



MEMORANDUM
MARCH 27, 2019

TO: BOARD OF DIRECTORS

FROM: CHRIS TREESE

SUBJECT: ANNUAL POLICY REVIEW, RD II, 2019

ACTION: Staff requests the following Board action:

- Review and advise of any desired changes to attached policies.
- Consider and advise of any new policies desired.

STRATEGIC INITIATIVE(S):

- 7.D Water Needs/Project Development
 - 6. Agricultural Water Use (all sub-initiatives)
 - 4. Colorado River Supplies (all sub-initiatives)
 - 9.A Water Efficiency and Conservation
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Attached are the four policies eligible for final action at the April meeting. They reflect the Board's direction at the January quarterly meeting. Changes requested at the January are shown in red. Attached are policies:

- Water Quality,
- Endangered Species Act,
- Instream Flow, and
- Recreational Water Uses.

Recall that under your process for policy review and adoption, policies must be agenda-ed for at least two quarterly meetings before final action. Therefore, these four policies are eligible for final action at the April meeting at the Board's direction.

As always, the annual policy review is also an opportunity for the Board to request new or suggest missing policy topics. For a complete list of River District policies, refer to our web site: <http://www.coloradoriverdistrict.org/policies/>.

Adopted, April 19, 2016
Draft #1, January 15, 2019
Draft #2, April 16, 2019

Water Quality

Colorado River Water Conservation District Policy Statement:

The Colorado River District's primary objective with respect to water quality is to protect the ability of the district's residents to use **and enjoy** water beneficially now and in the future. To this end, the River District supports the following:

1. The River District will advocate for and may participate in the prevention or mitigation of those activities that adversely impact water quality whenever existing or future beneficial water uses, the ecological health of rivers and streams, or local economies dependent on certain water quality may be threatened.

2. Water quality negotiations, classifications, and enforcement decisions should be based on sound scientific data and methodologies and should not impose unreasonable financial burdens or operational constraints ~~on~~**of** historical water users.

2.3. **The River District will participate in administrative and legislative efforts to clarify the scope of the Clean Water Act (CWA) through rulemaking and legislation defining Waters of the U.S. (WOTUS) and its implementation.**

3.4. The River District will generally support legislative and regulatory measures that provide and protect water quality it deems reasonable and necessary to support and protect the present and future economy and quality of life in the region.

4.5. The River District will oppose any mandatory, nonpoint source regulation for farming and ranching activities but will encourage the voluntary implementation of reasonable best management practices and programs. The River District will advocate for incentives for non-point pollution prevention and clean-up efforts **and funding for those efforts.**

5.6. Any new or substantially amended regulations should be implemented with sufficient resources allocated to the affected enforcement authorities, water users and land owners.

Background & Discussion:

The Colorado River District is committed to meeting the present and future water needs of its residents. The River District recognizes that water quality and water quantity are often inseparable. Water quality can be an important factor in the ability of the Colorado River District's residents to beneficially use water.

The tension between water quality and water quantity is long and varied. The inter-relationship between the two is better recognized and accepted today. There is a causative link between the amount of stream flow present and the water quality of the stream. Water diversions inevitably have some impact on water quality. However, this impact may not be measurable or significant

to either water users or to the environment.

Water quality regulation is largely driven by federal statutes and regulations, principally the Clean Water Act and regulations promulgated under this Act. The scope of the Act is largely determined by interpretation of the term “Waters of the United States.” (WOTUS). Recent and current efforts to administratively define and re-define WOTUS and guide its implementation have resulted in increased uncertainty. The River District believes Congress has the ultimate responsibility for clarifying WOTUS and other key terms of the CWA. Additionally, new programs, regulatory requirements and judicial interpretations ~~are too often implemented without~~ must be adopted with appropriations sufficient for implementation-companion resources.

In Colorado, responsibility for water quality protection is almost exclusively vested in the Colorado Water Quality Control Commission and Division within the Colorado Department of Public Health and the Environment. In contrast, responsibility for water quantity allocation and administration is generally vested with the Water Courts and the Colorado Department of Natural Resources. As integration between water quantity and water quality evolves, local governments should have a role in the monitoring, management and enforcement of water quality programs. Local governments’ role, however, should be voluntary, based on the needs and resources of the community and not mandated.

