide tax (income, sales, property), regional tax, statewide fee, Bureau of Reclamation contribution, hydropower user fee, export user fee (i.e. Front Range water user rate increase).

### **Questions/Concerns to Raise:**

The group identified some threshold questions and issues to consider going forward, including:

- Should the funding workgroup consider funding issues relating to a potential pilot program to take place at some point before a Demand Management program would be set up?
- For conversation with other workgroups – Who (or what sectors) would benefit most from a DM program?

### **Additional technical, informational other needs:**

### **Other:**

Public comment provided additional context around scenario considerations including evaluating and mitigating unintended consequences.

The group will meet again at the IBCC/Demand Management meeting on March 5, 2020 in Denver West.

## **Workgroup Meeting Report Out**

### **Work Group:**

Funding Workgroup Meeting #4

**Date:** May 18, 2020

### **Meeting Topics:**

Agenda topics included: recap of IBCC/Demand Management Workshop; scenario planning review; discussion of funding mechanisms; and a public comment period.

The five high-level, conceptual scenarios developed throughout the year were discussed with rough funding amounts assigned to each scenario with the idea that the group could discuss funding mechanisms for specific scenarios. Considerations that went into the estimated funding amounts included: storage in all Colorado River Storage Project Reservoirs or Lake Powell only, volume of water needed, whether or not evaporative losses or transit losses were considered in the annual cost, administrative costs, whether the participation in a demand management water lease effort would have few to many participants, whether the need was acute or chronic, population trends, tourism trends, and the economy.

### **Key Take Aways:**

The group discussed the considerations that went into the funding estimates including: the cost used for industrial water; the need to compare annualized costs for each scenario; the timeframe (a longer timeline reduces the impacts of transactional costs); the economy and tourism in light of COVID-19 have changed significantly and it is uncertain how long a rebound will take. Even with a diverse portfolio (as discussed at previous meetings) funding would likely fall short. Funding concepts that were mentioned included: user fees, lodging tax, federal sources, ad valorem taxes, risk management fees, and development fees. Any of these funding concepts could be paired with a reverse auction model where sellers bid for the prices at which they are willing to sell their water.

### **Questions/Concerns to Raise:**

The group identified some threshold questions and issues to consider going forward, including:

- COVID-19 has changed the calculus and there will need to be a fundamental change in thinking.
- All funding concepts on the table need to be reconsidered and new taxes are very unlikely to pass at this time.
- Demand management needs to be a top priority of the state in order for the state to find funds to support a program. Tying water to the state's economy could help.
- Concern that the investigation is moving too slowly and that hydrology could force a quicker pace.

### **Additional technical, informational other needs:**

### **Other:**

Public comment provided additional context around costs used in the scenarios and suggestions to look at all viable options.

# Attachment H

## Law and Policy Workgroup Documents:

1. Disclaimer
2. Policy Framework
3. Beneficial Use Analysis
4. Compact Compliance Analysis
5. Conserved Consumptive Use  
Analysis
6. Eligibility Analysis
7. Temporary Definition Analysis
8. Project Review and Approval  
Process Analysis
9. Reports

**DISCLAIMER**  
**June 6, 2020**

The discussion and proposed definitions contained in these materials do not represent interpretations of existing law by any member of the Law and Policy Workgroup or the organizations with whom they may be affiliated, the state of Colorado, or any of its officials or employees, nor predetermine in any manner the position or interests of the state of Colorado, the Colorado Water Conservation Board, or any demand management workgroup participants or their respective organizations, with respect to interpretation of any interstate compact or other component of the Law of the River.

**POLICY FRAMEWORK  
FOR DEMAND MANAGEMENT IN COLORADO  
(Compiled from Official Statements and Documents)  
With Policy Issues and Questions Identified  
June 3, 2020**

1. Purpose:
  - a. Temporarily reduce Consumptive Uses in the Upper Basin or augment supplies with Imported Water, if needed in times of drought, to help assure continued compliance with Article III of the Colorado River Compact without impairing the right to exercise existing Upper Basin water rights in the future.<sup>1</sup>
  - b. Avoid or mitigate the risk of involuntary curtailment.
  - c. Enhance security and certainty in the state's Colorado River water supply.<sup>2</sup>
2. Demand management (DM) means:
  - a. Voluntary, temporary, and compensated reductions in consumptive use of waters that otherwise would deplete the flow of the Upper Colorado River System for the specific purpose of helping assure compact compliance.<sup>3</sup>

*Some outstanding policy issues and questions on meaning of "temporary":*

    - *How long is temporary? 5 years? 25 years? Is it necessary to have an upper limit on participation?*
    - *Will the "temporary" requirement allow inclusion of: (a) water freed up from decommissioned power plants; (b) water savings from permanent crop switching; or (c) new reuse or other conservation investments by municipal providers?*
    - *Is the "temporary" requirement primarily intended to: (a) ensure that water users don't need to make a long term commitment to participate, (b) be a prohibition on longer term participation, and/or (c) help prevent permanent dry-up and reduce potential adverse impacts to local communities?*
    - *How can the benefits of investment in permanent reductions of use fit into a demand management program?*
    - *There are multiple possible interpretations here. The draft definition of "temporary" provides a consensus recommendation from the Law and Policy work group on some but not all of these issues.*
  - b. Use of imported waters from outside of the natural Colorado River watershed to augment the Upper Colorado River System for compact compliance purposes.<sup>4</sup>

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<sup>1</sup> Agreement regarding Storage at Colorado River Storage Project Reservoirs under an Upper Basin Demand Management Program, May 20, 2019 (DM Storage Agreement), Recital A.4, <https://www.usbr.gov/dcp/docs/final/Attachment-A2-Drought-Management-Storage-Agreement-Final.pdf>.

<sup>2</sup> CWCB Support and Policy Statements, Nov. 15, 2018 (CWCB Policy Statement); see draft definition of "compact compliance."

<sup>3</sup> *Id.*; see draft definitions of "temporary," "compact compliance," "conserved consumptive use"

<sup>4</sup> *Id.* at Recital A.4 and Section III.A.6. Note that the use of imported water "may also be evaluated" but is not assured as a part of a demand management program.

3. Consistency with Colorado's Water Plan
  - a. Further the goals expressed in Colorado's Water Plan, with specific consideration given to the principles and collaborative efforts set forth in Chapter 9.1 and Principle 4 of the Conceptual Framework in Chapter 8.<sup>5</sup>
  - b. Chapter 9.1 of Colorado's Water Plan provides in part: The State of Colorado will support strategies to maximize the use of compact water while actively avoiding a Colorado River Compact deficit.<sup>6</sup>
  - c. Principle 4 of the Conceptual Framework states: A collaborative program that protects against involuntary curtailment is needed for existing uses and some reasonable increment of future development in the Colorado River System, but it will not cover a new TMD [transmountain diversion].<sup>7</sup>

*Some outstanding policy issues and questions on Principle 4:*

- *How will the demand management program be structured to avoid providing benefit to a new TMD or increasing risk for existing water uses?*
- *Does the "reasonable increment for future development" need to be further defined? For example, should the increment be quantified and its location designated in the context of a demand management program?*

4. Equity
  - a. Prioritize avoidance of disproportionate negative economic or environmental impacts to any single sub-basin or region within Colorado while protecting the legal rights of Colorado water rights holders.

*Some outstanding policy issues and questions on equity:*

- *How will avoiding disproportionate impacts be determined?*
- *There is a tension between ensuring geographic equity and allowing the free market to govern transactions. Stated differently, there is a tension between allowing water users to participate if they are eligible and interested and potential restraints on participation to ensure that equity goals are met. For example, what if one county or sub-basin happens to have lots of water users interested in voluntarily reducing their water use for DM purposes? Will some be turned down? How will that decision be made?*
- *How is dispersed participation encouraged or incentivized?*
- *What are criteria for evaluating negative economic or environmental impacts?*
- *There are multiple possible interpretations here.*

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<sup>5</sup> CWCB Policy Statement.

<sup>6</sup> Colorado's Water Plan, Ch. 9.1, <https://dnrweblink.state.co.us/cwcb/0/doc/199522/Electronic.aspx?searchid=69705cbe-d4c1-446a-a4b9-00a411d2dad7>.

<sup>7</sup> Colorado's Water Plan, Ch 8, <https://dnrweblink.state.co.us/cwcb/0/doc/199506/Electronic.aspx?searchid=80d50cb3-95bf-405c-bfa5-587c633c7136>.

- b. Assess feasibility and promote mechanisms for obtaining roughly proportionate contributions of consumptively used water from participants on each side of the Continental Divide.<sup>8</sup>

*Some outstanding policy issues and questions on measuring contributions:*

- *How are municipal savings measured and accounted for over time and in different types of hydrological years? Can a baseline be established against which all contributions to the DM program are measured, adjusted for hydrology?*

5. State law consistency

- a. Comply with all applicable state law.

*Some outstanding policy issues and questions on state law compliance:*

- *What will the process be for accepting water rights into a DM program where they are used to “assure compact compliance”? Will a new “streamlined” structure be necessary or desirable?*
- *How will injury be determined?*
- *What steps must be taken to ensure no increase in risk of abandonment or reduction in historical consumptive use calculation?*
- *Will new legislative authorization be needed for whatever mechanism is used? Will legislation be required to shepherd DM water? Is a rule-making needed and if so, will it be sufficient?*

- b. Demand management actions shall not cause material injury to other water rights holders.<sup>9</sup>

*Some outstanding policy issues and questions on state law compliance:*

- *How will other water users be protected from injury?*
- *How will conserved consumptive use be quantified?*

- c. Export statute<sup>10</sup> inapplicability

6. Eligible water

- a. “Consumptive Use” means the depletion of water for domestic and agricultural beneficial uses as those terms are defined and referred to in the 1922 Colorado River Compact. It also includes the full amount of water: (i) consumed in association with the production of electrical power other than hydropower; and (ii) diverted from the Upper Colorado River System for which there are no return flows to that system, including, for example, diversions outside the natural Colorado River watershed.<sup>11</sup>
- b. The source of conserved water is Upper Colorado River System water, or Imported Water;
- c. The water is conserved, stored and released for the specific purpose of helping the Upper Division States assure continued compliance with Article III of the Colorado River Compact;

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<sup>8</sup> CWCB Policy Statement.

<sup>9</sup> CWCB Policy Statement.

<sup>10</sup> Colo. Rev. Stat. §§ 37-81-101 to -104.

<sup>11</sup> DM Storage Agreement, § III.A.3; *see also* draft definitions of “conserved consumptive use” and “eligibility.”



- d. For Upper Colorado River System water, the water must have been beneficially and consumptively used under valid water rights prior to being conserved as part of an Upper Basin Demand Management Program;

*Some outstanding policy issues and questions on water eligible for DM program:*

- *See issues identified above regarding “temporary.”*
- *How long will temporary water savings be allowed to continue or receive demand management credit?*
- *How can the DM program be designed to adapt to unanticipated opportunities to provide water to assure compact compliance?*

- e. For Upper Colorado River System water, the water must have been physically available for diversion in the year it was conserved, and would have been beneficially and consumptively used within a state or states of the Upper Division but for the conservation for the benefit of an Upper Basin Demand Management Program; and

- f. The conserved or Imported Water has arrived at a CRSPA Initial Unit after accounting for any conveyance and associated losses.<sup>12</sup>

7. Operational requirements - demand management water is subject to:

- a. Assessment of its proportionate share of evaporation during storage;
- b. Assessment of conveyance or transportation losses;
- c. Available unfilled storage capacity, meaning the storage space available at a given CRSPA Initial Unit after satisfying the legal storage obligations applicable to that Unit, consistent with applicable water rights administration requirements and decrees;<sup>13</sup>

*Some outstanding policy issues and questions on storage locations:*

- *How are storage locations other than Lake Powell determined if multiple CRSPA Initial Units are feasible alternatives and the Upper Division states are not in agreement?*

- d. An annual creation limitation at the CRSPA Initial Units combined (to be determined as part of the Upper Basin feasibility investigation);

*Some outstanding policy issues and questions on setting annual creation volume:*

- *Tension between desire to quickly fill DM storage as an insurance policy v. negative impact of larger annual volumes on local economies.*

- e. A maximum combined storage limitation of 500,000 acre-feet at the CRSPA Initial Units;

*Some outstanding policy issues and questions on setting annual creation volume:*

- *See comment above on storage in multiple locations. How will DM storage be allocated across the CRSPA Initial Units?*

- f. Reduction in the case of a spill at Lake Powell; and

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<sup>12</sup> DM Storage Agreement, § III.B.2.a

<sup>13</sup> *Id.*, § III.A.7.

- g. Annual verification by the Upper Division States, through the Upper Colorado River Commission (UCRC), and the Secretary of the volume of conserved water created, conveyed, and stored at the CRSPA Initial Units.<sup>14</sup>
- h. Through the year 2057,
  - i) Will not be released or cause a different release from Lake Powell than would have otherwise occurred under the 2007 Guidelines or post 2026 operational rules.
  - ii) Will be released from any of the CRSPA Initial Units only at the request of the UCRC to help assure continued compliance with Article III of the Colorado River Compact.<sup>15</sup>

#### 8. UCRC required actions

- a. Upper Division states, through the UCRC, must investigate feasibility of Upper Basin Demand Management Program (UB DM Program) and reach consensus on operational parameters, like verification, conveyance, administration and funding.<sup>16</sup>
- b. If the Upper Division states agree that the UB DM Program is feasible and determine to pursue development of the Program:
  - i. The UCRC must make finding that demand management activities are necessary to help assure continued compliance with Article III of the Colorado River Compact.
  - ii. The UCRC must approve the UB DM Program.
  - iii. Upper Division states, through the UCRC, must enter into an agreement with the Secretary of the Interior addressing methodology, documentation and process for verification and accounting for the creation, conveyance and storage of conserved water that is part of a demand management program.<sup>17</sup>

#### 9. Interstate Issues

- a. Ensure that water conserved within Colorado under any demand management program is not diverted and consumptively used by any other state.<sup>18</sup>
- b. Each Upper Division state must approve an Upper Basin Demand Management Program.<sup>19</sup>
  - Some outstanding policy issues and questions on interstate approval:*
    - *Interstate agreement necessary on triggers, interstate shepherding, evaporation and transportation charges, separate or joint State accounts, use of authorized storage locations other than Lake Powell, seepage and system assessments.*

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<sup>14</sup> *Id.*, § III.B.2.b.

<sup>15</sup> *Id.*, § III.B.2.c.

<sup>16</sup> *Id.*, § III.B.1.

<sup>17</sup> *Id.*, § III.B.3.

<sup>18</sup> CWCB Policy Statement.

<sup>19</sup> DM Storage Agreement, § III.B.3.d.

- c. The Upper Division states and the Secretary of the Interior must consult with the Lower Division states on: water rights eligible for demand management; verification of and accounting for the volume of conserved consumptive use, and; the methodology, process, and documentation for such verification and accounting.<sup>20</sup>
10. Some other issues not addressed in existing legal framework documents
- a. Tribal
    - i. Do Colorado tribes wish to participate and if so, how?
    - ii. Will currently unused tribal water rights be included in a DM program and, if so, how will they be treated?
  - b. Governance of Colorado program
    - i. Who runs a Colorado demand management program if one is established?
    - ii. Respective responsibilities of the CWCB and the Office of the State Engineer
    - iii. Opportunities for public engagement, advisory committee?

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<sup>20</sup> *Id.*, § III.B.3.b; Agreement Concerning Colorado River Drought Contingency Management and Operations (Companion Agreement), May 20, 2019, §§ H.1, H.2, and H.3.

**Issue:** Does Colorado law recognize compliance with an interstate compact as a beneficial use of water?

## **1. Background**

- a. This white paper evaluates whether, and to what extent, delivery or storage of water to be used to comply with the requirements of an interstate compact can be considered a lawful means of making water available for beneficial use under Colorado law.
- b. As discussed herein, the **Arkansas River Compact** equitably apportions the waters of the Arkansas River between Colorado and Kansas and, in so doing, outlines requirements for the delivery of water to the Colorado-Kansas state line. Article IV.D of the Arkansas River Compact provides that “the waters of the Arkansas river . . . shall not be materially depleted in usable quantity or availability for use to the water users in Colorado and Kansas under this Compact by . . . future developments or construction.”
  - i. The Water Court for Water Division 2 has addressed the use of water for compliance with the Arkansas River Compact in several cases. In one of those cases, LAWMA’s augmentation plan approved in Case No. 02CW181, the Court indicated that storage and delivery of water for compliance with this compact is a beneficial use of water.
  - ii. In a subsequent matter in which the Court approved the State Engineer’s Irrigation Improvement Rules, the Court appears to have assumed, without expressly stating, that compliance with the Compact constitutes beneficial use.
- c. Similarly, the Rio Grande Compact equitably apportions the waters of the Rio Grande between Colorado and the downstream states of New Mexico and Texas. Article III of the Rio Grande Compact contains a schedule of deliveries for Colorado’s delivery of water in the Rio Grande at the Colorado-New Mexico state line, measured at or near the Lobatos gaging station.
  - i. The Water Court for Water Division 3 approved conditional water rights for the Closed Basin Project in W-3038 for various beneficial purposes, including the delivery of water to the Rio Grande to assist the state of Colorado in meeting its delivery obligations under the Rio Grande Compact. The source of water for the Closed Basin Project is effectively salvaged or developed water from the Closed Basin, an area north of the Rio Grande where the streams do not flow to the Rio Grande or its tributaries. See *San Antonio, Los Pinos and Conejos Acequia Association v. Special Improvement District No. 1 of the Rio Grande Water Conservation District*, 351 P.3d 1112, 1123 (Colo. 2015). The project water is delivered to the Rio Grande downstream of all diversions in Colorado, and thereby makes more water available for diversion upstream in Colorado by means of substitution. *Id.* at 1123-24.
  - ii. In subsequent agreements between the State Engineer and the San Luis Valley Irrigation District and the Rio Grande Water Users Association, the parties thereto confirmed and agreed that the Rio Grande Reservoir would be used for Compact purposes, and that water that would otherwise be curtailed from water rights for compact delivery could be stored in and released from the Reservoir to aid the state in meeting its delivery obligations under the Compact. To the extent the water was not needed for compact purposes, it would be

retained in Colorado for beneficial use. It is a mechanism to minimize over-delivery under the compact..

- d. The **Republican River Compact** equitably apportions the waters of the Republican River among Colorado, Nebraska, and Kansas. Following litigation over Nebraska's compliance with the Compact, the parties entered into a settlement agreement that addressed how groundwater pumping would be incorporated into each state's allocation of water under the Compact.
  - i. The Republican River Water Conservation District sought approval from the Division 1 Water Court (for surface water) and from the Ground Water Commission (for designated groundwater) to use its water rights to assist the State of Colorado in complying with its obligations under the Republican River Compact. The Water Court and Ground Water Commission entered orders finding that Compact compliance is a beneficial use of water.
- e. The **La Plata River Compact** apportions the waters of the La Plata River (tributary to the San Juan) between Colorado and New Mexico. Under Article II of the Compact, for a majority of the year, one-half of the indexed flow measured at the Hesperus gage must be delivered to the stateline the next day.
  - i. The La Plata Water Conservancy District applied for conditional water rights in Long Hollow Reservoir (in Case Nos. 94CW75 and 00CW49), for various beneficial uses, including "for delivery of Colorado's Compact obligations to New Mexico under the La Plata River Compact." The Water Court entered conditional decrees approving that use, and La Plata Water Conservancy District has maintained diligence on these rights since the original decrees were entered.
  - ii. Most recently, in Case No. 16CW3005 (decreed in July 2019), the Water Court approved La Plata Water Conservancy District's application for an augmentation plan and exchange, which also relied on the Long Hollow Reservoir water rights (as conditionally approved for Compact compliance purposes) as an augmentation source for maintaining Compact compliance.

## **2. LAWMA Augmentation Plan (Case No. 02CW181, Water Div. 2)**

- a. One of the purposes of LAWMA's application in this case was to obtain approval of an augmentation plan to replace stream depletions associated with wells owned and operated by LAWMA's members in a manner that protects Colorado senior surface water rights from injury and assures compliance with the Arkansas River Compact. *Paragraph 12, 02CW181 Decree.*
- b. Under the augmentation plan, LAWMA replaces depletions to the waters of the Arkansas River at the stateline as required by the Paragraph IV.D of the Arkansas River Compact. *Paragraphs 23.A, 25.H, 26.I.*
- c. *Paragraph 53: "The application in this case seeks approval of a change of the Subject Water Rights so the water rights may be used to replace stream depletions to stateline flows. This Court has jurisdiction to determine the beneficial uses that may be made of Colorado water rights, including whether the Subject Water Rights and associated Article II Storage Account Water can be used to replace depletions to stateline flows and can be used for augmentation and replacement purposes. The Court finds that the Subject*

*Water Rights and associated Article II Storage Account water may lawfully be used to replace depletions to stateline flows under the Compact and may lawfully be used for augmentation and replacement purposes.”*

- i. Article IV.D of the Arkansas River Compact requires that the waters of the Arkansas River must not be materially depleted in usable quantity or availability. The Compact further provides for allocation of water stored in John Martin Reservoir between Colorado and Kansas.
  - ii. Thus, compliance with the Compact occurs through the replacement of material depletions to stateline flows.
  - iii. This decree equates “replacement of depletions to stateline flows” with augmentation and replacement as beneficial purposes recognized by Colorado law.
- d. Note: this was a consent decree approved by the Water Court, following LAWMA’s stipulations with fifteen opposers, with a “no precedent” clause included in Paragraph 71.

