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Colorado River Compacts and Entitlements

Colorado River Water Conservation District Policy Statement:

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.

As proscribed in the Colorado River Water Conservation District’s (River District) organic legislation in 1937, the River District is “given such powers as may be necessary to safeguard for Colorado, all waters to which the state of Colorado is equitably entitled under the Colorado River Compact.”

The 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 River District will continue to support the State of Colorado, in cooperation with the other three upper division states, in the development and implementation compact compliance strategies so that the Upper Basin will 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 minimizes the risk of compact curtailment to existing users.

The River District shall lead efforts to analyze the risk and risk factors of compact curtailment. Such analyses 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 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, the 1922 Compact negotiators allocated a greater amount of water than is reliably available. 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.

Curtailment of Colorado River water uses to meet the 1922 Compact requirements, should it ever occur, is projected to impact all or nearly all post-compact Colorado River water uses. As additional water development in Colorado occurs, the risk of reaching or exceeding our compact entitlement increases. Due to the anticipated magnitude of any interstate curtailment, this risk will likely be shared by all post-compact water users in Colorado. The risks to the West Slope posed by the potential acquisition of pre-compact water rights by non-West Slope interests and dry-up of associated agricultural lands must be addressed. Further, the future effects of, and uncertainty surrounding, climate change represent additional risk and challenges regarding determination and management of Colorado's remaining Colorado River entitlement and must be addressed.

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