

DEMAND MANAGEMENT: Preliminary Guiding Principles

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The principles outlined below are intended to guide Southwestern Water Conservation District (SWCD) in its evaluation of and input to any Demand Management (DM) program the state of Colorado, in cooperation with the other three Upper Basin states, may advance.

SWCD has not adopted a position of support, opposition or neutrality on the feasibility or development, let alone implementation, of a DM program within the Upper Basin. There are simply too many unknowns at this point. DM is an evolving concept; accordingly, this is a living policy document that will be reviewed periodically to reflect changing program elements, evaluations, and goals of DM in Colorado and the Upper Basin.

SWCD was created by the General Assembly in 1941 to lead in the conservation, use and development of the water resources of the San Juan and Dolores river basins, both of which are tributary to the Colorado River. SWCD's organic act also includes the charge "to safeguard for Colorado, all waters to which the state of Colorado is equitably entitled." Demand management is a novel concept that, if implemented, has the potential to alter water use and administration within the Upper Basin and, on a more local level, within SWCD's boundaries. Accordingly, SWCD will remain involved in the evaluation and potential formation and implementation of any DM program Colorado may pursue.

Colorado River Basin Drought Contingency Plans:

At least since the turn of this century, the security and sustainability of Colorado River water supply has been in question. The basin is currently experiencing one of the worst hydrologic cycles in recorded history. Continuing drought, resulting in worsening water supply and storage conditions, increases the risk of curtailment in the Upper Basin.

To reduce the risk of Lake Powell and Lake Mead declining to critically low levels, the United States Department of the Interior (Interior) and the seven Colorado River basin states agreed to develop and implement plans to overlay the 2007 Interim Guidelines addressing forecasted low reservoir elevations if the drought continued. The resulting Colorado River Drought Contingency Plans (DCP) were submitted to Congress on March 19, 2019. On April 16, 2019, then President Trump signed the Colorado River Drought Contingency Plan Authorization Act into law. This bill requires Interior to execute the Colorado River Drought Contingency Plans without delay and to operate applicable Colorado River System reservoirs accordingly.

For its part, the Upper Division states of Colorado, New Mexico, Utah and Wyoming committed to three primary strategies to address the impacts of continued drought in the basin. The first strategy, weather modification, was already being implemented across the basin and needed no federal legislation so was not included as part of the legislation passed in the Upper Basin's Drought Contingency Plan (DCP). The other two strategies focus directly on the goal to minimize the risk of water levels at Lake Powell falling below target elevations: an immediate response and a multi-year plan. The second strategy, articulated in the Drought Response Operations Agreement of the Upper Basin's DCP, is an immediate response measure designed to utilize operational adjustments or releases from the Colorado River Storage Project Act (CRSPA) Initial Units to bolster storage levels at Lake Powell when Lake Powell approaches a critical low elevation of 3,525' MSL. The Drought Response Operations Agreement also provides mechanisms for recovering storage at those same CRSPA Initial Units in subsequent years.

The Upper Basin's longer-term strategy is to explore the feasibility of developing and implementing a new demand management program that could generate water savings by either temporarily reducing existing water use within the Upper Basin or augmenting supplies with imported water. Under the Upper Basin's DCP, up to 500,000 acre-feet of DM water savings can be stored in the CRSPA Initial Units to help assure continued compliance with the Colorado River Compact under certain circumstances.

Most of the investigations and discussions pertaining to DM to date, have been focused on generating DM "water savings" through the voluntary, compensated and temporary reduction of historically consumptively used (HCU) water within the Upper Basin in order to assist with Colorado River Compact compliance. As a result, the guiding principles set forth below are based on the assumption that DM water will be generated in this manner.

***DRAFT* Guiding Principles:**

The foundational elements of any DM program must be voluntary, temporary, and compensated reductions in use of water that was being beneficially used under existing rights that otherwise would have depleted Colorado River basin flows within the Upper Basin.

SWCD believes DM is not a panacea. Additional options and alternatives (e.g., forest management, groundwater storage, weather modification, non-native phreatophyte removal, importing water from outside of the Colorado River basin) should be equally and fully explored as we work towards the goal of supply security and sustainability in the Colorado River basin.