### **3. State Engineer’s Irrigation Improvement Rules (Case No. 09CW110, Water Div. 2)**

- a. In Case No. 09CW110, the Water Court approved the State Engineer’s “Compact Rules Governing Improvements to Surface Water Irrigation Systems in the Arkansas River Basin in Colorado.”
- b. The purpose of these rules was to address reduced return flows/useable stateline flows resulting from changes to more efficient irrigation methods and to further the optimum use of the waters of the Arkansas River system in a manner consistent with preserving the priority system, while also ensuring that Colorado satisfies its Compact obligations. *Paragraph 72.*
- c. The Rules authorized the development and approval of Compact Compliance Plans designed to maintain historical seepage loss and return flows as required by the Compact. *Paragraph 59.* Rule 10 provides that Compact Compliance Plans “may include use of water other than the subject water right to prevent a violation of Article IV-D of the Compact, if the other water is imported water or other fully consumable water pursuant to the decree controlling the use of said water.” *See also Paragraph 60.* As such, these plans optimize the use of water by allowing applicants to dedicate water to the Plan, other than the water rights that serve their irrigation systems, for the purpose of maintaining historical seepage losses/return flows. *Paragraph 60.* Thus, these plans aim to ensure compliance with the Compact by ensuring that a dedicated water supply is available to prevent a violation of Article IV-D of the Compact.
- d. Neither the Rules nor the Water Court’s approval of those Rules expressly state that Compact compliance is a beneficial use of water. However, the Rules do require that water be dedicated to Compact Compliance Plans for the purpose of replacing reduced return flows, which in turn maintains useable stateline flows in compliance with the Compact. As such, these Rules, and the Water Court’s approval thereof, appear to have assumed that compact compliance constitutes a beneficial use of water.

### **4. The Closed Basin Project (W-3038, Water Division 3)**

- a. The Closed Basin Project is a federal reclamation project and the water right for the project was obtained by and is held by the Rio Grande Water Conservation District. The project's water right is decreed for various purposes in conformity with its authorization legislation. The Project's first priority is to deliver water to the Rio Grande to aid the State of Colorado in meeting its delivery obligations under the Rio Grande Compact. W-3038 Decree, pp. 1-2, Paragraph 4(a). The Project obtains its water from the unconfined aquifer within the Closed Basin, and the Water Court for Water Division 3 approved a conditional storage right for the Closed Basin Water Salvage Project in W-3038, which acknowledged that "the primary purpose of [the Project] is to collect and introduce into the Rio Grande River a large volume of water of acceptable quality to assist the State of Colorado in satisfying its obligation under the Rio Grande Compact." *Id.* These water rights were conditionally decreed in W-3038, after a hearing before the Water Referee, for various beneficial uses, one of which includes providing "supplemental water to meet Colorado's obligation under the Rio Grande Compact and accomplish maximum utilization of Colorado's share of the flows of the Rio Grande River under the Compact." *Id.* at p.2, Paragraph 4(b); p. 9. A portion of these water rights have since been made absolute.
  - i. In *Closed Basin Landowners Ass'n v. Rio Grande Water Conservation District*, the Supreme Court discussed the purposes the Closed Basin Project, as decreed in W-3038. Without significant analysis of the beneficial uses of water approved by this decree, the Court recognized that the Project is intended to deliver water to the Rio Grande to satisfy Colorado's Compact obligations. *See Closed Basin Landowners Ass'n v. Rio Grande Water Conservation District*, 734 P. 2d 627 (Colo. 1987) (discussing the conditional water rights decreed for the Closed Basin Project in the W-3038 Decree, and acknowledging that "[t]he goal of the Closed Basin project is to lower the water table in the sump area by approximately two feet through the construction and operation of over one-hundred shallow wells, and to reduce water losses to evaporation and evapotranspiration. Water salvaged from the sump area is to be delivered to the Rio Grande River to help meet Colorado's obligations to New Mexico and Texas under the Rio Grande Compact.").
  - ii. *See San Antonio, Los Pinos and Conejos Acequia Association v. Special Improvement District No. 1 of the Rio Grande Water Conservation District*, 351 P.3d 1112, 1123 (Colo. 2015), approving the use of Closed Basin Project Water to replace stream depletions and to assist in meeting Colorado's delivery obligations under the Rio Grande Compact.
  - iii. *See also Tres Rios Decree*, Case No. 91CW29, at 24-25 (discussing water rights decreed for Closed Basin Project for "Project purposes" and the federal authorizing legislation for the Closed Basin Project, establishing three priorities for Project water; "Priority One" of which concerns assisting existing water users on the Rio Grande and Conejos Rivers in meeting their delivery obligations under the Rio Grande Compact). The Court in *Tres Rios* determined that "[t]he history of the Project and its authorizing legislation make clear that Priority One water was not intended to be used, either directly or indirectly, as a source of water for new appropriations." This water instead "can be made available . . . to

existing users on the Rio Grande and Conejos River to meet the rivers' respective obligations under Article II of the Compact.").

- b. *See also* Operating Agreement for Rio Grande Reservoir, between San Luis Valley Irrigation District and the Colorado State Engineer (Feb. 3, 1987), which confirmed that the Rio Grande Reservoir "has been utilized for the benefit of all water users diverting from the Rio Grande to aid the State of Colorado in meeting its commitments under the Rio Grande Compact," (p. 1); "use of the Reservoir for Compact purposes is compatible with use of the Reservoir by the District for storage of its decreed water rights," (p.2); and, "[i]f the State Engineer determines that Compact Waters are needed to fulfill Colorado's obligations under the Compact," the District shall release such waters in the amount, and at the rate, directed by the State Engineer, but "[i]f the State Engineer determines that Compact Waters are not required for interstate delivery," he shall relinquish control of such waters for beneficial use by Colorado water users (pp. 3-4). A similar agreement was entered into between the State Engineer and the Rio Grande Water Users Association with similar terms and conditions.
  - i. Like the State Engineer's Irrigation Improvement Rules and the water court decree approving those Rules, this agreement does not expressly state that Compact compliance is a beneficial use of water. However, the Agreement acknowledges that water can be released from storage in the Rio Grande Reservoir specifically to satisfy Colorado's compact obligations, which also indicates that the parties to that agreement, including the State Engineer, have assumed that compact compliance constitutes a beneficial use of water.

## **5. Republican River Compact**

- a. The Republican River Compact allocates the "virgin water supply" of the Republican River (i.e., the water supply undepleted by the "activities of man") among Colorado, Nebraska, and Kansas. *See Articles II and III*. The Compact makes specific allocations to each state, based upon the average annual virgin water supply that originates in each drainage basin described therein. *See Article III*. The Compact also allocates a specific number of acre-feet for beneficial consumptive use within each state (Colorado is limited to an annual amount of 54,100 acre feet). *See Article IV*.
- b. During litigation commenced in 1999 concerning Nebraska's exceedance of its allocated amount of consumption, the Special Master rejected Nebraska's argument that groundwater use should not count toward the state's allocated share of water. The three states then negotiated an agreement that determines how stream flow, pumping, and other factors would be incorporated into calculating each state's allocation. Under the 2003 Final Settlement Agreement that resolved ongoing litigation related to this Compact, the party states adopted a moratorium on new wells, with the exception of wells constructed for the sole purpose of offsetting stream depletions to comply with Compact allocations, provided that the wells do not cause new net depletions to stream flow.
- c. Water Court, Water Division 1: In 14CW3135, the Republican River Water Conservation District and Yuma County Water Authority Public Improvement District applied to change the use of ten water rights to add augmentation as a decreed use, and "to assist the State of Colorado to carry out its duty to comply with the limitations imposed on the



State under the Republican River Compact.” The decree in this case recognized that the purpose of YCWA is to address an imminent threat to the economic viability of an area within Yuma County due to potential curtailment of irrigation wells and “to assist the State of Colorado’s compliance with its obligations under the Republican River Compact.”

- i. The decree entered in this case was a consent decree following the Applicants’ stipulations with several opposers, including the State and Division Engineers). The decree stated that the Applicants “are entitled to a change of water right” (¶ 13) and that the changed uses include augmentation and “to assist the State of Colorado to carry out its duty to comply with the limitations imposed on the State under the Republican River Compact.” (¶ 8).
- d. Ground Water Commission, Findings and Order – Permit No. 76149-F: The Colorado Ground Water Commission has also approved an application by the Republican River Water Conservation District seeking to change the use of a well to “Republican River Compact Compliance” purposes. The applicants sought to use the well in question as an alternate point of diversion for 58 water rights associated with various well permits. The subject wells are located in the Ogallala aquifer, in the Northern High Plains Designated Basin and the Sandhills Ground Water Management District.
  - i. The Colorado Ground Water Commission issued its Findings and Order dated June 20, 2013, for Permit No. 76149, approving the use of the well as an alternate point of diversion for the 58 water rights noted above, for the purpose of “Republican River Compact Compliance.” (¶ 11).
  - ii. In accordance with the Commission’s Order, the well permit for No. 76149 also recognizes “Republican River Compact Compliance” as the approved use for the well at issue in this case.
  - iii. Because the RRWCD’s application before the Ground Water Commission required the export of designated groundwater outside of the management district’s boundaries, the Sandhills Ground Water Management District also had to approve the associated export application. The export application requested approval “to use groundwater under specified groundwater rights outside the boundaries of the district *for the sole purpose of offsetting stream depletions to the Republican River and its tributaries in order to comply with the State of Colorado’s allocations under the Republican River Compact and the Final Settlement Stipulation in Kansas v. Nebraska and Colorado, No. 126, Original.*” To facilitate the use and delivery of the exported water, the Applicants proposed to build a pipeline from the District to the North Fork of the Republican River. The District issued an order, following a hearing, that approved the export and delivery of designated ground water to the North Fork of the Republican River “for the purpose of offsetting stream depletions that reach the Republican River . . . to comply with Colorado’s allocations under the Compact and FSS.” (¶ 46).

## **6. La Plata River Compact**

- a. The La Plata River Compact apportions the waters of the La Plata River between Colorado and New Mexico, with waters subject to administration on a daily basis during

a majority of the year (from February 15<sup>th</sup> through December 1<sup>st</sup> of each year). See *Article II(2)*. The Compact requires that one-half of the indexed flow (measured at the Hesperus gage) be delivered to the stateline the next day. *Id.*

- b. In Case No. 94CW75, Water Division 7, the La Plata Water Conservancy District filed an application seeking a water storage right for Long Hollow Reservoir, for various beneficial uses including “for delivery of Colorado’s compact obligations to New Mexico under the La Plata River Compact.” The Water Court entered a decree approving this conditional water right on September 22, 1995. Diligence has been maintained on these water rights since decreed. To date, no amount has been made absolute. La Plata Conservancy District filed an application for reasonable diligence for these water rights in 2019 (19CW3043); the December 2019 resume for that application confirms that water has been delivered from Long Hollow Reservoir to New Mexico under the Compact.
- c. In Case No. 00CW49, Water Division 7, the La Plata Water Conservancy District filed an application seeking an additional water storage right for Long Hollow Reservoir, and a conditional storage right in Johnny Pond Reservoir, for various uses of water, including “for delivery of Colorado’s compact obligations to New Mexico under the La Plata River Compact.” The Water Court entered a decree approving these conditional water rights on December 8, 2004. Diligence has been maintained on the Long Hollow Reservoir rights; the conditional right for Johnny Pond Reservoir was cancelled in the most recent diligence decree in 10CW98 (November 29, 2018).
- d. In Case No. 16CW3005, Water Division 7, the La Plata Water Conservancy District filed an application for an augmentation plan and exchange, using the water rights decreed to Long Hollow Reservoir as a source of augmentation to replace depletions resulting from the La Plata River Mitigation Site that would otherwise be curtailed to meet Colorado’s obligations under the La Plata River Compact. The Water Court entered a decree approving the augmentation plan and exchange on July 24, 2019.

**Conclusion:** Water Divisions 1, 2, 3 and 7, along with the Colorado Ground Water Commission, have recognized, or assumed, that Compact compliance is a beneficial use of water. In each case, the recognition or assumption of beneficial use did not necessarily lead to a uniform method of implementation.

- For instance, LAWMA’s augmentation plan decree in Case No. 02CW181 recognizes that compliance with the Arkansas River Compact, by replacing depletions to useable Stateline flows, is a beneficial use of water. In a subsequent matter involving compliance with the Arkansas River Compact, the State Engineer’s Irrigation Improvement Rules, and the Water Court’s approval of those Rules, seem to have assumed compact compliance to be a beneficial use.
- Similarly, one of the decreed beneficial uses of water under the Closed Basin Project’s decree in W-3038 to provide supplemental water to meet Colorado’s delivery obligations under the Rio Grande Compact. Further, in an agreement between the State Engineer and San Luis Valley Irrigation District, the State Engineer acknowledged that water may be released from Rio Grande Reservoir to fulfill Compact delivery requirements, which further relies on the premise that compact compliance is a beneficial use.

- Moreover, both the Division 1 Water Court and the Ground Water Commission recognized that assisting the State of Colorado in meeting its Republican River Compact obligations is a beneficial use of water.
- Finally, the Division 7 Water Court has similarly decreed a conditional water storage right for La Plata Water Conservancy District, for various beneficial uses including “for delivery of Colorado’s compact obligations to New Mexico under the La Plata River Compact.” La Plata Water Conservancy District’s November 2019 diligence application states that it has stored water in Long Hollow Reservoir and delivered water to New Mexico pursuant to the Compact.

## DEFINING COMPACT COMPLIANCE IN THE CONTEXT OF A DEMAND MANAGEMENT PROGRAM 5-4-20

As part of the Upper Colorado River Basin States' drought contingency planning, the Colorado Water Conservation Board (CWCB) has initiated investigation of a demand management program consisting of "voluntary, temporary, and compensated reductions in consumptive use of waters that otherwise would deplete the flow of the Upper Colorado River System *for the specific purpose of helping assure compact compliance*" (*emphasis supplied*).<sup>1</sup>

The CWCB Work Plan for evaluating the feasibility of a demand management program includes establishing workgroups consisting of subject matter experts. The workgroups are tasked to analyze various aspects of demand management and to help CWCB staff identify and evaluate priority issues within Colorado regarding demand management feasibility. This paper is the product of the Law and Policy Workgroup with the purpose of defining "compact compliance" in the context of a demand management program.<sup>2</sup>

The discussion and proposed definitions contained in this memorandum do not represent interpretations of existing law by any member of the Law and Policy Workgroup, the state of Colorado or any of its officials or employees, nor predetermine in any manner the position or interests of the state of Colorado, or any workgroup participants or their respective organizations, with respect to interpretation of any interstate compact or other component of the Law of the River.

### **Legal Framework:**

The 1922 Colorado River Compact (1922 Compact)<sup>3</sup> provides that "The states of the Upper Division<sup>4</sup> 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 reckoned in continuing progressive series . . ."<sup>5</sup> It further provides that should the United States in the future provide for deliveries of Colorado River water to Mexico, "such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then, the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin, and whenever necessary the States of the Upper Division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d)."<sup>6</sup> In 1944 the United States signed a treaty with

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<sup>1</sup> Colorado Water Conservation Board, *Support and Policy Statements Regarding Colorado River Drought Contingency Plans, Demand Management, and Compact Administration*, November 15, 2018 available at <https://dnrweblink.state.co.us/cwcb/0/edoc/209095/SUPPORTANDPOLICYSTATEMENTSFINAL11-15-18.pdf?searchid=a0210e79-2c01-40f7-beec-1f66486946ca> (CWCB Policy Statement).

<sup>2</sup> The term "compact compliance" is used multiple times in the CWCB Policy Statement but is not defined there or elsewhere.

<sup>3</sup> Colo. Rev. Stat. § 37-61-101.

<sup>4</sup> Colorado, New Mexico, Utah, Wyoming.

<sup>5</sup> 1922 Compact, Article III(d).

<sup>6</sup> *Id.*, Article III(c).

Mexico that guarantees the delivery of 1.5 million acre-feet of Colorado River water to Mexico each year (subject to certain exceptions).<sup>7</sup>

There are interpretive issues among the signatory states to the 1922 Compact concerning the meaning of these and other provisions in Article III. For example: Does Article III(d) describe a non-depletion obligation, or a delivery obligation? What constitutes “waters that are surplus” and a “deficiency” within the meaning of Article III(c) addressing the obligation to Mexico? There are others. These issues are beyond the scope of this paper, but for the purpose of defining “compact compliance” for a demand management program, Article III(c) and Article III(d) articulate the Upper Division states’ compact obligation, however it is ultimately quantified.

Although it is implied in Article III(d) and Article IX, the 1922 Compact contains no provision specifically requiring curtailment. The 1948 Upper Colorado River Basin Compact (1948 Compact), however, provides additional instruction on the determination of meeting or not meeting the compact obligation and the resulting consequences and authorities.<sup>8</sup> Article IV of the 1948 Compact provides that “In the event curtailment of use of water by the States of the Upper Division at any time shall become 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 . . . shall be determined by the Commission.”<sup>9</sup> The Upper Colorado River Commission (UCRC) established by the 1948 Compact is authorized to “make findings as to the necessity for and the extent of the curtailment of use” required by Article IV.<sup>10</sup> The UCRC is also authorized to determine the “extent of curtailment by each State of the consumptive use of water” allocated to it under the 1948 Compact.<sup>11</sup>

The Demand Management Storage Agreement explains that “The purpose of an Upper Basin Demand Management Program will be to temporarily reduce Consumptive Uses in the Upper Basin or augment supplies with Imported Water, if needed in times of drought, to help assure continued compliance with Article III of the Colorado River Compact without impairing the right to exercise existing Upper Basin water rights in the future.”<sup>12</sup> Therefore, in the context of the Demand Management Storage Agreement and the CWCBC’s Demand Management Policy Statement, “compact compliance” means the Upper Division States meeting their obligations under Article III of the Colorado River Compact.

### **Scenarios Concerning Compact Compliance:**

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<sup>7</sup> *Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande*, Treaty Between the United States of America and Mexico, signed February 3, 1944, Article X. (Mexican Treaty). It should be noted that there is an exception to this delivery requirement. Article X of the Mexican Treaty contemplates a reduction in deliveries “in the event of extraordinary drought or serious accident to the irrigation system in the United States” that makes it “difficult for the United States to deliver the guaranteed quantity of 1,500,000 acre-feet a year.”

<sup>8</sup> Upper Colorado River Basin Compact, 1948, Colo. Rev. Stat. § 37-62-101 (1948 Compact).

<sup>9</sup> 1948 Compact, Article IV.

<sup>10</sup> 1948 Compact, Article VIII(d)(8).

<sup>11</sup> 1948 Compact, Article IV.

<sup>12</sup> Demand Management Storage Agreement, Section I.A.5 and Section II.B.3.a.

There appear to be potentially three different scenarios in which compact compliance comes into play. Defining the term in the context of an “Upper Basin Demand Management Program” requires examination and evaluation of each scenario.

In the first scenario, the ten-year average flow at Lee Ferry falls below the required amount (a “Compact deficit”) and the UCRC makes a valid finding that curtailment of consumptive uses in the Upper Division states is necessary to comply with the 1922 Compact. Under this scenario, the Colorado State Engineer is authorized to adopt regulations enabling the State “to meet its compact commitments” if “the compact is deficient in establishing standards for administration within Colorado,”<sup>13</sup> including “regulations as will be legal and equitable to regulate distribution among the appropriators within Colorado obligated to curtail diversions to meet compact commitments” and must simultaneously adhere “to Colorado constitutional and statutory provisions for priority administration.”<sup>14</sup>

In the second scenario, hydrologic forecasts and other data convince the UCRC and the states of the Upper Division that a Compact deficit at Lee Ferry is sufficiently imminent that a preemptive curtailment of consumptive use is necessary to maintain compact compliance. Presumably, with a valid UCRC finding that curtailment is necessary to maintain compliance, the State Engineer can administer curtailment as described above, within the state.

The third scenario is the focus of this demand management feasibility investigation as contemplated by the Upper Basin Demand Management Storage Agreement and the CWCB Demand Management Policy Statement. The CWCB has launched the examination of a demand management program “to avoid or mitigate the risk of involuntary compact curtailment and to enhance certainty and security in the Colorado River water supply.”<sup>15</sup> The exploration of the feasibility of developing and implementing such a program is an essential element of the Upper Basin Drought Contingency Plan.<sup>16</sup> The type of program being evaluated is a proactive arrangement under which voluntary, temporary, and compensated reductions in consumptive use would be made, with the resulting water savings shepherded to a storage account(s) in the CRSPA Initial Units under the control of the UCRC. This stored water would be used “to help assure compact compliance and reduce the risk of mandatory curtailment.”<sup>17</sup> The UCRC must approve any Upper Basin demand management program, but it is not entirely clear whether such approval would provide sufficient authority for the Colorado State Engineer to administer demand management water in the manner that would be required.

### **Proposed Definitions:**

To insure that the public fully understands the CWCB Policy Statement it is important to distinguish between compact compliance that is accomplished through involuntary curtailment (the

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<sup>13</sup> Colo. Rev. Stat. § 37-80-104.

<sup>14</sup> *Simpson v. Bijou Irrigation Co.*, 69 P.3d 50, 69 (Colo. 2003).

<sup>15</sup> CWCB Policy Statement, p. 4.

<sup>16</sup> Agreement regarding Storage at Colorado River Storage Project Act Reservoirs under an Upper Basin Demand Management Program, May 20, 2019.

