

Colorado Activities

**Four States Irrigation Council
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Kevin Rein, P.E.
Division of Water Resources
State Engineer, Director



COLORADO

Division of Water Resources

Department of Natural Resources

Current Activities

- Yampa river Basin Measurement Rules
- Colorado River Compact Administration
- SB-048 Anti-Speculation Report

Measurement Authority

- Statutory Authority (section 37-84-112, C.R.S.)
 - “The owners (of ditches, etc.)...shall erect where necessary...a suitable and proper headgate...to control the water...and proper measuring flumes, weirs, and devices...”
 - Understand “...where necessary...”

Why Measurement?

- First, why measurement at all?
 - Administration
 - Intrastate Administration
 - Compact Administration
 - Data
 - Value of the water right
 - Compact obligation

Next, Why Measurement Rules?

- Manage the need ahead of time
 - Recognize all scenarios
 - Plan for options and alternatives
 - Technical and administrative guidance
 - Stakeholder involvement
 - Efficient implementation

Colorado River

(and its tributaries in Colorado)

- *Drought*
- *Over-appropriation*
- *Colorado River Compact*
- *Upper Colorado River Compact*
- *Compact Compliance Administration*
- *Drought Contingency Plan*
- *Demand Management*
- *Lake levels*
- *Drought Response Operations Agreement*
- ...



Colorado River (SEO Interest) (and its tributaries in Colorado)

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- *Compact Compliance Administration*
 - *Colorado River Compact*
 - *Upper Colorado River Compact*
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Probability of need to take action, Compact Administration

Year	Annual Lee Ferry Flow (ac-ft)	Ten-Year Total (ac-ft)
2001	8,361,000	101,872,000
2002	8,347,000	102,197,000
2003	8,372,000	102,432,000
2004	8,348,000	102,475,000
2005	8,395,000	101,628,000
2006	8,507,000	98,603,000
2007	8,421,000	93,150,000
2008	9,180,000	88,890,000
2009	8,406,000	85,866,000
2010	8,437,000	84,774,000
2011	12,753,000	89,166,000
2012	9,542,000	90,361,000
2013	8,289,000	90,277,000
2014	7,590,000	89,519,000
2015	9,157,000	90,282,000
2016	9,138,000	90,913,000
2017	9,170,000	91,661,000
2018	9,171,000	91,653,000
2019	9,264,000	92,511,000
2020	8,436,000	92,509,000

Remember the “Curtailment may be necessary” standard.

Outlook of the need to take action, Compact Administration

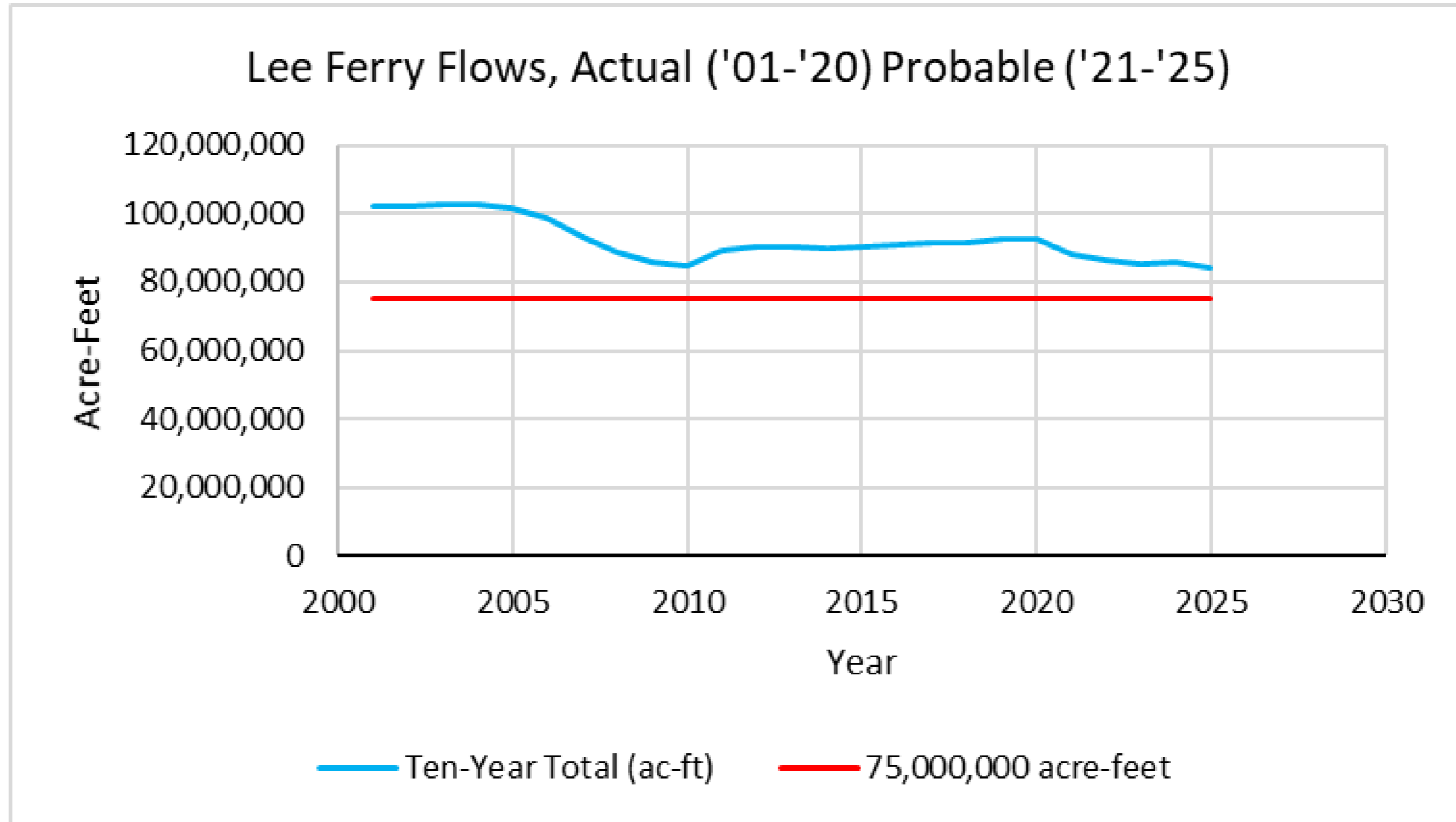
- 2017-2020 Actual Totals
- 2021-2022; Current projection, October 2020 24-Month Study*
- 2023-2025; Conservative SEO assumption, for planning only = 7,480,000 acre-feet*
- Acknowledge Mexico “obligation”

