

Written Statement of
Karen Kwon, Colorado Assistant Attorney General,
on behalf of
The States of Colorado, New Mexico, Utah, and Wyoming, and
The Upper Colorado River Commission to the
Subcommittee on National Parks, Forests and Public Lands and
Subcommittee on Water and Power
United States House of Representatives
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Shrine of Ages, Grand Canyon, AZ

“ON THE EDGE: CHALLENGES FACING GRAND CANYON NATIONAL PARK”

Good morning Mr. Chairman, Madam Chairwoman, and Subcommittee members. My name is Karen Kwon. I am an Assistant Attorney General for the State of Colorado. I specialize in interstate matters involving the Colorado River. In this capacity, I provide legal counsel to agencies within the Colorado Department of Natural Resources, Colorado’s representative to the 7-Basin States and Colorado’s Commissioner to the Upper Colorado River Commission. I am also a legal advisor to the Upper Colorado River Commission, the interstate compact administrative agency created by the Upper Colorado River Basin Compact of 1948. I am testifying on behalf of the States of Colorado, New Mexico, Utah, and Wyoming, and also the Upper Colorado River Commission.

I am pleased to appear before the Subcommittees today to provide, from an Upper Basin perspective, the contextual framework within which conditions at the Grand Canyon and effects of operations of Glen Canyon Dam should be evaluated. Specifically, my testimony focuses on the priorities and processes recognized by Congress and the Department of the Interior to manage the Colorado River as an essential resource for the Grand Canyon National Park, power generation, and the 30 million people who depend on the Colorado River as a water supply within the southwestern United States and Mexico.

There is no question that the Grand Canyon and its natural splendor are important to the Upper Colorado River Basin. So too is the protection of the recreational, environmental and archeological heritage of Lakes Powell, Mead and the Colorado River corridor in between those important reservoirs. It is because of these values that we have been active in developing programs such as the Upper Colorado River Endangered Fish Recovery Program and San Juan River Basin Recovery Implementation Program for endangered fish in the upper basin and supporting programs such as the Multi-Species Conservation Program in the lower basin. We were also instrumental in negotiating and supporting the 1992 Grand Canyon Protection Act (“GCPA”), and have been active supporters of implementing adaptive management programs through the Adaptive Management Work Group process for the operation of Glen Canyon Dam under that Act. It is important, however, to understand how these and other programs fit within the operational framework of the many agreements, laws, compacts, and international water treaty developed for the Colorado River, and why that framework is critical to sustaining the water supplies in the American southwest.

Colorado River management is based on a complex series of laws recognized and passed by Congress commonly referred to as the “Law of the River.” Born out of necessity to provide reliable

water supplies throughout the Colorado River basin, the Law of the River includes interstate compacts, a U.S. Supreme Court decree, and a treaty with Mexico as well as various Acts passed by Congress to accommodate a variety of purposes throughout the basin. Together, these laws operate to balance competing demands for the Colorado River resource to provide municipal water supplies to approximately 30 million people in seven states and the Republic of Mexico, irrigate over three million acres of land, produce over 11 billion kilowatt hours of hydroelectric power, and sustain environmental resources throughout the almost 250,000 square mile basin.

The 1922 Colorado River Compact is the foundation of the Law of the River. This Compact apportions water between the Upper and Lower Basins and establishes an Upper Basin requirement to not deplete flows at Lee Ferry below 75 million-acre feet (“MAF”) over a 10-year period. Because of the erratic nature of the Colorado River, Compact negotiators knew the Upper Basin could not meet its compact obligations without comprehensive development of storage reservoirs throughout the basin.

