

Demand Management Feasibility Investigation Summary and Fact Sheet

2007 Interim Guidelines¹

In May 2005, the Secretary of the Interior directed the Bureau of Reclamation to improve coordinated management of Lake Powell and Lake Mead due to a rapid and dramatic decline in reservoir elevations at the two reservoirs between 2000 and 2005. Reclamation responded by developing the 2007 Interim Guidelines through the National Environmental Policy Act process. The 2007 Interim Guidelines coordinate releases from Lake Powell based on elevation levels in Lake Mead. In general, the effect of the 2007 Guidelines is that a higher volume of water in Lake Powell will likely result in a higher release from the reservoir.² The 2007 Interim Guidelines are in place from 2008 through December 31, 2025.

2019 Drought Contingency Plans (DCPs)³

In 2014, as storage in Lake Powell and Lake Mead continued to decline and it was becoming clear that the 2007 Interim Guidelines were not sufficient to protect storage in Lake Powell and Lake Mead, the Upper Colorado River Commission (“UCRC”)⁴ passed a resolution Regarding Development of an Emergency Upper Basin Drought Contingency Plan. Among other things, the UCRC committed to develop a plan to use the CRSP Reservoirs (Flaming Gorge in Wyoming, the Aspinall Unit in Colorado, and Navajo Reservoir in New Mexico) if needed to protect critical elevations at Lake Powell and to explore the feasibility of a potential voluntary, temporary and compensated program (Demand Management) in the Upper Basin.⁵ Working together with the Department of the Interior, the Upper Division States developed the Upper

¹ The Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead (“2007 Guidelines”), available at

<https://www.usbr.gov/lc/region/programs/strategies/RecordofDecision.pdf>

² The Guidelines also established increasing reductions in Lower Basin water allocations based on elevation levels in Lake Mead² and created Intentionally Created Surplus (“ICS”) for the Lower Basin. ICS was intended to motivate the Lower Basin to conserve more water in Lake Mead to maintain elevation levels and allowed the Lower Basin to then use the water later.

³ <https://www.usbr.gov/dcp/finaldocs.html>

⁴ The UCRC is an interstate agency created by the Upper Colorado River Compact. It is made up of one governor’s appointee from each Upper Basin State and one federal presidential appointee. The UCRC has exclusive authority to administer all interstate elements of the Colorado River Compact and the Upper Colorado River Basin Compact on behalf of the Upper Division States. Although the UCRC has exclusive authority to determine the need for and extent of any Upper Basin curtailment for Colorado River Compact compliance purposes, the UCRC does not have authority to instruct the states how to meet any compact obligations within their respective boundaries. The Colorado State Engineer has exclusive statutory authority to make those determinations and administer water within Colorado in the event the UCRC finds Colorado has a compact curtailment obligation.

⁵ UCRC, *Resolution Regarding Development of an Emergency Upper Basin Drought Contingency Plan 3* (2014), http://www.ucrccommission.com/wp-content/uploads/2019/09/Upper_Basin_Drought_Contingency_Plan.pdf.

Basin Drought Contingency Plan (“DCP”), which includes the Drought Response Operations Agreement and the Demand Management Storage Agreement (“DMSA”).⁶

The DMSA charged the Upper Division States to investigate the feasibility of a program to reduce consumptive use in the Upper Basin on a voluntary, temporary, and compensated basis and to store up to 500,000 acre-feet of water in Lake Powell or the other CRSP Reservoirs for compact compliance purposes and at no charge. That water could then be released only at the direction of the Upper Division States through the UCRC in accordance with the Upper Basin Compact (1948). Any water stored as part of a Demand Management program would not be subject to release pursuant to the 2007 Guidelines.

In 2019, the seven Basin States agreed to the Upper and Lower Basin Drought Contingency Plans, and Congress enacted those plans and they became federal law the same year.⁷

It is not a foregone conclusion that a Demand Management program will be established. If a program were to be established, several requirements of the DMSA must be met first. Before an Upper Basin Demand Management Program can be put into place, the Upper Division States and the UCRC must investigate the feasibility of a Demand Management Program.⁸ If they wish to establish such a program, it requires every Upper Division State to agree through the UCRC on every one of the following Demand Management program items:

- (1) how to verify and account for the actual volume of conserved consumptive use;
- (2) how that conserved consumptive use can be protected and shepherded to the CRSP Reservoirs and how to account for conveyance losses along the way;
- (3) how and in what conditions to store and release any conserved consumptive use from the CRSP Reservoirs;
- (4) how the Upper Basin Demand Management program should be administered;
- (5) how to fund the program; and
- (6) that the program complies with federal law and the law of each Upper Division State, as required by the DMSA.⁹

In Colorado, the Colorado Water Conservation Board (“CWCB”) is the state agency authorized to consider and establish the state’s water policy, and it has a

⁶ See Agreement Concerning Colorado River Drought Contingency Management and Operations (“Companion Agreement”), Attachments A1 (Drought Response Operations Agreement) & A2 (DMSA), *available at* <https://www.usbr.gov/dcp/finaldocs.html>.

