S. HRG. 116–291

THE COLORADO RIVER DROUGHT CONTINGENCY PLAN

HEARING

BEFORE THE

SUBCOMMITTEE ON
WATER AND POWER

OF THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

MARCH 27, 2019

Printed for the use of the
Committee on Energy and Natural Resources

Available via the World Wide Web: http://www.govinfo.gov

U.S. GOVERNMENT PUBLISHING OFFICE
36–260 WASHINGTON : 2020

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THE COLORADO RIVER DROUGHT CONTINGENCY PLAN

WEDNESDAY, MARCH 27, 2019

U.S. SENATE,
SUBCOMMITTEE ON WATER AND POWER,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:31 p.m. in Room SD–366, Dirksen Senate Office Building, Hon. Martha McSally, presiding.

OPENING STATEMENT OF HON. MARTHA MCSALLY, U.S. SENATOR FROM ARIZONA

Senator MCSALLY [presiding]. The hearing of the Senate Committee on Energy and Natural Resources' Subcommittee on Water and Power will come to order.

The purpose of today's hearing, which is our first hearing together, is to discuss the Colorado River Drought Contingency Plan, otherwise known as the DCP.

The Colorado River is a lifeblood of the Southwestern United States. The 1,450-mile-long river provides drinking water to 40 million Americans, irrigation for 5.5 million acres of farmland and more than 4,000 megawatts of carbon-free hydropower to communities across the West.

The DCP represents a landmark grassroots collaboration that will allow the Basin states and tribes to prepare for a water scarce future without the Federal Government imposing a one-size-fits-all solution. This is a truly historic agreement which everyone involved should celebrate.

I am especially proud of the work done in Arizona. It was tough but through inclusive, good faith negotiations, cities, farmers, tribes, conservation groups, everybody came together and they found solutions to get it done.

I want to congratulate Governor Doug Ducey, the State Legislature and all of the stakeholders. Tom, you guys did a fantastic job. They are really too numerous to list on this outstanding achievement that is going to improve Arizona's water security for years to come.

Work on the DCP has been underway for nearly six years. It has spanned the terms of 2 Presidents, 3 Interior Secretaries and 13 Governors. The fact that this effort has seamlessly transitioned between Republican and Democratic Administrations, both here in DC and out in the states, speaks to the importance and the broad support of these agreements. Now that the states have completed

their work, it is time for Congress to take it across the finish line. I know many of us in the Basin have been tracking this closely for the past several years and are ready to take action.

I am happy to report that a bipartisan agreement on legislation has been reached, and I plan with my wing woman here——

[Laughter.]

——to be introducing this bill with my colleagues on the Colorado River Basin very soon. And that is a hint, I mean very soon, like as soon as possible. We want to drop this legislation and get it across the finish line and signed into law.

While the agreements themselves are complex and some are attempting to complicate matters with unrelated issues, the proposed legislation is actually simple, one of the shortest pieces of legislation I think I have seen. It allows the DCP to be signed by the Secretary and lets the states and Mexico get to work saving water.

We must act quickly or we will see Lake Mead decline for another year, even in the wet year that we have had.

With so much at stake it is not surprising the legislation has broad support from water and power users, tribes and conservation groups throughout the Basin.

And without objection, I would like to place the now 21 letters and statements of support for the DCP in the official record—including letters from Mayor Gallego of Phoenix, Arizona Farm Bureau, Central Arizona Project (CAP), Colorado River Indian Tribes, Gila River Indian Community, Salt River Project and 15 Arizona business groups.

[Letters of support for the Colorado River Drought Contingency Plan follow:]

March 14, 2019

Dear Members of Congress,

We write today to notify you of our strong support of the seven Colorado River Basin States Drought Contingency Plans (DCP). We support the ongoing work of the states to reach agreement on the DCP and the necessary federal legislation that is required to execute and implement those plans. The DCPs are intended to incentivize water conservation while protecting existing water rights, recognizing the values of the Basin's agricultural communities and respecting the need to protect its environmental resources. We appreciate that the DCPs establish processes that build on existing federal NEPA and ESA decisions.

From the headwaters to the Salton Sea and the delta, our groups have worked over the past two decades with the U.S. Bureau of Reclamation, the seven Colorado River Basin states, and water providers and users throughout the Basin to find solutions that work for both people and nature. We believe the states are close to a final agreement and we steadfastly support their actions. Once the states finalize the DCPs, we will continue our efforts during DCP implementation, as we also work with all parties to improve conditions at the Salton Sea and across the basin.

The Colorado River provides water to approximately 40 million people and 5.5 million acres of irrigated agriculture in the Upper Basin (Colorado, New Mexico, Utah and Wyoming) and the Lower Basin (Arizona, California and Nevada), as well as in Mexico. Since 2000, the Basin has experienced historically dry conditions and combined storage in Lakes Powell and Mead has reached its lowest level since Lake Powell initially began filling in the 1960s. Lakes Powell and Mead could reach critically low levels as early as 2021 if conditions do not significantly improve. Declining reservoirs threaten water supplies that are essential to the economy, environment, and health of the Southwestern United States.

Now is the time we all must work together for the sake of the future of the Basin. Therefore, it is critical that we support the goals of the DCP agreements in both basins and urge your support for these agreements and the necessary legislation as well. We look forward to working with you on these historic agreements.

Sincerely,

Matt Rice, American Rivers
Kevin Moran, Environmental Defense Fund
Julie Hill-Gabriel, National Audubon Society
Melinda Kassen Theodore Roosevelt Conservation Partnership
Steve Moyer, Trout Unlimited

TO: House Natural Resources Committee, Subcommittee on Water, Oceans & Wildlife
Senate Energy and Natural Resources Committee, Subcommittee on Water & Power
DATE: March 25, 2019
RE: Statement for the Record supporting the Colorado River Drought Contingency Plan

Dear Chairwoman McSally, Ranking Member Cortez Masto, Chairman Huffman, and Ranking Member McClintock,

The undersigned organizations work for the protection and restoration of the Colorado River Basin. Over the past two decades, we have devoted considerable effort to working with the U.S. Bureau of Reclamation, the seven Colorado River Basin states, Mexico, and water providers and users throughout the Basin to find solutions that work for both people and nature. To advance the conservation of Colorado River water, we support the Drought Contingency Plan agreements that have been reached between the seven Colorado River Basin states.

The Colorado River provides water to approximately 40 million people and 5.5 million acres of irrigated agriculture in the Upper Basin (Colorado, New Mexico, Utah and Wyoming) and the Lower Basin (Arizona, California and Nevada), along with Mexico. Since 2000, the Basin has experienced historically dry conditions and combined storage in Lakes Powell and Mead has reached its lowest level since Lake Powell initially began filling in the 1960s. Lakes Powell and Mead could reach critically low levels as early as 2021 if conditions do not significantly improve and one good snow year does not reverse the trend. We are concerned that if the DCPs are not adopted and implemented, the entire region risks a crisis that will impact communities, farms, industries, wildlife, recreational economies and the health of our rivers.

We support the goals of the Drought Contingency Plan ("DCP") agreements in both basins:

- The Upper Basin DCP is designed to: a) protect critical elevations at Lake Powell and help assure continued compliance with the 1922 Colorado River Compact, and b) authorize storage of conserved water in the Upper Basin that could help establish the foundation for a Demand Management Program that may be developed in the future.

- The Lower Basin DCP is designed to: a) require Arizona, California and Nevada to contribute additional water to Lake Mead storage at predetermined elevations, and b) create additional flexibility to incentivize additional voluntary conservation of water to be stored in Lake Mead.

The DCPs provide additional water supply security to all Colorado River water users, including in Mexico, through 2026. They run in parallel with the 2007 Interim Guidelines for the Coordinated Operations of Lake Mead and Lake Powell and for Lower Basin Shortages and will serve as a crucial bridge to achieving new operational guidelines for the future. The DCPs have been coordinated with Mexico and tie into the binational water scarcity provisions in Minute 323. The binational provisions provide certainty with respect to how shortages will be allocated to Mexico and ensure that Minute 323, including its important environmental components, can continue without conflict associated with competing interpretations of the 1944 Treaty.

We appreciate the many years of work that the Basin States have put into the development of their DCP agreements and proposed federal legislation. Their effort demonstrates the true value of bi-partisan, multi-interest collaboration. The result should benefit users and rivers across Basin.

The DCP agreements and supporting legislation supplement the underlying provisions of the "Law of the River", and should not grant the Secretary of Interior any additional authority or avoid environmental compliance related to future implementation of the DCPs. The agreements will allow the states and the Department of the Interior to continue the tradition over the past 20 years of developing innovative water management solutions to address the changing climate. As conservation and sportsmen's organizations, we appreciate and understand the DCP agreements keep existing federal and state environmental laws and policies intact. The existing water storage and conservation agreements in the Lower Basin have been successful in preserving over 20 feet of elevation in Lake Mead and have prevented a Lower Basin shortage so far, but the DCPs demonstrate the collective judgment of the Basin States and the Department of the Interior that more needs to be done now to ensure benefits can be achieved starting in 2020 and beyond.

Federal Legislation is an Important Element of the DCPs

As noted in the Basin States March 19, 2019 letter to Congress, Federal legislation is necessary to secure full implementation of the DCP agreements and to ensure that all the participating states and the Department of the Interior will comply with the terms of the agreements.

Given the urgent need for action, we concur with the Basin States' request that Congress adopt federal legislation as soon as possible, so that the parties can begin to implement their drought contingency planning.

Upper Basin Benefits

The Upper Basin DCP agreements have the potential to provide significant benefits and protections for the environment while also reducing water security risk, and we look forward to continuing to work cooperatively with the Upper Division States, the Upper Colorado River

Commission, and Bureau of Reclamation to develop tools to implement the provisions of the Upper Basin plans. One goal of the Upper Basin Drought Response Operations Agreement, part of the Upper Basin DCP, is: "Continued funding and implementation of environmental and other programs that are beneficial to the Colorado River system." The Agreement establishes a Framework "developed in recognition of, and consistent with, the law and practice relevant to the Upper Basin." It provides explicitly that drought operations involving release of water from CRSPA reservoirs to maintain levels in Lake Powell will continue according to their Records of Decision, Biological Opinions and other provisions already reviewed under the National Environmental Policy Act and the Endangered Species Act, as well as provisions of state water right systems.[1] It also provides that nothing in the Agreement affects state's rights and powers to regulate, appropriate, use and control Colorado River allocations.[2] The agreement requires that Drought Operations plans consider the "timing, duration and magnitude of releases to help minimize, the extent possible, impacts to natural resource conditions."[3] Finally, it provides that nothing in the Agreement "alters rights, obligations and authorities of the parties [states and the Secretary of Interior]" and that nothing in the Agreement "affects or shall be interpreted to affect the obligations that each Party may have related to natural resources around the CRSPA Initial Units under applicable law."

The Upper Basin DCP enables storage in Lake Powell to help avoid involuntary compact curtailment. Involuntary curtailment would almost certainly trigger extensive litigation and could also mean drastic water use reductions in places and at times that could have an adverse effect on stream flows. Dry-up of farmland and ranchland caused by involuntary curtailment may also have significant adverse effects in many locations in the Upper Basin. More generally, involuntary curtailment would divert federal and state limited resources away from projects and policies that meet the needs of both water users and the environment.

Maintaining levels in Lake Powell sufficient for hydropower generation helps ensure the continuation of a critical revenue stream that has traditionally supported efforts to reduce salinity and selenium levels in the Colorado River system, repayment of federal water projects for farmers and communities, and irrigation infrastructure improvements that, properly designed, can benefit both irrigators and stream flows.

Lower Basin Benefits

In the Lower Basin, the DCP agreements are designed to supplement the 2007 Interim Guidelines to protect Lake Mead from falling to elevations that would jeopardize water deliveries by requiring additional proactive water conservation measures and incentivizing storage of additional water in Lake Mead through the Intentionally Created Surplus program, which has already facilitated over 2 million acre-feet of storage. The LB DCPs will ensure that the Lower Basin States, water agencies, NGOs and Tribes can continue to successfully implement the Lower Basin Multi-Species Conservation Program along with other important

[1] Upper Basin Drought Response Operations Agreement, Sections I(c)(2); and II(A)(3)(b); II(A)(4)(b)(ii).
[2] Id., Section I (c)(4).
[3] Id., Section II(A)(3)(f).

programs in the Lower Basin. Like the Upper Basin agreements, the Lower Basin agreements will be interpreted, governed by, and construed under applicable federal law.[4]

Arizona:

We commend the progress achieved within Arizona to obtain the necessary support from the Arizona Legislature to authorize the Director of the Department of Water Resources to execute the DCPs. Our groups appreciated the ability to have participated in the State of Arizona's DCP Steering Committee process through the Water for Arizona Coalition and to have been an integral part of the DCP solutions. Arizona's DCP Implementation Plan will have a net positive benefit to the system and we stand ready to continue to ensure the DCP measures will be a success through the following examples:

- The DCP avoids drastic shortages which would put increased stress on aquifers in Central Arizona. Groundwater pumping within Arizona's Active Management Areas, even with the DCP in place, will continue to be regulated under Arizona law and in accordance with any necessary environmental requirements.
- Arizona's DCP implementation plan allocates water reductions within Arizona to ensure more water is being left in Lake Mead and that groundwater resources are not unreasonably utilized.
- The DCP provides system conservation program incentives for additional water conservation, which will be needed to resolve system imbalance. System conservation agreements will be an important component of ensuring Lake Mead elevations will be protected.
- The DCP establishes an ongoing and collaborative process to ensure Lake Mead elevations are always protected.

California:

The LB DCP allows California's Colorado River contractors to maintain their existing stored water in Lake Mead and establishes rules for an orderly withdrawal of water from Lake Mead, with a net benefit to Lake Mead. Flexibility and access to water within the Colorado River Basin decreases reliance on water for southern California from northern California.

According to the agencies within California, the Lower Basin DCP can be implemented within California without any adverse impacts to the Salton Sea, or the environment in general. Through a letter dated March 9, 2019 the State of California Natural Resources Department committed to ensuring that progress can move forward with projects at the Salton Sea, and urged completion of the DCPs. We commend the March 8, 2019 commitment of the Department of the Interior to continue to work with the State of California, California's Colorado River contractors and US Department of Agriculture on measures to address habitat and dust control concerns at the Salton Sea. We will continue to advocate for swift action to complete more habitat and dust control projects and obtain compliance with the State Water Resources Control Board's November 7, 2017 Stipulated Order on Long Term Management of the Salton Sea.

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4 Lower Basin Drought Contingency Plan Agreement, Section 5.g.; Upper Basin Demand Management Storage Agreement, Section III.D.6; Upper Basin Drought Response Operations Agreement, Section II.B.10.

Conclusion

We appreciate the Congressional support necessary to advance the proposed DCP federal legislation and request your prompt action in this critical effort. Although additional agreements to build upon the DCPs and the 2007 Interim Guidelines will be necessary to ensure continued stability and resilience in the Basin beyond 2026, implementation of the DCPs this spring will ensure there will be an opportunity to develop those additional agreements with a reduced level of conflict and growing level of operational knowledge.

Please accept this statement for the record for your hearings later this week. Thank you in advance for your work on this important issue.

American Rivers
Environmental Defense Fund
National Audubon Society
The Nature Conservancy
Theodore Roosevelt Conservation Partnership
Trout Unlimited
Western Resource Advocates

March 26, 2019

The Honorable Martha McSally, Chair
The Honorable Catherine Cortez Masto, Ranking Member
Subcommittee on Water and Power
Senate Committee on Energy Natural Resources

The Honorable Jared Huffman, Chair
The Honorable Tom McClintock, Ranking Member
Subcommittee on Water, Oceans, and Wildlife
House Committee on Natural Resources

Dear Chairs McSally and Huffman, Ranking Members Cortez Masto and McClintock:

As business leads with major operations in the Southwest and Colorado River basin, we write to support the seven Colorado River basin states' request that Congress move forward with federal legislation supporting implementation of approved Drought Contingency Plans (DCPs). The states' collective agreement to move forward on these plans comes after years of negotiations, with states pledging proactive conservation measures to safeguard Colorado River water supplies and protect water levels in Lake Mead.

We request that Congress now work to pass companion federal legislation authorizing implementation of the DCPs through the Secretary of the Interior.

Across economic sectors, business operators increasingly recognize the challenges drought has brought to the Southwest and all the Colorado River basin states. Uncertainty around water availability and pricing, combined with pressures from population growth, threaten business operations, economic prosperity, business innovation, investment, and financing.

