

Water and Power Subcommittee Field Hearing
Collaboration on the Colorado River: Lessons Learned to Meet Future Challenges
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Statement of Patricia Mulroy
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Madam Chairman, I am Patricia Mulroy, General Manager of the Southern Nevada Water Authority (SNWA), Las Vegas, Nevada. I am pleased to be here today to provide my views on the value and use of collaboration and cooperation in solving complex and challenging issues associated with managing the Colorado River management issues.

It is well known that the waters of the Colorado River are managed based on a body of documents referred to as the Law of the River, including federal and state statutes, interstate compacts, court decisions and decrees, and international treaty and contracts with the Secretary of the Interior (Interior). We also know now that the foundation of the Law of the River and the Colorado River Compact of 1922, were negotiated during a time when flows on the Colorado River were historically high. The Colorado River is significantly over allocated based on a comparison of the historic average flow and existing legal entitlements to Colorado River water. When coupled with projected growth, severe drought and predicted effects of climate change, this imbalance between supply and demand will likely become even greater in the future.

While federal and state legislation and litigation have played a necessary role in the management of the Colorado River, over the last few decades there has been a significant shift in the approach to resolving complex water issues. This shift involves using collaboration and cooperation among and between the Colorado River Basin States (Basin States) and the federal government before litigation. In particular, the Basin States and Interior – primarily through Reclamation – have developed a relationship that serves as a model for basin wide water management literally throughout the world. This relationship has resulted in innovative, flexible and far-reaching agreements, guidelines and programs that not only provide important tools for meeting the challenges of an era of uncertainty, but also avoid divisive and costly controversy and litigation.

As important, it is also a relationship that has developed and evolved over the course of changes in leadership within and between administrations at both the federal and state levels. For instance, Secretaries Babbitt, Norton and Kempthorne all exercised steady leadership and personal involvement that assured the necessary continuity and collaboration with the Basin States to successfully resolve challenging issues relating to management of Colorado River.

While these issues were completed during the first decade of this century, their origins and connections can be traced as far back as 1991. At that time, California was in a drought and requested additional surplus water from the Colorado River. Governor Romer of Colorado sent a letter to Governor Wilson of California offering a potential concept for resolution. The concept included providing California access to additional surplus water for a defined period contingent upon California developing a plan which enabled it to reduce its use of water to its basic apportionment of 4.4 million acre-feet in normal years.

This letter was instrumental in the initiation of a process among the Basin States and Interior. After nearly ten years of discussion and negotiation by these parties, Secretary Babbitt signed a Record of Decision in January 2001, putting into place Interim Surplus Guidelines that would allow California a period of time to reduce its use of Colorado River water. The Guidelines also included a provision for suspension at the end of 2002 if California water agencies did not execute a Quantification Settlement Agreement (QSA) and its related documents. The QSA was intended to provide the means to implement intrastate water transfer and supply programs that would allow California to live within the state's 4.4 million acre-foot basic annual apportionment of Colorado River water. The QSA also included commitments to address environmental restoration needs at the Salton Sea. After intense and complex negotiations, in early 2003 the California agencies delivered a QSA involving the investment of hundreds of millions of dollars to achieve that result. These achievements prompted some to declare "Peace on the River."

However, no sooner was the ink dry on these documents before record drought occurred on the Colorado River, causing levels of Lakes Powell and Mead to drop precipitously. In 2005, the upper basin asked the Secretary to release less than the minimum objective of 8.23 million acre-feet from Lake Powell, so as to preserve Powell's storage levels. The lower basin resisted this request. This situation resulted in a series of very difficult and contentious meetings between the states, with no agreement. Indeed, the states were on the verge of litigation. On May 2, 2005, Secretary Norton announced her intent to consult with the states on the "most appropriate processes and mechanisms" to develop: 1) shortage guidelines in the lower basin; and 2) "conjunctive management guidelines for Lake Powell and Lake Mead." Her stated goal was to have these guidelines in place by December 2007. The Secretary encouraged the states to reach an agreement on proposed operations and make a proposal.

After intense and extensive negotiations over an 18-month period, with technical assistance from Reclamation, the Basin States submitted proposed guidelines to the Secretary. In October 2007, Reclamation published the final environmental impact statement for Colorado River Interim Guidelines. In addition to the states' proposal, the FEIS analyzed an alternative called "Conservation Before Shortage" developed by several environmental organizations and a "Reservoir Storage Alternative" developed in large part by the Park Service as a cooperating agency.

