

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.