<sup>17</sup> CWCB Policy Statement, p. 2.

first two scenarios discussed above) and voluntary proactive measures, such as demand management, to “help assure compact compliance.” With this background in mind **we suggest following definition:**

**“Compact compliance” means the Upper Division States meeting their obligations under Article III of the Colorado River Compact.**

**Efforts to achieve compact compliance may include the three scenarios described above. With respect to the two mandatory administrative scenarios described above, we recommend the term:**

**Compact administration = Involuntary curtailment pursuant to a valid finding by the UCRC that curtailment is necessary in order that the flow at Lee Ferry not be depleted below that required by Article III of the Colorado River Compact.**

**With respect to the voluntary demand management scenario, the third scenario described above that is the focus of this demand management feasibility investigation, we recommend the term:**

**Voluntary compact assurance = Voluntary proactive measures, such as demand management, that help assure that the Upper Division states continue to satisfy their obligations under Article III of the Colorado River Compact and thereby reduce the risk of involuntary curtailment.**

## Law and Policy Workgroup

### Definition of Conserved Consumptive Use

An informal summary definition of Conserved Consumptive Use for purposes of an Upper Basin Demand Management Storage Program is: Upper Basin water that historically has been depleted under valid rights and would continue to be depleted but for its conservation as part of an Upper Basin Demand Management Program to help assure continued compliance with Article III of the Colorado River Compact.

A more specific definition of Conserved Consumptive Use requires reference to the specific language of the applicable governing document – i.e., the May 20, 2019 “Agreement Regarding Storage at Colorado River Storage Project Act Reservoirs under an Upper Basin Demand Management Program (the “Demand Management Storage Agreement”). The Demand Management Storage Agreement is Attachment A2 to the Agreement Concerning Colorado River Drought Contingency Management and Operations referenced in the Colorado River Drought Contingency Plan Authorization Act, P.L 116-14, adopted April 16, 2019.

The term Conserved Consumptive Use is not expressly defined in the Demand Management Storage Agreement. However, for the workgroup’s purposes, the definition can be determined by reference to certain sections of the agreement.

Section III.A.3 of the agreement expressly defines Consumptive Use as:

*The depletion of water for domestic and agricultural beneficial uses as those terms are defined and referred to in the 1922 Colorado River Compact. For purposes of this definition, Consumptive Use also includes the full amount of water: (i) consumed in association with the production of electrical power other than hydropower; and (ii) diverted from the Upper Colorado River System for which there are no return flows to that system, including, for example, diversions outside the natural Colorado River watershed.*

Section III.B.2.a of the agreement provides that “Water conserved shall only be recognized as part of any Upper Basin Demand Management Program if:

*i. The source of conserved water is Upper Colorado River System water, or Imported Water<sup>1</sup>;*

*ii. The water is conserved, stored and released for the specific purpose of helping the Upper Division States assure continued compliance with Article III of the Colorado River Compact;*

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<sup>1</sup> “Imported Water” is defined by the Agreement as water introduced to the Upper Colorado River System from outside the Colorado River System for the specific purpose of augmenting the supplies available for, or storing water as part of, an Upper Basin Demand Management Program. Such Imported Water need not have been previously consumptively used in its basin of origin.



*iii. For Upper Colorado River System water, the water must have been beneficially and consumptively used under valid water rights prior to being conserved as part of an Upper Basin Demand Management Program;*

*iv. For Upper Colorado River System water, the water must have been physically available for diversion in the year it was conserved, and would have been beneficially and consumptively used within a state or states of the Upper Division but for the conservation for the benefit of an Upper Basin Demand Management Program; and*

*v. The conserved or Imported Water has arrived at a CRSPA Initial Unit after accounting for any conveyance and associated losses.”*

## **DEFINING “ELIGIBILITY” FOR THE PURPOSES OF PARTICIPATING IN A DEMAND MANAGEMENT PROGRAM**

The purpose of this memo is to define which water rights are “eligible” to participate in an Upper Basin Demand Management Program operated within Colorado, should such a program ever be developed and individually approved by the Upper Division States through the Upper Colorado River Commission (“UCRC”). The definition proposed herein is based primarily on the Agreement Regarding Storage at Colorado River Storage Project Act Reservoirs Under An Upper Basin Demand Management Program dated May 20, 2019 (“DM Storage Agreement” or “Agreement”) and, to a lesser extent, the Colorado Water Conservation Board’s Demand Management Policy Statement dated November 15, 2018 (“CWCB Demand Management Policy”).

As a starting point, the DM Storage Agreement provides that in order to be eligible to participate in an Upper Basin Demand Management Program, any contribution of water must:

- (1) be conserved within, or imported into, the Upper Colorado River System to help assure the Upper Division States’ continued compliance with Article III of the Colorado River Compact;<sup>1</sup>
- (2) be capable of verification;<sup>2</sup> and
- (3) arrive at a CRSPA Initial Unit after accounting for any conveyance and associated losses.<sup>3</sup>

Imported Water is defined in Section III.A.6. of the Agreement as water that has been “introduced to the Upper Colorado River System from outside the Colorado River System for the specific purpose of augmenting the supplies available for, or storing water as part of, an Upper Basin Demand Management program.” Upper Colorado River System water is defined in Section III.A.10 to mean water within “the Colorado River System within the Upper Basin.”<sup>4</sup>

The DM Storage Agreement imposes additional requirements on water that is derived from within the Upper Colorado River System. More specifically, the Upper Colorado River System water must also have been: (4) beneficially and consumptively used under valid water rights prior to being conserved as part of an Upper Basin Demand Management Program; and (5) physically available for diversion in the year it was conserved. One must also demonstrate that the Upper Colorado River System water would have been beneficially and consumptively used

<sup>1</sup> DM Storage Agreement, Sections III.A.9 and III.B.2.a.ii.

<sup>2</sup> Verification is defined in Section III.A.11 of Agreement to mean the “confirmation of the actual volume of Consumptive Use that is conserved, or Imported Water that is introduced, conveyed to and stored in a CRSPA Initial Unit under an Upper Basin Demand Management Program.” The concept of verification is further discussed in Sections III.B.2.b.vi. and III.B.3.b.

<sup>3</sup> The CRSPA Initial Units consist of “Glen Canyon Dam, Flaming Gorge, Curecanti (the “Aspinall Unit”), and Navajo Reservoir as authorized under the 1956 Colorado River Storage Project Act.” Agreement, Section III.A.4.

<sup>4</sup> The Colorado River System is further defined to “have the same meaning as defined in the 1922 Colorado River Compact and the 1948 Upper Colorado River Basin Compact.” Agreement, Section III.A.2.

within an Upper Division State but for the conservation for the benefit of an Upper Basin Demand Management Program.

In order to be eligible to participate in an Upper Basin Demand Management Program that is operated within Colorado, water right holders must also satisfy the applicable standards set forth in the CWCB's Demand Management Policy. The standards contained in that policy apply across the board - regardless of whether the contributed water is derived from conserved Colorado River System water or Imported Water. For example, the contribution of water must not cause material injury to other water rights holders within Colorado.<sup>5</sup>

It should be noted that the eligibility requirements listed above are based solely on the DM Storage Agreement and the CWCB's Demand Management Policy. It is reasonable to assume that the Upper Division States through UCRC, or the State of Colorado, may establish additional requirements for Colorado water users' participation in the event this process moves forward, such as establishing the duration of time conserved Colorado River System water must have been used prior to enrollment in the demand management program or the length of time a particular water right may be enrolled in the program. The other Upper Division States may also elect to impose additional restrictions on their water users' ability to participate in a program.

<sup>5</sup> CWCB's Demand Management Policy Statement at ¶ 7. More specifically, the policy provides it will be the CWCB Board's strategy to "[c]omply with applicable state law, including, but not limited to, the requirement that no action related to demand management cause material injury to other water right holders."

**DEMAND MANAGEMENT PROGRAM – LAW AND POLICY ADVISORY GROUP**  
**POLICY DISCUSSION OF THE MEANING OF TEMPORARY FOR**  
**DEMAND MANAGEMENT PROGRAM PROJECTS**  
**JUNE 9, 2020**

**I. Introduction**

This memorandum addresses four approaches to defining the meaning of “temporary” for the purposes of a demand management program involving the conservation of consumptive use by water users in the State of Colorado for storage in the initial units of the Colorado River Storage Project Act (“CRSPA”) reservoirs. This memorandum is not intended to suggest there are no other approaches to defining the meaning of temporary. The discussion and proposed definitions contained in this paper do not represent interpretations of existing law by any member of the Law and Policy Workgroup, the state of Colorado, or any of its officials or employees, nor predetermine in any manner the position or interests of the state of Colorado, the Colorado Water Conservation Board, or any demand management workgroup participants or their respective organizations, with respect to interpretation of any interstate compact or other component of the Law of the River.

**II. Background**

**A. The Demand Management Agreement is prefaced upon the temporary reduction in consumptive use.**

The Demand Management Storage Agreement authorizes upper division states access to the unfilled storage capacity in the initial units of the CRSPA reservoirs up to a maximum combined storage of 500,000 acre-feet. The storage space made available in the initial units of the CRSPA reservoirs is to be filled, in part, through the temporary reduction of consumptive uses in the upper basin. Access to the storage space is conditioned upon the investigation of the feasibility of the development and implementation of an upper basin demand management program, actual development of the program, and Upper Colorado River Commission (“UCRC”) approval of the program.

Section I.A.4. of the Demand Management Agreement provides that “[t]he purpose of an Upper Basin Demand Management Program will be to **temporarily** reduce Consumptive Uses in the Upper Basin . . . if needed in times of drought, to help assure continued compliance with Article III of the Colorado River Compact without impairing the right to exercise existing Upper Basin water rights in the future.”

The term “temporarily” is not defined in the Demand Management Agreement. However, other terms in the Agreement help to define the meaning of temporary. Specifically, section III.B.2.a.iv. of the Demand Management Agreement provides that conserved water would have been used but for the conservation activity:

iv. For Upper Colorado River System water, the water must have been physically available for diversion in the year it was conserved, and **would have been beneficially and consumptively used** within a state or states of the Upper Division **but for the conservation for the benefit of an Upper Basin Demand Management Program**.

Paragraph III.B.2.a.iv. tracks with the requirement that the conservation of water be on a temporary basis. By requiring that water would have been beneficially and consumptively used, paragraph

III.B.2.a.iv. prohibits the conservation of water on a permanent basis. This requirement can be used as a rule of thumb in a demand management program to determine whether projects are temporary. If a water user no longer maintains the intent to beneficially and consumptively use water, the conservation project is probably less likely to be temporary.

**B. Colorado water law may help to inform the contours the meaning of temporary for the purposes of a demand management program.**

Colorado has adopted several statutes that define frequencies of time that apply to delineate between permanent and temporary uses of water. These statutes also contain provisions that apply to the use of water in water conservation programs, including programs to conserve water to ensure compact compliance.

Statute	Description of Statute
Abandonment of Water Rights  C.R.S. §§ 37-92-103(2), 402(11)	<p>Abandonment is defined as “the termination of a water right in whole or in part as a result of the intent of the owner thereof to discontinue <i>permanently</i> the use of all or part of the water available thereunder.”</p> <p>Abandonment occurs when there is a failure for a <i>period of ten years</i> or more to apply to a beneficial use the water available under a water right when needed. It is subject to a <i>rebuttable presumption</i> evidenced by the owner's intent not to abandon the right or such acts as loaning or leasing the water to others or good faith....” <i>Archuleta v. Gomez</i>, 200 P.3d 333, 344 (Colo. 2009). Even though a water user has not used water for more than ten years, a water user may successfully rebut any presumption of abandonment by showing a continuing intent to put water to beneficial use in the future.</p> <p><u>Observations</u>: The ten-year period may be tolled under C.R.S. § 37-92-103(2) if the period of nonuse is attributable to participation in certain water conservation or water banking programs. This would apply to a Colorado River demand management program. In addition, a water user may refrain from using water for more than ten consecutive years so long as the water user maintains a continuing intent to apply the water right to beneficial use in the future.</p>
Exemptions for historic consumptive use quantifications  C.R.S. § 37-92-305(3)(c)	<p>Water rights participating in certain types of water conservation programs are entitled to statutory protections under C.R.S. § 37-92-305(3)(c) to prevent a decrease when quantifying the historic consumptive use for the water right.</p> <p>“In determining the amount of historical consumptive use for a water right in division 1, 2, 3, 4, 5, or 6, the water judge shall not consider any decrease in use resulting from” participation in: (1) a water conservation program under a federal land conservation program; or (2) where the nonuse or decrease in use of the water from the water right by its owner “for a maximum of <i>five years in any consecutive ten-year period</i>” as a result of participation in certain types of water conservation programs, land fallowing programs to conserve water for compact compliance, or a water banking program.</p>

	<p><u>Observations:</u> Section 37-92-305(3)(c) does not preclude water rights from qualifying for the safe harbor over back-to-back ten-year periods. Section 37-92-305(3)(c) also does not preclude water rights from participating in water conservation programs for more than five out of ten years, although the water right would not receive statutory protection for any additional years during a single ten-year period.</p>
<p>Loaned Water for Instream Flows to Improve Environment</p> <p>C.R.S. § 37-83-105(2)(a)(IV), HB20-1157</p>	<p>Under C.R.S. § 37-83-105(1), agricultural water rights may be loaned to the Colorado Water Conservation Board (CWCB) for instream flow purposes. § Section 37-83-105(2)(a)(IV) provides that a loan “shall not be exercised for more than <i>three years in a ten-year period</i>, for which only a single approval by the state engineer is required.”</p> <p>Enacted and signed by Governor Polis in March 2020, HB20-1157 expands the number of years within a ten-year period that a renewable loan may be exercised from three years to five years, but for no more than three consecutive years, and allows a loan to be renewed for up to two additional ten-year periods.</p> <p><u>Observations:</u> Water rights loaned under HB20-1157 are not precluded “from concurrent or <i>subsequent</i> inclusion in a water conservation, demand management, compact compliance, or water banking program or plan, as is or may be subsequently defined or described in statute.” § 37-83-105(2)(a)(III.5).</p>
<p>Substitute Water Supply Plans (SWSP)</p> <p>C.R.S. §§ 37-92-308(4)(b), (5)(a)</p>	<p>If an application has been filed in water court, a substitute water supply plan (SWSP) is limited to an initial <i>one year period</i> with the ability to extend for <i>up to three years</i>, with any further extension requiring a showing to the state engineer that the delay in obtaining a water decree is justifiable.</p> <p>If no application has been filed for an augmentation plan or change of water right, and the water use plan or change proposed and the depletions associated with such water use plan or change will be for a limited duration, the plan is limited to a duration <i>not to exceed five years</i>.</p> <p><u>Observations:</u> The applicability of the SWSP statute to demand management projects may depend on whether demand management projects constitute a temporary change of water right. An argument can be made that demand management projects involve the conservation of water that would have been used for but for the conservation of water, and are therefore a conservation activity and not a change of water right.</p>
<p>Interruptible Water supply Agreements</p> <p>C.R.S. § 37-92-309(3)(c)</p>	<p>By statute, an interruptible water supply agreement cannot be exercised for <i>more than three years in a ten-year period</i>, for which only a single approval is required. The ten-year period begins with the granting of the approval.</p> <p><u>Observations:</u> The interruptible water supply agreement is designed to protect water users from injury from temporary transfers of consumptive use water to other water users for undecreed purposes.</p>

### **C. The 2007 Interim Guidelines May Provide a Roadmap for Defining the Meaning of Temporary in a Demand Management Program.**

The 2007 Interim Guidelines' treatment of intentionally created surplus (ICS) water may help to inform how Colorado's demand management program should define temporary water conservation activities. ICS is defined under the 2007 Interim Guidelines to mean "surplus Colorado River System water available for use under the terms and conditions of a Delivery Agreement, a Forbearance Agreement, and these Guidelines."<sup>1</sup>

The 2007 Interim Guidelines creates several categories of intentionally created surplus water, including: extraordinary conservation ICS, tributary conservation ICS, system efficiency ICS, and imported ICS.<sup>2</sup> Of these types of ICS, only System Efficiency ICS "projects are intended to provide temporary water supplies."<sup>3</sup> While not specifically defined in the 2007 Interim Guidelines, the Lower Basin Forbearance Agreement describes system efficiency projects as those involving "contributions of capital to the Secretary for use in Secretarial projects designed to realize efficiencies that save water that would otherwise be lost from the Mainstem [of the Colorado River] in the United States."<sup>4</sup> Although a contractor for ICS water is required to identify the term of the activity, only system efficiency projects are intended to be temporary in nature.<sup>5</sup> Typically, system efficiency ICS credits are based on capital contributions. The credits comprise a portion of the water saved through the efficiency project, and would not be stored, but would rather be provided to the user that developed the credit on a predetermined schedule for some period of years. The Lower Basin Drop 2 Reservoir System Efficiency Project is an example of a temporary System Efficiency ICS project. The Lower Basin Drop 2 Reservoir System Efficiency Project involves the construction of a reservoir to augment supplies and reduce inefficiencies in Lower Basin water orders and deliveries. Although temporary, it extends from 2008-2036.<sup>6</sup>

### **III. Discussion of Alternatives**

The following section explores alternative approaches to defining the meaning of temporary in a demand management program and the pros and cons of each alternative.

#### **A. Alternative 1: Do not adopt a definition of temporary.**

Description: Colorado could decide to not adopt a definition of temporary and individually assess whether a demand management project is temporary on a case-by-case basis similar to the approach taken in the lower basin with regard to system efficiency ICS water.

#### Benefits to this approach:

- Consistent with the 2007 Interim Guidelines.

<sup>1</sup> 2007 Interim Guidelines, pdf p. 32, available at:

<https://www.usbr.gov/lc/region/programs/strategies/RecordofDecision.pdf>

<sup>2</sup> 2007 Interim Guidelines, supra n. 1, pdf p. 41.

<sup>3</sup> 2007 Interim Guidelines, supra n. 1 pdf p. 41.

<sup>4</sup> Forbearance Agreements, pdf p. 6, available at:

<https://www.usbr.gov/lc/region/programs/strategies/agreements/Forbearance.PDF>

<sup>5</sup> 2007 Interim Guidelines, supra n. 1 pdf p. 42.

<sup>6</sup> Forbearance Agreements, supra n. 4, pdf p. 25.

- The 2007 Interim Guidelines do not include a definition of “temporary” for system efficiency water used to create intentionally created surplus (ICS) water.
- Allows Colorado and the Upper Basin to maintain flexibility.
  - Keeps options open for demand management projects that cannot be anticipated.
- Avoids a restrictive definition that may limit water availability for a Colorado demand management pool.

Drawback to this approach:

- May make it more difficult to maintain consistency and uniformity between demand management projects.
- May require more administrative oversight and analysis in approving projects for a demand management program.
- Could result in an evolving definition of temporary.

**B. Alternative 2: Adopt a single definition of temporary that applies regardless of type of demand management project or water rights involved.**

Description: Colorado could adopt a single definition of temporary that would apply to all demand management projects regardless of type of project or water right involved. For example, Colorado could limit water rights to participation in a demand management program to no more than five years of any ten-year period of time. This would align with the safe harbor for historic consumptive use quantifications under C.R.S. § 37-92-305(3)(c)

Benefits to this approach:

- Creates consistency and uniformity between demand management projects.
- Simplifies administrative oversight and analysis required to review and approach demand management projects.
- Ensures that demand management conservation efforts remain temporary and do not gradually become permanent.

Drawbacks to this approach:

- Could eliminate flexibility of a demand management program.
- If the definition of temporary is too restrictive, it may limit water user participation and make it difficult to fill a demand management pool.
- Depending on how temporary is defined, it may discourage system efficiency projects which have the potential to generate conserved water over longer periods of time.

**C. Alternative 3: Adopt a max term for system efficiency projects and cap all other types of projects based upon a time period of no more than five years in any consecutive ten-year period.**

Description: Colorado could adopt a 20-30 year max term for system efficiency projects, while non-system efficiency projects would be subject to a time period of no more than five years in any consecutive ten-year period of time.



Benefits to this approach:

- Recognizes that system efficiency projects have the ability to conserve water over longer periods of time.
- Provides a greater degree of flexibility than would be available under a single definition that applies to all types of use.

Drawback to this approach:

- May limit flexibility.
- If restrictions on frequency of participation are too restrictive, they may limit ability for water users to participate and make it difficult to fill demand management pool.

**D. Alternative 4: Adopt a definition of temporary for projects involving irrigation water rights, but leave the definition of temporary open ended for all other types of demand management water rights.**

Description: Consistent with HB20-1157, Colorado could adopt a definition of temporary for irrigation water rights so that such water rights may not participate more than five years in any consecutive ten-year period, but for no more than three consecutive years, and for only two additional ten-year periods, and leave the definition of temporary open-ended for all other types of projects/water rights.

Benefits to this approach:

- Aligns with the 2007 Interim Guidelines treatment of system efficiency projects used for ICS.
- Allows Colorado and the Upper Basin to maintain some level of flexibility.
- Provides additional protections for ag/irrigation water rights.

Drawback to this approach:

- Because this approach limits participation of irrigation water rights, it may place a disproportionate burden on other types of water rights to fill a demand management pool.
- For water rights/ demand management projects that are not subject to a fixed definition of temporary, it:
  - may make it more difficult to maintain consistency and uniformity between demand management projects.
  - may require more administrative oversight and analysis in approving projects for a demand management program.
  - could result in an evolving definition of temporary.

#### **IV. Conclusion**

There are at least four different approaches to defining the meaning of temporary for a demand management program, although other approaches may be used. Of the four approaches discussed above, these approaches may provide varying degrees of flexibility for Colorado, and may affect the availability of water for a demand management pool.

