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## Prior Appropriation

### **Colorado River Water Conservation District Policy Statement:**

**The Colorado River Water Conservation District supports Colorado’s system of prior appropriation as a fair and orderly system for allocating Colorado’s scarce water resources. Moreover, Colorado’s prior appropriation system has been proven to be both successful and flexible in addressing the public’s changing demands, beneficial uses, and values regarding Colorado water resources (e.g., instream flow and recreational in-channel diversion water rights). Additional flexibility and adaptation of the prior appropriation doctrine may be warranted to ensure the allocation of Colorado’s remaining Colorado River Compact entitlement among the river’s sub-basins within Colorado and to fairly allocate water uses to ensure water rights (including conserved consumptive use) are equitably administered in the event of interstate compact administration.**

### **Background:**

Water often does not naturally exist in sufficient quantities where and when it is needed to sustain human settlement and enterprise in Colorado. As a scarce resource, the demand for which exceeds its supply, water in Colorado requires a system of allocation and enforcement to meet the needs of Colorado’s citizens and the natural environment, both current and future.

Colorado’s prior appropriation doctrine is enshrined in the state’s constitution, which states in relevant part:

“Section 5. Water of streams public property: The water of every natural stream, not heretofore appropriated, within the state of Colorado, is hereby declared to be the property of the public, and the same is dedicated to the use of the people of the state, subject to appropriation as hereinafter provided,” and

“Section 6. Diverting unappropriated water - priority preferred uses: The right to divert the unappropriated waters of any natural stream to beneficial uses shall never be denied. Priority of appropriation shall give the better right as between those using the water for the same purpose; but when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall have the preference over those claiming for any other purpose, and those using the water for agricultural purposes shall have preference over those using the same for manufacturing purposes.”

(Colorado Constitution, Article XVI)

Additionally, a rich body of law, both legislative and judicial, has evolved to address the state’s need for an orderly and transparent system of water administration and the embodiment of the prior appropriation doctrine as that system.

Colorado's prior appropriation doctrine has proven its ability to adapt to the changing needs and values of the state regarding its scarce water resources. Notable among adaptations of Colorado's water allocation system are the 1972 Instream Flow Act (C.R.S. 37-92-102) and the 2001 Recreation In-Channel Diversion Act (C.R.S. 37-92-103(10.1) & (10.3)), both of which were adopted in a manner consistent with and incorporated into the prior appropriation system.

The 1922 Colorado River Compact and the 1948 Upper Colorado River Basin Compact provide that under certain circumstances, Colorado may be required to curtail water uses within the Colorado River basin to comply with interstate compact administration. The strict application of the prior appropriation doctrine in the event of compact administration could result in extreme hardship and economic disruption throughout the state. Merely the potential for future curtailment may result in undesirable speculation and competition for firm water supplies as Colorado moves closer to its full compact entitlement. Therefore, limited and targeted future adaptation of the prior appropriation doctrine may be necessary in order to equitably allocate the state's remaining Colorado River entitlement and to equitably address the curtailment of water uses that may be necessary to comply with the 1922 and 1948 compacts.