Congress agreed and in 1956 passed the Colorado River Storage Project Act to authorize construction and operation of storage reservoirs in the Upper Basin. The cornerstone of this system is Lake Powell, supported by units at Flaming Gorge, Aspinall and Navajo. The coordinated operation of these reservoirs provide for long-term storage of water to assure the Lower Basin receives its compact share of the Colorado River without impairing development of consumptive uses in the Upper Basin. They also provide for hydroelectric power generation, the sale of which repays the cost of the storage features and funds the Upper Colorado River Basin Fund (“Basin Fund”) to finance irrigation projects and environmental programs, including the Upper Colorado and San Juan Recovery Implementation Programs and the Glen Canyon Dam Adaptive Management Program. It is these projects and programs that are impacted by modification of dam operations, and, as a result, call for mitigation to be afforded.

Subsequently, in 1968 Congress passed the Colorado River Basin Project Act to provide for, among other things, the comprehensive operation of Lake Powell and other major facilities in conjunction with Lake Mead to effectuate the purposes and intent of the Colorado River Compact. To comply with this requirement, the Secretary of the Interior (“Secretary”) has implemented the 1970 Coordinated Long-Range Operating Criteria (“LROC”), the 2001 Interim Surplus Guidelines and the 2007 Interim Guidelines for Lower Basin Shortages and Coordinated Operation of Lake Powell and Lake Mead (“Interim Guidelines”).

The Upper Division States view these elements of the Law of the River as critical to planning for and developing our compact apportionment. Currently, we depend on the 2007 Interim Guidelines to provide much needed security in utilizing Colorado River water supplies under drought and low reservoir conditions. From a reservoir management perspective, these Guidelines allow the burden of low reservoir conditions to be shared equally between the Upper and Lower Basins by clarifying the amount of annual release volumes that the Secretary may authorize at Glen Canyon Dam. Specifically, the Guidelines link annual release determinations at Glen Canyon Dam to specific trigger elevations at both Lake Powell and Lake Mead. Depending on the reservoir levels in both, the Guidelines provide for a wide range of possible annual volume releases from Glen Canyon Dam in any given water year.

Without the flexibility to regulate the river according to this framework, the Upper Division States risk massive curtailment of water use, significant loss of a power generation, and a reduced ability to finance irrigation and environmental mitigation in the Colorado River Basin. Changes to Glen

Canyon Dam operations to accommodate resources at the Grand Canyon, therefore, necessarily implicate the rights and interests of the Upper Division States. For this reason, the Upper Division States urge the Subcommittees to bear in mind the priorities that Congress has affirmed for using the Colorado River resource as well as the benefits that the collaborative relationship between the Federal Government and Basin States have afforded to the Colorado River system as a whole. Critical in this regard is the GCPA, the provisions of which directly affect the interests of the States. Indeed, all seven Basin States were involved in the development of this legislation.

The GCPA directs that operations of the power plant at Glen Canyon Dam take into account downstream impacts. However, Section 1802(b) of the Act also requires that dam operations for downstream purposes recognize, and be subject to, elements of the Law of the River including the Colorado River Compact and provisions of the Colorado River Storage Project Act and Colorado River Basin Project Act. Furthermore, the Senate Energy Committee Report on the GCPA recognizes that annual and monthly reservoir operations at Glen Canyon Dam are based on water supply considerations, water delivery requirements, and the avoidance of anticipated spills from Lake Powell as established under the LROC pursuant to the Law of the River. It also acknowledges that changes to operations at Glen Canyon Dam in accordance with the GCPA should be made within the constraints of annual and monthly release volumes, and focus primarily on the hourly, daily and weekly fluctuations in releases to accommodate power operations. Through this guidance, Congress makes clear that the water allocation functions of the Colorado River reservoir system are the first priority.

The GCPA also requires the Secretary to complete an environmental impact statement (“EIS”), in accordance with the National Environmental Policy Act, to identify future operations for Glen Canyon Dam. The Secretary’s Record of Decision for the Glen Canyon Dam EIS concluded that, because of scientific uncertainties associated with dam operations, the Department of Interior should adjust dam operations pursuant to a process known as “adaptive management.” The Secretary, therefore, initiated the Glen Canyon Dam Adaptive Management Program (“AMP”) and established a federal advisory committee known as the Adaptive Management Work Group (“AMWG”) to provide input from stakeholders regarding modifications to Glen Canyon Dam operations.