* Consider 150,000 ac-ft gain in river, Powell to Lee Ferry

- Sources:
 - 72nd Annual Report of the UCRC
 - USBR 24-Month Study (May, 2021)
 - '07 Guidelines

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2017	9,170,000	91,661,000
2018	9,171,000	91,653,000
2019	9,264,000	92,511,000
2020	8,436,000	92,509,000
2021	8,380,000	88,137,000
2022	7,630,000	86,225,000
2023	7,630,000	85,566,000
2024	7,630,000	85,606,000
2025	7,630,000	84,079,000

Outlook of the need to take action, Compact Administration



What Can Be Done Now?

(What *Should* Be Done Now?)

- Plan for Curtailment?
 - Can we be more sophisticated, more thoughtful?

What Can Be Done Now?

(What *Should* Be Done Now?)

- What do the Rules need to address?
 - Determine vulnerabilities
 - Determine strategies



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Division of Water Resources

Department of Natural Resources

SB20-048

Bill Title

“CONCERNING A STUDY TO
CONSIDER THE STRENGTHENING OF
THE PROHIBITION ON SPECULATIVE
APPROPRIATIONS OF WATER.”



SB20-048

Overview

- Impetus?
- What is the concern?
- Can anything be done?
- Should anything be done?



Main Provisions of SB-048

- Section 37-98-103(8)(a), C.R.S.:
 - THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF NATURAL RESOURCES SHALL CONVENE A WORK GROUP DURING THE 2020 INTERIM TO EXPLORE WAYS TO STRENGTHEN CURRENT WATER ANTI-SPECULATION LAW.
 - THE DEPARTMENT AND THE ATTORNEY GENERAL SHALL SUPPORT THE EFFORTS OF THE WORK GROUP.



Main Provisions of SB-048

- Stakeholders
 - Agriculture (3)
 - Environmental/Recreation (2)
 - Private attorneys - different emphasis (4)
 - Water providers (2)



Background

- How did the concept originate?
 - Events
 - Colorado's existing Anti-Speculation Doctrine
 - Constitution
 - State
 - Case law
 - Misalignment of events and the Anti-Speculation Doctrine



More Background

- Speculation
 - Beneficial use, can and will (Speculation; Colorado's "Anti-Speculation Doctrine")
 - Strength of current law?
 - Profit-driven activities (speculation)
 - Need for new law?
 - What are the outcomes?
 - What are the consequences?



Process/Approach

- Speculation
 - Beneficial use, can and will (Speculation; Colorado's "Anti-Speculation Doctrine")
 - Strength of current law?
 - Profit-driven activities (speculation)
 - Need for new law? What are the consequences?



Report

- Important Points in the Report
- Findings
- Concepts
- Speculation
 - Beneficial use, can and will (Speculation; Colorado's "Anti-Speculation Doctrine")
 - Strength of current law?
 - Profit-driven activities (speculation)
 - Need for new law? What are the consequences?



Report

- Important Points in the Report
 - Legal analysis
 - Speculation
 - “Traditional” versus “Investment” Water Speculation
 - Common Values
 - Coloradans value water for its beneficial use. Water should not be traded as a commodity for profit.
 - Coloradans value property rights in the beneficial use of water and the protection of these property rights.



Report

- Risks and outcomes
 - Investor holds large portfolio of water rights in a region, influences the market
 - Investor has the resources to purchase water right, drives the cost up
 - Large-scale dry-up
 - Profit drives appropriations of water; subsequent, non-investment-oriented appropriation



Report

- Brainstormed ideas
 - Concepts for the committee



Report

- Concepts
 - Concept E: Prohibit non-diversion.
 - Concept G: Right of first refusal
 - Concept H: Reduce the agricultural tax benefit for lands from which water is removed.
 - Concept I: Require water to be tied to the land

Report

- **Concepts**
 - Concept J: Prohibit Investment Water Speculation
 - Concept K: Local governments to police Investment Water Speculation
 - Concept L: Tax the profit
 - Concept P: Establish maximum rate of water right price increase

WRRC Bill (“Bill B”)

- Components
 - What is “Investment Water Speculation”
 - Intent to profit in a subsequent transaction
 - Payment for nonuse
 - Ownership of a threshold percentage of ditch shares
 - Presumption of Investment Water Speculation
 - Overcome presumption with evidence
 - Ditch company sets threshold
 - State Engineer investigates (rulemaking)
 - Fine up to \$10,000

