



Colorado River District

Protecting Western Colorado Water Since 1937

MEMORANDUM

7/5/2018

TO: BOARD OF DIRECTORS
ANDY MUELLER, GENERAL MANAGER
PETER FLEMING, GENERAL COUNSEL

FROM: JOHN CURRIER, P.E. CHIEF ENGINEER

SUBJECT: SB 13-019 APPROVAL PROCESS

NO ACTION REQUESTED: *Update only.*

STRATEGIC INITIATIVE(S): 6.B., 6.D., 9.A.

SB 13-019 provides a mechanism to protect water rights enrolled in an approved water conservation program from potential diminution of the historical consumptive use (HCU) in any legal action that would quantify the HCU. The applicable language from C.R.S. § 37-92-305(3)(c)(II)(A) states:

(c) 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 the following:

(II) The nonuse or decrease in use of the water from the water right by its owner for a maximum of five years in any consecutive ten-year period as a result of participation in:

(A) A water conservation program, including a pilot program, approved in advance by a water conservation district, water district, water authority, or water conservancy district for lands that are within the entity's jurisdictional boundaries or by a state agency with explicit statutory jurisdiction over water conservation or water rights;

At its October 2013 meeting, the River District Board of Directors delegated authority to staff to approve water conservation programs. Since then staff has approved six programs, two of the six in 2018. A seventh is pending as of the date of this memorandum.

Although many other entities have authority to approve conservation programs, to the best of our knowledge, only the River District has approved any programs within the River District's boundaries.

Briefly, here is the process that we undertake and the information we seek as we review applications:

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- 1) We qualitatively conduct an assessment of the change of use contemplated under the proposed conservation plan. This may include assessment of many factors, dependent on the specific circumstances. Typically the following are assessed: 1) How large is the project, both the acreage and water rights / water supply involved? 2) What are the probable return flow impacts both in timing and volume? 3) What is the proximity / relationship to other water rights, including those owned by the River District? 4) What is the potential impact on those rights?

The assessments are qualitative, based on extensive experience and engineering judgment, rather than quantitative, as typically required in a formal change of water rights. As such we do not implement a “bright-line” criteria for conservation plans that will or won’t be approved.

- 2) Starting with 2018 applications, we are asking applicants to provide us the qualitative and quantitative information they collect as their conservation plans are implemented. This will allow staff to better determine a plan’s effectiveness and potentially identify adverse impacts.
- 3) Starting with 2018 applications, we are contacting the River District director of the appropriate County to; 1) let them know an application in their area has been received, 2) discuss the nature of the application, and 3) discuss any concerns that may exist.

With two exceptions, all the approved plans to date have been for relatively small amounts of water associated with small acreages, thus the potential impacts, positive and negative, have been small. The two larger plans that have been approved (Grand Valley Water Users Assn. Conserved Consumptive Use Pilot Project and Trout Unlimited’s Tomichi Ck. Water Conservation Program) both had extensive technical work by others and local support prior to River District approval.

While we expect most applications in the foreseeable future to be relatively small, geographically dispersed, and of little potential adverse impact, it is possible that we could see an application that is of significant concern by virtue of size, location or other factors. Such an application would require a higher level of scrutiny than the applications to date.

Finally, while many entities within the River District have the authority to approve conservation plans, processing the plans through the River District allows us to stay abreast of various conservation plans, to monitor and assess trends as they may emerge, and to serve the needs of River District constituents.