Each Basin State is a member of the AMWG, which has become a key component of the Secretary’s GCPA environmental compliance responsibilities and an important method of insuring the Colorado River’s environmental health. Other members of this committee include cooperating federal agencies, environmental groups, recreation interests, and contractors for federal power from Glen Canyon Dam. The Secretary brings these varied interests together to reach a “consensus on how to protect downstream resources and strike a wise balance on river operations.” The process includes on-going study to determine the underlying reasons for the trends observed in endangered fish populations and to alter dam operations or pursue other measures, as sufficient data become available to make sound choices about actions necessary and feasible to benefit the fish. The Basin States actively participate in the AMP via the AMWG to finance, develop and implement useful environmental programs that coexist with rather than undermine their interests on the River. In this manner, the Upper Division States believe AMWG has been and remains an appropriate mechanism for continuing the consultation necessary to meet our respective stewardship obligations on the Colorado River.

In addition to this formal consultation, the Department of the Interior has developed a collaborative relationship with the Basin States to address new Colorado River issues as they arise.

Over the past 20 years, this relationship has developed into a model for basin wide water management throughout the nation. It has resulted in innovative and flexible agreements and programs that not only provide important tools for adapting to challenges facing the Colorado River system, but also avoid interstate disputes both now and in the future. The most recent evidence of this is reflected in the 2007 Interim Guidelines in which the Secretary collaborated with the Basin States to remove political considerations from managing the Colorado River system under drought and low reservoir conditions to offer a secure foundation upon which to build important initiatives necessary to achieve greater flexibility in use and development of the Colorado River resource.

The Secretary has further solidified this collaborative relationship by joining in the Agreement executed among the Basin States as part of the Interim Guideline process. The Agreement requires consultation between the Secretary and States over any disagreement concerning Colorado River legal matters as a prerequisite to litigation. The Secretary memorialized the importance of this Agreement in the Record of Decision for the Interim Guidelines which provides:

Importantly for the long-term management of the Colorado River, adoption of this decision activates a legal agreement among the Basin States that contains a critically important provision: the Basin States have agreed to mandatory consultation provisions to address future controversies on the Colorado River through consultation and negotiation, as a requirement, before resorting to litigation. With respect to the various interests, positions and views of each of the seven Basin States, this provision adds an important new element to the modern evolution of the legal framework for prudent management of the Colorado River.

Finally, in keeping with this relationship, Interior and the Basin States are currently collaborating to perform the "Colorado River Basin Water Supply and Demand Study" under the Bureau of Reclamation's Basin Study Program. This comprehensive study is being conducted between January 2010 and January 2012 to identify current and future water supply and demand imbalances in the Basin, assess the risks to basin resources, and develop and analyze adaptation and mitigation strategies to resolve any recognized imbalances for the benefit of all Colorado River stakeholders.

The Colorado River is undoubtedly the lifeline for the entire American Southwest. It not only sustains the resources at the Grand Canyon, but also economies and uses from Denver, Colorado to the Colorado River Delta in Mexico. Simply put, on behalf of the Upper Division States and the Upper Colorado River Commission, I urge the Subcommittee members to not evaluate conditions at the Grand Canyon National Park or consider operations at Glen Canyon Dam in a vacuum. Rather, we encourage you to examine these issues in light of the important rights and priorities established under the Law of the River and with an understanding of the collaborative efforts currently used to promote flexible water management throughout the Colorado River basin. For this reason, we request that the Subcommittees here today preserve the existing operational framework for managing the Colorado River and promote the on-going collaboration among the Colorado River stakeholders to develop far-reaching programs capable of addressing the many and varied resource issues facing us today.

We appreciate and thank you for the opportunity to be part of this proceeding today. I will be happy to respond to any questions you may have for me at this time.