

Colorado River Compacts  
Adopted July 19, 2005  
Revised and readopted April 2008  
Revised and readopted July 2011  
Revised and readopted April 2014  
Draft #2, April 2017

---

## Colorado River Compacts

### Colorado River Water Conservation District Policy Statements:

The Colorado River Compacts of 1922 and 1948 must be enforced, protected and defended from legal challenge or amendment unless all seven basin states agree to the terms of any proposed change.

The seven basin states must reconcile differences in Compact interpretation in a mutually acceptable manner.

The Colorado River Water Conservation District (River District) recognizes that the Colorado River is a highly variable system, and this hydrologic variability is forecast to become more frequent and more pronounced in the future. Therefore, the State of Colorado, in cooperation with the other three upper division states, must implement compact compliance strategies to be fully prepared for periods of extended droughts that minimize impacts to existing uses and minimize the potential for shortages and disruptions to present and future West Slope economies.

New Colorado River water uses must be developed in a manner that ~~does not minimize increase the risk of compact curtailment risk~~ to existing users.

Formatted: Indent: First line: 0.5"

The River District shall lead efforts to develop a factual analysis of the risk and risk factors of compact curtailment. Such analysis shall explore early warning signs of possible curtailment and recommend alternative avoidance and mitigation responses.

The River District shall lead the effort to inventory and maximize the efficient use of water supplies exempt from compact administration to ensure western Colorado retains and can capitalize on the full benefit of pre-compact water rights.

### Background & Discussion:

The State of Colorado is signatory to the 1922 Colorado River Compact and the 1948 Upper Colorado River Basin Compact. The 1922 and 1948 Compacts, along with the 1944 International Treaty with Mexico, other federal laws, and United States Supreme Court decisions comprise the "Law of the River." The diversion of Colorado River water for consumptive beneficial uses within the State of Colorado is subject to, and limited by, provisions of the Law of the River.

Today, it is clear that the 1922 Compact negotiators employed a limited and unnaturally wet

Colorado River Compacts  
Adopted July 19, 2005  
Revised and readopted April 2008  
Revised and readopted July 2011  
Revised and readopted April 2014  
Draft #2, April 2017

hydrologic record in their deliberations, resulting in allocation of a greater than sustainable quantity of Colorado River water. This and other unresolved technical and legal issues result in conflicting interpretations of the 1922 Compact. Resolution of unresolved Colorado River compact issues, such as the Mexican Treaty obligation and the accounting of Lower Basin tributaries, will be challenging, time consuming, and costly. However, the cost of inaction is even greater.

The primary purposes of both compacts are to provide legal certainty regarding how much water each state can develop, to allow states to develop their water resources when the water is needed, and to preclude the interstate application of the prior appropriation doctrine. The Colorado River Compacts protect Colorado from downstream states claiming prior (senior) use of the Colorado River that would preclude Colorado's eventual development of its full consumptive use entitlement.

There are, however, disputes about the interpretation of the language of the compacts. These include conflicting language allocating the river's waters: "in perpetuity to the Upper Basin and to the Lower Basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre feet of water per annum" (*Article III(a)*) and the requirement that "the States of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre feet for any period of ten consecutive years." (*Article III(d)*) Interbasin differences also include unresolved issues between the Upper and Lower Basin states regarding respective water delivery obligations to the Republic of Mexico. Failure of the seven basin states to harmonize the terms, conditions and interpretation of the compacts by mutual agreement invites unilateral federal intervention to resolve these differences and legal proceedings that will be protracted, divisive, and exceptionally expensive.

Colorado must continue to improve and refine technical data regarding existing Colorado River uses within the state and throughout the Colorado River Basin, including a consistent and common method for calculating consumptive uses among the four Upper Basin states. Additionally, more and better science must be developed regarding historical Colorado River flows and periodic, sustained droughts, including refinement of paleo-hydrology studies and the potential impacts of climate variability on basin-wide hydrology.

The Colorado River Compact of 1922 expressly grandfathers water uses which pre-date the compact, protecting them from being curtailed when compact administration occurs. Therefore, full legal protection, along with efficient use, including by exchange, is of paramount importance regarding these strategic water rights.

The River District's involvement should include an active education program of its constituents, as

Colorado River Compacts  
Adopted July 19, 2005  
Revised and readopted April 16, 2008  
Revised and readopted July 2011  
DRAFT #1, 01/08/2014

Page -3-

---

well as other affected parties, regarding the issues involved, the importance of water storage and conservation, and the consequences of inaction.

Adopted July 19, 2005  
Revised and readopted April 2008  
Revised and readopted July 2011  
Revised and readopted April 2014  
Draft #2, April 2017

---

Under most interpretations of the compacts, the upper basin states do not have a clearly quantified allocation. Therefore, one upper basin state selling a portion of its unquantified entitlement is problematic, at best. At worst, it introduces lower basin interests into any eventual resolution of ambiguities in the 1948 Upper Colorado River Basin Compact and changes allegiances within the Upper Basin when negotiating ambiguities in the 1922 Compact.

In the lower basin of the Colorado River, interstate water storage agreements and consensual water marketing among states of the lower basin have been an important tool to manage limited supplies of and increasing demands for Colorado River water. Because of the structure and operation of the Colorado River, consistent with the Colorado River Compact of 1922, the River District fully supports water marketing among the lower basin states of the Colorado River contingent upon their mutual agreement.