



THE SOUTHWESTERN WATER CONSERVATION DISTRICT

September 17, 2018

CWCB Board Members
Colorado Water Conservation Board
1313 Sherman St., Room 718
Denver, CO 80203

Commissioner Eklund
Alternate Commissioners Stulp and McClow
Director Mitchell
State Engineer Rein

Re: State of Colorado's Participation in Upper Division States' Demand Management Program and Storage Account in Lake Powell or other initial units of the Colorado River Storage Project Act

Dear CWCB Board Members, Commissioner Eklund, and Alternate Commissioners Stulp and McClow, Director Mitchell, and State Engineer Rein:

We are writing on behalf of the Colorado River Water Conservation District and the Southwestern Water Conservation District, which collectively represent Colorado's entire West Slope.¹ The Districts understand that the State of Colorado may soon endorse or formally approve the Upper Basin's Emergency Drought Contingency Plan, which includes exploring a voluntary interstate Demand Management Program that will make use of a new storage account in Lake Powell or other initial units of the Colorado River Storage Project Act ("Demand Management Program"). The Districts generally support Colorado's efforts to implement voluntary measures that will help the Upper Basin continue to meet its Compact commitments. However, the adoption of a Demand Management Program is controversial within Colorado because the water contributed to the program will be generated through reductions in existing consumptive uses, and may have associated impacts to local economies. The Districts wish to thank the CWCB and its staff for the outreach it has conducted regarding a voluntary demand management program.

We also want to thank the members of the Front Range Water Council for working with the Districts on a set of principles to guide such a program. We have reviewed the September 13, 2018 letter from the FRWC to the CWCB; there is significant agreement between that letter and the points we describe herein. However, there are some important distinctions - specifically related to how closely a demand management program will mirror public presentations concerning its operation - that are critically important to the West Slope. In order to ensure that a demand management program is implemented consistent with the public presentations and actions of the Upper Colorado River Commission, the State of Colorado, and the Districts, we request that the State of Colorado adopt a set of basic principles that will govern exploration, adoption or

¹ The two Districts were formed by the State Legislature to aid in the protection, conservation, use, and development of the water resources of the Colorado River and all of its tributaries, as well as to safeguard all waters of the Colorado River Basin to which the State is entitled.

implementation of a Demand Management Program within Colorado. We, and our respective governing boards, would not oppose Colorado's approval of, and participation in, a Demand Management Program that is consistent with these principles.

We therefore request that, prior to the State of Colorado's endorsement or approval of interstate Drought Contingency Plan documents or any federal legislation authorizing an Upper Division Storage Account, the CWCB adopt a formal resolution setting forth the following principles to govern Colorado's participation in a Demand Management Program, and that the Colorado State Engineer endorse the principles with respect to his authorities:

1. The storage account in Lake Powell or other CRSPA initial units must be available without charge, used for the purpose of storing water created by managing consumptive uses under a Demand Management Program, for the exclusive benefit of the Upper Division States to ensure compliance with Article III of the Colorado River Compact ("Upper Division storage account").
2. The Upper Division storage account must be exempt from coordinated operations between Lakes Mead and Powell. In other words, such an account should not be subject to equalization or balancing releases from Lake Powell.
3. Colorado's contributions to the Demand Management Program will be generated exclusively through voluntary, temporary and compensated contributions of water that was beneficially used under existing rights and otherwise would have depleted flows in the Upper Basin within Colorado prior to being conserved as part of that program. The conserved water would be stored and accounted for in the Upper Division storage account until it is determined by the Upper Colorado River Commission ("UCRC") that release of the water is necessary for compliance with the Colorado River Compact. A demand management program will reflect proportionate contributions from each Upper Division state.
4. The creation, delivery, and use of the conserved water must not injure the water rights of others. Conserved water shall not be consumptively used by others within any Upper Division state.
5. The Demand Management Program will be implemented to avoid disproportionate impacts to any single basin or region within Colorado. This means that the water generated from Colorado under the Demand Management Program will be derived from water rights used on both sides of the Continental Divide and, more specifically, in amounts that are roughly proportionate to those two regions' post-compact depletions from the Colorado River. The payments for water generated by demand management should be market-based within the area or market from which the water is generated, and recognizing different market values for water within the state, will not necessarily be proportionate between basins. No water user would be required to contribute conserved water for this purpose and no entity or

person would be expected or required to contribute funds for this purpose. Contributions would also be subject to annual and cumulative volumetric caps.

6. Colorado's participation in a Demand Management Program must be consistent with Principles 1 through 7 of the Conceptual Framework set forth in Colorado's Water Plan.

We acknowledge that the implementation of a Demand Management Program within Colorado will require additional effort and significant collaboration among water users and the Colorado state government. We are fully committed to cooperating with the State of Colorado to develop the details of a mutually-agreeable Demand Management Program that will benefit the entire state, and that will not create disproportionate impacts to any region of Colorado. In this regard, we commit to fully and cooperatively engage in discussions related to the development of any rules and regulations that may be necessary for the implementation of a voluntary program for the purpose of compliance with Colorado's obligations under Article III of the Colorado River Compact.

To clarify, we believe there is agreement between the West Slope and the FRWC on many of these principles. However, we are concerned about recent discussions that a demand management program might morph into a mandatory "anticipatory curtailment" program or something else that has not been publicly vetted. That is the reason we request that the CWCB adopt of formal resolution or policy-statement regarding a demand management program, and that the CWCB commit that such a program be consistent in particular with Principle 4 of the Conceptual Framework set forth in the Colorado Water Plan.

If the quantity of conserved water made available through the principles outlined above is not sufficient to ensure compliance with the Colorado River Compact, the state of Colorado and the Upper Colorado River Commission may wish to pursue alternative measures to ensure continued compliance with the Colorado River Compact. In such instance and in light of the Districts' statutory obligations, we ask that the State of Colorado confirm that other uses of, or methods of contributions to, a demand management program or the Upper Division Storage Account be made using a consensus approach that includes the two Districts and other stakeholders. For our part, we again commit to fully and cooperatively engage in discussions amongst ourselves, the State of Colorado and other stakeholders related to the development of any such mutually-agreeable alternative measures.


We attach a proposed resolution for your consideration at your meeting later this week. Nothing in this letter waives any of the Districts' rights to challenge the extent or exercise of the state of Colorado's authority to promote or ensure compliance with the Compacts.

Sincerely,

The Southwestern Water Conservation District

The Colorado River Water Conservation District

By: _____
Bruce Whitehead, General Manager


By: _____
Andy Mueller, General Manager