Businesses need certainty to hire, invest in new facilities and equipment, and continue growing our economy. Right now, companies across the Southwest are facing real risk of water shortage. All seven Colorado basin states have reached agreement through coordinated DCPs, providing a critical step in addressing the region's complex water supply issues. DCP also provides interim security on reservoir operations and water management while longer-term solutions are under negotiation, ensuring that the seven basin states maintain a coordinated dedication to water conservation during negotiations and planning for a drier future.

As a next step, decisive federal passage of DCP implementation legislation is essential to provide a secure water future for agriculture, industry, cities and communities.

Our companies and business organizations have already stepped up to urge state leaders to prioritize drought planning, and many in our group are already taking voluntary steps to reduce our water footprints, conserve water, and contribute to a secure water future.

We look forward to working with you on implementation of federal legislation on the DCPs.

Sincerely,

Glenn Hamer
President and CEO
Arizona Chamber of Commerce and Industry
Phoenix, AZ

Todd Sanders
President and CEO
Greater Phoenix Chamber of Commerce
Phoenix, AZ

Nicholas J. Colglazier
Director
Colorado Competitive Council
Denver, CO

Allison Gilbreath
Executive Director
Arizona Manufacturers Council
Phoenix, AZ

John Wolfe
Senior VP and Southwest Region Manager
Cox Communications
Arizona and Las Vegas

Derek Miller
President and CEO
Salt Lake Chamber
Salt Lake City, UT

Cheryl L. Lombard, Esq.
President & CEO
Valley Partnership
Phoenix, AZ

Suzanne Kinney
President and CEO
Arizona Chapter of NAIOP
Phoenix, AZ

Sandy Fabritz
Director of Water Resources
Freeport McMoRan
Phoenix, AZ

Danone North America
Broomfield, CO

Amber Smith
President and CEO
Tucson Metro Chamber
Tucson, AZ

Jennifer Martin
Executive Director
Sierra Vista Chamber of Commerce
Sierra Vista, AZ

John Courtis
Executive Director
Yuma County Chamber of Commerce
Yuma, AZ

Julie Pastrick, IOM
President/CEO
Greater Flagstaff Chamber of Commerce
Flagstaff, AZ

Mea Brown
Executive Director
Tubac Chamber of Commerce
Tubac, AZ

Terri Kimble
President and CEO
Chandler Chamber of Commerce
Chandler, AZ

Dave Perry
Greater Oro Valley Chamber of Commerce
President and CEO
Oro Valley, AZ

MaRico Tippett
President & CEO
Greater Vail Area Chamber of Commerce
Vail, AZ

Olivia Ainza-Kramer
President and CEO
Nogales-Santa Cruz County Chamber of Commerce
Nogales, AZ

Robert Lotts
Director, Palo Verde Water Resources
APS
Tonopah, AZ

Steve Trussell
Executive Director
Arizona Mining Association
Phoenix, AZ

Steve Trussell
Executive Director
Arizona Mining Association
Phoenix, AZ

CC:
Brenda Berman- Commissioner, U.S. Bureau of Reclamation
Robert Snow- Attorney-Advisor, Department of Interior
Carly Jerla- U.S. Bureau of Reclamation
Lane Dickson- Senate Committee on Energy Natural Resources
Rebecca Bonner- Senate Committee on Energy Natural Resources
Matthew Muirragui- House Committee on Natural Resources
Carlee Brown - House Committee on Natural Resources
Bill Ball- House Committee on Natural Resources
Marnie Kremer- House Committee on Natural Resources
Patrick Tyrrell- Wyoming State Engineer
Eric Millis- Director, Utah Division of Water Resources
John Entsminger- Southern Nevada Water Authority
Peter Nelson- Coachella Valley Water District
Christopher Harris- Colorado River Board of California
Tom Buschatzke- Arizona Department of Water Resources
John Dantonio- New Mexico State Engineer
James Eklund- Squire Patton Boggs, Colorado
Amy Haas- Executive Director, Upper Colorado River Commission

Arizona Farm Bureau DCP Senate Hearing Statement

As the west's wisest stewards of precious water resources, Arizona's Farmers and Ranchers stand in support of the Drought Contingency Plan (DCP). DCP is the largest, most comprehensive water conservation undertaking in recent memory in the western United States. As the lower basin tries to find ways to deal with a harsh, decades-long drought, Arizona's agricultural industry has been proud to serve as an active player in the conversation. We applaud the work of Arizona Department of Water Resources Director Tom Buschatzke and Central Arizona Water Conservation District Manager Ted Cooke in directing an innovative, stakeholder-driven process that allowed our voices to be heard on these issues.

However, this legislation is just a first step toward a long-term solution to drought in the Western United States. In order to absorb the necessary cuts to the river for the benefit of consumers across the lower basin, farmers in Pinal County are facing up to a 70 percent reduction in available water supplies. We must continue to work with these producers to make sure that they have access to infrastructure and conservation technology necessary to continue farming, protect air quality, wildlife habitat, and a $2.3 billion agriculture industry in that county which is so critical to all of Arizona.

Ratification of the DCP is an important step towards responsible stewardship of such a valuable resource. We encourage you to ratify this plan. The Colorado River Basin is the lifeblood for so much of the West and we can create a sustainable future for both urban and rural, for both consumers and producers.

Thank you,

Stephanie Smallhouse
President
Arizona Farm Bureau Federation
325 South Higley Road, Suite 210
Gilbert, Arizona 85296

ACWA
Association of California Water Agencies

Bringing Water Together

March 27, 2019

The Honorable Jared Huffman, Chair
Subcommittee on Water, Oceans & Wildlife
Natural Resources Committee
U.S. House of Representatives

The Honorable Tom McClintock, Ranking Member
Subcommittee on Water, Oceans & Wildlife
Natural Resources Committee
U.S. House of Representatives

The Honorable Martha McSally, Chair
Subcommittee on Water & Power
Energy & Natural Resources Committee
U.S. Senate

The Honorable Catherine Cortez Masto, Ranking Member
Subcommittee on Water & Power
Energy & Natural Resources Committee
U.S. Senate

Dear Chairs and Ranking Members:

The Association of California Water Agencies (ACWA) would like to associate itself with the March 19th letter of the seven States of the Colorado River Basin (Basin States) regarding the importance of congress quickly passing legislation directing the Secretary of the Interior (Secretary) to implement the drought contingency plans (DCPs) as agreed to by the Basin States.

ACWA is the largest statewide coalition of public water agencies in the country. ACWA's mission is to assist its 450 members in promoting the development, management and reasonable beneficial use of good quality water at the lowest practical cost in an environmentally balanced manner.

During the past eighteen years, western drought conditions have worsened and new measures are needed to protect water supplies for the 40 million people throughout the Colorado River Basin who rely on this vital source of water. With swift congressional action to help implement the DCPs this year, the DCPs will:

- Provide operational certainty regarding Intentionally Created Surplus (ICS) conserved water supplies if Lake Mead declines below elevation 1,075 feet;
- Reduce the risk of Lake Mead dropping below the critical elevation of 1,020 feet from over forty percent without the DCP to about five percent with implementation of the DCP; and
- Incentivize the conservation and storage of water in Lake Mead this year with the assurance of greater flexibility in storage and recovery of ICS supplies.

ACWA recognizes as of this date, the DCPs will be implemented without the Imperial Irrigation District's (IID) participation. ACWA is pleased the state of California has recently acknowledged concerns expressed regarding Salton Sea management and restoration related issues and encourages all interested parties to move forward with plans and funding to address these concerns. ACWA strongly supports efforts to restore the Salton Sea.

Thank you for your leadership on the DCPs which ACWA views as a critically important western water issue.

Sincerely,

Dave Eggerton
Executive Director

SACRAMENTO 910 K Street, Suite 100, Sacramento, CA 95814 • (916) 441-4545
WASHINGTON, D.C. 400 North Capitol Street NW, Suite 357, Washington, DC 20001 • (202) 434-4760
www.acwa.com

BUSINESS FOR WATER STEWARDSHIP

March 26, 2019

The Honorable Martha McSally, Chair
The Honorable Catherine Cortez Masto, Ranking Member
Subcommittee on Water and Power
Senate Committee on Energy Natural Resources

The Honorable Jared Huffman, Chair
The Honorable Tom McClintock, Ranking Member
Subcommittee on Water, Oceans, and Wildlife
House Committee on Natural Resources

RE: Drought Contingency Plans in the Colorado River Basin

Dear Chairs McSally and Huffman, Ranking Members Cortez Masto and McClintock:

Representing a network of nearly 1,300 businesses working on Colorado River basin issues, Business for Water Stewardship urges you to support the seven basin states' request for federal legislation supporting implementation of approved Drought Contingency Plans (DCPs). This request from the states comes after years of negotiations, with states pledging proactive conservation measures to safeguard Colorado River water supplies and protect water levels in Lake Mead.

Many dozens of businesses across the Colorado River basin—including Intel, Cox, the Arizona Chamber of Commerce and Industry, Swire-Coca-Cola and many others—signed on to letters of support and/or met with state leaders to emphasize the critical need for drought planning and the DCP. Now is the time for Congress to pass companion federal legislation authorizing implementation of the DCPs through the Secretary of the Interior.

Across economic sectors, business operators increasingly recognize the challenges drought has brought to the Southwest and all the Colorado River basin states. Uncertainty around water availability and pricing, combined with pressures from population growth, threaten business operations, economic prosperity, business innovation, investment, and financing.

Our broad-based network of companies and business organizations has already stepped up to urge state leaders to prioritize drought planning, and many in our group are already taking voluntary steps to reduce water footprints, conserve water, and contribute to a secure water future. The myriad business partners that operate in Colorado River basin states understand first-hand the risks that come with water uncertainty and see the DCPs as a key step in addressing that risk.

The leadership and agreements at the state level show that this is a bi-partisan issue. Democratic and Republican governors and non-partisan water agencies negotiated the DCPs. Decisive, federal passage of DCP implementation legislation is essential to provide a secure water future for agriculture, industry, cities and communities throughout the Southwest.

We look forward to working with you on implementation of federal legislation on the DCPs. You can learn more about our organization at www.businessforwater.org.

Sincerely,

Todd Reeve
Director, Business for Water Stewardship

CC:

Brenda Berman- Commissioner, U.S. Bureau of Reclamation
Robert Snow- Attorney-Advisor, Department of Interior
Carly Jerla- U.S. Bureau of Reclamation
Lane Dickson- Senate Committee on Energy Natural Resources
Rebecca Bonner- Senate Committee on Energy Natural Resources
Matthew Muirragui- House Committee on Natural Resources
Carlee Brown - House Committee on Natural Resources
Bill Ball- House Committee on Natural Resources
Patrick Tyrrell- Wyoming State Engineer
Eric Millis- Director, Utah Division of Water Resources
John Entsminger- Southern Nevada Water Authority
Peter Nelson- Coachella Valley Water District
Christopher Harris- Colorado River Board of California
Tom Buschatzke- Arizona Department of Water Resources
John Dantonio- New Mexico State Engineer
James Eklund- Squire Patton Boggs, Colorado
Amy Haas- Executive Director, Upper Colorado River Commission

CALIFORNIA natural resources AGENCY

GAVIN NEWSOM, *Governor*
WADE CROWFOOT, *Secretary for Natural Resources*

March 27, 2019

The Honorable John Barrasso, Chairman
The Honorable Catherine Cortez Masto, Ranking Member
Committee on Energy and Natural Resources
Subcommittee on Water and Power
United States Senate
304 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Cortez Masto:

The California Natural Resources Agency supports implementation of the Seven Colorado River Basin States Drought Contingency Plans (DCPs).

Our agency is charged with managing water resources in California and recognizes this landmark agreement as critical to our efforts. It will enable states to manage ongoing dry conditions in the basin by enhancing conservation of Colorado River water and providing new water management tools to address shortages. Specifically, these plans provide important flexibility for California water users to store supplies in Lake Mead and to broaden conservation activities that result in further banked water supplies.

More broadly, this agreement represents the type of shared, collaborative approach that is needed to manage the Colorado River and other shared water resources amidst increasingly uncertain hydrology. It will enable our states to work together to build more resilient water supplies that protect our communities and natural environment in coming decades.

At the same time, we are committed to addressing pressing environmental conditions in the Salton Sea and implementing our state's 10-Year Salton Sea Management Plan. This includes working intensely to implement near-term projects at the Sea to suppress dust emissions and create critical habitat. Working closely with our federal partners, we are focused on bringing important federal funding to enable these projects, which will augment the state's current investment of $280 million in these efforts.

We are grateful for your consideration of legislation that will enact this historic seven state agreement. We are further thankful for your attention and leadership as you consider any final changes to this legislative proposal that address outstanding issues and enable this legislation to pass as soon as possible during the 116th Congress.

Sincerely,

Wade Crowfoot
California Natural Resources Secretary

Statement of Theodore C. Cooke
General Manager
Central Arizona Water Conservation District

Before the
Subcommittee on Water and Power
Committee on Energy and Natural Resources
United States Senate
Hearing on the Colorado River Drought Contingency Plan
March 27, 2019

Chairman McSally, Ranking Member Cortez Masto and members of the Subcommittee, I am Theodore Cooke, General Manager of the Central Arizona Water Conservation District (CAWCD). Thank you for the opportunity to provide the views of the CAWCD on the Colorado River Drought Contingency Plan (DCP) through this statement for the record. For the reasons I will discuss below, CAWCD supports the DCP and urges swift action by Congress to authorize the Secretary of the Interior to implement it. The agreements that make up the DCP will mitigate the risks posed by drought for the people who depend upon the waters of the Colorado River, including those served by CAWCD. We are eager to assist this Subcommittee in the effort to enact federal authorizing legislation for this critical multistate initiative to improve water security for the 40 million people that rely on the Colorado River system.

Role of CAWCD in Arizona

CAWCD manages the Central Arizona Project (CAP), a 336-mile canal system that delivers Colorado River water into central and southern Arizona. CAWCD's service area includes more than 80 percent of Arizona's population. The largest supplier of renewable water in Arizona, CAWCD diverts an average of over 1.5 million acre-feet of Arizona's 2.8 million acre-foot Colorado River entitlement each year through the CAP to municipal and industrial users, agricultural irrigation districts, and Indian communities. Our goal at CAWCD is to provide our customers with an affordable, reliable, and sustainable supply of Colorado River water.

These renewable water supplies are critical to Arizona's economy and to the economies of numerous Native American communities within the state. Nearly 90% of economic activity in the State of Arizona occurs within the CAP service area. The canal provides an economic benefit of $100 billion annually, accounting for one-third of the entire Arizona gross state product. CAP also helps the State of Arizona meet its water management and regulatory objectives of reducing groundwater use and ensuring availability of groundwater as a supplemental water supply during future droughts. The long-term sustainability of a state as arid as Arizona depends on achieving and maintaining these water management objectives.

Explanation of the DCP

The DCP is designed to protect the Colorado River system through reductions in use and increased incentives for storage in Lake Mead, the Lower Basin's principal reservoir. The DCP

agreements were developed through a collaborative process amongst the federal government, states, water users and Mexico. The Arizona Department of Water Resources (ADWR) and CAWCD were the participants from Arizona.

There is an Upper Basin DCP involving Colorado, New Mexico, Utah, Wyoming and the United States; a Lower Basin DCP involving Arizona, California, Nevada and the United States; and a companion agreement which connects these two programs and links them to Mexico through a United States-Mexico agreement. Within the State of Arizona itself, there is also a package of agreements called the Arizona DCP Implementation Plan. In 2018 and early 2019, ADWR and CAWCD jointly led nearly 40 stakeholders through months of public and small group meetings that led to agreement on this plan, which ensures that the burden of impacts from Colorado River delivery reductions and the benefits of increased reliability will be shared among Arizona water users. The plan, in the words of Lisa Atkins, CAWCD board president, "essentially 'shares the pain' amongst those who must bear the brunt of shortage" and "reflects how Arizonans typically work together to address water challenges and opportunities." On January 31, 2019, the Arizona Legislature adopted legislation in support of the Arizona DCP Implementation Plan, and authorized the State of Arizona to sign the Lower Basin DCP after federal legislation is passed.

If federal legislation implementing the DCP is enacted in 2019, reductions to Arizona's Colorado River supply under DCP begin immediately. The DCP agreements run through 2026, the expiration of the existing Colorado River shortage guidelines (2007 Guidelines). It is anticipated that new rules will be negotiated and put into effect after 2026.

