

[Water managers set criteria for conservation program participation - Aspen Journalism](#)

Andy Mueller was quoted in Aspen Journalism February 22 eloquently describing growing West Slope concerns with the SCPP program:

Any water saved by Western Slope water users will probably end up being used by the lower basin states (California, Arizona and Nevada) instead of bolstering reservoirs... Just because the River District has created a policy for approving SCPP applications doesn't mean it endorses the program.

"I don't think that it's a well-designed program to actually achieve the stated goal, which is to assist in bringing balance to the river. Any water produced under system conservation — to the extent it makes it past your neighbor's headgates and makes it into Lake Powell — is going to get sucked right through the Glen Canyon Dam and into Mead and right through Hoover and on to some lawn or swimming pool in Southern California or Arizona. And I don't think that's a great idea."

Open Records Act Request for SCPP Applications

The River District and SW have a statutory mandate to be involved in the West Slope's Colorado River Compact Use and Entitlement; they should've been in this loop from inception.

The statutory protections in the Use it or Lose it statute you are voting on today are not applicable in Division 7. If this is the legal basis for these projects you cant do these projects in SW(the Dolores Project).

As commendable and worthwhile as these CAWA projects are, they don't really belong in SCPP. These farmers have a full supply this year so they aren't going to be mitigating drought this year. Last I heard the conserved water will stay in the McPhee pool. SCPP money should be going to fix Lake Mead and Lake Powell. It feels like the Walton's and Nature Conservancy are softening up a beachhead for real Demand Management later by putting forward projects now no one can object to, I'm not. Down the road they may be less palatable. The end of the road may look more like Crowley County.

CWCB told the SWBRT in January that entities with control of the water rights would need to approve these projects. DWCD has been briefed on these projects, but to my knowledge haven't seen the actual applications and contracts or formally approved them.

This morning Director Mitchell seemed to indicate the UCRC is the only one with actual power or decision making authority over these applications. Has Colorado ceded authority to the UCRC over projects potentially exporting Colorado's water and disenfranchised the districts that represent the West Slope?

Are the CWCB side boards on Demand Management essentially meaningless because CWCB isn't going to implement them or has no actual authority over these programs. There is apparently no East West proportionality or municipal participation in SCPP. "Temporary" may be abandoned someday too, otherwise why was the abandonment statute amended to enable DM programs. Answer: to enable permanent fallowing of marginal lands with permanent economic impacts.

I'm also wondering if someone could explain why CWCB thinks it's appropriate to distribute public funds without allowing the public adequate time to see these applications or comment on them. Colorado citizens who live in proximity to these potentially disruptive programs, in particular, should have a chance to comment on impacts to ensure this board and UCRC are fully informed before these projects are set in motion. Neighbors know better than anyone the impact of these projects on canal flows, return flows, ground water, environmental and economic impacts.

Both I and others filed Open Records requests for these applications and were rebuffed. You should ask yourselves, just because you can block public access to these applications, in the spirit of Colorado's open meeting and open records law should you?

How these applications are being handled is further eroding trust in CWCB, UCRC and these programs in some corners of the West Slope.

Is CWCB "lawless"

In Director Felt's first year on this board he said something I never thought I would hear from this board, that Colorado should get tougher with the Lower Basin states and stop giving them so much water. Another director, replied angrily, "We are not lawless", like defending Colorado's compact use and entitlement was "lawless".

I asked this board two months ago to explain how SCPP 2.0 isn't a breach of Article III(a) and VIII in the Colorado Compact which requires "exclusive beneficial consumptive use" of Upper Basin water rights in the Upper Basin.

ARTICLE III

(a) There is hereby apportioned from the Colorado River System 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, which shall include all water necessary for the supply of any rights which may now exist.

I'm still waiting for an answer. Do I need to ask the UCRC because CWCB and the Colorado AG have no authority in this area?

The Bureau is the water master in the Lower Basin and delivers water to Lower Basin entities like the Central Arizona Project and Southern Nevada Water Authority under contract. Allowing the Bureau to buy water from Upper Basin water rights is the same as allowing Lower Basin

cities to buy Upper Basin water which has been forbidden for 100 years by the compact. Virtue signaling isn't a good reason for tearing out the heart and soul of the compact.

If SSCP 2.0 complies with Article III(a) someone should have told me by now, told me to shut up and if the argument is valid I would've. No one has, leading me to think SSCP may be a breach... though I am not a lawyer. If SSCP 2.0 is breaching Article III(a), especially without the Demand Management Pool in Lake Powell to hold the water back from the Lower Basin, and you are doing it anyway it appears either this board or the UCRC may at least be in the vicinity of "lawless".

Thank you for your time. If you have answers for some of these questions now that would be appreciated. Otherwise I will submit this testimony in writing, with a short bibliography of papers on transboundary transfers of water and establishing water markets on the Colorado River. I'll await your answers. If I have to ask the UCRC these questions because this board is powerless here please advise me on how to do this.