In December 2007, Secretary Kempthorne executed a Record of Decision adopting Interim Guidelines for the operation of Lakes Powell and Mead through 2025 that cover four main areas:

- Circumstances under which the Secretary will declare shortages in the lower basin under the authority of the decree in *Arizona v. California*;
- Coordinated operation of Lakes Powell and Mead, and in particular the reservoir conditions that will dictate how much water is released from Lake Powell to Lake Mead;
- The institutional framework to allow the states of the lower basin to develop and store in Lake Mead intentionally created surplus (ICS) and non-system water; and
- Conditions under which the Secretary will declare surplus conditions in the lower basin under the authority of the decree in *Arizona v. California*.

The Secretary also joined in an agreement executed among the states. The Agreement contains provisions requiring consultations between the Secretary and the states over any disagreement concerning Colorado River legal matters before initiating litigation. The Record of Decision recognizes the significance of this Agreement:

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.

The establishment of the Interim Guidelines has allowed the states and various agencies to move forward with the creation of ICS, a critical tool to help meet the challenges of continued growth, drought and climate change. Through forbearance and delivery agreements, the states and Interior have already moved significantly forward in developing ICS and water banking mechanisms, including the Drop 2 Reservoir and a possible pilot run of the Yuma Desalting Plant.

Moreover, recognizing the importance of integrating Mexico into Colorado River operations and providing for the maintenance and enhancement of the riparian environment in Mexico, the Basin States are engaged in discussions with Mexico, through the auspices of the Departments of Interior and State and the International Boundary and Water Commission.

From the Basin States' perspective, one of the key principles in development of the Interim Guidelines was to remove uncertainty and political considerations from management of the Colorado River system. The Interim Guidelines thus offer a secure foundation on which to build the important initiatives necessary to achieve greater flexibility in the development and management of the Colorado River's water supply. The cooperation between the Basin States and the Federal Government has been the primary reason for the successful development of the many multi-agency programs.

While my remarks have focused on the use of collaboration and cooperation among and between the Basin States and Reclamation to solve water supply and demand issues, it is important to point out that many other important programs and initiatives within the Basin have found success with this approach.

Managing the Colorado River to help protect and benefit environmental resources has also relied on collaboration and cooperation. The Upper Colorado River Recovery Implementation Program, Grand Canyon Adaptive Management Program, San Juan Recovery Implementation Program, and Lower Colorado River Multi-Species Conservation Program all focus on conservation and/or recovery of listed and special interest species in the Colorado River Basin. All of these programs have included extensive negotiation, collaboration and cooperation among a diverse group of federal, non-governmental, state, and local stakeholders and interests.

Currently, the Basin States are working with the Reclamation and the International Boundary Water Commission to negotiate with the Country of Mexico on establishing a cooperative process between water users in the two countries to help manage the Colorado River. Included in this process are initiatives to allow Mexico to utilize U.S. reservoirs to store excess water when available and to then call for the water when needed; programs to foster restoration of the natural river environment on both sides of the border; and to reach agreement on voluntary drought management measures, including the sharing of shortages.

In the coming years the strength of the partnership among the Basin States and between the Basin States and the federal government is likely to be put to the test. In particular, as the level of Lake Mead continue to decline and shortages become both more imminent and possibly greater in magnitude, the Basin States will need to come together to forge a collaborative solution as they have done so often in the past or face the prospect of prolonged and costly litigation. History has shown that such a consensus based approach to solving problems on the Colorado River takes time. Given the concerns about the continued lower elevations in Lake Mead, I believe the States and the Secretary should begin discussions on what will happen to water deliveries if the Lake goes below shortage levels. These discussions must be led by the Secretary and the States with involvement from other stakeholders as appropriate.

In closing, the Colorado River Basin and areas it serves have extensive legislative, legal and contractual underpinnings to guide management. The key to meeting future challenges will be to rely on and strengthen the federal, state, local and stakeholder relationships to develop flexible and durable solutions associated with water supply, hydropower, recreation, environmental and other uses. Madam Chairman, we thank you and other members of this Subcommittee for your interest, support, and efforts.