Why the DCP is important to the future of Arizona

The risks of Lake Mead falling below critically low elevations have tripled in the past decade, increasing the risks of large-scale reductions to Arizona's Colorado River supply and threatening the health of the river for all users. The 2007 Guidelines, designed to protect the Lower Basin against extended drought, are not sufficient to address the current risks to the system. The DCP is designed to be an overlay on the 2007 Guidelines and provide greater protection for Lake Mead until those guidelines are replaced after 2026.

Because of its junior priority on the Colorado River, CAP faces the greatest risk from shortage on the Colorado River. Indeed, under the DCP, CAP water users will be taking the largest cuts in supply. However, in recognition of the heightened risk that all water users in the Colorado River basin face, California has joined Arizona and Nevada in taking reductions under the DCP. Mexico has also agreed to take reductions if Lake Mead falls beneath defined thresholds, and provided that the United States implements to the DCP.

As mentioned, DCP protects the elevation of Lake Mead through reductions in use of Colorado River water, as well as enhanced incentives for water users to store Colorado River water in Lake Mead. While the DCP will not prevent a Colorado River shortage, projections by the United States Bureau of Reclamation show that implementation of these tools under DCP would reduce the risks of Lake Mead falling below critical elevations. We estimate that without the DCP, there is about a 43% chance of Lake Mead falling below the critically low elevation of

1,025 feet. With the DCP, that risk is reduced to 8%. The reduction in risk provides assurance to Arizona residents that their future water supplies are more reliable and secure.

Conclusion

In closing, I would like to express my gratitude to many other leaders in Arizona and the other Colorado River Basin States, as well as at the U.S. Bureau of Reclamation, for helping to develop the proposals and solutions that became part of the DCP. A collaborative effort brought us to this day. Development of the DCP required willingness by all parties to face the risks posed by drought and to accept the need for both flexibility and complexity in the solutions identified. It took vision and courage from many different parties and interest groups to make these agreements possible. Arizona has faced water challenges throughout its history. We lead the nation with rigorous water conservation and sustainability laws that protect Arizona water users. The DCP is poised to become an important part of our state's efforts, with the support of our sister states in the Colorado River basin, to promote the water security that is necessary for thriving communities and economies. At CAWCD, we are proud to have participated in developing DCP, and we look forward to continuing to work with our many partners both within and outside our state to address the Basin's challenges in the future.

CAWCD enthusiastically supports the enactment of legislation to authorize the implementation of DCP at the federal level. I would be pleased to answer any questions that the members of the Subcommittee may have.

COACHELLA VALLEY WATER DISTRICT
Established in 1918 as a public agency

GENERAL MANAGER
Jim Barrett

ASSISTANT GENERAL MANAGER
Robert Cheng

March 26, 2019

The Honorable John Barrasso, Chairman
The Honorable Catherine Cortez Masto, Ranking Member
Committee on Energy and Natural Resources
Subcommittee on Water and Power
United States Senate
304 Kirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Cortez Masto:

The Coachella Valley Water District (CVWD), together with other California water agencies, has been a strong supporter of the Colorado River Basin Drought Contingency Plan (DCP). The process took a significant step forward with the recent signing ceremony held on March 18, 2019 between the seven Colorado River Basin states and the Bureau of Reclamation to advance the package of negotiated agreements in consideration for federal legislation.

However, the work is not yet complete, and CVWD respectfully requests your consideration and favorable vote on the required legislation in order to authorize the Secretary of the Interior to execute four DCP agreements and to carry out their provisions regarding the operations of Colorado River System reservoirs.

The seven Basin states have had a long history of managing the Colorado River in a collaborative fashion to ensure reliable water supplies for over 40 million people throughout the basin. The DCP's strength lies in its foundation as a consensus-based document, achieved over years-long negotiations among the Basin states and Reclamation. Under the DCP, water curtailment actions to users may be avoided through additional conserved water stored in Lake Mead, electrical power will continue to be generated in Lake Powell as a result of the preservation of water elevation levels, and states are able to mitigate the effects of the poor hydrology within their borders through the additional water management actions.

The legislation is purposefully narrow and specifically tailored to give the Secretary the authority to implement the DCP without altering or disregarding the water rights of any user along the river. The legislation also recognizes that the proposed actions do not override the environmental review process. In fact, the proposed modified operations under the Lower Basin DCP are among the environmental alternatives that were analyzed (through the NEPA process) for the 2007 Record of Decision on "Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead."

While California is officially out of drought for the first time in seven long years thanks to the abundant rains and snow the state has received over the winter months, weather patterns are no longer predictable and a return to drought is a very real possibility. The additional operational rules created under the Lower Basin DCP will incentivize Lower Basin water contractors to store additional conserved water in Lake Mead, which will buffer against the possibility of delivery curtailment in another dry year.

The water users in the seven Basin states have entrusted their representatives to craft a framework that was good for the entire Colorado River Basin. The DCP is exactly that, and we ask for your consideration and favorable vote for the required legislation. If you have any questions regarding the agreements or Coachella Valley Water District's support of the agreements, please do not hesitate to reach out to me directly at (760) 398-2651 or at jbarrett@cvwd.org. CVWD looks forward to working with you and the other members of our delegation to secure passage of this important legislation.

Sincerely,

J.M. Barrett
General Manager

cc: The Honorable Lisa Murkowski, Chair
The Honorable Joe Manchin, Ranking Member
Senate Committee on Energy and Natural Resources

Testimony of Dennis Patch, Chairman
Colorado River Indian Tribes, Parker, Arizona
Senate Committee on Energy and Natural Resources
March 27, 2019

Honorable Chairwoman McSally, Ranking Member Cortez Masto, Members of the Committee: thank you for the opportunity to submit testimony for the record in support of the Drought Contingency Plan (DCP).

The Colorado River Indian Tribes (CRIT) have been an active participant in the DCP deliberations in the State of Arizona. We support enactment of legislation authorizing the Secretary of the Interior to sign and implement the DCP Agreements. We urge this Committee to provide the Department with this authority without delay.

The Colorado River Indian Tribes

The Colorado River Indian Reservation was created by an Executive Order in 1865 issued by President Abraham Lincoln. We are located on 300,000 acres of land between the city of Blythe, California and town of Parker, Arizona. Our reservation stretches along roughly 40 miles of the Colorado River and includes land in both Arizona and California. Our water rights are Present Perfected Rights to divert 719,000 acre-feet in both Arizona and California. Ours will be the last rights to be cut during shortages on the River.

The cultural heritage of our tribe is unique. Our membership contains individuals from the indigenous Mohave and Chemehuevi Peoples, as well as individuals of Navajo and Hopi descent.

The main economic driver on the Reservation is agriculture. Today, CRIT Farms, our tribal enterprise, farms approximately 15,000 acres with current crops of alfalfa, wheat, cotton and produce. CRIT tribal members and non-Indian tenants farm another 55,000 to 60,000 acres each year, for a total of more than 73,000 acres in production on our reservation at any given time.

We are concerned about the impact of nearly two decades of drought on the life of the River. The River has always sustained the Mohave and Chemehuevi People and we are doing all that we can to help preserve the River. We have participated in multiple contracts with Reclamation to store water in Lake Mead under the Pilot System Conservation Agreement. This water is "created" for the Lake by paying us to fallow farm lands. The money for this program is provided by Reclamation, Central Arizona Water Conservation District (CAWCD), Metropolitan Water District (MWD), Southern Nevada Water Authority (SNWA), and Denver Water.

In 1995, we created the Ahakav Preserve along the River. We replanted more than 1,400 acres with native trees, restored the riparian habitat, and developed approximately 250 acres of backwaters for endangered fish and other native aquatic plants and animals. We also maintain a large mesquite bosque at the southern end of the Reservation that is vital for the preservation of Mohave culture.

In addition, we restored the 12 Mile Lake, and No Name Preserves on the River shoreline, doubling the amount of land in conservation on the Reservation.

CRIT and the DCP

As the drought in the West grows more severe, and Lake Mead levels fall dangerously close to the first level of cuts, it was clear that we needed to do more. The River, which has protected our people for so many generations, now needs all of us.

At CRIT, discussions started more than four years ago. We met with major stakeholders, participated in the water meetings organized by Governor Ducey in 2017, and the Stakeholder Group lead jointly by the Arizona Department of Water Resources and the CAP. It was this group that eventually reached the agreement this committee is currently considering.

The DCP calls for reducing water deliveries to CAWCD water users by 512,000 acre-feet at a Tier 1 shortage. This was never going to be easy. But thanks to the strong leadership of Arizona's water leaders, we forged a plan that everyone can live with.

I am proud to say that the Colorado River Indian Tribes played a vital role in this process. We will leave 150,000 acre-feet of our consumptive use in Lake Mead for System Conservation over the next three years. This will be available by fallowing at least 10,000 acres of farm land each year for three years. Additionally, we will create 20,000 acre-feet of Intentionally Created Surplus (ICS) to provide the State of Arizona and CAP assurances that water deliveries to the Lake will match our commitments.

Unlike other tribes in the State of Arizona, who's water rights are confirmed in congressionally enacted water settlements, CRIT does not have the authority to lease water. This flexibility would be a significant asset to CRIT and the entire State of Arizona. I expect that we will be working with this Committee to craft legislation addressing this added benefit for the basin in the near future.

Conclusion

I am proud to have been part of the work accomplished by the DCP Stakeholders in Arizona. In the coming weeks, this Committee has the opportunity to approve the years of collaborative work that went into this agreement, and it is my hope that you will do so as quickly as possible. The River depends on this and we as the River People depend on your actions.

Thank you for your consideration, and I appreciate the opportunity to share the views of the Colorado River Indian Tribes on this important matter.

City of Phoenix
OFFICE OF THE MAYOR

March 26, 2019

RE: Colorado River Drought Contingency Plans (DCP)

Dear Members of Congress,

As Mayor of the City of Phoenix (Phoenix), I am writing to you today in support of the Colorado River Drought Contingency Plans (DCP), as proposed by representatives of the seven Colorado River Basin States in their letter to Congress dated March 19, 2019. As you know, the Colorado River provides water to over 40 million people in the West, and comprises 40% of the water supply for Phoenix. Phoenix is the nation's largest desert city; reliable and sustainable water supplies are of paramount importance to our community.

The Colorado River is over-allocated. After nearly 20 years of prolonged drought and climate change that has brought the Colorado River reservoirs to historic low levels, action to prevent catastrophic failure on the Colorado River is necessary. For the past several years, parties representing the 7 Basin States (Wyoming, Colorado, New Mexico, Utah, Arizona, Nevada and California) have carefully crafted drought contingency plans which represent a significant step forward in collaboration to conserve and manage the water resource jewel that is the Colorado River. It is essential that we attain Congressional support for the proposed legislation so DCP can be signed and implemented by the states immediately.

Phoenix has been an integral part of the DCP discussions within Arizona, and like stakeholders throughout the Colorado River Basin, Phoenix understands that the time is now for implementation of this important collaboration among all Colorado River stakeholders. As an urban water provider to over 1.6 million customers, Phoenix needs the certainty and security the DCP brings to protect the water supplies that are the lifeblood of the Phoenix economy. Phoenix also appreciates the value of the very difficult and complex collaboration DCP represents among water users in the Basin States, including municipalities, agricultural interests, tribal communities, federal interests and the Republic of Mexico. In order to capitalize on that collaboration, it is essential that Congress pass DCP without delay.

The risks posed to the Colorado River Basin caused by over-allocation, prolonged drought and climate change are significant and immediate. While the 2018-19 winter was a productive one in the Colorado River watershed, one wet winter cannot reverse the dramatic declines we have witnessed since 2000 – only an effective and flexible conservation management plan such as the DCP can improve the sustainability of the Southwest. Importantly, the voluntary conservation measures described in the DCP can be implemented without impacting the water rights of other Colorado River water users or environmental protections for the Colorado River Basin.

After years of careful review and negotiations among stakeholders throughout the Colorado River Basin and the United States Department of Interior, and with reservoir levels at historic lows, it is critical that Congress approve the DCP without delay so we can begin to implement it without further jeopardizing the water supplies for Phoenix and the Southwest.

Thank you for your consideration and I appreciate your support for this important piece of legislation.

Sincerely,

Kate Gallego
Mayor
City of Phoenix

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GILA RIVER INDIAN COMMUNITY

Executive Office of the Governor & Lieutenant Governor

"Putting Our People First"

Stephen Roe Lewis
Governor

Robert Stone
Lieutenant Governor

March 25, 2019

The Honorable Raúl M. Grijalva
Chairman, Natural Resources Committee
United States House of Representatives
1511 Longworth HOB
Washington, DC 20515

The Honorable Lisa Murkowski
Chairman, Committee on Energy & Natural Resources
United States Senate
522 Hart Senate Office Building
Washington, DC 20510

The Honorable Rob Bishop
Ranking Member, Natural Resources Committee
United States House of Representatives
123 Cannon Building
Washington, DC 20515

The Honorable Joe Manchin
Ranking Member, Committee on Energy & Natural Resources
United States Senate
306 Hart Senate Office Building
Washington, DC 20510

Re: Gila River Indian Community – Support for the Drought Contingency Plan

Dear Chairman Grijalva, Chairman Murkowski, Ranking Member Bishop, and Ranking Member Manchin:

I am writing on behalf of the Gila River Indian Community ("Community") to express our support for Congressional approval of the Drought Contingency Plan ("DCP") that is being proposed by the seven Colorado River Basin States ("Basin States").[1] Pursuant to the Arizona Water Settlements Act ("AWSA"),[2] the Community has a 311,800 acre-feet per year entitlement to Colorado River water delivered through the Central Arizona Project, which is held in trust by the United States ("CAP Water"). Because CAP Water is subject to reductions in time of shortage before other Colorado River water, and given the size of the Community's CAP Water entitlement, the Community perhaps has more at stake under the DCP than any other stakeholder. The size of our CAP Water entitlement also means that the Community was able to help innovatively develop the Arizona DCP Implementation Plan, storing over 215,000 acre-feet of our water in Lake Mead to offset for mitigation to be provided to Arizona farmers affected by the cuts to Arizona's CAP Water supplies under the DCP.

Since it first learned of the DCP in early 2016, the Community has been a pivotal participant in the DCP discussions with the United States Bureau of Reclamation, the State of

[1] The seven Colorado River Basin States include Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming.

[2] Public Law 108-451, Dec. 10, 2004.

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Arizona, and the Central Arizona Water Conservation District. The development of the Arizona DCP Implementation Plan recently approved by the Arizona legislature in January 2019 could not have been developed without the Community's direct involvement and agreement. The Arizona DCP Implementation Plan is a carefully balanced agreement among key stakeholders and it requires the Community to accept substantial cuts and leave substantial supplies of our CAP Water in Lake Mead in order to provide supplies to mitigate the severe cuts to CAP supply to Arizona water users from implementation of the DCP. The Community can only meet our commitment to keep CAP Water in Lake Mead once the DCP has been approved by Congress and other key agreements are in place. If Congress does not approve the DCP in a timely manner, the Community's ability to meet our commitments under the Arizona DCP Implementation Plan will be made much more difficult and Arizona conservation targets to help Lake Mead may be difficult, if not impossible, to achieve.

Time is of the essence and we urge you to take swift action to approve the DCP. As explained below, the Community has undertaken great effort and agreed to major sacrifices to implement DCP in order to protect our water settlement. Given that so much is at stake for the Community we hope that we can count on your support to ensure that DCP is approved in a bipartisan and timely fashion.

Unfounded environmental amendments may cause the Community to withdraw from the DCP.

The Community is extremely concerned about recent developments regarding allegations by former supporters of DCP that the DCP is somehow an "end run" around federal environmental laws and regulations. Based on our direct experience in the DCP negotiations for almost four years, nothing could be further from the truth. The entire DCP, including the Arizona DCP Implementation Plan, was built around the extensive environmental review undertaken at the time the *Record of Decision – Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead – December 2007* ("2007 Interim Guidelines") was issued.

We know this because there were many times during the hard fought DCP negotiations when the Community presented what we believed were reasonable solutions or proposals, only to be told that these proposals could not even be considered because we were all working within the constraints of the original environmental approvals in the 2007 Interim Guidelines. The scope of those environmental approvals in the 2007 Interim Guidelines created the precise framework for DCP and any perception that the DCP parties have somehow "sidestepped" environmental review could not be further from the truth. Our very first conversations with Deputy Secretary of the Interior Michael Connor in August 2016 focused on this precise question, and he assured us that DCP could and would work because the entire framework would fit within the existing environmental approvals in the 2007 Interim Guidelines.

