

The Colorado Engineer Adviser's Addendum to the 2021 Engineer Advisers' Report

April 8, 2021

At the 2021 Rio Grande Compact Commission (RGCC) Engineer Advisers' meeting held via videoconference on March 1-5, 2021, the Engineer Advisers did not reach consensus on the 2020 Rio Grande Compact (Compact) Accounting. The lack of consensus stems from the continuing disagreement regarding Colorado and New Mexico Credit Water that Reclamation released in 2011, the appropriate accounting of 2011 Colorado and New Mexico deliveries that were affected by Reclamation's release beyond the available Usable Water, and the directly relevant 2006 direction of the RGCC to Reclamation. There was no release of credit water by Reclamation in 2020 and the Engineer Advisers did reach agreement on the accounting of the 2020 streamflow numbers for the Colorado and New Mexico gaging stations. However, because of the lack of agreement on the effects of the releases of credit water in previous years, the amount of the accrued credit of Colorado and of New Mexico could not be agreed upon or finalized for 2020. Additionally, the unauthorized release of Colorado and New Mexico credit water in 2011 has caused a disagreement regarding the dates of Article VII timing under the Compact in 2020.

Therefore, the Colorado Engineer Adviser presents for the Commission's consideration the following method of accounting for the 2020 calendar year Compact Accounting:

Method 2: Colorado and New Mexico Credit Water was released during 2011, and accounted as being reduced in the month it was released, as in a relinquishment.

Method 2:

With this Method, the Credit Water will have been reduced for evaporation at the end of the calendar year – in accordance with Article VI of the Compact and the 2006 direction of the RGCC to Reclamation. The Colorado Engineer Adviser carried forward the end of 2019 accounting results for Method 2 used through the 2020 calendar year. This method complies with the last paragraph of Article VI of the Compact, wherein Credit Water in Elephant Butte Reservoir is “reduced annually to compensate for evaporation losses in the proportion that such credits (or debits) bore to the total amount of water...during the year.”

Under this method, Reclamation released accrued Credit Water from Elephant Butte Reservoir during the summer of 2011 unilaterally and without the permission of Colorado or New Mexico. This unauthorized release coupled with normal compact accounting resulted in 2020 Accrued Credits for Colorado that are less than those calculated in the Texas accounting method (Method 1). Method 2 results in Colorado having an Accrued Credit for the end of year 2020 of 1,200 acre-feet.

The difference in Colorado's Compact compliance status between the Texas method and Method 2 (minus 100 acre-feet) illustrates the effect of Reclamation's 2011 release of Credit Water on Colorado Compact compliance carried forward through 2020. Unlike an authorized relinquishment, however, Colorado did not receive the Article VII benefit of being able to store a like amount of water to that released by Reclamation in 2011 in post-compact reservoirs in the future when Article VII of the Compact is in effect.

Utilizing Method 2 accounting, the date that Article VII restrictions were lifted in 2020 was June 19. Method 1 accounting has the Article VII restrictions being lifted on June 19 also.

Summary

The Colorado Engineer Adviser believes that the Texas method (Method 1) of accounting as put forth in the Texas addendum contravenes the last unnumbered paragraph of Article VI of the Compact and the unanimous direction of the Commission to Reclamation in 2006. Therefore, the Texas method is not acceptable to the Colorado Engineer Adviser.

No after-the-fact accounting can address the primary issues that occurred in 2011 when Reclamation made its unauthorized releases of accrued Credit Water, which are:

- 1) Colorado and New Mexico have sole authority to decide the disposition of any of their respective accrued Credit Water; and
- 2) Reclamation's actions denied Colorado and New Mexico the benefits associated with relinquishments or other negotiated solutions under the Compact and eliminated Texas' incentive to negotiate the terms of a relinquishment or other negotiated solution during drought times.

The method proposed above is a suggestion for the Commission's consideration. The Colorado Engineer Adviser recognizes that no accounting method may be approved without the unanimous approval of the Commission, and that any accounting method must not violate the express terms of the Compact.