

Committee on Resources

Witness Testimony

STATEMENT OF ROBERT S. LYNCH
CHAIRMAN OF THE BOARD
CENTRAL ARIZONA PROJECT ASSOCIATION
BEFORE THE HOUSE COMMITTEE ON RESOURCES
CONCERNING THE AMERICAN HERITAGE RIVERS INITIATIVE
AND H.R. 1842 TO TERMINATE FURTHER FUNDING THEREFOR
SEPTEMBER 24, 1997

Mr. Chairman, Members of the House Resources Committee, thank you for the opportunity to appear here today and testify on the American Heritage Rivers Initiative and H.R. 1842. I have the pleasure of serving as Chairman of the Board of the Central Arizona Project Association, an Arizona non-profit association formed in 1946 to promote authorization and then construction and operation of the Central Arizona Project. Our Association membership represents business, resource, local government and agricultural interests throughout the state interested in the continued success of the Central Arizona Project.

The Project itself consists of over 300 miles of canal system and a regulating reservoir that provides an average of 1.5 million acre-feet of water annually to roughly two-thirds of the population of the state, industries, agriculture and Indian communities in central Arizona. That quantity of water represents over half of the entitlement of the State of Arizona to water from the Colorado River and some 20% of the entitlement of the three Lower Basin states (Arizona, California and Nevada) to water from the Colorado River.

Our interest in the American Heritage Rivers Initiative stems from our interest in and support of the Central Arizona Project. We are concerned that implementing this Initiative could very well interfere with ongoing efforts to resolve problems in the Colorado River Basin that affect the Central Arizona Project and its water supply. Our concerns fall into three categories: participation, process and personnel.

PARTICIPATION

Both the President's Executive Order and the Council on Environmental Quality (CEQ) Federal Register notice imply some loose geographic standard for defining non-federal participation in this Initiative. The Executive Order talks about "communities along rivers", 62 Fed.Reg. 48443 at 48445 (September 15, 1997). The CEQ Federal Register notice talks about "communities surrounding designated rivers" and "River communities" and "People ... who live and work in the area ...", 62 Fed.Reg. 48860, 48862 (September 17, 1997). The Phoenix metropolitan area served by CAP is some 190 miles from the Colorado River. The Tucson metropolitan area is another 120 miles beyond that. CAP is a vital part of the water supplies of central Arizona but this Initiative apparently would not consider these vital interests part of the interests to which the interagency committee established by the Executive Order would listen concerning the Colorado River.

Similarly, Salt Lake City would have no voice in matters related to the Duchesne or Green Rivers, even though receiving water from the Central Utah Project. Denver and other east slope Colorado cities would

have no voice in the Colorado, the Green, the Yampa, the White, the Gunnison, etc. People in Albuquerque could voice opinions about the Rio Grande but not the San Juan. The Los Angeles metropolitan area would have nothing to say about the Lower Colorado River as this Initiative may impact it. Presumably national and regional environmental groups and other organizations also would be excluded from this process.

The point is that legitimate interests concerning rivers are not confined merely to those who live or work alongside them. Nor is proximity much of a test when, as is often the case in the West, no one lives or works alongside them. It appears that those who crafted this Initiative, while paying lip service to rural areas and Western communities, were primarily drawing on their personal experiences as residents of other parts of the country. In the West, legitimate interests regarding rivers are often at great distance from them. That does not render these interests any less legitimate nor any less important. The Initiative is seriously flawed in this respect.

PROCESS

We are very concerned about the processes outlined in the Executive Order and the CEQ program. The Executive Order mandates a consultation requirement that must precede federal agency action with regard to rivers designated under this program. There is no explanation in the Executive Order or in the CEQ program about how this gets done and how this consultation requirement relates to similar requirements in various laws affecting the same resources. For example, the 1992 Grand Canyon Protection Act contains some very specific directives from Congress about consultation. If the Colorado River between Glen Canyon Dam and Lake Mead were designated under this Initiative, would this consultation requirement add processes to those required by Congress? There is no requirement, according to the Fish and Wildlife Service, under Section 7 of the Endangered Species Act to consult with affected interests when the Service is consulting with another federal agency (or itself) as required by Section 7. If a river is designated under the Initiative, must the Fish and Wildlife Service now consult with affected interests before entering into consultation with another agency under Section 7? Must the Environmental Protection Agency add a consultation requirement pursuant to this Executive Order to permit processes under the Clean Water Act and other programs it administers?

We raise these issues because we have had some experience with the Colorado River and these programs. There is an ongoing recovery program in the Upper Colorado River related to four endangered fish. There is a program entered into for the Lower Colorado River between the United States on the one hand and the three Lower Basin states and other affected interests on the other covering over 100 species from Glen Canyon Dam to the southerly international border. If the Colorado or any portion of it were designated, would these processes be impacted by this new consultation requirement? Would the River Navigator or River Navigators designated assume a role not currently defined in Colorado River processes? Would the consultation requirements of the 1968 Colorado River Basin Project Act be affected?