**DEMAND MANAGEMENT PROGRAM – LAW AND POLICY ADVISORY GROUP**  
**POLICY DISCUSSION OF REVIEW PROCESS FOR DEMAND MANAGEMENT PROGRAM PROJECTS**  
**JUNE 9, 2020**

**I. Introduction**

This memorandum discusses several potential processes for review and approval of projects for a Colorado River demand management program (“DMP”) operated within the state of Colorado.

This paper does not represent interpretations of existing law by any member of the Law and Policy Workgroup, the state of Colorado, or any of its officials or employees, nor predetermine in any manner the position or interests of the state of Colorado, the Colorado Water Conservation Board, or any demand management workgroup participants or their respective organizations, with respect to interpretation of any interstate compact or other component of the Law of the River.

On May 20, 2019, the Upper Division States and the Secretary of the Interior entered into an Agreement Regarding Storage at Colorado River Storage Project Act Reservoirs Under an Upper Basin Demand Management Program between the Upper Division States and the Secretary of the Interior (“Demand Management Agreement”). The Demand Management Agreement authorized the Secretary of the Interior to make unfilled storage capacity at the initial units of the Colorado River Storage Project Act Reservoirs (“CRSPA”) available for use by the Upper Division States, through the Upper Colorado River Commission, at no charge and in accordance with the terms of the Demand Management Agreement. To access the unfilled storage capacity in CRSPA Reservoirs, the Upper Division States must “investigate the feasibility of developing and implementing an Upper Basin Demand Management Program, and reach consensus” on several items identified in the Demand Management Agreement.

Colorado has initiated a process to investigate feasibility of a DMP within the state, on a parallel track to efforts at the interstate level. On November 15, 2018, the Colorado Water Conservation Board (“CWCB”) adopted Support and Policy Statements Regarding Colorado River Drought Contingency Plans, Demand Management and Compact Administration (“Policy Statement”). The Policy Statement expresses the CWCB’s strategy to investigate a DMP that:

- Allows for voluntary, temporary, and compensated reductions in consumptive use of waters that otherwise would deplete the flow of the Upper Colorado River System for the specific purpose of helping assure compact compliance.
- Complies 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.
- Meets the other strategies and policy goals set forth in the Demand Management Agreement and the CWCB’s Policy Statement.

CWCB Policy and Support Statement, p. 4 ¶¶(4), (7).

In exploring a framework for a DMP, inquiries have been made about available processes for the review and approval of demand management projects and whether projects must undergo water court review. This memorandum explores five potentially available alternatives under Colorado law through which projects can be reviewed and approved for participation in a DMP under existing law. The five alternatives include the use of: (1) water court adjudications to review and approve the change of water rights for use in a DMP; (2) the temporary substitute water supply plan statute, C.R.S. § 37-92-308(5), to

temporarily approve the change of water rights for use in a DMP; (3) the interruptible water supply plan statute, C.R.S. § 37-92-309, to temporarily transfer the consumptive use of a water right for use in a DMP; (4) the water bank statute, C.R.S. § 37-80.5-104.5, to approve the deposit of conserved consumptive use credits in a water bank to be withdrawn for DMP purposes; and (5) the exercise of the State Engineer's authority to promulgate rules and regulations with respect to deliveries of water to enable the state of Colorado to meet its compact commitments under C.R.S. § 37-80-104.

This memorandum reviews the five identified processes, and concludes with a review of the pros and cons associated with each process. Although new legislation may be necessary or useful to facilitate these processes, it is beyond the scope of this memorandum to make such recommendations. This memorandum is not intended to suggest there are no other existing lawful processes to accomplish the goals of DMP. Likewise, this memorandum does not address the authority of the State Engineer concerning the discharge of the obligations of the state of Colorado imposed under the Colorado River and Upper Colorado River Basin Compacts.

## **II. Processes Available for Review and Approval of Demand Management Projects**

### **1. Use of Water Courts to Review Demand Management Projects**

Water users participating in a DMP could be required to go to water court to have their projects adjudicated for demand management uses. The Water Right Determination and Administration Act of 1969, §§ 37-92-101 to -602 ("1969 Act") defines the types of special statutory procedures available for the filing of applications in water court. These include applications for determinations with respect to a change of water right. C.R.S. § 37-92-302(1)(a).

Without assessing the merits, an argument can be made that demand management projects constitute a change of water right as defined in C.R.S. § 37-92-103(5),<sup>1</sup> to the extent consumptive use is being stored in Lake Powell rather than used for decreed purposes and places of use.<sup>2</sup> Arguments can be made that demand management is not a change of water right contemplated by the 1969 Act. However, counter arguments could be made that the quantification and transfer of conserved consumptive use for demand management purposes is a change of water right. Thus, one means of quantifying, reviewing and approving demand management projects would be to require water users to obtain decrees through an adjudicated change of water right.

<sup>1</sup> C.R.S. § 37-92-103(5)(a) defines a change of water right as "a change in the type, place, or time of use, a change in the point of diversion except as specified in section 37-86-111(2), a change from a fixed point of diversion to alternate or supplemental points of diversion, a change from alternate or supplemental points of diversion to a fixed point of diversion, a change in the means of diversion, a change in the place of storage except as specified in section 37-87-101(3), a change from direct application to storage and subsequent application, a change from storage and subsequent application to direct application, a change from a fixed place of storage to alternate places of storage, a change from alternate places of storage to a fixed place of storage, or any combination of such changes....

<sup>2</sup> In contrast to demand management projects, pilot projects involved in the system conservation pilot program did not involve a change of water right because system conservation pilot projects only involved the reduction or forbearance of diversions, and no effort was made to quantify the conserved consumptive use to claim credit for water storage in Lake Powell.

## 2. Administrative Agency Review of Demand Management Projects

As an alternative to water court adjudication of demand management projects, several statutes provide authority for the administrative approval of temporary transfers of water rights for undecreed purposes.

“Starting with Colorado's first adjudication acts . . . the General Assembly has consistently chosen to assign the water right determination function to the courts and the water distribution function to the water officials,” *Santa Fe Trail Ranches Prop. Owners Ass’n v. Simpson*, 990 P.2d 46, 58 (Colo. 1999). However, “nothing in the Colorado Constitution—and particularly nothing in art. XVI, § 6 . . . prevents the legislature from placing such jurisdiction in a different agency.” *Larrick v. N. Kiowa Bijou Mgmt. Dist.*, 510 P.2d 323, 328 (Colo. 1973) (addressing the constitutionality of the Colorado Groundwater Management Act). Such legislation also does not violate the doctrine of separation of powers, nor does it constitute an unlawful delegation of judicial powers under Colo. Const. art. III and art. VI, s 1. See *Larrick*, 510 P.2d at 328.

In fact, the General Assembly has made exceptions in certain contexts, granting state water officials a wider latitude to approve temporary changes of water rights and plans for augmentation, C.R.S. §§ 37-92-308(4)-(5), to approve interruptible water supply agreements involving a temporary transfer of water rights, C.R.S. § 37-92-309; designated ground water basins, C.R.S. § 37-90-101 *et seq.*, and water banking programs, C.R.S. §§ 37-80.5-102, 37-80.5-104.5.

Such existing authority may enable the State Engineer to quantify review and approve demand management projects. The following table summarizes available statutory mechanisms that may allow existing water rights to be used in a DMP and explains potential shortcomings with each mechanism.<sup>3</sup>

TEMPORARY TRANSFER MECHANISM	APPROVAL ENTITY	PURPOSE	ISSUES WITH TRANSFER MECHANISM
<b>Substitute Water Supply Plan</b> C.R.S. § 37-92-308(5)	State Engineer	For temporary changes of water rights for no more than 5 years.	A five-year limit may be too restrictive.
<b>Interruptible Water Supply Agreement</b> C.R.S. § 37-92-309	State Engineer	Temporary transfer of HCU for another type or place of use.	Requires that the borrowing entity be a water right owner.
<b>Water Banking Statute</b> C.R.S. § 37-80.5-104.5	State Engineer & possibly Water Court	Allows for the lease, exchange, or loan of stored water within a water division.	Could be interpreted as only allowing water banks to operate within the water division for use within the division. Control over credits would need to be immediately transferred to entity administering a DMP to prevent a withdrawal.
<b>State Engineer Authority</b> C.R.S. § 37-80-104	State Engineer	Authorizes regulations for deliveries of water to enable Colorado to meet its compact commitments.	Among other things, a DMP would need to be for the purpose of ensuring compliance with Compact obligations.

<sup>3</sup> For an in depth discussion of these temporary mechanisms as well as other mechanisms authorized by the General Assembly, see Peter D. Nichols, Anne J. Castle, Zach Smith, P. Andrew Jones, Aaron Derwingson, *Standardizing Temporary Water Transfer Procedures in Colorado*, 22 U. Denv. Water L. Rev. 497 (Spring 2019).

#### **a. Substitute Water Supply Plans**

Under C.R.S. § 37-92-308(5)(a), if the statutory conditions are met, the State Engineer may approve a temporary substitute water supply plan ("SWSP") "for new water use plans involving ... a change of water right, if no application for approval of a plan for augmentation or a change of water right has been filed with a water court and .... change proposed and the depletions associated with such ... change will be for a limited duration not to exceed five years...."

To satisfy the statutory conditions of § 308(5)(a):

- The applicant must request approval of the SWSP with the state engineer and demonstrate its proposal will not cause injury to other water rights; and
- Provide a written notice of the request for approval of the SWSP by first-class mail or electronic mail to all parties who have subscribed to the SWSP notification list for the water division in which the proposed plan is located and proof of such notice is filed with the state engineer.

Potentially affected water users are given thirty-five days to submit comments to the state engineer, including "any claim of injury or any terms and conditions that should be imposed upon the plan to prevent injury to a party's water rights or decreed conditional water rights and any other information the opposer wishes the state engineer to consider in reviewing the substitute water supply plan request." C.R.S. § 37-92-308(5)(a)(III).

The state engineer must then make a determination whether "the operation and administration of SWSP will replace all out-of-priority depletions in time, location, and amount and will otherwise prevent injury to other water rights and decreed conditional water rights, including water quality and continuity to meet the requirements of use to which the senior appropriation has normally been put, pursuant to section 37-80-120(3), and will not impair compliance with any interstate compacts." C.R.S. § 37-92-308(5)(a)(IV)(A).

Under § 37-92-308(5)(a)(IV)(C), the state engineer is not required to hold any formal hearings or conduct any other formal proceedings, but may conduct a hearing or formal proceeding if the state engineer finds it necessary to address the issues.

Section 37-92-308(5)(c) also provides that the approval or denial of an SWSP does not "create any presumptions, shift the burden of proof, or serve as a defense in any legal action that may be initiated concerning the [SWSP]." If an applicant or opposer appeals a SWSP, the appeal is made "to the water judge in the applicable water division within thirty days, who shall hear such appeal on an expedited basis." *Id.*

#### **b. Interruptible Water Supply Agreements**

The Interruptible Water Supply Agreement ("IWSA") statute, C.R.S. § 37-92-309, is "intended to enable water users to transfer the historical consumptive use of an absolute water right for application to another type or place of use on a temporary basis without permanently changing the water right." C.R.S. § 37-92-309(1). In enacting the IWSA statute, the General Assembly recognized there are "certain circumstances under which administrative approval of the use of [IWSAs] ... can maximize the beneficial use of Colorado water resources without the need for an adjudication and without injury to vested water rights or decreed conditional water rights." *Id.*

Under § 309(2), an IWSA is specifically defined as:

...an option agreement between two or more *water right owners* whereby:

- (I) The owner of the loaned water right agrees that, during the term of the agreement, it will stop its use of the loaned water right for a specified length of time if the option is exercised by the borrowing water right owner in accordance with the agreement; and
- (II) The borrowing water right owner may *divert* the loaned water right for such owner's purposes, subject to the priority system and subject to temporary approval by the state engineer in accordance with this section.

C.R.S. § 37-92-309(2)(a) (emphasis added).

The State Engineer is authorized to approve and administer IWSAs “that permit a temporary change in the point of diversion, location of use, and type of use of an absolute water right without the need for an adjudication....” C.R.S. § 37-92-309(3). IWSA approved by the State Engineer must include:

- A quantification of the historical consumptive use of the water right.
- An accurate description of the land where the water is decreed for use.
- If the loaned water right is being used for irrigation, a plan to prevent erosion and blowing soils and a description of compliance with local county noxious weed regulations and other land use provisions.
- Any terms and conditions determined by the State Engineer to be necessary to ensure that these standards are met.

C.R.S. § 37-92-309(3)(a).

The state engineer is not required to hold any formal hearing or conduct any other formal proceedings, but may conduct a hearing or formal proceeding if the state engineer finds it necessary to address the issues. § 37-92-309(3)(b), C.R.S.

Similar to the SWSP statute, “[n]either the approval nor the denial of the agreement by the state engineer creates any presumptions, shifts the burden of proof, or serves as a defense in any legal action that may be initiated concerning the [IWSA]....” C.R.S. § 37-92-309(4)(a). Appeals of IWSA decisions must be “expedited, limited to the issue of injury, and made within thirty-five days after mailing of the decision to the water judge in the applicable water division.” § 37-92-309(4)(a).

An ISWA “cannot be exercised for more than three years in a ten-year period, for which only a single approval is required. The ten-year period begins with the granting of the approval.” § 37-92-309(4)(c). Although the IWSA statute is ambiguous, it can be read as allowing IWSAs to be approved for two additional ten-year periods, under C.R.S. §§ 37-92-309(4)(c) and (6), under a process that requires additional notice through the water court resume process. C.R.S. § 37-92-309(6)(c).

### **3. Water Bank Program**

The Water Bank Program could present another framework for administering, reviewing and approving demand management projects. Under C.R.S. § 37-80.5-104.5(1)(a), upon a request by a water conservancy or conservation district “the state engineer shall promulgate program rules necessary or convenient for the operation of a water bank within the division in which such district is located.”

Section 37-80.5-104.5(1)(a) specifies several requirements that the rules must meet. C.R.S. §§ 37-80.5-104.5(1)(a)(I)-(V), (b). Among these requirements, the rules must:

- “[A]uthorize, facilitate, and permit the lease, exchange, or loan of stored water within a water division” without impairing any of Colorado’s interstate compacts. C.R.S. § 37-80.5-104.5(1)(a)(I).
- “[A]ccount and address, as appropriate, any necessary or desirable limitations upon the time, place, or type of use of waters made available through the water banks, and the appropriate length of agreements implementing banking transactions.” C.R.S. § 37-80.5-104.5(1)(a)(IV).
- “[E]nsure that operation of the banks shall not cause any material injury to the owner of or persons entitled to use water under a vested water right or a decreed conditional water right.” C.R.S. § 37-80.5-104.5(1)(b).

In addition, the State Engineer must adopt criteria for the approval and administration of deposits and credits to and from the water bank. C.R.S. § 37-80.5-104.5(c).

There are a number of challenges to adapting the water banking statute to a DMP, including:

- A potential hurdle to utilizing the water banking statute for a DMP is that under C.R.S. § 37-80.5-104.5(2), deposited “credits may be removed by the owner at any time prior to an actual transaction in which control of a credit is transferred, subject to the terms and conditions of the deposit agreement executed with the operator of the bank.” Thus, for credits deposited for storage in Lake Powell, ownership of credits would need to be transferred to the entity administering the DMP to prevent a withdrawal, or deposit agreements would need to prohibit withdrawal.
- The water banking statute could be construed as authorizing water banks for lease, exchange or loan of water within the water division and not across state lines or in Lake Powell.
- The water bank statute allows for the assessment of transaction fees, which could help fund the administration of a DMP, but also add additional cost for water users. See C.R.S. § 37-80.5-104(1)(d).

#### **4. State Engineer Promulgation of Rules Providing for Review of Demand Management Projects.**

It may also be possible to review and approve demand management projects through the State Engineer’s statutory authority to promulgate rules and regulations to administer deliveries of water to enable Colorado to meet its compact obligations.

Under C.R.S. § 37-80-104, the State Engineer:

*shall make and enforce such regulations with respect to deliveries of water as will enable the state of Colorado to meet its compact commitments.* In those cases where the compact is deficient in establishing standards for administration within Colorado to provide for meeting its terms, the state engineer shall make such regulations as will be legal and equitable to regulate distribution among the appropriators within Colorado obligated to curtail diversions to meet compact commitments, so as to restore lawful use conditions as they were before the effective date of the compact insofar as possible.

(Emphasis added).

The Demand Management Agreement authorizes the storage of water in the initial units of the CRSPA reservoirs “to help assure continued compliance with Article III of the Colorado River Compact without impairing the right to exercise existing Upper Basin water rights in the future.” Because water conserved under a DMP is to help assure compact compliance, the State may have the authority to promulgate rules and regulations for the review and approval of demand management projects under C.R.S. § 37-80-104.<sup>4</sup>

Such rules would likely be “constrained by all of the statutory restrictions imposed the State Engineer’s water rule power, including the provisions set forth in ... [C.R.S. §] 37–92–308 [and 37-92-501]” See *Simpson v. Bijou Irrigation Co.*, 69 P.3d 50, 71 (Colo. 2003), as modified on denial of reh’g (May 27, 2003).

### III. Discussion of Alternatives:

**Alternative 1, Water Court Review and Approval:** The Water Court can be used to adjudicate changes of water rights for the purpose of quantifying historic consumptive use (“HCU”) and any associated return flow obligations for a DMP.

- Pros:
  - Allows for quantification of HCU.
  - Provides an existing mechanism to adjudicate changes in water rights for use in a DMP.
  - Provides certainty to water users.
  - Allows for a determination of injury.
- Cons:
  - Potentially high transaction costs.
  - Inefficient and time consuming. May take years to resolve cases if contested.
  - Relatively permanent result for projects that are intended to be temporary.
  - Likely to discourage participation by water users due to risks posed by water court litigation.
  - The above drawbacks could make a DMP infeasible.

**Alternative 2, Substitute Water Supply Approval Process:** The State Engineer may use the SWSP process, under C.R.S. § 37-92-305(8), to approve temporary changes of water rights for use in a DMP.

- Pros:
  - Relatively low transaction costs compared to water court.
  - Timely process for review and approval of projects.
  - Consistent with temporary nature of demand management projects.
  - Provides efficient process for review of injury in water court.
- Cons:
  - The five-year limit for approvals with no renewal could be too limited in duration for a DMP.
  - Limited notice and review time.

<sup>4</sup> Arguments also exist that the State Engineer’s compact rule power does not extend to a demand management program.



- No protections for underlying water right from abandonment or reduction to HCU unless it is enrolled in an approved program.<sup>5</sup>

**Alternative 3, Interruptible Water Supply Agreement Approval Process:** The State Engineer may approve IWSAs to authorize the transfer of HCU for use in a DMP.

- Pros:
  - IWSA statute appears aptly suited for the temporary quantification of consumptive use.
  - Provides speedy process for review of consumptive use quantification and determination of injury in water court, if necessary.
  - Low transaction costs as compared to water court.
  - Consistent with the temporary nature of a demand management project.
  - May allow for higher participation in a DMP because there is a low risk of adverse binding precedent when quantifying a water right's consumptive use.
  - Protections for underlying water right from abandonment or reduction to HCU.<sup>6</sup>
- Cons:
  - The IWSA statute is potentially ambiguous as to subsequent renewals.
  - The IWSA renewal process is slightly more cumbersome and complicated than the initial approval process.
  - Limited notice and review time.
  - Three in ten-year limit for approvals may be too limited in duration for a DMP.

**Alternative 4, Water Bank Statute:** Use of the Water Bank Statute to create rules for the deposit and administration of credits for a DMP.

- Pros:
  - The water bank statute provides a process for developing rules for the deposit and approval of credits that could be useful for administration of a DMP.
  - The assessment of transaction fees may provide a means for funding the administration of a DMP.
  - Relatively low transaction costs compared to water court.
  - Timely process for review and approval of projects.
  - Consistent with temporary nature of demand management projects.
  - Provides efficient process for review of injury in water court.
- Cons:
  - The water bank statute allows for the assessment of transaction fees, which could add to water users' costs when participating in a DMP.
  - Water bank statute could be construed as authorizing water banks for the lease, exchange or loan of water within the water division, and not for use outside of the division.
  - Ownership or control of credits would need to be transferred to the entity responsible for administration of a DMP to prevent a withdrawal under C.R.S. § 37-80.5-104.5(2) or a deposit agreement would need to prohibit withdrawal.

<sup>5</sup> These programs are described in C.R.S. § 37-92-103(2) (protection from abandonment) and C.R.S. § 37-92-305(3)(c) (protection from reduction in HCU).

<sup>6</sup> *ISG LLC v. Arkansas Valley Ditch Association*, 120 P.3d 724, 734 (Colo. 2005).

- Limited notice and review time.

**Alternative 5, State Engineer Promulgation of Rules for Review and Approval of Demand Management Projects:** The State Engineer may be able to promulgate rules under C.R.S. § 37-80-104 for the delivery of water conserved under a DMP for delivery to the initial units of the CRSPA Reservoirs.

- Pros:
  - Depending on rules, may provide a legally defensible process for developing enforceable rules for a DMP.
  - Allows rules to be tailored to the needs of a DMP in the Colorado River Basin.
  - Allows for the development of rules that have low transaction costs, provide for speedy review of demand management projects and protects other water users from injury, and recognize the temporary nature of demand management projects.
- Cons:
  - Questions exist regarding the applicability of this statute to a demand management program.
  - State Engineer must develop new rules, which may be time consuming.
  - The rules are subject to protest in the Water Court under C.R.S. § 37-92-501(3)(a).
  - May require a determination that a DMP is needed to meet compact commitments.