Our concern about this environmental issue goes much further than just the fact that it is based on what appears to be a totally false premise. As I noted above, the Community has had to sacrifice a great deal in order to find a path that would lead to a more predictable water supply for ourselves and all the parties dependent on the Colorado River. A greater degree of certainty is the primary goal for the Community in our efforts to develop a workable Arizona DCP Implementation Plan.

To achieve that certainty, the Community agreed to both substantial reductions in our water deliveries going forward and to store enormous quantities of water in Lake Mead using an expanded program of storage authorized under the 2007 Interim Guidelines called Intentionally Created Surplus ("ICS"). The program was included in the original 2007 Interim Guidelines, and it was subject to full environmental review for the level of storage now being contemplated. Our participation in the ICS program, however, is being confirmed by DCP as it is to be implemented today, including critical agreements about how our participation is to take place and when.[3] We must begin storing our water in Lake Mead **this year**, while we have supplies available that are not being reduced by drought. Indeed, we need to make a decision within the coming weeks about whether to divert supplies to Lake Mead this year or not. If we cannot make this decision with sufficient certainty, it is very possible that the Community will have to drop out of DCP altogether, throwing the entire Arizona DCP Implementation Plan into chaos.

The Community is deeply concerned that amendments are being considered that would create legal uncertainty about the DCP overall, subjecting it to subsequent legal challenges that, while completely unfounded, put our ICS storage at substantial risk. Fundamentally, if the legislation is modified in a manner that either delays DCP implementation, or puts our ICS storage at legal risk, the Community will have to seriously re-consider our participation in the Arizona DCP Implementation Plan altogether.

The Community received its CAP Water entitlement through its water settlement.

The Community has been farming central Arizona for centuries and we trace our agrarian heritage to the ancient Huhugum that once irrigated thousands of acres. The two tribes that make up the Community, the Akimel O'otham and the Pee Posh, continued this agricultural heritage along the Gila River. We were so successful that we supplied settlers with food on their way to California after gold was discovered in Sutter Creek in 1848. By the mid-1850s we were a prosperous, self-sufficient people, and considered the "bread basket of Arizona."

But all this changed soon after the Civil War ended. Non-Indians who started to settle upstream from the Community's lands began to illegally divert water. This great theft of water devastated our people. Once prosperous and self-sufficient, without water for our farms we became impoverished and reliant on the Federal government to provide us food. Our diets changed, resulting in diseases like diabetes that we still struggle with to this day. This great theft of water also led to environmental damage. Along the Gila River there used to be cottonwoods and mesquite tress. But without farms to make a living, many Community members began chopping down the trees to sell as firewood as a way to make a living. The result was deforestation of our lands and famine among our people. By 1900 there were newspaper stories about starvation in the Community because of lack of water.[4]

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[3] The DCP does not change the maximum accumulation of ICS for the Lower Basin States of Arizona, California and Nevada under the 2007 Interim Guidelines. The DCP does allow for greater flexibility among the Lower Basin States by authorizing Lower Basin States to borrow annual ICS creation capacity from each other in order to keep more water in Lake Mead. The Community is relying on this additional annual creation capacity under DCP in order to store large volumes of our CAP Water in Lake Mead during non-shortage years.

[4] *E.g.*, "Indians Starving: Six Thousand Perishing on the Gila Reservation because of Lack of Water." Chicago Tribune, reprinted in the Florence Tribune, July 14, 1900.

This theft of water started a 160-year struggle to regain our water rights. On December 10, 2004, Congress enacted the AWSA, which approved our water settlement. Under our water settlement, the Community has an entitlement to 653,500 acre-feet of water and received federal funds to build out the irrigation system on our reservation. Because it was not politically feasible to return all the water that was stolen from us, one of the tradeoffs the Community had to accept was to give up some of our claims to the Gila River in exchange for an entitlement to CAP Water.

Our 311,800 acre-feet of CAP Water is a great benefit, but it does comes with risk. It is by far our most expensive source of water, so managing cost has been a challenge. It is also a supply that has a low priority on the Colorado River, placing it more at risk during shortage and drought.

The Community played a pivotal role in developing an Arizona DCP Implementation Plan.

Given the risks associated with its CAP Water, the Community began a process to develop a water plan to more efficiently use our water supplies, especially our CAP Water. The Community's water plan put in motion certain policies aimed at increasing agricultural production within the Community and bringing back the Gila River through riparian projects, and doing so in an affordable way. Under our water plan, the Community created a permanent endowment that will ensure that funding is available for current and future generations of farmers. In addition, we rehabbed wells and developed new wells to increase the amount of groundwater available for farmers. In order to ensure that we do not over-pump groundwater supplies, we also developed riparian recharge facilities that both restore riparian habitat in the Gila River and recharge our aquifer. These riparian and recharge facilities use our CAP Water supplies to restore stretches of the Gila River and ensure we have a sustainable groundwater supply.

When we first learned about the proposed DCP in 2016, it was unacceptable to the Community because the United States had not consulted with the Community in facilitating a plan that would reduce our CAP Water, which is a United States trust resource under the AWSA. The Community made it clear that it would not allow DCP to move forward unless a plan was developed that was acceptable to the Community.

Although the Community made its concerns known to all, we were committed to helping reach consensus within Arizona to help conserve water in Lake Mead and have a plan to address the worst case scenarios in the event regional drought persists. In 2016-2017, the Community began to meet with key stakeholders in Arizona to see if we could develop a "DCP Plus" plan – a program to incentivize large-scale conservation in Lake Mead to help reduce the chance of shortage and the serious cuts called for under the DCP. During this period, the Community made 90,000 acre-feet of our CAP Water available for Lake Mead conservation efforts. In anticipation of DCP Plus, the Community began to accelerate our groundwater infrastructure rehabilitation and construction efforts in order to free up CAP Water supplies for Lake Mead conservation efforts.

Although the DCP Plus did not happen, by accelerating the Community's groundwater infrastructure rehabilitation and construction efforts, the Community was able have the tools in place to develop a plan that would ultimately become the Arizona DCP Implementation Plan. The Community's willingness to accept cuts to our CAP Water supplies and make a substantial amount of our CAP Water available for conservation efforts to help Lake Mead is a key component of the Arizona DCP Implementation Plan. Moreover, because the Community was essential to Arizona's

participation in DCP, it was the Community that ultimately provided the framework that became the Arizona DCP Implementation Plan.

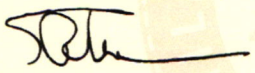
Reaching agreement among Arizona stakeholders and getting the Arizona DCP Implementation Plan approved by the Arizona legislature was no easy task. The Community has made major concessions by agreeing to make over 200,000 acre-feet of our CAP Water available for unmitigated cuts, 215,000 acre-feet of our CAP Water available for conservation efforts in Lake Mead, and 900,000 acre-feet for development interests within Arizona under favorable terms in order to remove political opposition to DCP in Arizona.

The Community has agreed to these concessions because we are convinced that without DCP we do not have the level of certainty in water availability for us to make decisions and use our water supplies in the best interests of our people. We have determined that the DCP is the best path for the Community and the Basin States, but it must be one that begins now and that is not subject to unnecessary legal challenge for environmental issues that may have already been considered and addressed.

Congress should take swift action to approve DCP and avoid amendments that will create unnecessary legal risks for essential participants.

For the DCP to work it needs to be implemented in a timely manner. We urge you to quickly approve the DCP so Basin States can start diligently implementing this historic effort to ensure that all stakeholders will have a reliable water supply to meet agricultural, domestic and environmental needs in the Basin States.

Respectfully,



Stephen Roe Lewis
Governor

Cc: Linus Everling
Councilman Barney B. Enos

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Manager

March 25, 2019

The Honorable John Barrasso, Chairman
The Honorable Catherine Cortez Masto, Ranking Member
Committee on Energy and Natural Resources
Subcommittee on Water and Power
United States Senate
304 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Cortez Masto:

The Metropolitan Water District of Southern California (Metropolitan) owns and operates the Colorado River Aqueduct and serves Colorado River water, as one of two sources of imported supplies, to a service area of 19 million residents throughout Southern Coastal California. Given the importance of Colorado River water in our service area, Metropolitan strongly supports Congress taking action to enact legislation memorializing the terms of the Seven Colorado River Basin State Drought Contingency Plan Agreements (DCPs) in a manner that facilitates implementation of the DCPs this year. Metropolitan actively participated in development of the Lower Basin DCP and believes that the DCPs represent exactly the sort of cooperative efforts of all seven Colorado River Basin states working collaboratively to manage this important shared resource that we strive for as a Basin.

The seven Basin states and contractors, like Metropolitan, developed the DCPs with input from stakeholders throughout the basin, including tribal and environmental leaders, to significantly reduce the risk of Lake Powell and Mead falling below critical elevations by incentivizing conservation and increased water storage in Lake Powell and Lake Mead. Metropolitan's 38-member board voted unanimously to authorize Metropolitan to step in and be responsible for meeting California's DCP Contributions, even if other California contractors decide not to participate in the Lower Basin DCP. Taking this step enabled Metropolitan to meet the important goals of safeguarding the district's Colorado River supplies and meeting the deadline for DCP completion established by the Commissioner of the Bureau of Reclamation.

Implementation of the DCPs will build on existing environmental compliance to protect water supplies, while preserving existing water rights and respecting environmental resources. Metropolitan stands by the testimony of the Colorado River Board of California, as submitted for the record in connection with the need to advance congressional authorizing legislation on this critical issue.

It is our recommendation that under your leadership, Congress will move forward with the steps necessary to introduce and expedite the terms of the Seven Colorado River Basin States Drought Contingency Plans by enacting legislation to address this urgent matter as soon as possible during the 116th Congress.

Sincerely,

Jeffrey Kightlinger
General Manager

cc: The Honorable Lisa Murkowski, Chair
The Honorable Joe Manchin, Ranking Member
Senate Committee on Energy and Natural Resources

National Water Resources Association

President – Cheryl Zittle
Vice President – Christine Arbogast
Treasurer – Tom Myrum
Executive Vice President – Ian Lyle

March 26, 2019

The Honorable Lisa Murkowski
Chairman
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1324 Longworth House Office Building
Washington, DC 20515

Chairman Murkowski, Chairman Grijalva, Ranking Member Manchin and Ranking Member Bishop:

On behalf of the National Water Resources Association (NWRA) I write today to echo the March 19th request of the seven States of the Colorado River Basin (Basin States) to support legislation directing the Secretary of the Interior (Secretary) to implement the drought contingency plans (DCPs) agreed to by the Basin States. NWRA also agrees with the Basin States that this legislation should implement the DCPs without granting any additional authority to the Secretary. We respectfully request that this legislation be passed with haste so that the DCPs can be implemented by April 22, 2019. The language agreed to by the Seven Basin States is attached for reference.

The NWRA is a nonprofit federation made up of agricultural and municipal water providers, state associations, hydropower producers, and individuals dedicated to the conservation, enhancement and efficient management of our nation's most important natural resource, water. Our members provide water to more than 50 million Americans, millions of acres of irrigated agricultural. This water is critical to the health of our communities and our economy. NWRA has members in each of the seven basin states, and we recognize the critical importance of the Colorado River and the water it provides to almost 40 million people. The Colorado River continues to weather a long-term drought that is projected to continue even with above average precipitation in some basin states this year. If recent conditions persist, as projected, Lake Powell and Lake Mead could see critically low levels as early as 2021.

Recognizing the challenges of managing the Colorado River, the Basin States have worked collaboratively to develop the DCPs in a manner that will benefit water users and the environment. The DCP's are consistent with existing environmental laws including the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA).

Reliable water supply is essential to the health and well being of all Americans. We thank you for your efforts to ensure the DCP authorization moves forward in a timely manner. NWRA stands ready to assist you in this work.

Sincerely,

Ian Lyle
Executive Vice President
National Water Resources Association

4 E Street SE, Washington, DC 20003
Phone: (202) 698-0693 | Fax: (202) 698-0694

PROPOSED LEGISLATION

SEC. __ COLORADO RIVER BASIN DROUGHT CONTINGENCY PLANS

(a) Notwithstanding any other provision of law directly related to operation of the applicable Colorado River System reservoirs, upon execution of the March 19, 2019 versions of the Agreement Concerning Colorado River Drought Contingency Management and Operations and the agreements attached thereto as Attachments A1, A2 and B, by all of the non-federal parties thereto, the Secretary of the Interior shall, without delay, execute such agreements, and is directed and authorized to carry out the provisions of such agreements and operate applicable Colorado River System reservoirs accordingly; provided, that nothing in this section shall be construed or interpreted as precedent for the litigation of, or as altering, affecting, or being deemed as a congressional determination regarding, the water rights of the United States, any Indian tribe, band, or community, any state or political subdivision or district thereof, or any person.

CC
The Honorable Mitch McConnell
The Honorable Charles E. Schumer
The Honorable Nancy Pelosi
The Honorable Kevin McCarthy

Northern Water
Northern Colorado Water Conservancy District
220 Water Avenue • Berthoud, Colorado 80513
800-369-7246 • www.northernwater.org

March 26, 2019

Honorable Martha McSally, Chairman
Water and Power Subcommittee
U.S. Senate Committee on Energy & Natural Resources
B40D Dirksen Senate Office Building
Washington, D.C. 20515

Honorable Catherine Cortez Masto, Ranking Member
Water and Power Subcommittee
U.S. Senate Committee on Energy & Natural Resources
516 Hart Senate Office Building
Washington, D.C. 20510

Re: Colorado River Basin Drought Contingency Plans (DCP)

Dear Chairman McSally and Ranking Member Cortez Masto:

I am writing on behalf of the Northern Colorado Water Conservancy District and its Municipal Subdistrict to join many others in support of the Colorado River Basin States Drought Contingency Plan (DCP). Northern Water urges immediate action by Congress to authorize the implementation of the DCP.

Northern Water, a public agency created in 1937, and its Municipal Subdistrict, an independent conservancy district formed in 1970, provide water for agricultural, municipal, domestic and industrial uses to an eight-county service area in Northeastern Colorado. Northern Water and the U.S. Bureau of Reclamation jointly operate and maintain the Colorado-Big Thompson Project. The Municipal Subdistrict operates the Windy Gap Project. Both projects collect water at the headwaters of the Colorado River and deliver it to Northeastern Colorado through a 13-mile tunnel beneath Rocky Mountain National Park. Northern Water and the Municipal Subdistrict deliver water to more than 120 ditch, reservoir and irrigation companies serving more than 640,000 acres of irrigated agriculture and to municipal and domestic water providers that serve a population of about 980,000 in Northeastern Colorado.

Drought conditions in the Colorado River basin have caused vital Colorado River system reservoirs to approach critically low levels. Declining reservoir levels threaten the water supplies for 40 million people and their significant urban, agricultural and recreational economies and the environment. This water supply is at risk unless the seven Colorado River basin states take immediate steps to ensure system reservoirs are maintained above critically low elevations.

The Colorado River basin states' stewardship of water resources is fundamental to a sustainable water future for all. The DCP was developed through a collaborative and cooperative effort among the states and stakeholders that transcends political and geographic boundaries. The proposed federal legislation and implementation of the plans will enable actions to conserve Colorado River water and provide the states with water management tools to address declining levels in Colorado River system reservoirs.

Northern Water and its Municipal Subdistrict request your support of the DCP and legislation currently proposed by the seven states of the Colorado River basin. It is particularly important the DCP goes into effect immediately, without delay.

Thank you for your leadership on this critically important issue.

Sincerely,

Bradley D. Wind, P.E.
General Manager

cc: U.S. Senator Michael Bennet
U.S. Senator Cory Gardner

Delivering water and power™

David C. Roberts
Associate General Manager, Water Resources
PAB232 | P.O. Box 52025
Phoenix, AZ 85072-2025
P: (602) 236-2343 | C: (602) 818-7747
Email: Dave.Roberts@srpnet.com

March 25, 2019

The Honorable Martha McSally and Honorable Catherine Cortez Masto
Chairman, and Ranking Minority Member
Subcommittee on Water and Power
Senate Committee on Energy and Natural Resources
304 Dirksen Senate Building
Washington, DC 20510

Dear Chairman McSally and Ranking Member Cortez Masto,

I write to express the Salt River Project's (SRP) support of the Colorado River Drought Contingency Plan (DCP) implementing legislation submitted to Congress by the seven Colorado Basin States on March 19th.