As growth in Colorado continues, as consumptive water uses ~~in Colorado~~ continue to be developed, and as drought cycles continue to occur, water quality will continue to be an ever-growing issue for Colorado water ~~users~~ managers.

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Endangered Species Act

Colorado River Water Conservation District Policy Statements:

Congress should reauthorize the Endangered Species Act (ESA) ~~and amend provisions of the Act to provide~~ with amendments providing for better implementation that focuses on species recovery, encourages and rewards constructive and meaningful partnerships with non-federal parties and respects private property rights including water rights. The reauthorized Act should encourage and reward programs and partnerships such as the Upper Colorado River Endangered Fish Recovery Program (Recovery Program), which has proven successful in making progress in species' recovery while allowing continued water use and development as well as avoiding litigation. Any reauthorization or amendment to the ESA must prioritize and encourage proactive programs that prevent species' listings. Additionally, the amended Act should ~~include a requirement for~~ require recovery goals, including timelines, for all listed species and funding for recovery.

Listing actions, critical habitat designations and other recovery program actions must be based on sound scientific information.

Irrespective of Congressional actions or judicial interpretations, the ESA should be administered in a manner respectful of property rights and, to the maximum extent practicable, that rewards voluntary partnerships with affected parties.

Background & Discussion:

Adopted in 1973, the ESA was designed as a law that would protect species believed to be on the brink of extinction. The original bill included a sunset for the Act on October 1, 1992. Although the ESA has not been reauthorized, Congress annually appropriates funds for its continued implementation keeping the Act in full force and effect.

When the law was enacted in 1973, there were 109 species listed for protection. As of 2018, there are more than 1,660 species on the list in the United States and more than 2,300 worldwide, with 61 species considered as "candidates" for listing. As of 2019, Colorado had 32 species listed as threatened or endangered, including 16 animals and 16 plants and an additional 43 species listed as "species of special concern."

Unfortunately, since its inception the ESA has largely failed to achieve recovery and delisting of imperiled species. Only 59 domestic species have been "delisted" or removed from the species list since 1973, 17 due to extinction and 19 due to "data error"; the remaining species benefitted from recovery programs and other activities such as banning the use of certain pesticides.

The ESA is administered primarily by the U.S. Fish and Wildlife Service of the Department of the

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Interior and NOAA Fisheries of the Department of Commerce. Under the ESA, certain species of plants and animals (both vertebrate and invertebrate) are listed as either "endangered" or "threatened" according to assessments ~~of evaluating~~ the risk of ~~their~~ extinction. In practice, most new listings result from judicial action, primarily from third parties. Once a species is listed, powerful legal tools- including third party legal actions, enforce the recovery of the species and protection of its habitat, ~~including third party legal actions~~.

A species, subspecies or "distinct population" may be classified as "endangered" when it is in danger of extinction within the foreseeable future throughout all or a significant portion of its range. A "threatened" classification is provided to those animals and plants likely to become endangered within the foreseeable future throughout all or a significant portion of their ranges.

Despite the fact that there are many areas for improvement that opposing interests agree on, past efforts to reauthorize the Act, or even to initiate administrative improvements, have met with vocal opposition; as a result few have passed or been implemented.

The Upper Colorado River and the San Juan River Basin Recovery Programs are multi-agency, multi-party, public-private partnerships designed to help recover listed fish species while allowing historical water use and future water development to continue in the respective basins. Both of these programs have enabled Colorado and surrounding states' water users to avoid litigation and interruptions of historical water use or denials of water development authorizations that have occurred elsewhere.

The Colorado River District has been an active partner and participant in the Upper Colorado River Recovery Program since its inception. This program has been heralded as exemplary for its continued successes and lack of litigation. This Recovery Program, along with its sister program in the San Juan River Basin, should continue with attendant federal financial and programmatic support.

Adopted 7/20/2016
DRAFT #1, January 15, 2019
DRAFT #2, April 16, 2019

Instream Flows

Colorado River Water Conservation District Policy Statements:

The Colorado River District recognizes and supports the environmental and human benefits of flowing rivers and streams. The values and benefits of instream flows, however, must be balanced with those of consumptive water uses in an arid West.

