

## Energy Transition Water Planning Horizon & Colorado River Drought Assistance Opportunity

**Background:** During Colorado's 2023 legislative session, Senate Bill 23-295 passed the state legislature with near-unanimous support in the House and Senate and was signed by Governor Polis, creating the [Colorado River Drought Task Force](#). The purpose of the 17-member Task Force is to recommend programs to the Colorado legislature to address: (i) drought in the Colorado River Basin; and (ii) Colorado's interstate commitments related to the Colorado River and its tributaries.

In 2019 and 2020, the Colorado General Assembly passed carbon dioxide emissions reduction legislation, (e.g., § 25-7-105, C.R.S. (HB 19-1261); §40-2-125.5, C.R.S. (SB 19-236)), which now mandates an 80% reduction to carbon dioxide emissions by the electric utility sector by 2030 and a 100% reduction in statewide greenhouse gas emissions by 2050.

**Concept:** Electric Utilities affected by HB 19-1261 and SB 19-236, as well as supporting extractive industries (e.g. coal mines), propose to: (1) temporarily enact appropriate water rights planning horizons, similar to those available to municipalities, to preserve utility water rights through the energy transition planning period (2050), so that those water rights are available for development of new clean energy generation projects; and (2) beneficially use their water rights during the transition planning period in a manner that supports the Colorado's drought response initiatives.

### **Method:**

- (1) Modify statutory definitions in the 1969 Water Right Determination and Administration Act to provide water rights protection and planning flexibility for electric utilities and supporting extractive industries, which modifications would sunset in 2050.
- (2) Add new provisions to the instream flow temporary loan program (sunsetting in 2050) stating that, within water divisions 4, 5 and 6, renewable loans from electric utilities and supporting industries of absolute water rights for instream flow purposes:
  - a. are not limited to a period of use of one hundred twenty days.
  - b. may be used five out of five years for which only a single approval of the state engineer is required. The five-year period begins when the state engineer approves the loan. An applicant may reapply for and the state engineer may approve a renewable loan for five additional five-year periods.
  - c. may be used to preserve or improve the natural environment to a reasonable degree even if there is not a decreed instream flow water right held by the board.
  - d. There is a determination that a temporary instream flow loan is in the normal course of business and is not subject to Public Utility Commission approval.
  - e. The use of water rights for renewable loans during the transition period is permissive and will not limit the uses otherwise available to electric utilities or supporting industries during or after the transition period.

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