SRP was formed to contract with the federal government for the building of Theodore Roosevelt Dam, and other components of the Salt River Federal Reclamation Project. Today SRP operates seven dams and reservoirs throughout Arizona, 1,300 miles of canals, laterals, ditches, and pipelines to deliver water from the Salt and Verde Rivers to approximately 250,000 acres of land in the greater Phoenix area. We also operate and have interests in a variety of electrical generation facilities within Arizona. Although SRP does not rely on the Colorado River for our water supply, Colorado River water plays such a central role in Arizona's economy that all of us are impacted by uncertainty, and will benefit from this important agreement and implementing legislation.

Successful implementation of the DCP within Arizona could have only been achieved through a broad stakeholder-driven process. SRP was an invited and active participant in that process through the Arizona DCP Steering Committee. Our continued commitment to the plan can be demonstrated by SRP's commitment of mitigation water through a DCP exchange with the Central Arizona Project. SRP appreciates your leadership to address Colorado River drought, and urges the prompt passage of the legislation necessary to implement the DCPs.

Sincerely,

David C. Roberts
Associate General Manager-Water Resources

cc: Senator Kyrsten Sinema

Statement of Dan Denham
Assistant General Manager
San Diego County Water Authority

Before the
Subcommittee on Water and Power
Committee on Energy and Natural Resources
United States Senate
Hearing on the Colorado River Drought Contingency Plan
March 27, 2019

Chairman McSally, Ranking Member Cortez Masto and members of the Subcommittee, I am Dan Denham, assistant general manager of the San Diego County Water Authority (the "Water Authority"). Thank you for the opportunity to provide the views of the Water Authority in support of the Drought Contingency Plan (DCP) for the Colorado River. The Water Authority urges this Subcommittee to pass federal legislation authorizing the DCP as soon as possible.

Role of the Water Authority

As a public agency created in 1944, the Water Authority is one of the nation's largest water agencies, delivering wholesale water supplies to 24 retail water providers, including cities, special districts and Marine Corps Base Camp Pendleton. Today, most of the region's water is imported from its long-term water conservation and transfer agreement with the Imperial Irrigation District, conserved water from projects that lined portions of the All-American and Coachella canals in Imperial Valley, and water purchased from the Metropolitan Water District of Southern California. The remaining water comes from local sources, including groundwater, local surface water, recycled water, and seawater desalination. Hence, Colorado River water is an important source of the water we deliver to sustain a $231 billion regional economy and the quality of life for 3.3 million people. The clear majority of the region's residents realize that they live in a semiarid climate and view water-use efficiency as a civic duty. In support of this ethic, the Water Authority promotes ongoing efforts to improve water-use efficiency in homes, businesses and public places across the region and statewide through landmark conservation legislation. Since 1990, per capita water use in the San Diego region has declined by more than 40 percent. As a result, we now use far less water than we did three decades ago even though the population has grown by 900,000.

What the DCP will accomplish

The DCP is an effort by the seven Colorado River Basin States to prevent Lake Powell and Lake Mead from reaching critically low levels by agreeing to voluntary reductions in water delivery. People, farms, and businesses would be harmed if these reservoirs reached such low levels as to trigger severe delivery cuts. The DCP is a set of interlocking agreements: an Upper Basin DCP negotiated by Colorado, New Mexico, Utah, Wyoming and the U.S.; a Lower Basin DCP negotiated by Arizona, California, Nevada and the U.S.; and a complementary agreement which connects these two programs and links them to Mexico through a US-Mexico agreement. By

negotiating and approving the DCP, the Basin States are agreeing to voluntarily reduce Colorado River water deliveries if reservoir levels decline to certain predetermined levels.

The DCP builds on the operating experience and scientific information developed through the 2007 Interim Shortage Guidelines ("2007 Guidelines"). The 2007 Guidelines were the first mechanism the Basin States adopted to formally address the risk of shortage on the Colorado River. They introduced the concept of Intentionally Created Surplus (ICS), which is a pool of water in Lake Mead created by Lower Basin Contractors through water conservation. Water stored as ICS is available for later delivery to the Contractor that created the ICS. Storage of ICS water in Lake Mead can significantly reduce the risk of shortage to the Colorado River Basin by maintaining water levels above reservoir elevations that trigger mandatory cutbacks. Furthermore, the ICS program promotes efficient use of water resources because it provides a low-cost storage option that incentivizes leaving water in the river for later use.

The Water Authority believes the ICS mechanism has great potential to build elevation in Lake Mead and simultaneously to improve the reliability of regional water supplies. Due to several significant conservation measures funded by the Water Authority, we currently have 333,700 acre-feet (AF) of ICS eligible supplies, however, we do not yet have an ICS account. This eligible volume is anticipated to eclipse 400,000 AF in the near future as additional supplies come on line. We look forward to working with Section 5 Contractors and Reclamation to store some portion of San Diego County's supplies in Lake Mead under the ICS program and provide a benefit for the entire Southwest.

In December of 2018, Bureau of Reclamation Commissioner Brenda Burman addressed the Colorado River Water Users Association and noted that Lake Powell's and Mead's combined storage was only 46% of capacity, the lowest level since 1966. The persistence and intensity of the current drought have driven home the risk of reaching critically low levels of storage in this system. It has become imperative that the Basin States find more ways to promote conservation and stabilize the river. The DCP's agreed-upon reductions in deliveries will help achieve these goals.

Conclusion

The Water Authority applauds the tireless efforts by each of the seven Colorado River Basin States and the Bureau of Reclamation that culminated in the DCP. The DCP agreements are vital to managing risk on the Colorado River. Agreed-upon drought operations allow water agencies to predict future deliveries with greater confidence, helping us to improve efficiency and to plan with greater accuracy. The DCP will mitigate the impacts of shortages on our economies and the environment. The Water Authority is pleased to support the enactment of federal legislation that is needed for the DCP to come into effect. Please do not hesitate to contact me if you have any questions or the Water Authority can assist in any way with the Subcommittee's consideration of authorizing legislation for the DCP.

UPPER COLORADO
RIVER COMMISSION
355 South 400 East • Salt Lake City • Utah 84111 • 801-531-1150
website: www.ucrcommission.com

March 25, 2019

The Honorable Martha McSally, Chair
The Honorable Catherine Cortez Masto, Ranking Member
Senate Committee on Energy and Natural Resources, Subcommittee on Water and Power
304 Dirksen Senate Building
Washington, D.C. 20510

Re: Colorado River Basin Drought Contingency Plans ("DCPs") Oversight Hearing

Dear Chair McSally and Ranking Member Cortez Masto:

Thank you for your leadership in convening a hearing on the drought contingency planning efforts underway in both the Upper and Lower Colorado River Basins ("Upper" and "Lower Basins", respectively) as reflected in the March 19, 2019, final draft DCP agreements provided to Congress. As Executive Director and Secretary, I represent the Upper Colorado River Commission ("UCRC"), an interstate water administrative agency established under the laws of the states of Colorado, New Mexico, Utah and Wyoming (the "Upper Division States") and by Congress through the enactment of the 1948 Upper Colorado River Basin Compact (63 Stat. 31) ("1948 Compact"). The UCRC's role serves to ensure the appropriate allocation of water from the Colorado River to the Upper Division States and to ensure water is provided to the Lower Division States of Arizona, California and Nevada and to the Republic of Mexico in accordance with the 1922 Colorado River Compact (45 Stat. 1057) ("1922 Compact"). The UCRC is comprised of one representative appointed by the Governor of each of the Upper Division States and one member appointed by the President to represent the United States. There is no equivalent to the UCRC in the Lower Basin.

The UCRC supports, without reservation, both the Upper and Lower Colorado River Basin DCPs, whose combined objective is to avoid falling below critical elevations in Lakes Powell and Mead. The risks facing the Colorado River resulting from almost 20 years of historically dry conditions are well-documented. Of particular concern is the potential for Lake Mead to plunge to a critically low level as early as 2021, further threatening elevations at Lake Powell. Accordingly, the UCRC urges your immediate support for federal legislation necessary to implement the DCPs as soon as possible.

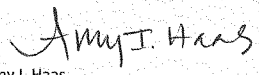
The UCRC plays a central role in both the demand management and drought response operations elements of the Upper Basin DCP ("Agreement Regarding Storage at Colorado River Storage Project Act Reservoirs Under an Upper Basin Demand Management Program" and "Agreement for Drought Response Operations at the Initial Units of the Colorado River Storage Project Act", respectively). Demand management is premised on water conserved, and subsequently stored and released at the direction of the UCRC, in order to satisfy the Upper Division States' obligations under the 1922 Compact.

The drought operations element, which will operate within the framework of existing environmental compliance, seeks to avoid falling below a critical elevation at Lake Powell through the development and implementation of drought response operations plans. The plans will require the participation of the UCRC in each phase of the drought response process.

The UCRC's role in the Upper Basin DCP arises from its authorities under both federal law and the statutes of the signatory states to the 1948 Compact. These authorities include making findings as to the quantity of water in the Upper Colorado River above Lee Ferry used each year by each state signatory to the 1948 Compact; the quantity of water deliveries at Lee Ferry during each water year; and, the necessity for and the extent of the curtailment of use required, if any. See Articles IV and VIII (d) of the 1948 Compact. Both the demand management and drought response operations elements of the Upper Basin DCP seek to maintain reservoir elevations at Lake Powell sufficient to ensure continued compliance with the 1922 Compact. At the same time, both seek to avoid the specter of involuntary curtailment of uses by the Upper Division States should conditions deteriorate such that compact obligations may be jeopardized. As such, the dual purposes of the Upper Basin DCP directly impact the responsibilities of the UCRC. Moreover, while the UCRC is not itself a party to the interstate DCP agreements, the agreements will be executed by the Upper Division States through each of their Commissioners to the Upper Colorado River Commission and, accordingly, will bind the UCRC to the terms of the agreements.

The UCRC appreciates the opportunity to express our unequivocal support for the Upper and Lower Basin DCPs and the enactment of federal legislation necessary for immediate implementation of the plans.

Very truly yours,



Amy I. Haas
Executive Director and Secretary
Upper Colorado River Commission

cc:
Patrick T. Tyrrell, Wyoming Commissioner
Eric L. Millis, Utah Commissioner
L. James Eklund, Colorado Commissioner
John R. D' Antonio, New Mexico Commissioner

The Western Coalition of Arid States
W E S T C A S

March 27, 2019

Hon. Martha McSally, Chair
Water and Power Subcommittee
U.S. Senate Committee on Energy @ Natural Resources
B40D Dirksen Senate Office Building
Washington D.C. 20510

Hon. Catherine Cortez Masto, Ranking Member
Water and Power Subcommittee
U.S. Senate Committee on Energy and Natural Resources
516 Hart Senate Office Building
Washington D.C. 20510

Hon. Jared Huffman, Chair
Water, Oceans, and Wildlife Subcommittee
Committee on Natural Resources
1324 Longworth House Office Building
Washington D.C. 20515

Hon. Tom McClintock, Ranking Member
Water, Oceans, and Wildlife Subcommittee
Committee on Natural Resources
1329 Longworth House Office Building
Washington D.C. 20515

Re: WESTCAS Support of enactment of the Colorado River Basin Drought Contingency Plan

Dear Chairmen McSally and Huffman and Ranking Members Masto and McClintock:

On behalf of the Western Coalition of Arid States (WESTCAS) we wish to express our strong support for the Colorado River Basin States Colorado River Basin Drought Contingency Plans (DCP) and we further wish to thank your respective subcommittees for the public hearing on this issue which you are holding in the Senate on March 27 and the House on March 28.

The Western Coalition of Arid States
W E S T C A S

WESTCAS was formed in 1992 when water and wastewater service providers joined together to pool their talents and resources in support of the development of water programs and regulations. Our mission is to ensure adequate supplies of high quality water for those living in the arid west while also protecting the environment. The WESTCAS membership is located in the states of California, Arizona, Nevada, Colorado, New Mexico, and Texas.

We applaud and salute the Basin States, the U.S. Bureau of Reclamation, urban and agricultural water districts and the key water contractors for reaching agreement to establish a voluntary program for managing the critically important Colorado River system. WESTCAS urges the Congress to act swiftly to enact the necessary legislation to implement the DCP. Long-term drought conditions have caused a 130-drop in the water level of Lake Mead since the year 2000. If the annual water level reaches an elevation of 1,075 feet, about 15 foot lower than the current water level, an official shortage would be declared that would in turn trigger cuts in water delivered to Arizona and Nevada. A continuing decline in Lake Mead elevation to critical levels would have increasingly severe consequences for all the stakeholders.

WESTCAS believes that the DCP would help to address the challenges associated with drought in the Colorado River Basin. We appreciate your consideration to swiftly enact the DCP legislation. If you have any questions regarding these comments please do not hesitate to contact me at (760)398-2661, extension 2286.

Sincerely,

Steve Bigley
President
Western Coalition of Arid States

The Voice of Water Quality in the Arid West
P. O. Box 77561 Washington, D. C. 20013-7561
770-424-8111 Fax: 770-727-2121

WESTERN STATES WATER COUNCIL

682 East Vine Street, Suite 7 / Murray, Utah 84107 / (801) 685-2555 / FAX (801) 685-2559

Web Page: www.westernstateswater.org

March 22, 2019

The Honorable Jared Huffman, Chair
Subcommittee on Water, Oceans & Wildlife
Natural Resources Committee
U.S. House of Representatives

The Honorable Tom McClintock, Ranking Member
Subcommittee on Water, Oceans & Wildlife
Natural Resources Committee
U.S. House of Representatives

The Honorable Martha McSally, Chair
Subcommittee on Water & Power
Energy & Natural Resources Committee
U.S. Senate

The Honorable Catherine Cortez Masto, Ranking Mem.
Subcommittee on Water & Power
Energy & Natural Resources Committee
U.S. Senate

Dear Chairs and Ranking Members:

The Western States Water Council (WSWC) was created by the governors to advise them on water policy issues. The WSWC is comprised of representatives appointed by the governors of eighteen western states. The mission of the WSWC is to foster cooperation among its member states, provide a forum for discussion of a broad spectrum of water resource challenges facing the West, and ensure that the West has an adequate, sustainable supply of water of suitable quality to meet its diverse economic and environmental needs now and in the future.

Water is a scarce and precious resource in the West. Surface and groundwater supplies in many areas are stressed, resulting in a growing number of conflicts among users and uses. Effectively addressing these challenges requires collaborative, cooperative effort among states and stakeholders that transcends political and geographic boundaries. The WSWC has a long history of promoting drought preparedness, planning, and response programs in cooperation with federal agencies.

The Colorado River provides water to approximately 40 million people and 5.5 million acres of irrigated agriculture in the Upper Basin (Colorado, New Mexico, Utah, and Wyoming) and Lower Basin (Arizona, California, and Nevada). Since 2000, the Basin has experienced historically dry conditions and combined storage in Lakes Powell and Mead has reached its lowest level since Lake Powell initially began filling in the 1960s. Last year's runoff into the Colorado River was the second lowest since 2000, and there is no sign that the trend of extended dry conditions will end any time soon even if 2019 provides above average runoff. Lakes Powell and Mead could reach critically low levels as early as 2021 if conditions do not significantly improve. Declining reservoirs threaten water supplies that are essential to the economy, environment, and health of the Southwestern United States.

The States' primary stewardship over water resources is fundamental to a sustainable water future. The WSWC strongly encourages your support of the drought contingency plans and legislation currently proposed by the seven States of the Colorado River Basin to implement necessary actions in order to respond to the historic drought and ongoing dry conditions in the Colorado River Basin.

The proposed federal legislation and subsequent implementation of the plans will enable prompt action to enhance conservation of Colorado River water and provide the States with water management tools necessary to address a looming crisis. These tools will assist in reducing the probability that Lakes Powell and Mead will decline to critically low elevations, without sacrificing any existing environmental protections.

We thank you for your leadership on this critically important issue.

Sincerely,

Tony Willardson
Executive Director

cc: The Honorable Raúl M. Grijalva, Chair, House Natural Resources Committee
The Honorable Rob Bishop, Ranking Member, House Natural Resources Committee
The Honorable Lisa Murkowski, Chair, Senate Energy & Natural Resources Committee
The Honorable Joe Manchin, Ranking Member, Senate Energy & Natural Resources Committee

WUWC
WESTERN URBAN WATER COALITION

March 25, 2019

Hon. Martha McSally, Chairman
Water and Power Subcommittee
U.S. Senate Committee on Energy & Natural Resources
B40D Dirksen Senate Office Building
Washington, D.C. 20515

Hon. Catherine Cortez Masto, Ranking Member
Water and Power Subcommittee
U.S. Senate Committee on Energy & Natural Resources
516 Hart Senate Office Building
Washington, D.C. 20510

Re: Colorado River Basin Drought Contingency Plans (DCP)

Dear Chairman McSally and Ranking Member Cortez Masto:

The Western Urban Water Coalition (WUWC) appreciates the opportunity to express its strong support for the Colorado River Basin Drought Contingency Plans (DCP) and commends the States, the Bureau of Reclamation, Tribal governments, and the key water contractors for achieving agreement through broad-based collaboration to establish a program for managing this vitally important river system. We urge Congress to act expeditiously to enact legislation to implement the DCP.