#### IV. Conclusion

Arguments exist that at least five processes are currently available for review and approval of demand management projects. These processes may result in varying levels of authority, flexibility and participation in a DMP. A program requiring water court adjudication of projects is likely to result in the higher transaction costs and lower levels of participation in a DMP. In contrast, an administrative review and approval process is likely to have lower transaction costs and less risk, and may therefore create the conditions for higher levels of participation in a DMP. Other processes may be available for the review and approval of demand management projects, including a combination of the above approaches.

**The alternatives discussed above assume that demand management would constitute a recognized beneficial use of water. Compact compliance has been deemed a beneficial use in certain situations in Colorado.<sup>7</sup> A voluntary demand management program could be used as a mechanism to help assure compact compliance<sup>8</sup> However,** whether demand management meets the definition of a beneficial use of water could be subject to challenge. Other questions exist regarding the viability of the discussed alternatives for demand management purposes under existing law. The Law and Policy Workgroup therefore does not assert that any of the discussed alternatives are definitively available for implementation of a DMP.

<sup>7</sup> See CWCB DM Law and Policy Workgroup, Does Colorado law recognize compliance with an interstate compact as a beneficial use of water? (April 2020).

<sup>8</sup> CWCB DM Law and Policy Workgroup, Defining Compact Compliance in the Context of a Demand Management Program (May 2020), p. 4.

## **Work Group Meeting Report Out**

**Work Group:** Law and Policy Meeting #1 **Date:** December 19, 2019

### **Meeting Topics:**

Agenda topics included: Workgroup Role/Process; Scope of Discussions (working within framework of Demand Management Storage Agreement); Identification of Threshold Law and Policy Issues; Prioritization of Threshold Issues; Resource/Technology Needs Going Forward.

### **Key Take Aways:**

- Laundry list of legal and policy issues exist within a number of important topics. Important to group issues according to topic to better focus where work group can provide most value.
- Definition of specific terms related to Demand Management critical first step to informing how to consistent evaluate key issues.
- Important to capture evaluation in useful manner i.e., report, charts, etc. to frame paths forward or challenges for the Project Management Team's recommendations to the Board.

### **Key Discussion Points:**

The group identified threshold law and policy questions related to Demand Management that Colorado will need to consider. It grouped these questions into specific topics, and then identified needs to help inform the evaluation process. It then assigned responsibilities to address the initial needs for evaluating the law and policy issues and discussed approaches for developing an end product. These discussions will be refined in future meetings, but included:

Threshold topics (Note: specific issues identified within each topic)
<ul style="list-style-type: none"><li>• Legal definitions of critical terms</li><li>• Purpose and Goal</li><li>• Water Management and Administration</li><li>• Governance</li><li>• Funding</li><li>• Equity/Neutrality</li><li>• Hybrid Considerations</li><li>• Tribal Considerations</li></ul>

### **Additional technical, informational other needs:**

- Literature review of existing law and policy materials related to Demand Management
- Summary of key principals of existing Legal Framework under the Demand Management Storage Agreement.
- ? for Work Groups - Water Accounting/Administration Group – what are topics looking into? What are implications of using storage for DM, how does that work with 1 fill rule,

etc.? Funding Group – What are topics looking into? Tribal Discussion – What are key topics looking into?

**Other:** The group's next meeting will be held February 5<sup>th</sup> in Summit County. Place and time to be determined.

## **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 voluntary 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).

## **Work Group Meeting Report Out**

**Work Group:** Law and Policy Meeting #3 **Date:** March 24, 2020

### **Meeting Topics:**

Agenda topics included: Key Takeaways Summaries/ Report out from IBCC Meeting - Purpose of L&P Workgroup \* Uncertainties \* Questions from Other Workgroups \* Approach for Developing Work Product / Definition of Key Terms (Continued discussion) / Next Steps.

### **Key Take Aways:**

- Communications “tool” that CWCB introduced at IBCC meeting may be helpful to evaluate some uncertainties identified by the Workgroup. Will consider more and see if there are key uncertainties that the group wants to map out.
- Purpose of the Law and Policy Workgroup – To focus on framework to help inform three different matters:
  - Identifying the threshold legal and policy questions that the CWCB should be aware of when investigating and potentially determining the feasibility of Demand Management for Colorado. NOTE: Not decision but noting the pros and cons associated with each.
  - Assess key terms to provide a baseline understanding that can help the CWCB, workgroups and other stakeholders speak the same language as considering options.
  - Help inform answers to law and policy questions posed by other workgroups.
- Key uncertainties at this time include:
  - Is there a need to pursue Demand Management? Do we need an insurance program? What is the obligation Colorado is trying to fulfill? CWCB Communications tool may help with this – still thinking on it.
  - If so, “is the juice worth the squeeze?” Does it provide sufficient risk mitigation for the effort it will require?
  - What will other states do? How do we agree?
- Approach for Work Product – Develop a basic legal and policy framework:
  - Based on a streamlining of elements from the Demand Management Storage Agreement and CWCB Support and Policy Statement to focus on essential elements for any Demand Management Program in Colorado
  - Identify the legal and policy issues associated with the key elements within the framework, noting the benefits and challenges associated with the alternative ways to assess the matters.
  - Hope is to provide some definition to key elements.
- Key definitions that Workgroup is mapping

- What constitutes “compact compliance,” and how it should be defined, therefore, is important to the structure of the entire program.
- Whether demand management actions will be considered a beneficial use of water will be important to define and clarify.
- What constitutes conserved consumptive use and what water rights would fit within a demand management program.
- How to define “temporary” under a Demand Management Program that is voluntary, temporary and compensated.

### **Key Discussion Points:**

- 1) There are different ways to look at what constitutes compact compliance. The focus of this process should be on helping to assure compact compliance is the basis for conducting demand management activities. In developing this definition, it will remain important to be consistent with wording in the Demand Management Storage Agreement and CWCB Support and Policy Statement. It will also be important to make sure that the definition of “compact compliance” does not interfere with the concept that actions taken for demand management could constitute a beneficial use. .
- 2) To work within the existing water rights system, there is a need to identify whether 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 and augmentation wells, Long Hollow Reservoir – water court decree, Arkansas River Irrigation Improvement Rules, groundwater commission decisions. While compact compliance activities may be considered a beneficial use in various basins, the activities that are deemed fall within what constitutes compact compliance still need to be defined.
- 3) 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 water rights represented by shares in ditch companies. Presenting the pros and cons of different alternatives to consider.
- 4) Water that is eligible for a Demand Management Program must meet the minimum requirements of the Demand Management Storage Agreement and CWCB support and policy statement.

### **Additional technical, informational other needs:**

- 1) Working through go to meetings to conduct meetings during COVID-19 concerns. Everyone seems to be managing. Will report out complications as develop.

- 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.



## **Law and Policy Work Group Meeting Report Out**

**Meeting Date:** April 22, 2020

### **Meeting Topics:**

Agenda topics included: summary of public comment; review of workgroup members' work on various Demand Management topics; discussion of strawman/framework document relating to Demand Management Storage Agreement and CWCB Policy statement; identification of legal and policy alternatives within framework; public comment

### **Key Take Aways:**

- The group identified and discussed the key elements of the Demand Management Policy statement and identified issues that require ongoing discussion and additional clarification.
- There are various points in the Storage Agreement and Policy Statement that require definitions. The group has developed draft definitions of key terms and continues to work on refining and identifying areas of agreement and outstanding issues.

### **Key Discussion Points:**

Discussion about how to frame key issues relating to Demand Management and areas requiring clarification in the Storage Agreement. The group recognized it does not need to reach consensus or decisions on these issues, but rather is working to frame and prepare a work product for the Board identifying the issues and identify various approaches and interpretations.

Workgroup members will continue to work to finalize work products.

**Next Steps:** Note that one final, brief call was held among the workgroup members on June 5, 2020, for the purpose of discussing logistics for finalizing the group's reports.

# Attachment I

## Monitoring and Verification Workgroup Documents:

1. Fallowing/Deficit-Irrigation Projects
2. Agricultural Hypothetical Examples
3. Trans-Mountain CU Reduction Projects
4. TMD Hypothetical Examples
5. Reports

# **FINAL**

## **Ideas for Monitoring and Verification of Agricultural Fallowing/Deficit-Irrigation Projects Demand Management - Monitoring and Verification Workgroup June 2020**

### **Notes:**

1. “Generally Accepted” practices draw from existing programs and practices, administration, and water court case law while other practices that have been identified were noted as “Potential”. Generally Accepted practices sometimes vary between divisions/locations based on need, applicability, and practicability.
2. In this document, “Consumptive Use (CU) credits” or “credits” are defined as the amount of water to be quantified in the stream as available for use in the Demand Management Program (DMP) and are derived by reducing the estimated amount of conserved CU by safety factors to conservatively reflect uncertainties and levels of accuracy.

### **Guiding Principles:**

1. Measurement and verification must be honest, accurate, and defensible.
2. It must be protective of other water users.
3. It must be as simple, easy, and flexible as possible while still meeting the first two principles.

### **Temporary Nature:**

*Demand Management Program:* The M&V ideas presented here are meant to address waters temporarily made available to the Demand Management program (program).

*Field level:* For consumptive use (CU) water produced by reductions in crop consumption due to reduced irrigation, the measure of “temporary” shall be determined at the field level. For ease of implementation and administration, entire ditch system or structures may choose to participate simultaneously, however, the measure of temporary shall still be based at the field level. The fallowing or reduction of irrigation of any particular field is presumed to be limited to a certain number of years within a longer period. Specific terms will be considered on a case-by-case basis, and the standard of scrutiny may be based on the type and duration of the project.

### **Level of Accuracy:**

Typically, the generally accepted practices listed below offer a higher level of certainty in estimation of parameters needed for monitoring and verification of potential demand management projects. This is either due to a higher level of detail or a greater amount of experience of use within Colorado changed water rights history and case law. Often, the higher precision and confidence results in higher cost for monitoring and verification due to required infrastructure, data, or time for an engineer or scientist to perform analysis. The higher precision and level of confidence should also allow for maximization of

transferred CU resulting from a project. The potential practices listed below are typically more untested in Colorado changed water right history and case law. In some cases, they may be simpler or require less analysis and/or infrastructure. The tradeoff in simplicity is that the results will be more uncertain and require safety factors to avoid potential injury to other water users.

### **Specific Issues:**

***Measurement of water returned to stream*** – Quantifying the amount of water that was physically and administratively available and returned to the stream is a cornerstone of monitoring and verification. Headgate diversion and measurement of water returned to the stream is required unless the Division Engineer confirms that an acceptable alternate method of quantification of the amount of water generated is available. The standard applied shall be that credit will only be given for water that is both physically and administratively available, and that can be honestly, easily, and accurately quantified using defensible methods. In general, direct measurement is preferred and will produce the most confidence in measurement. Alternative methods that do not use direct measurement of flows involve assumptions and introduce uncertainty.

### **Generally Accepted Practices:**

#### **Diversion and Measurement**

For typical irrigation systems, water must be diverted through the ditch headgate to ensure that it was physically and administratively available and the amount returned to stream measured. Typically a Parshall, Cutthroat, or other type of flume with a stage/discharge recorder is used for measurement; data telemetry is not required but is encouraged. The Division Engineer has a right to verify measurement accuracy. The amount of water diverted and measured back to the stream includes the amount of conserved CU, and an amount representing losses and return flows (see section below).

#### **Bypass of Water**

In some cases, water can be bypassed past the ditch headgate if the Division Engineer confirms that the amount of water that is both physically and administratively available can be easily and accurately quantified. The amount of water bypassed shall be determined by headgate diversions measurements and records as a demonstrable physical reduction in allowable diversions.

### **Potential Practices:**

#### **Other Indirect Estimation Methods**

In some cases, direct measurement of water available to a field or reductions in diversions may not be possible or feasible. Such cases may include high altitude grass irrigation, high groundwater sub-irrigation situations, or deficit irrigation situations. In such cases, alternative assumptions of conserved CU and return flows may be allowed through conservative engineering estimation methods and accounting methodologies.

***Consumptive Use Analysis*** – A consumptive use (CU) analysis is required to estimate the historical or potential consumptive use of irrigation water and CU factors and volumetric limits that are required for administration. CU factors relate the amount of water that was returned to or left in the stream to the portion that was historically consumed. The factors may need to incorporate ditch losses based on the location of measurement, and are inversely proportional to return flow (RF) factors which may be further subdivided into immediate and delayed portions. Volumetric limits are needed to limit monthly and annual CU/depletion amount totals to historically used amounts, and for a temporary project could be based on maximum rather than average historical amounts.

Additional factors and limits based on the certainty and accuracy of the measurement methodology and CU estimation methodology can be quantified and applied to CU to result in appropriately conservative stream credits and return flow obligations.

*Generally Accepted Practices:*

Historical Consumptive Use (HCU) Supply-Limited Analysis

A supply-limited HCU analysis limits potential crop demands by historical ditch diversions and soil moisture storage given ditch and irrigation application efficiencies to estimate consumptive use of irrigation water and factors and volumetric limits based on historical use over a representative study period of at least 30 years. Tools such as StateCU, the Lease Fallow Tool (LFT), and IDSCU can be used for an HCU analysis. Required data includes acres, crops, ditch diversion records, shares/ownership, potential evapo-transpiration (PET), precipitation, soil capacity, ditch losses and application efficiency. A site specific engineering analysis is the preferred method and may result in the highest CU credit. However, the use of standardized tools such as the Lease Fallow Tool with conservative assumptions is also acceptable, but will result in lower amounts of CU credit.

*Potential Practices:*

Potential Consumptive Use (PCU) Analysis

A PCU analysis could be used within a demand management program when ditch diversion records or other data are not available or when conservative measures are also applied. CU factors are estimated with application and ditch efficiencies and volumetric limits based on historical and/or real-time potential crop irrigation water requirement. This analysis does not identify historically water long periods (which lowers CU factors below maximum efficiencies) or water short periods (which reduce volumetric limits). Required data includes crop type, potential evapotranspiration (PET), precipitation, and application efficiency.

Remote Sensing Historical Analysis

Satellite imagery can be processed with methods such as METRIC to estimate historical CU. The analysis can identify historically water short periods, although volumetric limits for a temporary project may be based on maximum usage. CU factors could be estimated separately with application and ditch efficiencies but water long periods which lower these factors would not be identified. Because this methodology incorporates less direct measurement and more uncertainty, its application should be

limited to locations and situations that cannot feasibly use other methodologies or for project types that require the flexibility offered through this method. Relatively cloud-free satellite imagery as well as reference evapotranspiration (ET) and precipitation data are needed.

***Estimation of Residual Field Consumptive Use*** – Many temporary fallowing practices may still consume water, and continued consumption to the extent that it reduces return flows in comparison to the normally irrigated state should either be subtracted from stream credits and/or volumetric limits or replaced as additional return flow requirements. Practices and associated methods to estimate residual consumptive use include:

*Generally Accepted Practices:*

Full Dry-up: No Residual CU

The residual field CU is typically considered zero if nothing is replanted, deep rooted crops (alfalfa/grass) are removed, and management practices to ensure that inadvertent irrigation does not occur are implemented such as tilled separations from irrigated fields and ditches and periodic field inspections to ensure that the field remains fallow.

Sub-Irrigation: Measurement of Groundwater Levels

Groundwater monitoring wells can be installed and used to estimate the amount of groundwater consumed by crops. Accepted tables of depth to water versus crop consumption are available for alfalfa and grass. The residual consumptive use as indicated by the tables would be subtracted from credits and/or volumetric limits. Some of the potential practices listed below may also accurately account for residual field consumptive use, but have less history in Colorado for that purpose.

*Potential Practices:*

Non-irrigated Cover or Dryland Crops: Potential Estimation of Soil Moisture Impacts

Non-irrigated and shallow rooted cover crops and dryland crops have been planted on temporary fallowed fields to reduce noxious weeds and maintain soils and productivity using the management practices above to avoid inadvertent irrigation. However, these crops can reduce soil moisture in the year the field is re-irrigated, and modeling or measurement of soil moisture impacts may be required.

Deficit Irrigation: Measurement of Irrigation Water Applied

Any irrigation water applied to a field can be measured with a flume or other device. Under water short conditions efficiencies can be very high; therefore a method to estimate efficiency as a function of the ratio of water applied to PCU should be developed to be used as an accepted assumption. For example, if irrigation application is less than 50% of PCU, then it may be assumed that applied water is 100% consumed, and if 75%, then efficiency can be assumed to be 80%, and so on. It may prove beneficial to define a maximum application efficiency rate that could potentially be approved. The applied water that is estimated to be consumed would be subtracted from PCU to result in an estimate of conserved CU, subject to volumetric limits and further reductions for uncertainty.

#### Deficit or Sub-Irrigation: Remote Sensing of Actual Consumptive Use

Satellite imagery can be processed with methods such as METRIC to potentially estimate the water consumed by the deficit or sub-irrigated crop. The amount of effective precipitation is estimated and subtracted from this amount to estimate the amount of irrigation or groundwater that was consumed, and this amount would be subtracted from PCU to result in an estimate of conserved CU, subject to volumetric limits and further reductions for uncertainty. Relatively cloud-free satellite imagery as well as reference ET and precipitation data are needed.

#### Lower Consumption Crops: PET Evaluation

Consumptive use can potentially be reduced by changing from higher consumption crops (such as alfalfa or grass) to lower consumption crops (such as grains). The practice could potentially be used in demand management if the change would occur for multiple years and not part of a typical crop rotation practice. The consumptive use analysis of the higher consumption crop is based on the historical crop distribution on the field for the last 30 years or more, and conserved water is measured back to the stream. The credit and/or volumetric limits based on the historical crop distribution would be reduced by the irrigation requirement of the new crop based on the real-time or maximum PET.

#### Deficit/Sub-Irrigation: Yield reduction estimates

Studies have related water supply reduction to yield reduction for various crops. Yield reductions could be measured, and credit amounts could be limited by corresponding estimated reduction in water supply. This would require accurate measurement and verification of harvest yields in the project field and potentially in a normally irrigated field. This measurement is several steps removed from actual flow measurement and involves a large number of assumptions. Many factors besides conserved CU may affect crop yield, introducing a large amount of uncertainty.

***Return Flow Maintenance*** – In order to apply irrigation water to new uses while ensuring downstream rights are not injured, the water that would have returned to the stream system as a result of the use of the water right for irrigation needs to be maintained in amount, location, and time such that there is no injury to other water rights holders. Replacement of return flows may also have streamflow benefits, and this workgroup awaits the results of the Demand Management Environmental workgroup to evaluate those benefits. Irrigation water not consumptively used by crops can return to the stream system as surface water (tailwater) runoff or as deep percolation through groundwater systems. Return flows are sometimes referred to as “immediate” (those returning to the stream essentially at the same time as the diversion) and “delayed”. Return flow factors as a function of farm or river headgate deliveries are determined with the CU analysis. Methods to measure and replace return flow requirements include:

#### Generally Accepted Practices:

##### *Immediate return flows:*

Measurement Station – Immediate return flows can be returned through the measurement station along with the CU credit as long as the return flow location is appropriate. In some areas where flows

historically returned to the stream primarily as surface water or at a very fast rate (i.e. less than a month), the entire return flow requirement may be able to be replaced through the measurement station, so long as no downstream users are significantly impacted. These areas can include locations with fields close to the river, where return flows were predominantly surface water, or where underlying materials between the field and river are very permeable. Alternatively, with the approval of the Division Engineer, the downstream call regime may make the lagging or delay of return flow replacement less critical.

Bypass of Water - In some cases, The Division Engineer may confirm that the amount of immediate return flow that is required can be accurately quantified if the water is bypassed past the ditch headgate. This is only allowable in cases where the amount of immediate return flow is only a component of the amount bypassed, with the full amount representing the conserved CU portion and the return flow portion being both physically and administratively available. The amount of water bypassed shall be determined by headgate diversions measurements and records as a demonstrable physical reduction in allowable diversions.

Delayed Return Flows - Unit Response Functions (URFs) will be used to define the timing pattern of delayed return flows. These are often estimated using The Glover-Balmer analytical solution (Glover equation), distances from the field centroid and aquifer boundary (if applicable) to the river, and estimates of groundwater transmissivity and specific yield. Assurances may need to be secured to ensure that water sources will be available into the future:

Recharge Pond – Recharge or infiltration ponds are often used to replace delayed return flows. If the pond is located close to the fallowed field, deep percolation return flows should return to the stream system similarly to how they would have if the field was irrigated. However, evaporation from the pond must also be quantified and this amount replaced by reduction of the credit and/or replacement of this additional water amount into the pond. Evaporation can be estimated from climate data and the days that water is in the pond. Delayed return flows measured back to the stream or bypassed in the same manner as described above can be rediverted (directly or by exchange) into such recharge ponds for delayed release.

Replacement from Reservoir or Other Sources – Delayed return flow requirements can potentially be replaced using reservoir or other water sources. After passing through the measurement station, return flows portions can potentially be exchanged into a reservoir for storage and scheduled release. Some portion of the CU credit may have to be dedicated to reservoir evaporation. Another option is to contract with existing reservoir owners and or augmentation providers to purchase water for scheduled release to replace delayed return flows. The use of such purchased sources would be subject to legal considerations, availability for such use, and would need to consider location to prevent unacceptable impact to other users.



**FINAL**  
**Agricultural Hypothetical Demand Management Examples**  
**Monitoring & Verification Demand Management Workgroup**  
**June 2020**

## **INTRODUCTION**

The following scenarios are intended to highlight various issues that might arise with Monitoring and Verification (M&V) of conserved consumptive use associated with west slope agricultural participation in a Demand Management program. As such, the intention is that these scenarios be limited to addressing Monitoring & Verification issues and concerns at the field level and back to the headgate plus surface and groundwater return flow issues.