Exploration of DM must be just one part of the comprehensive, basin-wide strategy for addressing short- and long-term water supply and demand imbalance that may be included in the next set of Interim Guidelines currently in negotiations regarding the operations of Lake Mead and Lake Powell for future Colorado Compact compliance.

SWCD pledges to evaluate DM as one of many possible strategies to provide flexibility and reduce the risk of curtailment in the Upper Basin.

SWCD will participate in the exploration and potential formation of any Colorado DM program to ensure any proposed program is capable of achieving its stated objectives and that adverse consequences are avoided, minimized, or fully mitigated.

Any DM program must operate within Colorado's Prior Appropriation Doctrine. The creation, storage, delivery and use of DM water must not injure any existing water right within Colorado.

Before deciding whether it would be feasible to adopt, let alone implement, a DM program within Colorado, the State must commit to developing the technical platform necessary to demonstrate that a program can be accomplished without injury to other users within Colorado, at a sufficient scale, and that any conserved water can be conserved, protected, and ultimately delivered for Compact compliance.

Any DM program must ensure equitable and proportional participation from all basins consuming Colorado River water as well as all regions and sectors of Colorado's economy. SWCD acknowledges that "equity" and "proportionality" are critical but undefined terms within the context of demand management. Both are currently the subject of statewide focus.

Transmountain diverters of Colorado River water must participate in DM using water that was historically diverted and beneficially used under decreed transmountain water rights. Transmountain diverters must not be allowed to purchase or otherwise rely upon other water supplies that originate in the Colorado River Basin in order to accomplish their proportional participation in DM.

A successful DM program can help ensure the safety and economic health of all Coloradans. Accordingly, the considerable funding required for DM must not target water right holders, water users, or other specific groups.

Colorado's DM program, if any, must be designed and implemented to support and aid sustaining Colorado's predominantly family- and locally-owned agriculture.

Storage of DM "savings" should be in CRSPA Initial Units that are located as high in the system as practicable.

Releases of DM water from storage should only be made by the Upper Colorado River Commission for the purpose of helping the Upper Division States assure continued compliance with Article III of the Colorado River Compact without impairing the right to exercise existing Upper Basin water rights in the future. Such releases should be timed, to the extent practicable, to provide the greatest economic, environmental, and recreational benefits.

Any DM program must not encourage or reward speculation in Colorado water resources.

Any DM program must recognize there will be impacts resulting from implementation of DM, and that impacts, both positive and negative, will be neither equally nor equitably distributed. Therefore, any DM program must include adequate mitigation for those individuals, water districts and ditch and reservoir companies, and communities impacted by implementation of a DM program. Additionally, DM mitigation should be designed to provide a net benefit to participating individuals, water projects, and their communities.

The evaluation of DM's feasibility, appropriateness, and whether DM is a timely and worthwhile pursuit must be approached without prejudice. In other words, a determination of infeasibility, inappropriateness or unworthiness must be honestly evaluated.

In order to 'test' DM and to allow for incremental implementation and accrual of meaningful DM savings, SWCD recognizes that initial implementation of DM may be required at a pilot or demonstration scale. However, any pilot or demonstration DM program must be conducted in conformance with Colorado water law, without injury to other water users and without prejudice regarding its conclusions or consequences.

As it continues to evaluate the appropriateness of DM, SWCD will remain mindful of the severe consequences of Compact Administration, which could force involuntary, and uncompensated water curtailments that could, in turn, result in disproportionate impacts to certain water users, economic sectors and geographic regions.

SWCD appreciates the CWCB's outreach and inclusivity in its evaluation process to date. SWCD pledges its continued, constructive participation with the state in its DM investigations.

Future Process:

SWCD will continue to explore demand management, including by proactively identifying and communicating its concerns regarding disproportionate and negative impacts potentially resulting from implementation of DM.

SWCD will continue to reach out to water districts, Tribes, and other interested parties in its on-going evaluation and assessment of DM.

SWCD will continue to evaluate water supply, water rights, and water uses and their respective relationships to Compact compliance.

SWCD will collaborate closely with the Colorado River District in order to maintain, to the greatest extent possible, harmony on DM between the two districts.

SWCD will continue to engage in all appropriate Colorado River Compact discussions.

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