Testimony of Bennett Raley

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Management of the Colorado River

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My name is Bennett Raley. I am Assistant Secretary of the Interior for Water and Science. I am pleased to be here representing the Department of the Interior and to offer some background and perspective on ongoing Colorado River management activities.

The Secretary of the Interior (Secretary) is mandated under Federal law and the Supreme Court Decision and Decree in *Arizona v. California* to serve as water master for the Lower Colorado River. In that role the Department is responsible for administering the Colorado River water apportionments in the three states of California, Arizona and Nevada as well as the individual entitlements of users within those states. The Secretary also consults with all seven Colorado River Basin States[(1)] regarding issues that effect the entire Colorado River.

Background - The history of the Colorado River is filled with controversy and conflict dating back to the early 1920's, when the allocation of apportionments between the Upper and Lower Basins was developed. The need for the 1922 Colorado River Compact was created by California's early and significant development utilizing the river's water. The passage of the 1928 Boulder Canyon Project Act, which authorized the construction of Hoover Dam and the All American Canal in California and established the allocation of Lower Basin apportionments, occurred in spite of disagreement between Arizona and California. Congress allocated the water without the concurrence of the two states, giving California 4.4 million acre-feet of water, the largest apportionment of all seven Colorado River basin states. To address the concerns of the other states, Congress required that, before construction of Hoover Dam could be initiated, the state of California must adopt a law limiting its use to the allocated 4.4 million acre-feet (maf). In 1930, with the passage of the California Limitation Act, the California Legislature complied. A contract among the California entities, the "Seven Party Agreement," was subsequently developed which allocated the 4.4 maf among water users within the State.

During the 1940's and 50's California developed facilities allowing the utilization of more than its 4.4 maf apportionment and quickly began full use of its share of the river, and more. During that same time, Arizona began developing its own plans for utilization of its 2.8 maf apportionment. However, California effectively prevented Arizona from implementing its plans, arguing that development and use of water from Colorado River tributaries within Arizona counted against its apportionment and limited significant additional development and diversion from the mainstream by Arizona.

In 1951, Arizona filed suit in the U.S. Supreme Court, asking the court to clarify and support Arizona's apportionment. After 12 years of fact finding by a Special Master and arguments by the two states, the Supreme Court issued a decision in 1963 affirming Arizona's 2.8 maf apportionment. In 1964, the court further affirmed the decision by issuing a decree that, among other things, enjoined the Secretary from delivering water in amounts outside the decreed entitlements. Recognizing that time would be required for Arizona to develop its full use, the court allowed California to continue to use amounts greater than its apportionment as long as the other lower basin states were not utilizing their full entitlements, or if surplus water was determined to be available by the Secretary.

Despite Arizona's victory in the Supreme Court, California was still able to extract a final concession from Arizona. In exchange for California's support of Congressional authorization for the Central Arizona Project (CAP), Arizona conceded to allow its CAP water to have a subservient priority to California water use during times of shortage on the Colorado River system. This was a significant concession since CAP water use represents more than half -- approximately 1.5 maf of its 2.8 maf - of Arizona's apportionment.

California's Internal Allocation - It is also important to provide some background on the historical relationship among the Colorado River water users within California. The relationship that is internal to California's water allocation is defined by the Seven Party Agreement and related documents and is as complicated as the relationship among all the seven basin states. The documents that memorialized the Seven Party Agreement were executed in 1931 by the California Colorado River water users and the Secretary. In summary, this agreement made the southern California urban area served by the Metropolitan Water District (MWD), the lowest priority recipient within the State and gave higher priority to agricultural use. Further, it provided for a tiered entitlement system among the agricultural users with priorities for unlimited use by three of four irrigation districts. In addition, Coachella Valley Water District (CVWD), has an entitlement for any unused water within a 3.85 maf irrigation limit. These relative priorities have placed both MWD and CVWD at odds with the other California contractors, particularly the Imperial Irrigation District (IID), the largest agricultural water user not only in California but in the entire river system.

Following the Supreme Court Decree in 1964, California continued to utilize more than its entitlement, relying on the unused apportionment of other lower basin states as provided for in the Decree. In the early 1990's, however, Arizona and Nevada began approaching their full entitlement and it became apparent that California would soon have to begin curtailing its use. The realization that California reductions would soon be required increased the tension among the California contractors as well as with the other basin states. Given the California entitlement system, most of the reductions in use, as much as 800,000 acre-feet, would have to be borne by urban users given their low priority. With the large population served in this region of the state along with anticipated continued significant growth, coupled with the limited water supplies from other sources, there was significant concern over California's ability to comply with the mandates of the Decree.

California began pressing the other basin states and the Secretary to utilize another section of the Decree that allows for a declaration of surplus when hydrologic conditions permit. Such a declaration would essentially allow California's continued utilization of more than its entitlement, as much as 5.2 maf in some years. Because of the contentious history and California's central role in that conflict, the other basin states were less than enthusiastic about the proposal.

By the mid 1990's, with the encouragement of the other basin states and the Secretary, the California parties acknowledged the need to limit their water use and ~~to~~ began serious efforts to develop a plan to achieve the reduction. Fortunately, wet conditions in the basin resulted in full reservoirs and an abundance of water,

thereby allowing the Secretary to declare surpluses and to continue to meet all of California's water needs while this plan was being developed.