Established in 1992 to address the West's unique water supply and water quality challenges, the WUWC consists of the largest urban water utilities in the West, serving more than 40 million western water consumers in major metropolitan areas in seven Western states. WUWC includes the following urban water utilities:

- *Arizona* – Central Arizona Project, City of Phoenix and Salt River Project;
- *California* – Eastern Municipal Water District, Los Angeles Department of Water and Power, The Metropolitan Water District of Southern California, San Diego County Water Authority, Santa Clara Valley Water District, and City and County of San Francisco Public Utilities Commission;
- *Colorado* – Aurora Water, Colorado Springs Utilities, and Denver Water;
- *Nevada* – Las Vegas Valley Water District, Southern Nevada Water Authority, and Truckee Meadows Water Authority;
- *New Mexico* – Albuquerque Bernalillo County Water Utility Authority;
- *Utah* – Salt Lake City Department of Public Utilities; and
- *Washington* – Seattle Public Utilities.

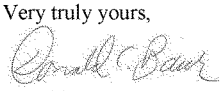
The WUWC is committed to presenting a new and different perspective on the management of water resources in the modern West. The WUWC articulates the needs and values of Western cities to provide a reliable, high quality, sustainable urban water supply for present and future generations. As operators of public water supply systems, WUWC members serve the health, environmental, and economic needs of their communities around the clock and every day of the year. WUWC advocates for effective and practicable approaches to environmental protection programs at a time when water is becoming more scarce and critical to the economic growth, natural resource sustainability, and quality-of-life in the Western states. The DCP is a classic example of the importance of innovative and collaborative management of water resources to the sustainability and resilience of the infrastructure and economy of the West.

The WUWC is in strong support of federal legislation to implement the DCP. The WUWC has carefully tracked the development of this agreement over many years, and several of its members are major urban water supply utilities in the Upper and Lower Basin of the River who have participated in negotiations to develop the DCP that is now subject to your consideration. The Colorado River is essential to the economy and quality-of-life of these urban areas, and the sustained drought conditions on the River since 2000 are placing at risk the continued availability of drinking water to the tens of millions of residents of these cities, as well as other users. The WUWC urges Congress to act expeditiously to enact federal legislation to implement the DCP. We specifically support and request enactment of the legislative text (attached), which reflects the consensus provision developed by the seven Colorado River Basin states.

It is particularly important to put the DCP into effect immediately, without delay. The DCP has already gone through years of complex negotiation and review by all of the key stakeholders, and the basic impacts of implementation are known and overwhelmingly positive. Adding further layers of procedural review would not add any meaningful elements to the DCP, while depriving the Colorado River system of critically important management measures that must be in place prior to the August 2019 determinations of operations for Lake Powell and Lake Mead in 2020. The DCP is the product of unprecedented collaboration, cooperation, and sacrifice among the many parties with interests in the Colorado, and the hard-won agreements that serve as the basis for the DCP could be undone if action is not taken now. Implementation of the DCP without delay has broad support by NGOs, including the strong support by American Rivers, the Environmental Defense Fund, the National Audubon Society, the Theodore Roosevelt Conservation Partnership and Trout Unlimited. Please support the DCP with Congressional ratification, and in doing so, help ensure the long-term viability of the Colorado River system.

Thank you for the opportunity to provide this letter of support. If you have any questions regarding these comments, please contact me at 202-654-6234 or dbaur@perkinscoie.com.

Very truly yours,



Donald C. Baur
National Counsel
Western Urban Water Coalition

143793349.1

Attachment C to the Agreement Concerning Colorado River Drought Contingency Management and Operations ("Companion Agreement")

PROPOSED LEGISLATION

SEC. __ COLORADO RIVER BASIN DROUGHT CONTINGENCY PLANS

(a) Notwithstanding any other provision of law directly related to operation of the applicable Colorado River System reservoirs, upon execution of the March 19, 2019 versions of the Agreement Concerning Colorado River Drought Contingency Management and Operations and the agreements attached thereto as Attachments A1, A2 and B, by all of the non-federal parties thereto, the Secretary of the Interior shall, without delay, execute such agreements, and is directed and authorized to carry out the provisions of such agreements and operate applicable Colorado River System reservoirs accordingly; provided, that nothing in this section shall be construed or interpreted as precedent for the litigation of, or as altering, affecting, or being deemed as a congressional determination regarding, the water rights of the United States, any Indian tribe, band, or community, any state or political subdivision or district thereof, or any person.

Rationale for Proposed Legislation

This proposed legislation was developed by the seven Basin States, and water contractors within those states, working on a consensus-basis. Much like the Drought Contingency Plans (DCPs) themselves, it is the product of collaboration and compromise. The DCPs, when authorized by this proposed legislation, will enhance existing water management tools in order to address a looming water crisis in the Colorado River Basin. The seven-year term of the DCPs will also provide the opportunity for the Basin States, federal government and other key stakeholders to collaborate on a longer-term set of sustainable solutions for managing the Colorado River.

The proposed legislation is tailored to authorize and require the Secretary of the Interior to carry out the provisions of the DCPs, and to limit the Secretary's authority to that which is necessary to carry out the flexible operational tools the states have developed. This legislation would grant no additional authority to the Secretary beyond congressional direction to implement the DCPs upon their execution by the parties. Furthermore, the proposed legislation and the DCP agreements themselves reserve and recognize each party's existing rights and do not impact the rights of other water users or stakeholders with interests in the Colorado River.

To achieve compromise with regard to the proposed legislation, the Basin States, and water contractors within those states, had to assure that the DCPs respect the existing Law of the River, while providing for the flexibility found within the DCPs. For example, certain provisions of the Lower Basin DCP are inconsistent with some Parties'

interpretations of the Law of the River. Additionally, the Upper Basin DCP authorizes the ability to store water under an Upper Basin Demand Management Program should one be developed. To allow for full implementation of the DCPs, the proposed legislation requires their implementation notwithstanding any other provision of law directly related to operation of the applicable Colorado River System reservoirs. Accordingly, through that provision, existing laws will not preclude DCP implementation.

The Parties developed the DCPs with a clear recognition of the environmental considerations associated with operating the applicable Colorado River System reservoirs. For example, the impacts of additional reduced deliveries of water consistent with what will occur under the Lower Basin DCP were previously evaluated as part of the Environmental Impact Statement associated with the 2007 Record of Decision on "Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead," prepared pursuant to the National Environmental Policy Act (NEPA). Furthermore, the Upper Basin's Drought Response Operations Agreement expressly provides that the action contemplated to protect target elevations at Lake Powell will operate within the framework of existing NEPA and Endangered Species Act (ESA) compliance, and other listed federal and state laws and regulations, for each of the Initial Units of the Colorado River Storage Project (CRSP) Act. Additionally, the Authorization for Demand Management Storage and the creation of a process to potentially use such storage as an element of the Upper Basin DCP do not affect existing NEPA or ESA compliance for the CRSP Act Initial Units.

The DCPs must also be implemented without delay. Immediate implementation of the Lower Basin DCP would benefit the Lower Basin. The new operational flexibility created by the Lower Basin DCP will enable Lower Basin water contractors to put Intentionally Created Surplus into storage this year, rather than needing to draw it down, helping preserve the level of Lake Mead. Determinations regarding reservoir operations for water year 2020 will be made in August 2019. Timely implementation is important with regards to contributions by the Republic of Mexico. Those contributions are conditioned upon the effectiveness of the Lower Basin DCP and will require several months to effectuate, potentially precluding Mexico's participation in water year 2020 if the DCPs are not implemented by April 22, 2019. Moreover, implementation cannot begin until the agreements have been executed by all parties, which is predicated upon securing congressional legislation. It is the position of the Basin States, and water contractors within those states, that immediately enacting the proposed federal legislation and implementing the DCPs reduces the probability that Lakes Powell and Mead will decline to critically low elevations – which could occur as early as 2021 – and promotes both domestic and binational participation in drought contingency planning.

Senator MCSALLY. I hope we can stick together as a Basin to get this legislation enacted very soon so water savings can be locked in for 2020.

I understand there will be more work to be done after we have authorized the DCP, but we can't let those next steps slow down this critical legislation.

Today's hearing is the next step in this historic agreement, and I look forward to hearing from our witnesses.

With that, I now turn to our Ranking Member, Senator Cortez Masto.

STATEMENT OF HON. CATHERINE CORTEZ MASTO, U.S. SENATOR FROM NEVADA

Senator CORTEZ MASTO. Thank you, Chairman McSally. It is a pleasure to be here for our first Water and Power Subcommittee hearing this Congress. And let me just say, I am looking forward to working with you and thank you so much.

As we know, there are many water issues facing the western states in the West, and it starts with us working together and it is wonderful.

We are here today to discuss the Colorado River Drought Contingency Plan. This is an important issue for both our states. Collaborative, consensus-based efforts to find solutions in difficult circumstances is what the Basin is all about. I look forward to working with everyone to advance legislation authorizing the plan's implementation.

I am especially pleased to have John Entsminger here from the Southern Nevada Water Authority. John, it is great to see you. He has been instrumental in finding a path forward for the drought contingency plan, and he continues to work tirelessly to secure a strong water future for Nevada and the West.

I also want to welcome Commissioner Burman. In the short time that you have been there, it has been great to work with you as well, as well as all the other witnesses here. Thank you for all of your hard work. I look forward to the conversation that we will have today.

The Colorado River Basin, as we all know, is critical to the nation. The Basin supplies, as you have heard, water to more than one in ten Americans and irrigates 5.5 million acres of farmland. It supports 4,200 megawatts of hydropower and provides habitat to a wide range of species. The Basin is also home to over 22 federally-recognized tribes.

In particular, the Colorado River is the lifeline for Southern Nevada. The Las Vegas valley draws 90 percent, 90 percent, of its water supply from the Colorado River by way of Lake Mead, which has seen its surface drop by more than 130 feet over the past 16 years. The water from this river supports Southern Nevada's 2 million residents and the 42 million annual visitors who come to Las Vegas and the surrounding area to partake in our world class entertainment and gaming industry, as well as our increasingly popular outdoor recreation economy. Needless to say, the conservation and preservation of this water resource is crucial to the future of my home state.

For the last 18 years the Colorado River Basin has been in prolonged drought. Last year the Bureau of Reclamation estimated there was a 57 percent chance that Lake Mead would be in shortage in 2020, the first declared shortage in the history of the Colorado River Basin. While this water year is promising, the risk of shortage in the Basin is always imminent.

The seven Basin States have come together to find a path forward in managing the river understanding the risks of shortage in the Basin. The plans they have developed are the result of years of good faith negotiation and partnership beginning as far back as the Obama Administration continuing through today. This is an agreement that considers all elements within the watershed whether they be agricultural, tribes, the environment or the 40 million people who call the Basin home.

It is often noted that water managers are in the business of the future. The Drought Contingency Plan does simply that. It looks forward and prepares for what might come.

I want to thank you, and I look forward to the testimony today.

Senator MCSALLY. Okay, thank you. I really appreciate it.

We are now going to turn to our witnesses. We really have a great panel today, all of whom have put many, many, many long hours into getting the DCP where it is today.

First, we have the Honorable Brenda Burman, the Commissioner of the Bureau of Reclamation. Next, I am very pleased to have Tom Buschatzke, the Director of Arizona Department of Water Resources, who has been a leader in Arizona water throughout this process. Thank you for all the work you did to get this across the finish line. He was literally twisting arms, can you see?

[Laughter.]

You should see the other guys.

[Laughter.]

After that we have John Entsminger, General Manager of Southern Nevada Water Authority. And lastly, Pat Tyrrell, Wyoming State Engineer who will represent the Upper Basin.

Thank you all for being here. I ask you please limit your testimony to five minutes. Your full remarks will be submitted for the record.

With that, the Subcommittee recognizes Commissioner Burman.

STATEMENT OF HON. BRENDA BURMAN, COMMISSIONER, BUREAU OF RECLAMATION, U.S. DEPARTMENT OF THE INTERIOR

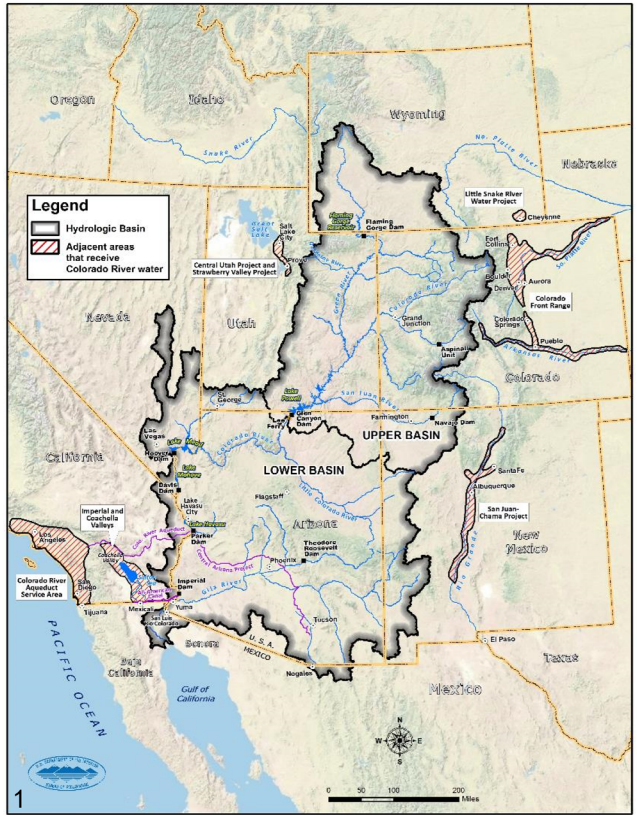
Ms. BURMAN. Good afternoon, Chair McSally, Ranking Member Cortez Masto. I'm Brenda Burman, Commissioner of the Bureau of Reclamation.

Thank you for the opportunity to testify today on the efforts on the Colorado River Basin on Drought Contingency Plans. We appreciate that the Subcommittee called this oversight hearing as promptly as possible.

Just to paint the picture—as the handout you've been provided shows, the Colorado River irrigates nearly 5.5 million acres of farmland. It serves approximately 40 million people in major metropolitan areas across nine states in the United States and Mexico, including Denver, Salt Lake City, Las Vegas, Phoenix, Tucson, Los

Angeles, San Diego, Mexicali and Tijuana. It is a most vital resource to the environment and the economy of the southwest.