ARTICLE VIII

Present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact. Whenever storage capacity of 5,000,000 acre-feet shall have been provided on the main Colorado River within or for the benefit of the Lower Basin, then claims of such rights, if any, by appropriators or users of water in the Lower Basin against appropriators or users of water in the Upper Basin shall attach to and be satisfied from water that may be stored not in conflict with Article III.

All other rights to beneficial use of waters of the Colorado River System shall be satisfied solely from the water apportioned to that Basin in which they are situate.

The Compact language suggested territorial use limitations. When Arts. III(a) and II(f)(g) are read together, the "exclusive consumptive use" allowed each Basin in the Compact is limited to the physical territory of the particular basin. Art. III(a) apportioned to each basin the "exclusive beneficial consumptive use" of 7.5 m.a.f./year. Art. II(f)(g) defined the Upper Basin as those named states "within which and from which waters naturally drain into the Colorado River System" above Lee Ferry, and the Lower Basin as those named states below Lee Ferry. Art. VIII further specified territorial use limitations, affirming that "[a]ll rights to beneficial use of waters of the Colorado River System shall be satisfied solely from the water apportioned to that Basin in which they are situate." The drafters added this language to the article which dealt with water storage to meet the Lee Ferry delivery obligation, in order to affirm that water stored in the Upper Basin for the benefit of the Lower Basin would be part of the Lower Basin's apportionment.⁴¹

The Colorado River Compact appears to forbid the Galloway Project. Essentially, the Compact apportions exclusive use of a quantity of water to the Lower and Upper Basins. Galloway envisions using water apportioned to one Basin in the other. Art. VIII of the Compact expressly precludes Galloway's arrangement. This Article requires that all rights to beneficial use under the Compact "be satisfied *solely* from the water apportioned to that Basin in which they are situated."⁶³ As will be discussed in the remaining sections of this paper, Articles II, III, and IV also preclude Galloway's arrangement because they limit the use of the water to the territory of the Basin to which the water was apportioned.

Colorado River Basin Project Act(1968)

<https://www.varuna.io/LOTR/1968/crbproj.pdf>

82 Stat. 901

Pub. Law 90-537

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September 30, 1968

SEC. 603. (a) Rights of the upper basin to the consumptive use of water available to that basin from the Colorado River system under the Colorado River Compact shall not be reduced or prejudiced by any use of such water in the lower basin.

(b) Nothing in this Act shall be construed so as to impair, conflict with, or otherwise change the duties and powers of the Upper Colorado River Commission.

From a Colorado River Compact Challenge to the Next Era of Cooperation Among Seven Basin States (2007)

<https://arizonalawreview.org/schiffer-guenther/>

"This will relieve Arizona of the need to challenge the legality of Reclamation's use of the 602(a) Storage algorithm that protects power generation and recreation uses in the Upper Division States. However, Arizona reserves the right to challenge future use of the 602(a) Storage algorithm after expiration of the interim period, if it reappears."

"...releases of 8.23 MAF are insufficient to satisfy the 9 MAF mainstream water allocations of the Lower Division States and Mexico, plus the associated evaporation and other losses"

"First, the States agreed that Colorado River management strategies for operation of the reservoirs should be designed to delay the onset and minimize the extent and duration of shortages in the Lower Basin."

"Second, they agreed that the management strategies should maximize the protection afforded to the Upper Division States by Lake Powell against calls upon

the Upper Division to curtail uses.”

“.. releases from Lake Powell between 7.0 MAF and 9.0 MAF, treating the two reservoirs more like one.”

“...would send more than 8.23 MAF to Lake Mead during low reservoir conditions when water levels approach critical shortage trigger levels in the Lower Basin.”

Papers on Cross Boundary transfers of water and water markets on the Colorado River

[Analysis of Option Agreement between' the Galloway Group. Ltd.. and San Diego County Water Authority](#) (Metropolitan Water, 1984)

[The Galloway Proposal and Colorado Water Law: The Limits of the Doctrine of Prior Appropriation](#) (1985)

[The Galloway Project and the Colorado River Compacts: Will the Compacts Bar Tansbasin Water Diversions](#) (1985)

[An Upper Basin Perspective on California's Claims to Water from the Colorado River Part II: The Development, Implementation and Collapse of California's Plan to Live within Its Basic Apportionment](#) (Lochhead, 2003)

This is mostly about California's Quantitative Settlement Agreement to stay under 4.4 maf but also includes how water banking in aquifers and markets started in the Lower Basin.

[Cross-Boundary Water Transfers in the Colorado River Basin: A Review of Efforts and Issues Associated with Marketing Water Across State Lines or Reservation Bound](#) (2013)