Additionally, the CEQ Federal Register notice promises that obligations of federal agencies under the National Environmental Policy Act will not be disturbed by this Initiative (62 Fed.Reg. at 48866). Since the agencies in the next breath are being directed to provide programs and resources aimed at satisfying community interests in site-specific areas of a watercourse, it would seem that this program is creating a new class of federal actions requiring NEPA clearance separate and apart from existing programs. Will designation require such NEPA clearance before any federal help can be received after the designation? Who will pay the cost of that clearance?

PERSONNEL

Finally, we are concerned about the effects of implementing this new Initiative on federal personnel and the costs associated with that commitment. The Executive Order requires agencies to establish a method for field offices to assess the success of the Initiative and recommend changes. The Executive Order also mandates high-level participation by 12 departments and agencies, directs the agencies to do a number of assessments and inventories of programs, regulations, grants and other assistance and then requires them to reformulate those to fit this Initiative. That reads like a serious time commitment.

In turn, the CEQ program announces that federal field staff have been identified in each state to answer questions (62 Fed.Reg. at 48861). It provides for a River Navigator to be available for each designation. This person would be a federal employee. Other federal employees would have to be involved in distributing, receiving and processing nomination packets. A report for the panel of experts would have to be provided and staffing for the cabinet or sub-cabinet interagency task force would also have to be provided, as well as the members themselves.

All of this takes time. Presumably, the people involved in this program at the various agencies will be people with some knowledge and background about rivers and about the resources typically associated with them. People knowledgeable in the sciences, people active in cultural, archaeological, endangered species, water resources, power resources, wetlands, and environmental programs, etc., will have to be detailed to these tasks. We are concerned that doing so will pull them away from other important tasks that already take too much time to get accomplished. We are concerned that other coordination and permitting processes could suffer. Specifically, we are concerned that people already stretched to the limit will be drawn away from two critical Endangered Species Act programs: the Upper Basin Recovery Program and the Lower Colorado River Basin Multi-Species Conservation Plan. We are also concerned that, in a year of stressful hydrologic conditions, personnel of the Bureau of Reclamation may be diverted from critical tasks on the Colorado River to other areas because of designations that need to have knowledgeable people involved in them.

We are also concerned that costs associated with implementing this new program have not been addressed. Even if no new dollars are appropriated by Congress for grants, loans, construction funds, and the like, the personnel costs associated with implementing this program have to be borne somewhere. How will those costs be allocated? To what programs or projects will they be assigned? Will they be reimbursable by local sponsors of existing projects and programs? Is there a danger of significant cost shifting from costs already assigned pursuant to which Congress has already approved funding?

One thing is clear. There will be costs in both time and dollars associated with implementing this Initiative. Those costs are real and may be substantial. If the Initiative goes forward, those costs should be tracked and reported to Congress by each of the agencies involved. In the meantime, the public should be assured that existing projects and programs will not be hampered by this additional workload. Justice delayed is justice denied in the Executive Branch as well.

Before closing, we would be remiss if we did not congratulate Congressman Bob Schaffer for his efforts in having inserted in the CEQ Federal Register notice the savings language with regard to water and water rights. That had been and continues to be a matter of critical concern to us and to many others in the West. We remain concerned, however, that the focus of designation pursuant to this Initiative on a particular watercourse will concentrate interest in applying other regulatory programs to those water resources in a manner that could create the same problems this savings language seeks to avoid. If Congress is providing no additional money beyond salaries and administration for this program, what the agencies are left with is

a command from the President to go forward and only existing tools to use. The federal tools used on rivers are typically the Endangered Species Act, the Clean Water Act, the Safe Drinking Water Act and similar laws with federal enforcement programs and permit programs. The river community congratulating itself about its designation may find that the "help" it is getting from the federal government comes in the form of increased demands for changes in water uses. Concentrated examination under existing regulatory programs of that river or river segment may generate local costs, rather than local benefits.

CONCLUSION

Having made a sincere effort to review these documents and understand their intent, we are unfortunately left confused. We do not see how CAP interests can participate in, let alone be enhanced by, this new program. We cannot tell how the requirements of this new program mesh with existing requirements that affect CAP interests and the interests of others similarly situated. We cannot ascertain how the costs of this new program and the time burdens associated with it will be allocated and what barriers to accomplishing tasks under other programs will be created.

This new program is uncomfortably vague. We would recommend that this program be set aside, at least for the moment. Perhaps CEQ could enter into another, more inclusive, round of discussions with interested groups and parties around the country and answer the questions that have been raised such as those we raise here. Failing interest in doing that, regretfully we would recommend that Congress withhold funding for any efforts under this Initiative until it can be clarified as to its purpose and impacts.

Thank you very much for the opportunity to appear here today and testify on this important subject.

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