[The information referred to follows:]



Colorado River System

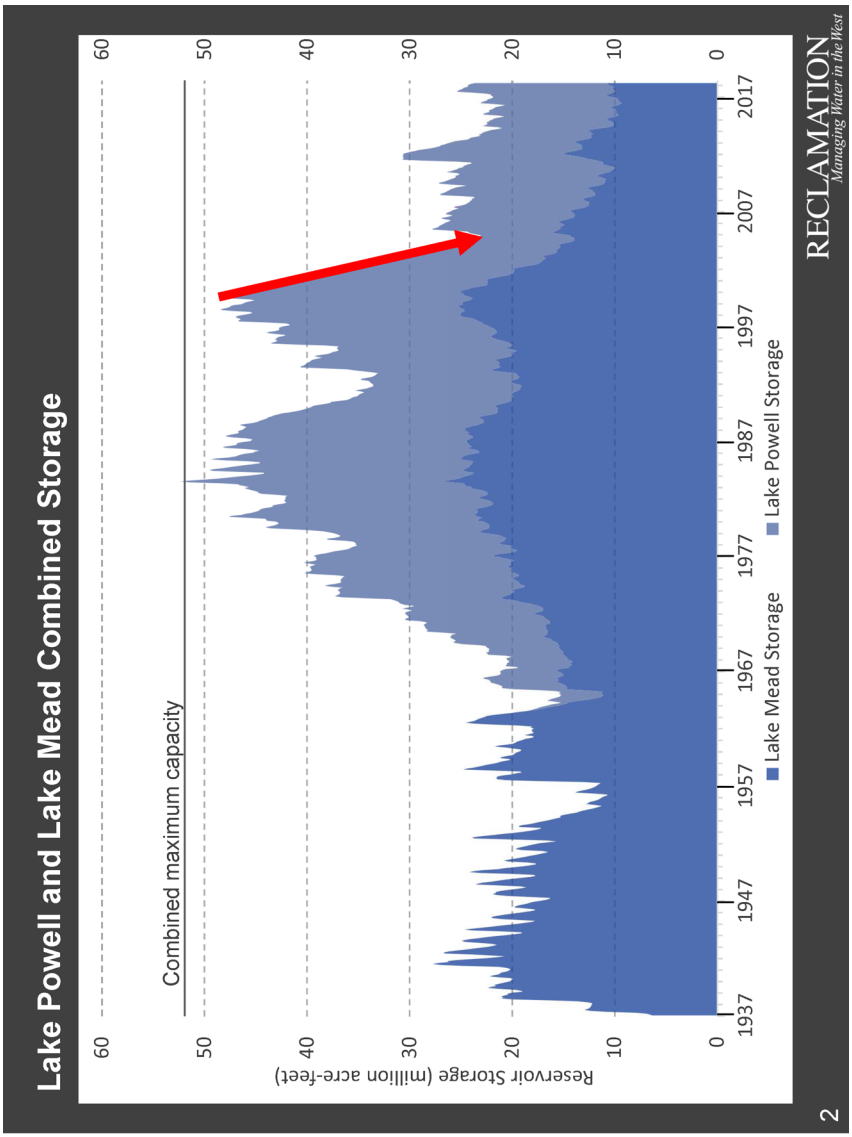
- Provides water to seven US states and two Mexican states
- Supplies water for approximately 40 million people
- Supplies water to over 5 million acres of agricultural production
- Capacity to store four years of annual average inflow
- Capacity to generate more than 4,200 megawatts of hydropower

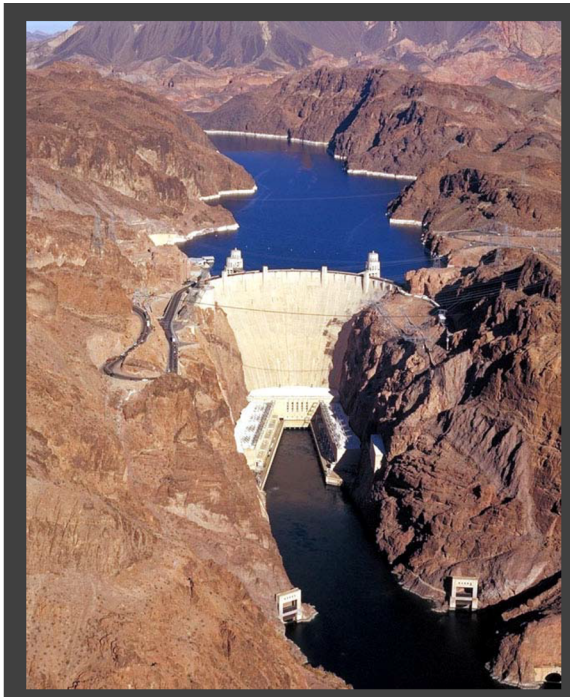
RECLAMATION
Managing Water in the West

Ms. BURMAN. Understanding its importance, the Colorado River Basin is in danger. We are currently experiencing its worst drought in recorded history. The period from 2000 through 2018 is the driest 19-year period in over 100 years. And this period represents one of the driest periods in the 1,200-year paleo record.

These dry periods have caused the combined storage of Lake Powell and Lake Mead to drop precipitously. The combined storage in these two massive reservoirs stands at approximately 40 percent of capacity.

[The information referred to follows:]


Lake Powell and Lake Mead Combined Storage
Reservoir Storage (million acre-feet)
60
50
40
30
20
10
0
Combined maximum capacity
1937
1947
1957
1967
1977
1987
1997
2007
2017
Lake Mead Storage
Lake Powell Storage
RECLAMATION
Managing Water in the West
2



Lake Mead near Hoover Dam in 2000

Lake Mead near Hoover Dam in 2016

3

RECLAMATION
Managing Water in the West

Conservation and storage programs developed in the last few years have added approximately 25 feet in elevation to Lake Mead, keeping us just out of shortage. But these conservation efforts have helped the Lower Basin avoid shortage in the past few years. These efforts will also be instrumental in helping to avert a shortage condition through 2019.

While shortages are likely part of the Lower Basin's future, none of the Lower Basin states, or Mexico for that matter, can afford to allow a true crisis of water supply to develop. Simply put, if Lake Mead were to decline to elevations below 1,020 feet mean sea level, the remaining live storage would be less than six million acre-feet. And to put that in context, in a normal year Reclamation delivers nine million acre-feet, and this would leave us without even a full year supply. That is not a future we want this Basin to experience.

Reclamation data from January indicates the critical elevations could be reached as early as 2021. The risk of our primary reservoirs, Lake Powell and Lake Mead, reaching critically low elevations has increased nearly fourfold over the past decade and could continue to increase without action.

The seven Colorado River Basin States deserve great credit. Over the past 25 years we've seen that by working together we are able to accomplish far more than any one party, any one state or even any one country could do on its own. Together the Upper and Lower Basins, all seven states, are committed to taking actions to reduce risk on the system and we applaud their efforts and their successful negotiation of a set of agreements that will reduce risk on the Colorado for all that rely on the river.

Whether you rely on the Colorado River for your city's water supply, irrigate with water from the Colorado, use electricity generated by the Colorado or enjoy the natural wonders of the Colorado River, everyone benefits when we work together to protect this limited, declining and irreplaceable resource.

Thank you again for calling this hearing. I look forward to your questions and to the testimony of the Basin State leaders that are here with us today.

[The prepared statement of Ms. Burman follows:]

Testimony of Brenda Burman
Commissioner, Bureau of Reclamation
U.S. Department of the Interior
Before the Committee on Energy and Natural Resources
Subcommittee on Water and Power
U.S. Senate

March 27, 2019

Good morning, Chairman McSally, Ranking Member Cortez Masto and Members of the Subcommittee, I am Brenda Burman, Commissioner of the Bureau of Reclamation (Reclamation).

Thank you for the opportunity to testify today on the efforts in the Colorado River Basin (Basin) on the drought contingency plans (DCPs). We appreciate that the Subcommittee called this oversight hearing as promptly as possible given the recent drought agreements forged by the Colorado River Basin States, who also are testifying today.

We are here for a very serious and important purpose: to discuss critically needed efforts to ensure that, *by working together across the Colorado River Basin*, we can protect all who rely on the Colorado River.

The Basin States have now completed their drought plans and have determined that federal legislation will be necessary to promptly implement their plans. As you will hear from the states, the goal of the DCP is straightforward. The goal is to reduce the risk that Colorado River reservoirs, primarily the massive reservoirs of Lake Powell and Mead, decline to critically low elevations. For example, and for context, if Lake Mead were to decline to elevations below 1,020 feet mean sea level, at that point the remaining live storage in Lake Mead would be less than 6 million acre-feet. In a normal year, the Lower Basin States use 7.5 million acre-feet and deliveries to Mexico total 1.5 million acre-feet.

Background

The Colorado River irrigates nearly 5.5 million acres of farmland and serves approximately 40 million people in major metropolitan areas across nine states in the United States and Mexico including Denver, Salt Lake City, Las Vegas, Phoenix, Tucson, Los Angeles, San Diego, Mexicali and Tijuana, and a number of tribal reservations.

The Colorado River Basin (Basin) is currently experiencing its worst drought in recorded history. The period from 2000 through 2018 is the driest 19-year period in over 100 years and one of the driest periods in the 1,200-year paleo-record.

Over a decade ago, responding to five years of intense drought, the Department of the Interior (Interior) worked with the Basin States, tribes and other stakeholders in the Basin to adopt operating rules for Glen Canyon and Hoover Dams. These operating rules are known as the 2007 Interim Guidelines and were adopted to better coordinate the operations of Lakes Powell and Lake Mead, encourage water conservation, and to provide objective rules for shortages and reductions of water use in the Lower Basin by Arizona and Nevada.

Since 2007, the drought has persisted and more action, such as combining provisions requiring reduced use of water with new incentives to conserve water, is needed to protect these reservoirs that are essential to our environment and economy.

Following the extremely dry years of 2012 and 2013, when the Colorado River experienced the lowest 2-year runoff period in modern recordkeeping, the seven Colorado River Basin States began pursuing drought contingency plans. In 2014, Reclamation and the Basin States initiated a series of pilot projects to encourage additional, compensated, water conservation. Most recently, the adoption in September 2017 of a new, long-term cooperative agreement with Mexico known as Minute 323 included additional important water conservation and savings actions by Mexico. Some of these water savings actions would only be triggered if the DCPs are completed in the US, which intensified efforts to complete the DCPs in the Upper and Lower Basins.

In December 2017, during my first public remarks as Commissioner of Reclamation, based on the ongoing historic drought, I called on all seven Basin States and key water districts in the Lower Basin to complete their work on finalizing the drought contingency plans by the end of 2018. During development of the DCPs, the states requested, and received, technical assistance from Interior on such matters as the projected risk facing the basin as a result of long-term drought. Interior is proud to have worked collaboratively with the States, tribes, non-governmental organizations and other Basin stakeholders on the DCPs. We look forward to continuing our work with the States, tribes, NGOs, key water districts, and Mexico on implementation of the DCPs once they become effective.

Colorado River Basin Hydrology

2018, the fifth driest year on record, caused the combined storage of Lake Powell and Lake Mead to drop to approximately 40 percent of capacity, the lowest level since the mid-1960s when Lake Powell was initially filling. Conservation and storage programs developed in the last few years have added approximately 25 feet in elevation to Lake Mead, helping to avert a

shortage condition for at least the past four years (2016 through 2019). However, Reclamation analysis conducted in January 2019 indicates the risk of water levels declining to critical elevations at Lakes Powell and Mead, has increased nearly four-fold over the past decade. Critical elevations could be reached as early as 2021.

Hydrology in the upper Colorado River basin, where 92 percent of the total inflow in the Basin originates, appears to be experiencing a modest reprieve in water year 2019. As of March 19, 2019, snowpack in the upper basin is 138 percent of median, one of the highest snowpack totals for this time of year since the drought started, and the forecasted seasonal runoff into Lake Powell is 133 percent of average. We are reminded that while hydrologic conditions in the Basin have improved this year, one year of above average inflow will not end the ongoing, extended drought and does not substantially reduce the risks facing the Basin. In fact, after a robust water year in 2011, the Basin experienced exceptionally low snowpack and flows in 2012 and 2013. Due to hydrologic uncertainty, there is still a possibility that Lakes Powell and Mead decline to critical levels over the next few years.

Drought Contingency Plans

Upper Colorado River Basin Drought Contingency Plan

The Upper Basin DCP is designed to reduce the risk of reaching critical elevations at Lake Powell and help assure continued compliance with the 1922 Colorado River Compact and authorize storage of conserved water in the Upper Basin that could help establish the foundation for a Demand Management Program that may be developed in the future.

Drought Response Operations Agreement

The Drought Response Operations Agreement (DROA) in the Upper Colorado River Basin creates a process to temporarily move water stored in the Colorado River Storage Project (CRSP) Initial Units above Lake Powell — Aspinall, Flaming Gorge, and Navajo—to Lake Powell if it is projected to approach critical elevations. The purpose of temporarily moving water to Lake Powell is to avoid critical elevations (below elevation 3525') that threaten compliance with the Colorado River Compact, and hydropower production. DROA creates a process to respond to critical elevations at Lake Powell: if advance forecasting shows the that Lake Powell's elevation is approaching a critical elevation, the Secretary will convene representatives of the Upper Basin States to monitor the forecasts, assess the water needs to avoid reaching critical elevations, and assess the water that may be available from the upstream Initial Units. If forecasted hydrology continues to show levels below a critical elevation, this group will recommend a plan to the Secretary regarding what water releases can be made from the Initial Units to avoid critical elevations, and the Secretary will approve or reject that plan.

Demand Management Storage Agreement

The Demand Management Storage Agreement creates support for each of the four Upper Basin States, working through the Upper Colorado River Commission, to have access to storage capacity in the CRSP Initial Units where they can store conserved water, should the states decide to create Demand Management Storage programs in the Upper Basin. Water conserved under such programs, if developed, would be set aside for meeting the Upper Basin's obligations contained in the Colorado River Compact of 1922 and the Upper Colorado River Compact of 1948.

The Demand Management Storage Agreement contains important safeguards. Before water can be set aside for demand management storage, each respective Upper Basin state must work with its water users to assess conservation opportunities available at facilities within the state and approve its own intrastate voluntary demand management program to conserve water. The Demand Management Storage Agreement does not affect what particular water conservation opportunities may be available in a particular state. Each state must then secure interstate approval for its program throughout the Upper Basin. The States have indicated to Reclamation that available storage for conserved water in the CRSP Initial Units is critical to pursuing discussions to develop these conservation programs because there is no incentive to begin complex discussions on water conservation if there is no place to store conserved water. We understand that these discussions are conceptual at this time and specific plans have yet to be negotiated or approved and are likely to take some time to develop.

The States have not identified operational details for a potential Demand Management program and therefore have not defined how water savings will be determined, how water will be conveyed to CRSP Initial Units, or how much water the States may be able to save. Of the 30,000,000 acre-feet of storage capacity in the Initial Units, the Demand Management Storage Agreement authorizes storage in the Upper Basin up to a maximum of 500,000 acre-feet. Once these details become available, Interior will work with the Upper Basin States, in consultation with the Lower Basin States, to review the technical elements of the anticipated Demand Management Storage Program.

Lower Colorado River Basin Drought Contingency Plan

The Lower Basin DCP is designed to reduce the risks of Lake Mead declining to critical elevations by requiring Arizona, California, and Nevada to contribute additional water to Lake Mead storage at predetermined elevations and creating additional flexibility to incentivize additional voluntary conservation of water to be stored in the lake. These new contributions of water by each Lower Basin State are an overlay and are in addition to the shortage volumes

outlined in the 2007 Interim Guidelines. Like the shortage elements of the 2007 Guidelines, new contributions would increase as Lake Mead's elevation declines, providing protection against Lake Mead declining to critically low elevations. The DCP also provides for the potential recovery of contributions later, should Lake Mead conditions improve significantly.

The Lower Basin DCP creates important incentives to encourage water conservation and storage in Lake Mead. New rules allowing flexibility to withdraw previously conserved water from Lake Mead below elevation 1,075 feet will remove disincentives to conserve water when Lake Mead is near those elevations. The Lower Basin DCP also removes incentives to withdraw previously stored water as Lake Mead approaches elevation 1075'.

The DCP increases the maximum allowable storage of Intentionally Created Surplus (ICS) for each Lower Basin State to help incentivize creation and long-term storage of ICS. This incentive aims to further bolster Lake Mead's elevation.

In the Lower Basin, the DCP agreements will be accompanied by intra-state agreements in Arizona and California for each Lower Basin State, and related inter-state agreements among Arizona, California and Nevada, required to implement the DCP.

Implementation of a Lower Basin DCP will automatically trigger Mexico's Water Scarcity Contingency Plan as outlined in Section IV of Minute 323 to the 1944 U.S.-Mexico Water Treaty. This agreement, finalized in 2017, provides that Mexico will share proportionally in making additional contributions to Lake Mead at predetermined elevations. Following execution of the Lower Basin DCP in the U.S., the principal engineers from the U.S. and Mexican Sections of the International Boundary and Water Commission will prepare an engineer's report implementing Mexico's Water Scarcity Contingency Plan.

Collectively, these elements of drought response actions in the Upper Basin, Lower Basin and Mexico would cut the risk of Colorado River reservoirs reaching critically low elevations by approximately 50 percent. These are critically important actions and Interior believes these efforts need to be implemented this year to provide the maximum benefits in terms of water conservation opportunities and associated risk reduction.

Environmental Considerations

Reclamation has worked closely with the Basin States as the DCPs were developed, and, as noted above, provided technical assistance to the States throughout their discussions. Through this engagement, Reclamation has been able to inform the States of relevant existing environmental programs and environmental compliance in the Upper and Lower Basins so that

the elements of the DCPs could be carefully developed with these important considerations in mind.

Now that the DCPs have been finalized and transmitted for congressional consideration and approval on March 19, 2019, Reclamation has been carefully reviewing the final provisions in the context of existing environmental analyses that guide operation of Colorado River reservoirs.