Under all these scenarios there are potentially multiple Administration and Accounting (A&A) issues including shepherding, transit loss, injury, reservoir administration, and certainly more. Some of these issues are noted below in the “Considerations / Questions” section for each scenario. While raised here, the intent is that these issues are highlighted primarily for the Administration and Accounting Workgroup to address separately or in collaboration with the M&V Workgroup.

One issue with significant overlap between the M&V Workgroup and the A&A Workgroup is the potential change in return flow patterns and the need to prevent injury to other water rights.

Graphics for Scenarios 1 – 4, taken from various locations and basins across the west slope, are attached to help portray those scenarios. They are not intended to be specific to any location or parcel but rather highlight, in general, situations that may occur.

## **SCENARIOS**

**Scenario 1:** Full-season fallow of 40 acres of sprinkler irrigated grass-hay pasture on bench adjacent to stream.

1. Water Supply:
  - a. Direct diversion to pumping forebay immediately upstream from subject parcel. There is a full water supply in all years.
2. Considerations / Questions:
  - a. How is “saved” direct flow water quantified and bypassed at the headgate?
  - b. Are there surface and groundwater return flows concerns that must be investigated?

**Scenario 2:** (variation of scenario 1). Full-season fallow of 40 acres of sprinkler irrigated grass-hay pasture on bench adjacent to stream.

1. Water Supply:
  - a. Direct diversion to pumping forebay immediately upstream from subject parcel. The stream is water short in average and drier than average years and the physical supply is often limited in the late season (essentially this pumping forebay “sweeps” the stream).
2. Considerations / Questions:
  - a. How is “saved” direct flow water quantified and bypassed at the headgate?
  - b. Are there surface and groundwater return flow concerns that must be investigated?
  - c. How can / should transit losses be quantified through the dry-up stream reach and beyond?

**Scenario 3:** Full-season fallow of 200 acres of flood irrigated grass-hay pasture served with a combination of direct flow and supplemental storage sources of supply. The parcel is located adjacent to a major reservoir and surface and groundwater return flows accrue to the reservoir.

1. Water Supply:
  - a. Direct flow early season supply supplemented by local reservoir storage. Both the ditch and storage are the source of supply for other pastures both upstream and downstream from the subject parcel.
2. Considerations/ Questions:
  - a. How is “saved” direct flow water bypassed at the headgate(s) to ensure that it is not consumed by the upstream or downstream pasture located on the same ditch?
  - b. How is “saved” storage water delivered to the stream system without being consumed on upstream and downstream pastures?
  - c. If “saved” storage water is retimed and delivered to the stream later than it normally would delivered for irrigation, how is increased evaporation loss assessed to the “saved” storage water?
  - d. How does the change in groundwater return flows impact physical and legal water supply into the downstream major reservoir? Assume that, under normal operations, some of the early return flow accrues to the reservoir when it is in priority (storable inflow) and some lagged return flow would be bypassed later in the season when the reservoir is out of priority.

**Scenario 4:** Split-season fallow of 50 acres of grass-hay pasture on an upland bench. Lower level irrigated pastures are located between the toe of the upland bench and the stream.

1. Water Supply:
  - a. Subject pasture is served by a ditch that also serves several down-ditch and up-ditch users.

- b. Groundwater return flows: 1) may accrue to the ditch serving the parcel located between the below the toe of the bench and the stream, 2) supplement sub-irrigation of the lower parcel, and 3) accrue to the stream.
- 2. Considerations / Questions:
  - a. How is “saved” direct flow water bypassed at the headgate to ensure that it is not consumed by the upstream or downstream pastures located on the same ditch?
  - b. How much carriage water (push water) must be left in the ditch to ensure the other users receive the supply they would have received but for the DM program?
  - c. How is the down-gradient water user (at the toe of the bench) impacted by the loss of return flow? (non-legal injury)

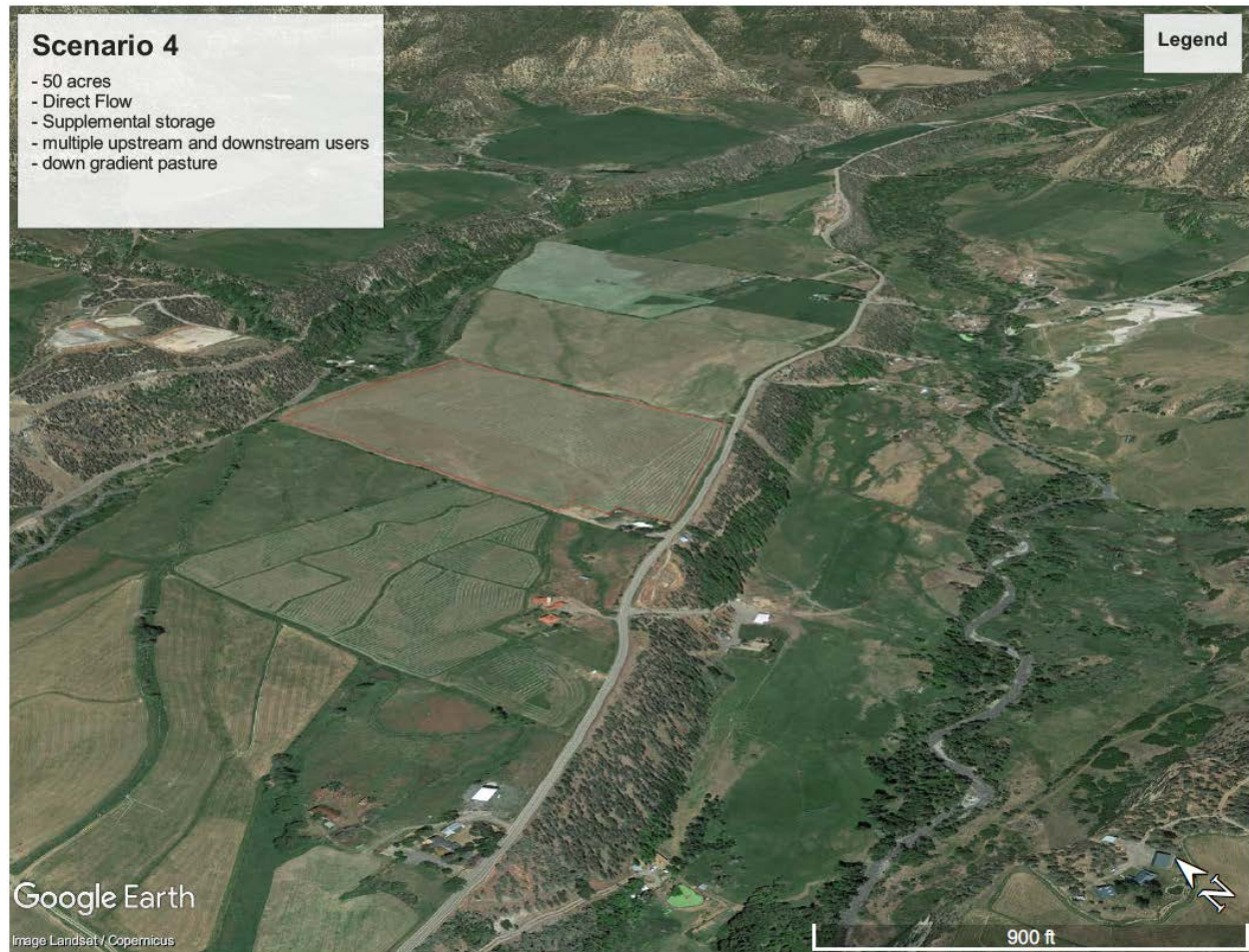
**Scenario 5: (Variation on Administration and Accounting hypothetical #1)** Large water user association with 60-mile-long canal system primarily served by direct flow right with supplemental late season storage. 3,000 acres, a small fraction of the total acreage served by the association, is proposed for inclusion in a DM program. The 3,000 acres is split between full season and split-season fallow. The acreage proposed for the DM program includes multiple varieties of row crops.

- 1. Water Supply:
  - a. The system is assumed to have a full water supply such that 100% of the  $ET_p$  is satisfied for all shareholders by the combination of the direct flow right and supplemental storage (water long system).
  - b. There are assumed to be no return flow issues. Tailwater and groundwater return flows accrue to surface drains or subsurface drains which then daylight in the surface drains.
- 2. Considerations / Questions:
  - a. How is “saved” direct flow water measured back to, bypassed and quantified at the headgate?
  - b. Given that the system is typically water long, does the “saved” direct flow water need to be measured back to, and bypassed, at the headgate?









# ***FINAL***

## **Monitoring and Verification of Trans-Mountain CU Reduction Projects Demand Management - Monitoring and Verification Workgroup June 2020**

### **INTRODUCTION**

The purpose of this document is to provide a conceptual framework to guide trans-mountain (TM) project participation in a Demand Management (DM) program pursuant to the 2019 Drought Contingency Plan Demand Management Storage Agreement. More detailed hypothetical examples are attached that highlight some of the nuanced details and questions that may need to be addressed to adequately quantify and verify reduced Colorado River basin consumptive use by participating TM projects.

Every TM project is unique. As such, there is not a “one size fits all” solution for the quantification and verification of conserved Colorado River basin consumptive use (CU) within the context of a DM program. Therefore, all proposals for participation in a DM program will need to individually and carefully evaluated.

### **GUIDING PRINCIPLES**

The following, over-arching principles shall guide participation by a trans-mountain project in a DM program.

1. Quantification and Verification must be honest, accurate, and defensible.
2. Participation must be protective of other water users.
3. Participation must result in added water to the system and cannot result in re-timing of Colorado River Basin depletions.
4. Participation must be as simple, easy, and flexible as possible while still meeting the first three principles.

### **TRANS-MOUNTAIN PROJECT DEFINITION**

A trans-mountain (TM) project fundamentally is defined by the existence of delivery infrastructure that conveys water from the Colorado River Basin to a receiving river basin, or basins, not tributary to the Colorado River Basin.

### **MEASUREMENT OF REDUCED COLORADO RIVER CONSUMPTIVE USE**

Quantifying the amount of water that is physically and administratively available and returned to the stream is a cornerstone of monitoring and verification. Quantification of reduced Colorado River CU by TM projects shall be measured as reductions in TM deliveries as compared to deliveries that would have occurred absent participation in a DM program. The volume of reduction in TM deliveries must be equal to the volume of water added to the Colorado River Basin system (DMP water). Credit shall only be given for DMP water that is both physically and administratively available, and can be honestly and accurately quantified using defensible methods. For TM diversions, physical measurement of water returned to the stream through an acceptable weir, gauge, or flow meter is required unless the Division of Water Resources confirms an acceptable alternate method of quantification is available.

*Considerations for Direct Flow TM Diversions* – Certain TM diversions are of a direct flow nature, i.e. the water is not stored in west slope storage prior to delivery to the receiving basin. In such cases, the participant must quantify the amount of water physically and administratively available, then immediately add the DMP water back to the Colorado River Basin through an appropriate measurement device. The diversion and addition of DMP water to the system is essentially simultaneous, therefore, DMP water can only be added to the system while the TM project is in priority and the foregone diversion could have been beneficially used or stored in the receiving basin

The year in which DMP water is added to the Colorado River Basin by Direct flow TM diversions may result in an equivalent reduction in storage volume and / or CU in the receiving basin. However, the reduced storage volume or CU deficit in the receiving basin cannot result in Direct Flow TM diversions in any year subsequent to DMP participation greater than the diversion that would have been made absent the Direct Flow TM's participation in the DMP (i.e. retiming).

*Considerations for Diversions into West Slope Storage prior to TM delivery* – Certain systems store water in west slope storage prior to TM delivery to the receiving basin. In such cases, the participant must store the water in priority; however, the DMP water may be added to the Colorado River Basin immediately or held in west slope storage for release at a later date. The timing of the diversion, addition of DMP water to the Colorado River Basin system, and TM deliveries do not necessarily coincide. This will have implications for accounting and verification, as well as the calculation of applicable transit losses and shepherding of the water. However, this can also provide opportunities to coordinate the timing and rate in which DMP water is added to the system to provide additional flow related benefits below the storage and on the Colorado River.

Also, in many systems with west slope storage, there is also a direct flow right on the TM delivery infrastructure. In such cases, there may be complex operations where some TM deliveries to the receiving basin are concurrent with diversion under a direct flow right (with the considerations described in the section above), and some operations in the same system entail diversions into storage with subsequent DMP releases and TM deliveries (with the considerations described in this section). In these complex systems, clear monitoring and verification will be important.

Within the hydrologic year of DMP participation, reduced TM deliveries to the receiving basin by TM systems with West Slope storage must be equal to the volume of DMP water added to the Colorado



River Basin. A reduction in TM deliveries may result in an equivalent reduction in storage volume and / or CU in the receiving basin in the year in which DMP water is added to the Colorado River Basin. Such reduced storage volume or CU deficit in the receiving basin cannot result in TM diversions in any year subsequent to DMP participation greater than the diversion that would have been made absent the TM systems participation in the DMP (i.e. retiming).

## **VERIFICATION OF REDUCED COLORADO RIVER CONSUMPTIVE USE**

To maintain honest, accurate, and defensible measurement and verification of reduced Colorado River CU, each TM participant must provide evidence that the amount of DMP water added to the Colorado River system would have been delivered to the receiving basin “but for” participation in the Demand Management Program. Because of the complex and far reaching water supply, storage, and delivery systems of the TM projects, there is no uniform and clearly defined approach to providing this evidence. Therefore, each participating project must formulate its own approach and present reasonable evidence supporting its “but for” claim for credit. Evidence may consist of quantitative analyses, accounting, narrative descriptions, and other information deemed necessary for honest, accurate, and defensible measurement and verification.

*Recommended Information for Verification* – There is some basic information that participants should take into consideration when formulating their approach and developing evidence to be presented, including but not limited to:

1. The type of TM diversion (i.e. direct flow, storage and delivery, or complex operations)
2. A description of representative TM project operations, such as:
  - a. Timing and amount of diversions
  - b. Reservoir levels (if applicable)
  - c. Timing and amount of TM deliveries (through tunnel, pipeline, or ditch)
3. The amount, rate, and timing of DMP water
4. The timing and amount of TM deliveries for the project period (absent DMP water), the volume of DMP water, and net TM deliveries
5. The amount and timing of demand or storage capacity in the receiving basin to accommodate the import of the water
6. Identification of the gauges or measurement points to be used for monitoring and verification
7. Any volumetric or other limitations that may apply to the diversion of TM water
8. Any relevant agreements or arrangements that affect delivery of TM waters
9. Identification of reduced east slope consumptive use or replacement of west slope supply with alternative east slope supply, if appropriate
10. Other relevant factors

## **GENERAL PRINCIPLES APPLICABLE TO ALL TM PARTICIPANTS IN A DMP**

1. *Coordination of Benefits* – To the degree practicable, TM DMP water may provide additional non-consumptive and flow related benefits. If applicable, the participant may, but is not

required to, operate the project such that the timing and rate in which DMP water is added to the Colorado River system accommodates other uses and benefits.

2. *Volumetric Limits* – For systems with applicable volumetric limits on TM diversions, all DMP water shall count as diverted and delivered TM water for the sake of calculating and measuring these volumetric limits.
3. *Prevention of injury and Impact* – Participants will coordinate with other water users, interested parties and the Division of Water Resources to assure the timing and rate in which DMP water is added to the Colorado River system does not cause injury or undue impact to users or the natural environment.
4. *No Effect on Water Right* – Participation in this program, and specifically any DMP water and reductions in TM deliveries, shall not have any detrimental effect on the validity or future exercise of any water right used in the DMP program.

#### **ATTACHMENTS - TMD Hypotheticals document**

**FINAL**  
**TMD Hypothetical Demand Management Examples**  
**Monitoring & Verification Demand Management Workgroup**  
**June 2020**

1. **Scenario:** Direct TM diversion (ditch, tunnel, or pipeline) to east slope uses without West Slope (WS) storage  
**Project:** water legally and physically available at the diversion is returned to the Colorado River system instead of being diverted to the East Slope (ES)  
**ES use impacts:** less water is available for direct use (i.e. irrigation), storage, or marketing to other users. Shortage results in less ES direct use, replacement with another ES source, or lower reservoir levels (either through drawdown to replace use, or less increase in storage due to less water available).  
**Primary Challenge:** need to demonstrate forgone diversion is added water to the system  
**Considerations:**
  - Do you need to demonstrate that previous project operations diverted all water that is legally and physically available each year?
  - Do you need to demonstrate that east slope demand is being reduced or met by other ES sources?
  - Do you need to demonstrate the following year that project operations do not deviate from what would have been done if this project were not in place?
    - Yes, but may be simpler if east slope use is direct use (non-storage)
  - Show east slope storage could have stored the water (if applicable)
  - Volumetric limits need to be paper filled
2. **Scenario:** WS reservoir fills and then empties by deliveries to ES each year  
**Project:** water stored in the reservoir is released to the Colorado River system instead of the ES. Reservoir empties with some water going to ES and some to WS  
**ES use impacts:** Tunnel delivers to storage prior to use. Shortage results in less ES use, replacement with another ES source, or lower reservoir levels  
**Primary Challenge:** need to demonstrate forgone diversion is added water to the system  
**Considerations:**
  - Do you need to demonstrate that previous project operations diverted all water that is legally and physically available each year?
  - Do you need to demonstrate demand is being reduced, being met by other ES sources, or met by storage releases?
  - Do you need to demonstrate the following year that tunnel operations do not deviate from what would have been done if this project were not in place?
  - What are appropriate considerations to refill the WS reservoir?
  - Other TMDs in system do not divert more water

3. **Scenario:** WS reservoir fills but does not empty each year  
**Project:** water stored in the reservoir is released to the Colorado River system instead of the ES. The WS reservoir is drawn down to a specific level but some water goes to the ES and some to the WS instead of all water going to the ES  
**ES use impacts:** Tunnel delivers to storage prior to use. Shortage results in less ES use, replacement with another ES source, or lower reservoir levels.  
**Primary Challenge:** need to demonstrate forgone diversion is added water to the system  
**Considerations:**
- Do you need to demonstrate how much previous project operations would typically divert under similar conditions absent a DM program?
  - Do you need to demonstrate what the WS reservoir storage level would have been absent the DM program?
  - Do you need to demonstrate demand is being reduced, being met by other ES sources, or met by storage releases?
  - Do you need to demonstrate that reduced TM deliveries do not create additional opportunity to divert TM water than would have existed absent the DM Project?
  - Do you need to demonstrate the following year that tunnel operations do not deviate from what would have been done if this project were not in place?
  - What are appropriate considerations to refill the WS reservoir?
4. **Scenario:** Water is delivered from a West Slope reservoir through a transmountain tunnel that also has a direct flow right. The storage and direct flow rights have the same priority date.  
**Project:** hold reservoir down X acre-feet by bypassing storable or divertible water, or releasing X acre feet of previously stored water  
**ES use impacts:** Tunnel delivers directly to use, or to storage prior to use. Shortage results in less ES use, replacement with another ES source, or lower reservoir levels.  
**Primary Challenge:** need to demonstrate forgone reservoir diversion is added water to the system  
**Considerations:**
- How do you determine when the reservoir can be re-filled if there is no paper fill?
  - Do you have to paper fill the storage account?
  - Do you need to demonstrate additional water was not diverted under the direct flow right (i.e., did not take more through the tunnel than you would have if it were not for the Demand Management project)? If so, what are ways to prove “standard” operations?
  - What happens if reservoir spills or does not historically fill?

5. **Scenario:** Water is delivered from West Slope reservoir reservoir through a transmountain tunnel that also has a direct flow right. The storage and direct flow rights have the same priority date.  
**Project:** forego diversion under the direct flow right at the tunnel.  
**ES use impacts:** Tunnel delivers directly to use, or to storage prior to use. Shortage results in less ES use, replacement with another ES source, or lower reservoir levels.  
**Primary Challenge:** need to demonstrate forgone diversion is added water to the system  
**Considerations:**
- Do you need to prove the foregone tunnel diversion could have been beneficially used or stored?
  - If the foregone diversion is not tied to a reduced demand, do you need to demonstrate how the demand was met?
  - Alternatively, could you tie the foregone diversion to a reduced demand to prove it is added water to the system?
6. **Scenario:** East Slope reservoir does not empty every year.  
**Project:** water stored in the reservoir is used to meet demand that would have been met with imported CO River water.  
**Primary Challenge:** need to demonstrate forgone diversion is added water to the system  
**Considerations:**
- Do you need to demonstrate demand is being met by storage releases and, therefore, less water is brought through the tunnel?
  - Do you need to demonstrate the following year that tunnel operations do not deviate from what would have been done if this project were not in place?
  - Identify conditions in which water could be released from the East Slope reservoir.
  - What are appropriate considerations to refill the reservoir?

## **Work Group Meeting Report Out**

**Work Group:** Monitoring and Verification Meeting #1 **Date:** September 10, 2019

### **Meeting Topics:**

Agenda topics included: background on demand management and drought contingency planning; process and expectations of the work groups; initial issue identification; and public comment.

The group spent the majority of the meeting listening to presentations on System Conservation Pilot Program (SCPP) projects, monitoring and verification of the SCPP projects, and methods to estimate agricultural consumptive use.

### **Key Take Aways:**

The SCPP projects offer baseline guidance of how monitoring and verification can be performed for temporary fallowing projects. Very little municipal participation in the program resulted in little guidance on non-agricultural monitoring and verification.