The Colorado River District supports Colorado's instream flow program as a means of protecting the aquatic environment. The River District supports the Colorado Water Conservation Board's (CWCB) authority to appropriate instream flow water rights that balance protection of the natural environment with the activities of mankind. The District also supports the state's ability to acquire absolute water rights for conversion through the water court to instream flows ~~that~~ when those rights are offered by a willing party and ~~that those rights~~ provide multiple benefits to the aquatic environment and water users.

The River District's support for Colorado's instream flow program is not exclusive. The River District likewise supports other mechanisms that benefit the aquatic environment that are consistent with Colorado's Prior Appropriation Doctrine.

The District may oppose individual CWCB instream flow appropriations or donations when they exceed the amount reasonably necessary for the protection or improvement of the environment or do not sufficiently accommodate other existing ~~or potential~~ water uses. An instream flow right should not be granted if it would materially impair the ability to fully develop for beneficial use Colorado's entitlements under the Compacts of 1922 and 1948, ~~nor should it exceed the amount of water reasonably necessary for the protection of the environment to a reasonable degree.~~ Moreover, the River District calls on the CWCB to exercise its statutory discretion to accommodate future uses, incorporating decree conditions such as depletion allowances or "carve outs."

The state should periodically review its instream flows rights for potential modification based on improved science and updated demand and water availability data. Additionally, the District supports the existing statutory protection for water uses, decreed or not, existing at the time of an instream flow adjudication.

On a case-by-case basis, the District may advocate for inundation of all or portions of instream flow rights to accommodate new or expanded water storage, consistent with the state's policy of maximum utilization.

Background & Discussion:

The River District was created to protect the many beneficial (consumptive and non-consumptive) uses of Colorado River basin waters. The River District's mission is to protect and manage our scarce water resources for present and future uses and enjoyment.

Since 1973 and the inception of the Colorado instream flow program, the CWCB has appropriated instream flow water rights on more than 1,600 stream segments covering more than 9,250 miles of stream and 480 natural lakes in Colorado. While extensive, there are many waterways that do not have a CWCB instream flow water right. Most of the existing instream water rights are limited to cold water streams and rivers. Additionally, many of the state's existing instream flow rights, especially its earlier instream flow rights, are for single, year-round or two-season flow regimes. More recent, seasonal adjudications better mimic the natural hydrograph and therefore often better protect the natural environment as well as better comport with consumptive water uses.

Conflicts and impacts have occurred as a result of instream flow appropriations, especially when instream flow rights are located on the lower reaches of streams and river; accordingly, special consideration should be given to appropriations near state lines.

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Recreational Water Use

Colorado River Water Conservation District Policy Statements:

The Colorado River District supports recreational water uses - and the water rights confirming those recreational water uses - that balance recreational needs with historical and future consumptive water uses, including water uses by exchange. A recreational in-channel water right (RICD) should not be granted if it would materially impair the ability to fully develop for beneficial use Colorado's entitlements under the Compacts of 1922 and 1948.

The River District recognizes that a variety of recreational water uses occur throughout Colorado, including on -lakes and reservoirs, in-stream, and those enabled or enhanced by storage releases and diversions from streams. Like all water rights, water rights for recreational uses must be reasonably efficient and promote maximum utilization of Colorado's waters.

Recreational water uses and any water rights confirming those uses should be included in regional stream management plans.

Background & Discussion:

Recreational water use and aesthetic enjoyment of the state's waters are integral to Western Colorado's lifestyle and economy.

Recreation is a recognized beneficial use of the state's waters. Colorado's courts and Colorado's General Assembly recognize certain recreational in-channel uses of water as beneficial water use and eligible for adjudication.

In 2001, the General Assembly passed Senate Bill 01-216 providing legislative certainty and conditions on recreational in-channel diversions (RICD). In 2006, the legislature passed Senate Bill 06-037 providing clearer definitions regarding RICD water rights and their associated structures. The final version of Senate Bill 06-037 represented considerable compromise by both sides of the debate and resulted in an Act that both deserved and enjoyed broad support. The River District supported both bills.