

Colorado River Compacts
Adopted July 19, 2005
Revised and readopted April 16, 2008
Reconsideration: Draft #2, April 2011

Colorado River Compacts

Colorado River Water Conservation District Policy Statements:

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.

The seven basin states must reconcile differences in Compact interpretation in a mutually acceptable manner.

Colorado must quantify the maximum legally defensible and hydrologically reliable, annual yield of Colorado River water available to Colorado under the 1922 and 1948 Compacts. The Colorado River Water Conservation District (*River District*), along with other affected parties, must be active participants in this process.

The ~~Colorado River Water Conservation 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. Western Colorado water users must fully protect the historical *consumptive* use of all pre-compact (“prior perfected”) water rights and develop strategies that minimize disruptions to present and future West Slope economies caused by potential compact-related curtailments.

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, a number of 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, it is clear that the 1922 Compact negotiators employed a limited and unnaturally wet hydrologic record in their deliberations, resulting in allocation of a greater than sustainable quantity of Colorado River water. This, and other unresolved technical and legal issues, results 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.

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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, ambiguities and potential inconsistencies in 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, ~~and~~ 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* ~~develop better~~ 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. *The state's Colorado River Water Availability studies (2010/11) are important steps in this process.* Additionally, more and better science must be developed regarding historical Colorado River flows and periodic, sustained droughts, *including refinement of paleo-hydrology studies, along with* and the potential impacts of climate variability on basin-wide hydrology.

~~In 1956, the United States Congress passed the Colorado River Storage Project Act (CRSPA). CRSPA authorized the construction of five large storage reservoirs: Powell, Flaming Gorge, Navajo, Aspinall, and Fontanelle. The primary purpose of these reservoirs is to store water and regulate the Colorado River so that the Upper Basin States can fully develop their compact entitlements while meeting 1922 Lower Basin Compact and Mexico Treaty delivery requirements.~~

~~The regional drought that began in 2000 raised new issues and rekindled old ones that have never been fully resolved by the compact signatories. In the summer of 1999, Lake Powell was essentially full; by March of 2005, Lake Powell dropped to eight million acre feet in storage or approximately 32% of capacity. If dry conditions persist or return, Lake Powell could drop below minimum power pool (the minimum storage elevation necessary for the operation of the~~

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~~hydroelectric turbines) and approach its dead storage pool (a functionally empty reservoir) just two to three years later. Therefore, the Colorado River Water Conservation District (River District) and other Colorado River water users must prioritize strategies addressing drought conditions on the Colorado River.~~

The Colorado River Compact of 1922 expressly grandfathers water uses which pre-date the compact. Therefore, the full legal protection, along with efficient use of such rights *including by exchange*, is of paramount importance ~~to~~ *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.