The group discussed the challenge of monitoring and verification for trans-basin diversions (TBDs), noting that the foregone West Slope diversion, consideration of storage, reduction in consumptive use, tracking of supply, and already planned conservation all are considerations for monitoring and verification of potential Front Range municipal participants.

The group expressed an interest in simplifying agricultural participation with streamlined methods of determining historic consumptive use (HCU) and operating the projects.

### **Questions/Concerns to Raise:**

The group identified some threshold questions and issues to consider going forward, including:

- How flexible will the program be with complex projects? i.e. fallowing, split-season irrigation, alternative crop-typing, etc.
- How will maintenance of historical return flow patterns be handled? In which areas of the Colorado River basin is this an important consideration?

### **Additional technical, informational other needs:**

The group discussed utilization of a contractor to perform a literature review. The group also discussed a desire for more detailed discussion of possible trans-basin/municipal considerations and participation in a demand management program.

### **Other:**

No public comments were heard during the first meeting. The group will meet next on October 31 from 10am-2pm in Summit County.

## **Work Group Meeting Report Out**

**Work Group:** Monitoring and Verification Meeting #2 **Date:** October 31, 2019

### **Meeting Topics:**

Agenda topics included: report from other workgroups, including “parking lot” issues; discussion of scenario planning and its applicability to the monitoring and verification workgroup; a small group exercise to identify types of projects, mechanics, and monitoring and verification issues associated with both agricultural and municipal and industrial (M&I) projects; and a discussion of guidance for a consultant to be hired for this workgroup.

The group spent the majority of the meeting in the two small workgroups alternating between discussion of agricultural and M&I projects.

### **Key Take Aways:**

Agricultural projects will need to be considered differently depending on project type (full fallowing, split-season/deficit irrigation, crop changing, etc.) but there are many templates of projects with monitoring and verification for estimating conserved CU. Kelley Thompson will develop a draft rubric that guides monitoring and verification based on project type, quantifies conserved consumptive use to the satisfaction of other Colorado River Basin states, and protects other intra-state water rights from injury.

Trans-basin M&I projects may come in many forms, but ultimately the measure of conserved consumptive use will need to occur at the trans-basin diversions. This will need to involve considering the entire system operations of the project participant (reservoir storage, other supplies, volumetric limits, etc.).

Augmentation stations may be critical for measurement of physical supply for agricultural projects. They are currently uncommon on the West Slope and may prove to be a financial barrier.

The application process should offer guidance, but not mandates for monitoring and verification. Templates for possible application/approval processes include the SWSP process and the HB-1248 process.

### **Questions/Concerns to Raise:**

The group identified some “parking lot” questions and issues for other groups to consider, including but not limited to:

- Are crop switching projects feasible?
- Who will evaluate project proposals? SEO? CWCB? Committee?
- What are the economic impacts of requiring augmentation stations for agricultural projects?
- Do East Slope projects need to prove and monitor consumptive use reduction or just reduction at tunnel?

**Additional technical, informational other needs:**

Kelley Thompson will forward the SWIIM newsletter and Brian Macpherson will try to obtain an OpenET powerpoint presentation for review at the next meeting.

**Other:**

No public comments were heard during the second meeting. The group will meet next on February 10 from 10am-2pm in Salida.



## **Work Group Meeting Report Out**

**Work Group:** Monitoring and Verification Meeting #3 **Date:** February 10, 2020

**Meeting Topics:** Agenda topics included: report from other workgroups and the regional workshop, including “parking lot” issues; discussion about the upcoming RFP selection and desires from the group for the contractor; planning for the upcoming joint IBCC meeting and joint workgroup meeting. Brian Macpherson gave an OpenET presentation with slides provided by the OpenET team. Kelley Thompson gave a presentation on draft considerations for irrigation demand management project monitoring and verification.

**Key Take Aways:** Additional outreach to the agricultural community is needed relating to demand management. The Colorado Ag Water Alliance (CAWA) may be a good forum to reach producers.

OpenET, and more generally remote sensing based ET measurement, is perhaps best applied for deficit irrigation projects or end of season validation, and not for a historic consumptive use analysis or for real-time monitoring of conserved consumptive use.

There will be a balance and tradeoffs between accuracy and transaction cost for monitoring and verification of demand management projects. Conservative safety factors may be employed to reduce cost and risk of injury to other water users.

The requirement of an augmentation station for measurement of conserved consumptive use is site-specific. In areas of abundant flow, it may not be necessary.

For the length of the HCU analysis, there was uncertainty if a long period of record similar to change case should be used, or if a short period of record better captures the foregone CU.

Lagged return flow obligations (RFOs) may be repaid with on-farm recharge ponds (which are expensive to construct and operate) or with reservoir storage filled via exchange or lease of reservoir water.

The group would like the consultant to perform a literature review on change cases, organized by region and attribute (crop type, whole ditch vs. partial ditch, elevation band, etc.)

**Questions/Concerns to Raise:** The group identified some “parking lot” questions and issues for other groups to consider, including but not limited to:

- Is there opportunity for regional opportunities for reservoir releases to pay RFOs?
- Who will approve M&V project plans? Advisory Group? DWR? Who will be responsible for performing M&V? The State? The Applicant?

**Additional technical, informational other needs:** Workgroup members agreed to do additional research on monitoring and verification considerations.

**Other:** No public comments were heard during the third meeting. The group will meet next on March 30 from 10am-2pm in Silverthorne.

## **Work Group Meeting Report Out**

**Work Group:** Monitoring and Verification Meeting #4 **Date:** March 5, 2020

**Meeting Topics:** Agenda topics included: summary from joint Demand Management - IBCC meeting the previous day; large group scenario planning exercise; Monitoring & Verification individual meeting to identify top priorities and uncertainties; joint meeting with Agricultural Impacts workgroup; joint meeting with Administration and Accounting workgroup.

**Key Take Aways:** There were many overlapping issues between the two workgroups the M&V group met with. Agreed upon issues with the agricultural impacts workgroup included: the need for sideboards and differentiation of M&V needs depending on project type (high elevation pasture, full and partial fallow, crop switching, M&I, TMDs, etc.); the balance between accuracy and administrative cost of M&V; the responsibilities of the contractor and contractee regarding M&V, infrastructure, and quantification/payment of water volume; the balance of defensible, honest, and accurate M&V with simplicity; the desire to measure “wet water” and not “paper water”; the importance of maintaining return flow patterns where there is injury potential and the need to simplify and pool resources (regional reservoir releases, etc.); the desire for a “straw man” project to work through.

Agreed upon issues with the administration and accounting workgroup included: the need for a simple process that avoids water court; the balance between accuracy of M&V and simplicity, possibly using conservative safety factors; the possibility of using the Lease Fallow Pilot Project approval model (CWCB authority by statute, conservativeness through the criterion guidelines, SEO approval); the importance of maintaining RFOs in key geographic areas and the desire to pool resources; the need to group geographic and sector areas for streamlining of study and guidance; the need for transparency and understanding that there will be uncertainty in the process.

Uncertainties raised in both the individual meeting and the joint meetings included: Who evaluates project proposals? Is Compact Water a legal use? Does it need adjudication by Water Court? Is there a minimum project size for efficiency of administration? Does application from one producer require a ditch-wide analysis? Does Colorado need to scrutinize other Upper Basin state programs? Is a “lowest common denominator” approach required in the Upper Basin in terms of data availability?

**Questions/Concerns to Raise:** The group identified some “parking lot” questions and issues for other groups to consider, including but not limited to:

- Can the Lit Review identify West Slope reservoirs with decreed augmentation supply (for possible lease/pooling of RFO replacement)?

**Additional technical, informational other needs:** Workgroup members agreed to do additional research on monitoring and verification considerations.

**Other:** No public comments were heard during the fourth meeting. The group will meet next on March 30 from 10am-2pm in Silverthorne (re-scheduled as web meeting).

## **Work Group Meeting Report Out**

**Work Group:** Monitoring and Verification Meeting #6 **Date:** April 24, 2020

**Meeting Topics:** Agenda topics included: introductions and updates from other workgroups and contractor; additional discussion about monitoring and verification of transmountain diversion projects; special considerations for municipal and industrial monitoring and verification; special considerations for well use participation; initial discussion about creation of hypothetical scenarios; and discussion of next steps.

**Key Take Aways:** There is uncertainty in the group whether transmountain diversion projects need an identified water reduction project or specified replacement source or if accounting at the tunnel is adequate for monitoring and verification; well user participation will need to consider lagged depletions, but should otherwise be treated like a surface diverter in terms of monitoring and verification; there is uncertainty whether moving up the schedule of a municipal conservation project (e.g. turf replacement) constitutes “temporary” and how long credit should be given for; there is uncertainty whether municipalities issuing watering restrictions to create demand management water would be “voluntary” for municipal customers; West Slope municipal participation in the program will be straightforward, but monitoring and verification will likely be costly because water reduction will have to be on a small scale (e.g. turf replacement); any hypotheticals considered should consider input from one or more large municipalities, System Conservation Pilot Program (SCPP) projects, and Irrigators of the Lands in the Vicinity of Kremmling (ILVK) projects.

**Questions/Concerns to Raise:** The group identified some “parking lot” questions and issues for other groups to consider, including but not limited to:

- Would transmountain project applicants be required to identify a specific conservation project or replacement source of non-Colorado River water? Either at the time of application or at the time of credit?
- Would a municipality imposing drought restrictions in order to conserve consumptive use violate the voluntary condition of demand management for water customers?
- How long would credit be given for a municipality fast-tracking a conservation, reuse, or other project where water savings are applied to DM for the approved period?

**Additional technical, informational, or other needs:** Workgroup members agreed to do additional reporting on monitoring and verification considerations, including for transmountain diversion projects, hypothetical projects, and for existing streamlined tools.

**Other:** One public comment was heard during the sixth meeting. The group will meet next on May 15 from 9am-12:30pm via web meeting.

## **Work Group Meeting Report Out**

**Work Group:** Monitoring and Verification Meeting #7 **Date:** May 15, 2020

**Meeting Topics:** Agenda topics included: introductions and updates from other workgroups and contractor SGM; reminders about final deliverables and need for framing uncertainties; additional discussion about monitoring and verification of transmountain diversion (TMD) projects; hypothetical scenarios of TMD projects; and discussion of next steps.

**Key Take Aways:** The workgroup does not need to reach consensus on all topics and instead need to frame the issues for the Board; identifying uncertainties is a key task; the Project Management Team will likely develop a summary document with several workgroup work products as attachments. The contractor was introduced to the group and discussed the tasks identified for them to accomplish. A discussion was held regarding the TMD document and several issues were identified such as how to identify “representative” operations, how to prevent re-timing of TMDs through double book accounting, and the importance of considering each TMD system separately. A document of TMD hypothetical scenarios was discussed which included the scenario, project, east slope use impacts, primary challenges, and monitoring and verification (M&V) considerations.

**Questions/Concerns to Raise:** The group identified some “parking lot” questions and issues for other groups to consider, including but not limited to:

- When comparing demand management operations to “representative” or “typical” operations, how do you quantify those operations?
- For TMD projects, if “double books” are kept with accounting using demand management operations and hypothetical accounting using non-demand management operations (to prove non-retiming), how long and to what level of detail would this accounting be kept?
- Is there a way to prove non-retiming for a TMD projects besides 1) Proving reduction in consumptive use on the East Slope, 2) Providing an East Slope replacement supply, or 3) paper filling volumetric limits that do result in curtailment of physical and legal supply (i.e. volumetric limits are typically hit)?

**Additional technical, informational, or other needs:** Workgroup members agreed to do additional reporting on monitoring and verification considerations, including for agricultural hypothetical scenarios, use of streamlined state tools for agricultural hypothetical scenarios, and for creation of the workgroup summary document.

**Other:** Two public comments were heard during the seventh meeting. The group will meet next on June 1 from 9am-12:30pm via web meeting.

## **Work Group Meeting Report Out**

**Work Group:** Monitoring and Verification Meeting #8 **Date:** June 1, 2020

**Meeting Topics:** Agenda topics included: introductions and updates from other workgroups and contractor SGM; additional discussion about transmountain diversion (TMD) project document; Lease Fallow Tool and ET datasets demonstration and presentation; discussion about agricultural hypotheticals document; group wrap up and discussion of final deliverables and Board presentation.

**Key Take Aways:** The uniqueness of Colorado's TMD projects was reiterated, making rules of thumb for monitoring and verification (M&V) difficult. The M&V document was re-written to convey more general principles that project participants would need to prove in their project proposals. A presentation was made on one of the State's tools (the Lease Fallow Tool) to assess historic consumptive use (HCU) for irrigated parcels. A presentation was also made on the State's future climate and ET dataset using the Penman Monteith equation. Agricultural hypotheticals were considered and discussed. For verification and maintenance of return flows, the importance of augmentation stations (or alternative measurement) and on-farm recharge to replicate return flow timing was discussed. Non-use of these two pieces of infrastructure is possible but would require project participants to describe how injury will be avoided. The use of remote sensing and/or monitoring wells was also discussed to quantify levels of sub-irrigation to be subtracted from conserved consumptive use. The importance of maintaining river flow for environmental purposes, whenever possible, was discussed, as well as other ways to provide multiple benefits to various stakeholders.

**Questions/Concerns to Raise:** The group identified some "parking lot" questions and issues for other groups to consider, including but not limited to:

- How will injury be evaluated with respect to return flows?
- Is the concept of "foregone consumptive use" an acceptable alternative to "historic consumptive use"?

**Additional technical, informational, or other needs:** Workgroup members will review all deliverable documents and make suggestions for final deliverables and Board presentation.

**Other:** Three public comments were heard during the eighth meeting. This was the final workgroup meeting.

# Attachment J

Water Rights Administration and  
Accounting Workgroup Documents:

1. Summary
2. Reports

## **Demand Management Issues – Administration and Accounting Work Group 2019\***

### **Tasks:**

- **Generate list of key issues identified related to administration and accounting of a potential demand management program that you believe require additional analysis and why.**
- **Identify mechanisms to perform this additional analysis (Eg literature review, pilot, studies, modeling) and a brief summary of each.**

1. What is the appropriate process for changing the use of a water right from its current use to demand management?

There have been many important administrative and accounting issues identified through our meetings over the past few months. Additionally, we have analyzed the existing administrative statutory programs that could effectuate, even in part, the goals of the demand management program.

- Can these issues be resolved through a single statutory program that can entirely allow the implementation of the demand management program?
- Is one of the biggest issues and hurdles the lack of a specific and clearly defined statutory program to implement the demand management program?
- Is it detrimental to try to rely on piecemealing of existing statutory programs and could this lead to conflicts and unnecessary delays?
- If so, is there is need for legislative action to specifically implement a pilot demand management program that could ultimately evolve into a permanent program if the pilot program proves successful?
- Would the appropriate process need to include the following features?
  - Administrative, rather than judicial, review and approval of the proposed change of use of to demand management;
  - A requirement that the change of use not result in injury to other water rights;
  - An opportunity for other water rights holders to participate to in the review process to assure they are protected against injury;
  - The requirement that the Division of Water Resources be allowed to shepherd water changed to demand management use past upstream or downstream diversions, provided that no injury results;
  - Protection of the water right to be used for demand management against abandonment or loss of consumptive use credit.
- Could a process for changing the use of a water right to demand management might be modeled after one or more of Colorado's existing ATM mechanisms but still be established by new legislation?

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\* This summary reflects only the thoughts and opinions of various Work Group members and is not an endorsement by the State of Colorado.

## 2. Is “demand management” a beneficial use of water?

When necessary to increase water deliveries in order to accomplish a compact compliance purpose, CRS 37-80-104 allows a Colorado State Engineer to curtail existing uses pursuant to rules and regulations.

- Could this be extended to a Demand Management Agreement, through voluntary and temporary relinquishment of existing water rights to accomplish the same objective?
- Are these actions relinquishments and therefore at risk of appropriation by other in-state water users unless such rights are changed to include “demand management” as a type of use? See also CRS 37-81-101 to 104.
- Unless recognized by intervening downstream States, will such flows be intercepted by their water users prior to reaching the intended destination?
- Can resolution of this question be achieved through passage of legislation that establishes that “demand management” is a beneficial use with certain limitations?
- Should there be other limitations on demand management as a beneficial use including but not limited to a volumetric limitation on the amount of water that can be used for demand management, in order to assure that Colorado does not over-participate in a demand management program?
- Similarly, could proportionality concepts also be worked into the limitations of demand management as a beneficial use, so that different water use sectors and regions of the state share proportionally in demand management?
- Is an appropriate means of providing the necessary protections for such voluntarily relinquished water rights in Colorado to have the legislature recognize “demand management” as a beneficial use and to provide procedures to allow existing water rights to be changed to include this type of use, similar to Water Rights Protection water rights concept as was established through HB16-1228?
- Will water rights changed to include demand management need to include rights to be stored and stored by exchange?
- Does CRS 37-81-101(2) preclude the possibility of utilizing a temporary change of water right of the type authorized by CRS 37-92-308 (4) and (5), et.al., in order to effect a change which would result in the use of an existing water right in another state? Could the legislature further expand the authority of the state to provide an exception to the change procedure specified in this statute?
- What other options are available to protect water previously decreed for another use and not be diverted and allow it to be “shepherded” to another point of diversion?
- What mechanism needs to be in place to move this water past other likely senior water rights (diversions)? Additional conversations with the Law and Policy Group are warranted.

The Colorado Water Conservation Board’s Support and Policy Statements dated November 15, 2018 states: “Demand management activities that could be promoted in Colorado ... 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.”

- Does this encompass not only the beneficial consumptive use that typically defines the measure of a water right but also water salvaged from non-beneficial uses,



waters authorized for transmountain diversion from the Colorado River Basin but intentionally not diverted in order to accomplish non-consumptive purposes and potentially, water released from storage for purposes other than that for which it was originally appropriated, in order to meet some temporally specific compact purpose?

- Is there interest in researching any of these alternative types of water which might be applied to demand management purposes in connection with the Demand Management Agreement?
- Depending on how the Conservation Board answers the previous question in the affirmative, then does the statutory definition of changes of water right to include demand management purposes should recognize that applicants may be permitted to claim reduced historical non-beneficial uses as well as foregone beneficial uses in the quantification of the changed rights.

### 3. Who has the authority to secure this water for a beneficial use?

Typically, water is administered at the direction of a water right owner pursuant to a decree or in response to the terms of a various types of administratively approved plans originated and proposed by an applicant.

- In the case of a Demand Management operation which ostensibly will accomplish a public demand management objective, it is unclear who or what entity is authorized to contract with the owner of a water right that has been changed to demand management uses and to initiate a Demand Management operation in concert with a legitimately devised compact compliance strategy.
- Also, if such operations will likely involve the exchange of water into one of the Initial Units or other reservoirs, which entity should establish appropriative rights of exchange and storage to facilitate these operations?
- Should Colorado's representative to the Upper Colorado River Compact Commission in consultation with the Colorado Water Conservation Board have authority to devise any alternative compact compliance strategy involving a demand management operation and to initiate it through the auspices of the Colorado State Engineer?
- Is the Colorado Water Conservation Board the appropriate entity to receive legislative authorization to hold exclusive rights to appropriative rights of exchange and storage in connection with a demand management operation in order to protect the public purpose of demand management?
- Because compact compliance is a state obligation, should the beneficial use of water for demand management should be limited to the CWCB, in the same way that the use of water for instream flow is limited to the CWCB?
- Does the CWCB need to work in cooperation with DWR and what are the consequences of allowing private ownership? In looking at how this has been addressed in the Rio Grande, they have determined that having private water rights held in storage out of the state is not something that was found to work there.
- Once a water right is changed to include "demand management" as a type of use, should the Colorado Water Conservation Board accept the responsibility of ensuring that a mechanism exists and is accepted by each state so that the amount of water so diverted or appropriated and transported through or into such other state or

states is credited as a delivery to such other state or states by Colorado, of water to which such other state or states may be or claim to be entitled from such interstate source under an existing interstate compact? (See CRS 37-81-103.)

- Regardless of the entity or venue which may be authorized to approve any change of water right to include demand management as a type of use, should the legislature recognize terms and conditions as legitimate, which require the owner of such a changed right to forego their constitutional right to appropriate unappropriated waters of the state which may be available in order to accomplish the same purposes as those historically met by the changed right, so that the Compact compliance objective of the changed right is not frustrated?
4. How would storage and administration and accounting for such storage in the Aspinall Unit pursuant to the DMSA be accomplished?
- Would storage of demand management water in the Aspinall Unit result in significant changes in operations of the unit?
  - How would this be accounted for?
  - Would this require NEPA or consultation under the ESA?
  - Will resolution of these questions require legal analysis and reservoir modeling?
  - Would a pilot project inform these issues?
  - In river basins other than the Gunnison, where we do not have CRSPA storage facilities, how will demand management be accomplished?
  - Is storage a requirement for demand management to function, or can demand management be operated on a direct flow basis?
  - If storage is a requirement, are there reservoirs that could be used for this purpose, both legally and physically (their decrees allow it and capacity is available)?
  - If storage is to be permitted in reservoirs other than the Aspinall Unit, how can accounting for this water be achieved?
  - Does the Rio Grande basin offer guidance as to the complexities of this exercise? For example, as to curtailing diversion upstream to deliver a quantity of water downstream?
  - Does this raise other issues, including trust in the administration and challenges to their daily decisions?
  - Do the water users in the Rio Grande have valuable experience that could offer some insight to the other challenges as well?
  - How will ensuring historical return flows be achieved? Will this depend upon existing analysis and available data?
  - How will transit losses be assessed on waters routed within the State's waterways for demand management purposes?
  - Does this necessitate promulgation of rules by the State Engineer under existing Compact Rule making authority to establish reasonable transit losses or procedures to be used to establish such losses to be applied to the yield of demand management water right released from Initial Unit, within Colorado?
  - To the extent possible, should such rules follow procedures to be used by other Upper Division States which describe how transit losses will be determined and applied to the yield of demand management water rights released from Initial Units?