I emphasize this history in my testimony because it underscores the contentious relationship that has existed between California and the other states as well as internally among the California water users. It also facilitates an understanding of the perspectives of the various parties. All of the other basin states have a long history of concern about California's use of the system and have a strong desire to protect their entitlements established under the Colorado River Compact, the Boulder Canyon Act, the Upper Colorado River Basin Compact, and the Supreme Court Decree.

Negotiated Solution Among California's Colorado River Water Users - Efforts over the last five years have produced a negotiated settlement of how they will reduce their use of Colorado River water down to their 4.4 allocation. The California entities have developed a plan to do this in a manner that does not place the burden of reduction on the urban area. Agriculture to urban water transfers, on a willing buyer/willing seller basis, will allow the burden of reductions to be accommodated by irrigation water users. These transactions have been facilitated through a Quantification Settlement Agreement (QSA), which modifies the Seven Party Agreement by quantifying the entitlements of both Coachella Valley Water District (CVWD) and Imperial Irrigation District (IID) for a period of up to 75 years. The details of the settlement have been worked out and most of the documents are ready for execution.

Recognizing California's significant efforts and the fact that the reductions will require some time to implement, the Secretary adopted a plan, based on a consensus proposal from the seven basin states, to allow California to continue to use surplus water to satisfy the needs of the southern California urban areas for a 15 year period. The Secretary formally adopted surplus guidelines for operation of the river system, with the signing of a final record of decision in January, 2001.

Deadlines for Final Implementation - The Record of Decision for the Colorado River interim Surplus Guidelines includes specific benchmark dates and quantities by which California must reduce its use of Colorado River water over the next 15 years. The first benchmark must be achieved in 2003. California's failure to meet the required benchmarks would result in a reduction of available surplus waters. The Guidelines anticipate that execution of the QSA (and its related documents) among IID, CVWD, MWD, and the San Diego County Water Authority by December 31, 2002 will allow the required benchmarks to be met. I can not emphasize enough the importance of these deadlines. While the other basin states and the Secretary are impressed with California's efforts, a "trust but verify" process has been established. Therefore, it is essential that these required actions take place in accordance with the QSA. If California does not meet the benchmark quantities, the recently developed trust will be significantly undermined and would likely result in a significant reduction in available Colorado River waters under the terms of the Surplus Guidelines. Two dry years (roughly 60 percent of normal) in the Colorado River Basin have resulted in significantly decreased reservoir storage. Without demonstrated progress by California, the provisions of the surplus guidelines will require that California live without the plentiful surplus waters that have been available to this date.

Water Transfers and Impact on the Salton Sea - The biggest issue affecting California's successful implementation of the water transfers associated with the plan, is achieving both state and Federal Endangered Species Act compliance. While significant progress has been made in this arena, addressing potential impacts that the water transfers will have on the Salton Sea has been difficult. Currently, IID is working with the Fish and Wildlife Service to prepare a Habitat Conservation Plan (HCP) to address the impacts that the water transfers may have on species both within the District and at the Salton Sea. An

agreement in concept to address species within the District boundaries is nearly completed. However, reaching an agreement on measures to mitigate the effects of the water transfers on the Salton Sea has been much more difficult.

IID and the other California parties (CVWD, MWD, and SDCWA) have sought both State and Federal legislation to provide relief from the Endangered Species Act and California Endangered Species Act for covered activities in the HCP area. Proposed Federal legislation (H.R. 2764) was introduced August 2, 2001, to provide, among other things, $60 million in appropriations for Salton Sea mitigation, and directs the Fish and Wildlife Service to issue the necessary "take" permits for the water transfers. Similarly, legislation introduced in the California Assembly (A.B. 1561), to provide compliance with the California Endangered Species Act, has been prepared and may be considered in January 2002 .

Another possible solution that the parties are exploring entails Reclamation entering into Section 7 consultation with the Fish and Wildlife Service on potential impacts of the water transfers on the Salton Sea. If that were to proceed, the scope of the HCP being prepared by IID, would be adjusted to address only covered activities within the IID service area. Further, the number of species to be addressed would be significantly reduced because it would be limited to Federally proposed or listed species. Two listed species, the Desert Pupfish and the Brown Pelican, have been identified at this time. The White Pelican, one of the most abundant fish-eating birds at the Salton Sea, would not be included in the Consultation. The discretionary Federal action being consulted on is the approval of the Implementation Agreement and the water transfers off the mainstem.

The Department continues to work with all interested parties to continue to identify other potential solutions for resolving this very complex issue. We are committed to seeking acceptable and scientifically sound solutions whether using existing administrative process or legislative initiatives.

Conclusion - The resulting framework (i.e, a California Plan coupled with Interim Surplus Guidelines) is truly historic. The negotiations have been intense and all the parties deserve praise for their ability to compromise and find workable solutions. The hurdles that have been overcome are much greater than the ones before us. To allow the process to fail now is untenable. We look forward to working with all of the involved parties to complete the process.

That concludes my statement. I would be pleased to answer any questions.

1. The basin states are: Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming

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