⁷ Colorado River Drought Contingency Plan Authorization Act, Pub. L. No. 116-14, 133 Stat. 850 (2019).

⁸ DMSA, § III.B.1.

⁹ DMSA III.B.1.f.

responsibility to evaluate and implement mechanisms for the effective management and wise administration of the Colorado River within Colorado. Among other authorities, it has the statutory authority and responsibility of the CWCB to:

- (1) devise and formulate methods, means, and plans for bringing about the greater utilization of the waters of the state¹⁰;
- (2) gather data and information looking toward greater utilization of the waters of the state¹¹;
- (3) cooperate with the other states and federal government for the purpose of bringing about the greater utilization of the waters of the state of Colorado¹²;
- (4) formulate and prepare drafts of state and federal legislation designed to assist in securing greater beneficial use and utilization of the water of the state¹³;
- (5) investigate and assist in formulating a response to the plans, purposes, procedures, requirements, law, proposed laws, or other activities of the federal government and other states which affect or might affect the use or development of water resources of this state¹⁴; and
- (6) foster the conservation of the water of the state by the promotion and implementation of sound measures to enhance water use efficiency in order to serve all the water needs of the state and to assure the availability of adequate supplies for future uses, and that necessary water services are provided at a reasonable cost.¹⁵

Because of the CWCB's unique role, in 2018, the CWCB joined with Colorado's Commissioner to the UCRC to support the Colorado River Basin Drought Contingency Plan. The CWCB also issued a Demand Management Policy Statement that adopted a policy to develop the state's position and approach on whether and how to develop any Upper Basin Demand Management Program that could potentially be implemented within Colorado.¹⁶

The CWCB Policy Statement also identified the strategy to develop the state's position and approach on a potential Demand Management Program which included as its first step convening a process to identify and evaluate the issues the state must address as part of any potential Demand Management Program to be considered in Colorado and the Upper Basin. This process has been underway since 2019 and

¹⁰ C.R.S. 37-60-106(1)(c).

¹¹ C.R.S. 37-60-106(1)(d).

¹² C.R.S. 37-60-106(1)(e).

¹³ C.R.S. 37-60-106(1)(g).

¹⁴ C.R.S. 37-60-106(1)(h).

¹⁵ C.R.S. 37-60-106(i)(r).

¹⁶ <https://dnrweblink.state.co.us/cwcb/0/edoc/209095/SUPPORTANDPOLICYSTATEMENTSFINAL11-15-18.pdf?searchid=a0210e79-2c01-40f7-beec-1f66486946ca>.

included an extensive stakeholder process that involved dozens of water experts from across Colorado who volunteered their time over two years to investigate the feasibility of a potential Demand Management Program in Colorado.

CWCB's Demand Management feasibility investigation is being conducted within the context of—and subject to—the terms and conditions of the interstate DMSA, including, but not limited to, the express understandings that any water conserved and stored would be for the limited purpose of compact compliance.

If the Upper Division States all agree on the required elements described above and decide through the UCRC to develop a Demand Management program, the DMSA establishes several requirements that must be a part of that program, including:

- (1) the conserved water must be Upper Colorado River system water or imported water;
- (2) the water must be conserved, stored, and released for the specific purpose of helping the Upper Basin States assure continued compliance with Article III of the Colorado River Compact;
- (3) the water must have been beneficially and consumptively used under valid water rights prior to becoming demand management program water; and
- (4) the water must have been physically available for diversion and otherwise beneficially and consumptively used if it were not used for demand management.¹⁷

Through the UCRC, the Upper Division States and the Secretary of Interior (“Secretary”) must then enter into agreements addressing each of the UCRC consensus items and each of the DMSA requirements listed above. The Lower Basin States must also be consulted about these agreements before the Upper Division States and the Secretary can finalize them. And critically, the UCRC and every individual Upper Division State must approve the program that will then become the Upper Basin Demand Management Program before any state can stand up a demand management program under the DMSA.

The DMSA and the 2007 Interim Guidelines both expire on December 31, 2025. If a program is established and water is stored before that date, then through 2057, this stored program water shall not be released or cause a different amount of water to be released from Lake Powell than would have otherwise been released in any year under the 2007 Interim Guidelines or whatever post-2026 operational rules are adopted thereafter.

¹⁷ DMSA, II.B.2.a.

Conclusion

This document addresses the concept of Demand Management, which is the mechanism available to the Upper Division States to determine whether it is feasible and advisable to develop an interstate program to conserve water to help ensure ongoing compliance with the 1922 Colorado River Compact. This document does not address intrastate tools designed to conserve water and build resiliency within the state, including but not limited to concepts identified in the Colorado Water Plan.