- Should rules be subject to the approval of the Upper Colorado River Commission under the Demand Management Storage Agreement or an amendment thereto?

## 5. Mechanisms for Further Analysis

- Can the work of the various workgroups could be relied upon to inform the development of a robust program that should be led by DWR and CWCB with legal guidance from the AGO? These agencies have a proven track record to develop effective programs that are centered on scientific and legal investigation and historical administrative experience.
- Could the CWCB direct CWCB staff to work with the SEO and AGO staffs to initiate a dialog with the Legislative Water Resources Review Committee this summer and fall to hopefully gain support of proposed legislation that could implement a pilot demand management program that could realistically start in 2021?
- Is this a priority because it seems time is of essence?
- Does this proposed process allow time for input from other agencies like the AGO on legal issues that have been raised (e.g., whether “demand management” is a beneficial use) and federal agencies like BOR on potential use and operation of federal reservoirs for storing demand management water?
- Could several of the administrative and legal issues raised (and others that are identified in the other workgroups) be addressed in legislation?
- Could a specific pilot program be effective in gathering important data and statistics regarding important issues like environmental, agricultural and economic impacts and creates a potential funding mechanism to implement the pilot program and to provide for continued education and outreach.
- Could the need for any specific rulemaking to implement the program can also be addressed in legislation?
- Would a successful pilot program employ a defined engagement of our sister Upper Basin states to address interstate issues of implementing each state’s specific demand management program in meeting the collective goals of the DCP?

## **Administration and Accounting Work Group Meeting Summary**

**Work Group:** Administration and Accounting Work Group Meeting #1 **Date:** November 18, 2019

### **Meeting Topics:**

Agenda topics included: a presentation from Cleave Simpson from the Rio Grand Water Conservation District regarding compact compliance and demand management activities currently occurring in the San Luis Valley; a group discussion of issues and challenges RGWCD faces with those efforts; a discussion of lessons learned and some key takeaways from the SCPP; issue identification related to the administration and accounting of conserved water created as a result of a potential demand management program in Colorado; and a discussion of whether or not there are administration and accounting parallels between the statutes and processes governing ATMs in Colorado and a potential demand management program.

### **Key Take Aways:**

That there have been challenges with sufficient levels of participation in the Rio Grande Water Conservation District's conservation/fallowing program. Also, a program that is voluntary and compensated has not resulted in sufficient levels of water user engagement. Demand Management as provided for in the DCP may not be the same as the approach taken in the compact compliance approach. Is demand management administered and accounted for by reducing consumption or increasing flows?

That the process applied when considering how to account for and administer water rights that are participating in a potential demand management program will need to be examined. Water users are accustomed to a water court model that authorizes administration of the water right. Would this be utilized? If not, what processes would be implemented to facilitate the accounting and administration of the water rights? Would that process need to be the same or similar to those processes applied in the other Upper Basin States, by the UCRC, by the Lower Basin?

Compact compliance is a state obligation. What type of beneficial use would the participating water rights be administered for? What process would be applied for the measurement of the conserved consumptive use? What would the timeframe be? A representative period? Some time frame similar to that used in the Lower Basin for their ICS? Limited to the year in which the conservation occurs? Other? Would this need to be the same timeframe for all the Upper Basin States?

The Group discussed the ATM program and whether there would be parallels or lessons that could be learned and/applied from a deeper examination of the ATM program, the related statutes, policies, regulations and implementation issues.

### **Additional technical, informational other needs:**

For the next meeting, the group may further consider parallels with the ATM program and further identify issues related to the need for statutory fixes as to potential new beneficial uses and consideration of processes related to administration and accounting of water rights in relation to the Aspinall Unit.

**Other:** No public comments were heard during the first meeting.

## **Administration and Accounting Work Group Meeting Summary**

**Work Group:** Administration and Accounting Work Group Meeting #2 **Date:** February 10, 2020

### **Meeting Topics:**

Agenda topics included: a presentation by Alex Funk from the CWCB regarding Alternative Transfer Methods (“ATMs”); a discussion of benefits, issues and challenges associated with the use of ATMs; a discussion of how the structure and implementation of ATMs might be applied to the administration and accounting of conserved water created as a result of a potential demand management program in Colorado; and what questions this Group would like to pose to other Work Groups.

### **Key Take Aways:**

A brief summary was provided of the State Engineer’s presentation on Compact Administration in the Colorado River Basin and the Second Regional Demand Management Workshop that occurred at the January meeting of the Colorado Water Congress.

That there are numerous methods that have been authorized by state statute to create flexibility in moving water between agricultural and urban uses with a mix of water court and DWR involvement and pilots for each to analyze impacts. The State Water Plan directed further investigation and development of ATMs and recognized that the practice of permanent transfers from agriculture to municipalities aka “buy and dry” could not continue. While ATMs are not defined by the Water Plan, guidelines are provided.

One example occurs in the Rio Grande basin and involves split-season fallowing. In one instance, an irrigator agreed to fallow in the first part of the season and irrigate during the latter part of the season. The program required mimicking return flows and keeping the ditch whole for other users. The price per acre foot was almost doubled to induce the irrigator to participate.

That despite the variety of options, ATMs are little used. CWCB has plans to examine the reasons for this in 2020 and determine next steps. That the lack of participation could stem from the fact that because of their temporary nature, they are perceived as creating uncertainty and not worth the time, expense and effort for the irrigator. That municipalities are willing to participate but that they require certainty as to their water supplies. That ATMs that include a water court component create greater security.

That elements of existing statutes authorizing ATMs could potentially be applied to a demand management program but issues and challenges exist with each. Questions arose in the context of the water conservation and agricultural protections statutes and whether there is a need for participants to obtain a change of water right for compact compliance and whether these processes afford opportunities for increasing operational efficiencies for participants. Additional questions identified related to how such a beneficial use would be administered in relation to free river conditions and how the administration of conserved water would occur to the state line. The Group expressed a desire to reach out to the Law and Policy and Monitoring and Verification Work Groups on intersecting elements of these issues.

**Additional technical, informational other needs:**

For the next meeting, the Group may further consider parallels with the work of the Law and Policy and Monitoring and Verification Work Groups and further identify issues and challenges related to administration and accounting issues based on the type and location of participating water users, the amount of water to be conserved and mechanisms to administer and account for conserved water in relation to the Initial Units and accepted accounting practices within Colorado and throughout the Upper and Lower basins.

**Other:** No public comments were heard during this meeting.

## **Administration and Accounting Work Group Meeting Summary**

**Work Group:** Administration and Accounting Work Group Meeting #3 **Date:** April 16, 2020

### **Meeting Topics:**

Agenda topics included: a review of the topics discussed, and issues identified at the IBCC/CWCB meeting held March 5, 2020. The Work Group had an opportunity to benefit from the cross-over meetings with the Law and Policy and Monitoring and Verification Work Groups. The Work Group then analyzed several hypotheticals related to administration and accounting resulting from various water rights that would participate in a potential Demand Management Program.

### **Key Take Aways:**

A brief summary from the IBCC/CWCB Meeting held on March 4-5, 2020 was provided. The Work Group felt some topics applied and other did not. Of those that applied, the Group modified. Discussion included but was not limited to (a) Upper Division States in relation to Colorado's pool and what the target amount would need to be; (b) amount of DM participants modified to the number of structures and volume of water required; (c) acute or chronic: storage of small amounts of water over a longer period of time and/or develop a program that could acquire large amounts of water over short period of time; (d) reservoir storage options limited to storage in the initial units (Aspinall) or consideration of other reservoirs. Other factors considered: (i) hydrology (ii) being able to exchange water to Navajo or Flaming Gorge (UCRC purview); and (iii) compact compliance as a beneficial use.

The remainder of the meeting was spent discussing various hypotheticals related to administration and accounting matters as to demand management. The hypotheticals were not intended to advance any particular position but to think through elements of various on-the-ground scenarios. The Work Group was tasked with analyzing several water administration scenarios that included different combinations of factors including but not limited to the type of water right owner, the type of use, and priority date of the water right, in order to identify issues associated with each scenario and of those issues, those that the Work Group believed were in need of further analysis to include in the Report to the CWCB Board.

### **Additional technical, informational other needs:**

For the next meeting, the Group will further consider the administration and accounting issues and challenges presented in the hypotheticals based on the type and location of participating water users, the amount of water to be conserved and mechanisms to administer and account for conserved water in relation to the Initial Units and accepted accounting practices within Colorado and throughout the Upper and Lower basins.

**Other:** Public comments were heard during this meeting including concern at the complexity of the issues related to the administration and accounting for a potential demand management program. The group is scheduled to meet via video conference for the final meeting on May 18, 2020.

## **Administration and Accounting Work Group Meeting Summary**

**Work Group:** Administration and Accounting Work Group Meeting #4 **Date:** May 18, 2020

### **Meeting Topics:**

Agenda topics included: a review of the hypotheticals discussed at the April 16, 2020 Work Group Meeting and issues identified. The Work Group then reviewed Members' lists of identified issues, priorities and proposed methods for additional analysis of those issues as the next step in the feasibility investigation as to a potential Demand management Program.

### **Key Take Aways:**

Discussion included but was not limited to (a) whether or not there is a need for "compact compliance" as a recognized beneficial use; (b) Which entities could or should utilize water for this purpose and who manages such a program; (c) accounting challenges associated with tracking water to be used for this purpose and how it is colored; (d) how to administer these water rights in relation to the available Initial Unit and questions related to NEPA; (e) how to avoid injury to water rights; (f) elements associated with administrative and judicial mechanisms and how to allow for due process; (g) how to calculate conserved consumptive use and safeguard against abandonment or loss of consumptive use credit; and (h) how to balance efficiency of deliveries with the need for equity.

### **Next Steps:**

A brief overview was provided as to various logistics for compiling the report summarizing this first phase of the demand management feasibility investigation and timelines to provide a draft to the CWCBC Board in time for the July CWCBC Board Meeting and a Demand Management Workshop with the CWCBC Board to be scheduled in August. Additionally, the benefits of some type of pilot project was discussed.

**Other:** Public comments were heard during this meeting including mention of other proposed plans for following lands served by the Colorado River, the federalization of the Upper Basin and concern as to risks to water rights placed to beneficial use at the time the 1922 Compact was ratified.



# Attachment K

Summary of IBCC Discussions  
regarding Equity

# Summary of IBCC Discussions Surrounding Equity in Demand Management

## ***Background:***

As defined in the CWCB Board-approved [2019 Work Plan for Demand Management Feasibility Investigations \(Work Plan\)](#), eight Demand Management (DM) Workgroups were established to explore key DM-related topics for Fiscal Year 2019/2020 including: 1) Agricultural Impacts 2) Economic Impacts and Local Government, 3) Education and Outreach, 4) Environmental Considerations, 5) Funding, 6) Law & Policy, , 7) Monitoring and Verification, 8) Water Rights Administration and Accounting. The work plan further directed that the concept of equity be considered throughout the feasibility investigation.

Although it had been discussed in almost all of the workgroups, the concept of equity, defined here as “sense of fairness,” was not specifically being addressed by any one workgroup, though it has been a topic of discussion for many of the workgroups. In 2019, CWCB coordinated with the Interbasin Compact Committee (IBCC) to explore the concept of equity – effectively having IBCC act as an additional, de facto DM workgroup, looking at the equity issue specifically. The DM workgroup and IBCC discussions were still being formulated (formally starting in August 2019) by the July 2019 CWCB board meeting - a joint meeting with IBCC. In order to match the DM workgroup timeline and to have input included in the forthcoming July 2020 CWCB board meeting memo packet, IBCC’s October (2019), March and June (2020) meetings included time to discuss DM equity. There is also one IBCC member on all but one of the eight DM workgroups.

## ***CWCB Board Process, Policy & Stakeholder Input:***

The work done pursuant to the FY 2019/2020 Work Plan, including IBCC input on equity, will be delivered to the CWCB board consistent with the [CWCB Board’s Demand Management Policy Statement](#) which was adopted by the CWCB Board in November 2018. Three key elements of the CWCB policy statement should be noted as they relate to IBCC’s DM equity discussion. They include the board’s stated policy to:

- “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.”
- “Prioritize avoidance of disproportionate negative economic or environmental impacts to any single subbasin or region within Colorado while protecting the legal rights of water rights holders. The Board 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.”
- “Investigate voluntary, temporary, and compensated reductions in consumptive use of waters that otherwise would deplete the flow of the Upper Colorado River System for the specific purpose of helping assure compact compliance. Consistent with the Upper Basin Demand Management Storage agreement, the Board may also join the UCRC and other Upper Basin States in any evaluation of importing of waters from outside the natural Colorado River watershed to augment the Upper Colorado River System for compact compliance purposes.”

Lastly, it should be noted that while IBCC and the workgroups are providing their input to the board, neither the workgroups nor the IBCC are making recommendations to the CWCB Board. Rather, these inputs and considerations help broaden and frame the public discussion around issues the CWCB Board should be aware of.

### ***IBCC Discussion Summary Overview & CWCB Board Request***

The following represents a summary of IBCC's last three meetings where DM equity was discussed and this document is only meant to capture the main discussion points from those meetings. Broadly, the IBCC has acknowledged that a DM program that shares the burden across Colorado may create greater opportunities for equity than curtailment. Unlike curtailment, the concept of a DM program could be used to develop more equitable solutions for mitigating risks by providing Colorado with choices and flexibility that serve to mitigate risks.

At the same time, risk tolerance may be different across the state. This is the central challenge, and this summary does not presume to have solved it nor should it be taken to mean or otherwise imply that IBCC has reached consensus on the topic of DM equity. It has not. This is because some IBCC members did not feel they had the time to fully explore hypotheticals or scenarios that may have allowed them to reach consensus, noting that at this initial stage in the feasibility investigation, it was difficult to speak in concrete terms about what equity may mean. To that end, the IBCC would like the CWCB Board to consider how to continue engaging IBCC in a meaningful way on the important issue of equity.

### ***IBCC Discussion Summary to Date***

The IBCC talked about DM equity issues at the [October 23, 2019 IBCC meeting](#), the [March 4, 2020 IBCC meeting](#), the combined and [March 5, 2020 IBCC & DM Workgroup Meeting](#), and the June 17, 2020 IBCC meetings. The latter will be posted to the [CWCB's website](#) when the minutes are available. For reference, the DM Workgroup [March 2020 Joint IBCC & Demand Management Report](#) is also linked here. The IBCC summary is meant to capture the major pieces of those discussions while recognizing that IBCC has not reached a consensus direction (as noted in the section above).

In tackling the issues of DM equity, conversations have centered largely on two things:

1. How to define "equity" and,
2. Whether it is possible to create an equitable DM program.

Broadly defined as a sense of fairness, IBCC has been keen to point out that equity is in the eye of the beholder or "what is fair to *me*." In other words, if a DM program were to be established it would need to consider equity issues in and across each basin so as not to create disproportionate impacts to any one geographic area, sector, economy, etc. At the same time, because one's sense of fairness is often heavily influenced by their level of trust, building trust is inherent in building equity.

Regarding whether or not a program could actually be equitably created, IBCC is uncertain – member polling was split. In fact, IBCC explored several hypothetical DM approaches during a March 4, 2020 IBCC meeting exercise (slides for March 4 and March 5 can be found on the [CWCB website](#)). The exercise helped highlight how ostensibly equitable approaches to DM might still be perceived as inequitable. At the same time, this exercise and other IBCC discussions also illustrate how stakeholders, if consulted, will work to identify challenges, mitigate issues and develop *more equitable* outcomes.

The collective input of IBCC suggests that the structure of any potential DM program would have to be flexible enough to address both existing and potentially emerging basin-specific concerns across any number of issues. However, flexibility itself may not be sufficient to address equity concerns. Additionally, because building trust is fundamental to establishing equity, any process to develop a DM program or any resultant program would need to be open, transparent and responsive.

To provide context, specific comments taken directly from the IBCC minutes are listed on the following pages. These bullets capture the main points of IBCC discussions related either directly or indirectly to equity. The full minutes from each meeting (linked above) can be referenced for additional detail.

### ***IBCC MINUTES THAT DIRECTLY RELATE TO EQUITY***

- *One of the largest issues is how to build trust in a demand management program.*
- *One of the benefits of the demand management process is that the conversation can focus on equity. While curtailment is a top-down and reactive management process, demand management is a proactive process that creates the opportunity to engage with communities.*
- *Fairness is an important concept in the equity discussion. Whenever a decision is made, people will evaluate whether they were treated fairly. Despite the complexity of the problem, the program must be managed fairly.*
- *Some expressed the view that equity should not serve as a barrier to implementing a demand management program, and it should not be used as a way to prevent water from getting to Lake Powell.*
- *Building trust is an important factor in the process of developing a demand management program. Water is a serious topic, which makes it easy for people to be afraid or suspicious. IBCC members should continue to have conversations with their communities to gather community perspectives to assist in developing a demand management program that works for the communities across the state.*
- *All groups across Colorado working together may be able to develop solutions for the water issues in Colorado; it is important to continue to think about tackling water issues in cooperation with one another.*
- *The term equity makes some people uncomfortable. Other terms, like shared responsibility, were also discussed, with some emphasizing that concept of shared responsibility changes the conversation to how citizens can help protect the state most effectively by providing water to Lake Powell. [Note: any potential Demand Management program would be strictly voluntary, with nobody being forced to participate if they do not choose to do so. Therefore, while the concept of “shared responsibility” may be open to interpretation, it does not refer to or imply any potential Demand Management program design that would involve mandatory participation\*]*
- *One common theme is that each group discussed concerns with disproportionately affecting different geographic areas within and among the basins. Fairness is related to proportionality, and proportionality by basin and geography is important. Fairness is also related to proportional impacts across the state.*
- *Various issues associated with management of the program should be explored further, including how market forces impact participation in a potential program, the concept of credits associated with the pool, and other issues.\**
- *There is also a question as to if DM might be enabling speculation and creating a market for agricultural water rights.\**
- *There are two different types of equity: equity of impact and equity of opportunity. Equity of impact is making sure that not one basin takes on the burden of demand management. Equity of opportunity is making sure that the benefits of a demand management program are distributed more evenly and that not only a couple of water rights users benefit from the program.*
- *It is not possible to talk about fairness until there is recognition that there is a lack of trust in developing a demand management program. Some of the mistrust is historic, but there is a willingness to trust as the IBCC comes together to listen to each other in open and candid conversation to determine what each person needs to make a demand management program fair.*
- *Market mechanisms and finance could drive a demand management program with caps by geographic locations. Different sectors could then decide how much to contribute to a program.*

#### **IBCC MINUTES THAT INDIRECTLY RELATE TO EQUITY AND/OR WERE CONSISTENTLY DISCUSSED**

- *One way to frame the demand management conversation is through the perspective of risk. Water users want to know the likelihood that the state will be in a curtailment scenario and to what degree it will impact water usage in the state.*
- *One reason that it is important to know the State Engineer's Office's plan for a potential curtailment scenario is that it allows water users to understand their risk and act accordingly. For example, if the State Engineer's Office plans to administer a curtailment program based on prior appropriation, low and high priority water users should understand the risk to their water usage that is associated with that plan.*
- *Demand management has been an elusive idea, and the IBCC and the basin roundtables have exercised patience as they have worked to define and understand the problem. When problems are not solved quickly, some people assume the worst.*
- *There are similarities to be made between the Colorado River, the Rio Grande, and other rivers, like the Republican River. It is important to learn how different river basins are managing their water resources, and there are many lessons to take from the Rio Grande River Basin. The producers and water users of the Rio Grande have long worked with the State Engineer's Office to develop a system of self-government. It is likely that the federal government in some form will need to provide funding to the state and basin roundtables, so understanding how the federal government participates and funds the program in the Rio Grande is essential.*
- *A common theme among the groups was a discussion of a free market versus guided market versus government program for implementing demand management.\**
- *Another common theme was that no two water rights are alike. There are remaining questions about how to analyze the value of water rights and the socioeconomic impacts of a demand management program. There may be a need for a ditch wide analysis of socioeconomic impacts.*
- *The value of water can be difficult to quantify because the value of water goes beyond its transactional value. The value of water also comes from the economic activities and recreation tourism it generates as well as from its social and aesthetic values.\**
- *There is not one solution that will solve everything; there will likely need to be a combination of factors and sideboards that go into a program. There should be a list of all the factors that need to go into an assessment of a program.*
- *Having some type of criteria was a common discussion topic, including determining who develops the criteria and who evaluates programs and projects using the criteria. Some participants said that local grassroots organizations or basin roundtables could develop criteria and evaluate projects. Other tables discussed that sectors could develop criteria and decide how to allocate resources, but there is still an important task of identifying who speaks for a certain sector.*
- *The industry sector is missing from the discussion. The Economic Considerations and Local Government workgroup have discussed incentivizing power plants downstream that use hydrological power to participate in a demand management program. The Economic Considerations and Local Government workgroup also has discussed the water rights of some of these retiring power plants and whether they could be used to address water deficits under the Colorado River Compact. It is important to involve industry in the discussion because in some counties, they may represent a significant portion of water use.*
- *There are remaining questions about how to decide who participates, who defines the terminology, who decides how to measure socioeconomic impact, and whether a voluntary program is actually voluntary if there are pressures from the community.*

\*Bullets marked with an asterisk have been adjusted from the original minutes to better reflect IBCC feedback on the final draft going to the CWCB board.