Avoidance of Crisis

The DCP is a program that implements simultaneous and coordinated actions among the seven Colorado River Basin States and Mexico through the activation of their Binational Water Scarcity Plan in a critically needed effort to reduce water use, or conserve water, to protect the Colorado River system from crisis.

Implementation of the DCPs would occur while Basin State representatives, along with Tribes, NGOs, and the public, begin efforts to develop agreements on longer-term operations that would be adopted beyond 2026.

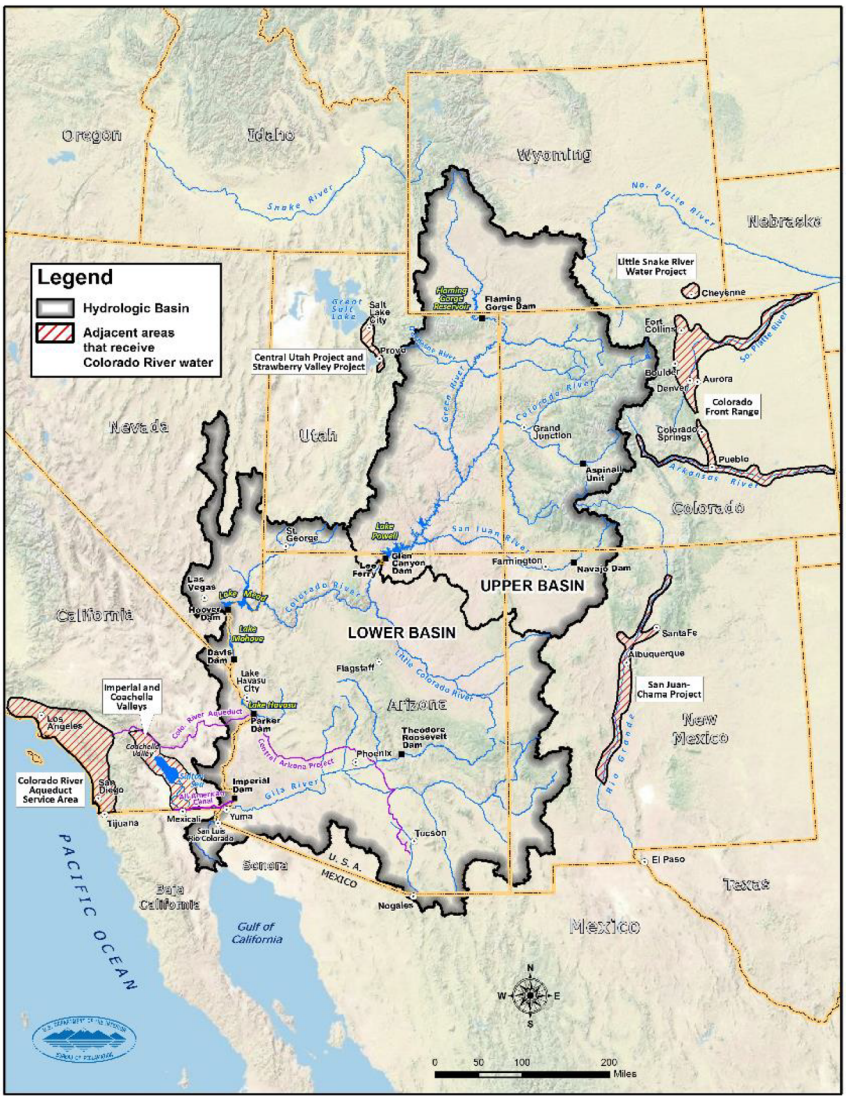
Committing to this level of conservation, more than double what is currently required, results in a more reliable future for all resources that depend on the Colorado River – municipal, agricultural, hydropower production, recreation, and the environment.

Conclusion

In summary, the Upper and Lower Basin DCPs, coupled with Mexico's Water Scarcity Contingency Plan under Minute 323, are designed to reduce the risk of Lakes Powell and Mead declining to critical levels.

With these plans in place, analysis indicates that the risk of declining to critical levels decreases to what they were when the 2007 Interim Guidelines were implemented. This would help bridge the gap as Interior and Reclamation work with stakeholders to develop a new set of operating guidelines prior to the expiration of the 2007 Interim Guidelines in 2026.

In closing, the Colorado River Basin is a critical resource to the seven Basin States. Recognizing that, they have worked and will continue to work hard on this effort. Thank you for the opportunity to appear before the Subcommittee today and I would be happy to answer any questions you may have.


Legend
Hydrologic Basin
Adjacent areas that receive Colorado River water
Oregon
Idaho
Wyoming
Nebraska
Nevada
Utah
Colorado
California
Arizona
New Mexico
Texas
Mexico
Baja California
Sonora
UPPER BASIN
LOWER BASIN
Snake River
No. Platte River
So. Platte River
Arkansas River
Colorado River
Gunnison River
San Juan River
Gila River
Little Snake River Water Project
Central Utah Project and Strawberry Valley Project
Colorado Front Range
San Juan-Chama Project
Imperial and Coachella Valleys
Colorado River Aqueduct Service Area
Flaming Gorge Reservoir
Flaming Gorge Dam
Salt Lake City
Provo
Cheyenne
Fort Collins
Boulder
Denver
Aurora
Colorado Springs
Pueblo
Grand Junction
Aspinall Unit
St. George
Lake Powell
Glen Canyon Dam
Lee Ferry
Farmington
Navajo Dam
Las Vegas
Lake Mead
Hoover Dam
Lake Mohave
Davis Dam
Lake Havasu City
Lake Havasu
Parker Dam
Flagstaff
Phoenix
Theodore Roosevelt Dam
Santa Fe
Albuquerque
Los Angeles
San Diego
Colorado River Aqueduct
Coachella Valley
Imperial Dam
All American Canal
Mexicali
Yuma
Tijuana
San Luis Rio Colorado
Tucson
El Paso
Nogales
U.S.A.
MEXICO
PACIFIC OCEAN
Gulf of California
N
W
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S
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50
100
200
Miles

Senator MCSALLY. Great. Thank you, Commissioner Burman.
Mr. Buschatzke.

STATEMENT OF THOMAS BUSCHATZKE, DIRECTOR, ARIZONA DEPARTMENT OF WATER RESOURCES

Mr. BUSCHATZKE. Good afternoon, Chairman McSally, Ranking Member Cortez Masto and members of the Subcommittee. I am Tom Buschatzke, the Director of the Arizona Department of Water Resources.

Thank you for providing me an opportunity to present testimony on behalf of the State of Arizona on the Lower Basin Drought Contingency Plan, or the DCP. It is a plan negotiated by representatives of the states of Arizona, California and Nevada, water agencies within those states and the United States Bureau of Reclamation to address the ongoing drought in the Lower Colorado River Basin that began nearly two decades ago and that has no end in sight.

DCP also has, also accounts for the drier future we all expect will be the norm for the river in the coming decades. The drought and that drier future could lead to Lake Mead falling to critical elevations resulting in draconian reductions in water deliveries throughout the Lower Basin. The DCP is an urgent measure that could help avert such a crisis, and the time to act is now.

The DCP and the drought contingency plan crafted by the Upper Basin states are the latest examples of the states working together with the Bureau of Reclamation to achieve agreed-upon solutions to issues facing the states regarding the Colorado River. The Republic of Mexico has also agreed to a binational water scarcity plan for their Colorado River water that provides additional benefit to the action of the seven Basin States.

We have developed a sound plan for protecting the water supply in both lakes in the face of historic drought conditions, and we have done so in a manner that continues to protect and respect the water rights of those that rely on the Colorado River.

The DCP is innovative and strikes a careful balance between flexibility and certainty that results in a more sustainable Lake Mead. The DCP is an overlay to the existing operational criteria set out in the 2007 interim guidelines that include water shortages in the Lower Basin to protect critical Lake Mead elevations. The DCP recognizes that the 2007 guidelines are covered by existing environmental compliance under both NEPA and the Endangered Species Act. The DCP was expressly designed to fall within the parameters of that existing environmental compliance. The DCP benefits accrue as a result of less water being delivered from Lake Mead.

DCP will have consequences for water users in Arizona. Nevertheless, stakeholders in Arizona, that include tribes, cities, towns, counties, irrigation districts, agriculture, NGOs and members of our legislature, came together to create an Arizona implementation plan to engender support for the DCP.

Water users in Arizona, recognizing the urgent need to address Colorado River issues, agreed to make sacrifices. Their support enabled legislative action on January 31, 2019, with nearly unanimous approval by the State Legislature, authorizing me to sign the

DCP documents and to bind the State of Arizona. Governor Doug Ducey signed that legislation the same day and in the same room that the landmark 1980 Groundwater Management Act was actually signed, symbolizing the importance of the Drought Contingency Plan to the State of Arizona.

It is important to understand that the Drought Contingency Plan is an initiate of the seven Basin States. I recognize that the participation of the Bureau of Reclamation over the last four years was the key to the success of this endeavor, and I thank them.

Over the last two decades innovative management on the Colorado River has been dependent upon cooperation between the states and upon partnerships with the Federal Government, even as Presidential administrations have changed. The DCP continues that paradigm.

In conclusion, I urge the adoption of the bipartisan, federal legislation necessary to implement the Drought Contingency Plans and I thank you for the opportunity to testify, and I'm happy to answer questions.

[The prepared statement of Mr. Buschatzke follows:]

Testimony of Thomas Buschatzke
Director
Arizona Department of Water Resources
Before the
Committee on Energy and Natural Resources
Subcommittee on Water and Power
United States Senate
On
The Colorado River Drought Contingency Plan
March 27, 2019

Chairman McSally, Ranking Member Cortez Masto and members of the Subcommittee:

I. Introduction

My name is Thomas Buschatzke and I am the Director of the Arizona Department of Water Resources. Thank you for providing me an opportunity to present testimony on behalf of the State of Arizona on the Lower Basin Drought Contingency Plan, or LBDCP. The LBDCP is a plan negotiated by representatives of the states of Arizona, California and Nevada, water agencies within those states and the United States Bureau of Reclamation to address the ongoing drought in the Lower Colorado River Basin that began nearly two decades ago and that has no end in sight.

The Upper Division States of Colorado, New Mexico, Utah and Wyoming, along with the Bureau of Reclamation, have negotiated a drought contingency plan for the Upper Colorado River Basin. The two DCPs work together to benefit the Colorado River system. The State of Arizona ("State") supports the implementation of both plans.

The DCPs are the latest examples of the Seven Basin States working together with the Bureau of Reclamation to achieve agreed-upon solutions to issues facing the states regarding the Colorado River. The Republic of Mexico, which has a right to receive water from the Colorado River under the Mexican Water Treaty of 1944 with the United States, is also a key participant in the management of the Colorado River. Mexico has agreed to a Binational Water Scarcity Contingency Plan pursuant to Minute 323 signed in September 2017. Working together, we have developed a sound plan for protecting the water supply in both reservoirs in the face of historic drought conditions and we have done so in a manner that continues to protect and respect the water rights of those millions of people who rely on the Colorado River.

The Seven Basin States have drafted a series of agreements to implement the DCPs. These agreements are attached to a letter sent by the Seven Basin States to the members of Congress on March 19, 2019. The letter also included proposed federal legislation necessary for the plans to become effective. We request that Congress take action immediately to pass that legislation, which directs the Secretary of the Interior to execute the agreements and carry out their provisions after they have been executed by the non-federal parties to the agreements. In addition to providing you with testimony on the DCPs, I am here today to request your support in passing that legislation as quickly as possible.

II. Importance of the River to the Lower Basin

The Colorado River is a critical source of water for 40 million people and businesses that reside in the River's Upper and Lower Basins. In addition to providing water for these municipal uses, the River supplies water for the irrigation of nearly 5.5 million acres of land in the Upper and Lower Basins and produces power for millions of people. In the United States portion of the Lower Basin, the River supplies water to

nearly 25 million people and generates electrical power for approximately 8 million people.

Last year's runoff into the Colorado River was the second lowest since 2000 but it is just one year in nearly two decades of drought in the watershed. The Bureau of Reclamation is predicting that Lakes Powell and Mead, the two largest man-made reservoirs in the United States, could reach critically low levels as early as 2021 or 2022. Although this winter's snowpack is well above normal, one thing we have all learned is that one above-normal year will not erase over 19 years of drought on the system.

In Arizona, the Colorado River supplies nearly 40 percent of the State's water use. An initial shortage on the Colorado River will be felt first by critical underground water storage and replenishment programs, then our agricultural communities within the service area of the Central Arizona Project ("CAP"), and finally by our municipalities and tribal water users within the CAP service area. The CAP serves three of the State's 15 counties, contributing to the water supplies of approximately 80 percent of the State's population, including the major metropolitan areas of Phoenix and Tucson. In addition, nine Native American communities have rights to water through the CAP, and CAP water is delivered to the agricultural communities in central and southern Arizona.

For over a century, Arizonans have worked hard to provide secure water supplies in an arid state prone to drought. Initially, development of Arizona's Colorado River water supplies occurred along the River. The authorization and construction of the CAP constituted a significant additional step for Arizona to put its Colorado River entitlement to beneficial use.

Since the initial deliveries of Colorado River water through the CAP in May 1985, the State's water users within the CAP service area have

reduced their dependency on finite groundwater supplies. At the same time, they have increased reliance on the State's renewable surface water supplies including the Colorado River. Today, nearly 40 percent of the State's annual water demand is met with Colorado River water supplies. It is difficult to overstate the importance of this water supply to the State's economy, environment, and its quality of life.

III. The DCPs

In 2013, representatives of the Seven Basin States informed the Secretary of the Interior that they would begin discussing ways to address the ongoing drought in the Colorado River Basin. The States' representatives also asked the Bureau of Reclamation to assist in those efforts. Initial discussions focused on a single basin-wide plan.

In 2015, the three Lower Basin States began discussions focused on developing a plan for the Lower Basin. The goal was to develop a plan to reduce the threat of Lake Mead's elevation falling to critically low levels that would result in significant reductions in deliveries of Colorado River supplies to water users and potentially impact hydro-power generation in the Lower Basin States.

At the same time, the Upper Basin States embarked on their own drought contingency plan. It was anticipated that the two plans would ultimately converge. These plans were intended to overlay the 2007 Guidelines and last for the duration of the Guidelines, which are in effect through 2026.

The LBDCP is the product of these lengthy negotiations among the Lower Basin States. Under the terms of the LBDCP, the Lower Basin States will take reductions in water deliveries or make contributions to Lake Mead at various elevation levels through 2026. These reductions and contributions will create additional water in Lake Mead, which in

turn, lowers the risk of the reservoir reaching critically low elevations. Key elements of the LBDCP create additional incentives, while at the same time lessening disincentives inherent in the 2007 Guidelines, for the storage and delivery of Intentionally Created Surplus (ICS).

The DCPs recognize that the 2007 Guidelines are covered by existing environmental compliance under the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). The DCPs were expressly designed to fall within the parameters of that existing environmental compliance.

The appropriate parties to the DCPs, including me on behalf of the State of Arizona, will sign the agreements attached to the March 19, 2019 Seven Basin States' letter to implement the DCPs. Upon execution of the LBDCP, the Republic of Mexico will also contribute additional water for storage in Lake Mead, in parity and alignment with the United States parties, pursuant to the Minute 323 Binational Water Scarcity Contingency Plan agreed to by Mexico and the United States.

Understanding the significance of the Colorado River supplies and the impacts of the LBDCP to Arizona's communities and economy, the State's water community, including Central Arizona Project, Salt River Project, tribes, irrigation districts, municipalities, industrial water users, environmental organizations, and with direct participation of Arizona's legislative leaders, worked diligently to develop a series of intrastate agreements, known as the Arizona Implementation Plan. Those agreements are essential to achieving the reductions in Arizona's Colorado River demands required by the LBDCP.

Following extensive debate in public meetings, irrigation district board rooms, the press and at the State legislature, on January 31, 2019, the Legislature enacted legislation in support of the intrastate agreements and a statutorily required resolution authorizing me to sign

the LBDCP after the federal legislation is passed. On the same day, Governor Doug Ducey signed the legislation and the resolution, making it effective immediately.

IV. Moving Forward with the DCPs

The agreements to implement the DCPs will be signed by the parties upon the passage of the federal legislation and will remain in effect until December 31, 2026, which is when the 2007 Guidelines expire.

The DCPs are a significant incremental step towards the sustainability of the Colorado River system. They build on prior actions that incrementally improve the management of the River.

The Seven Basin States recognize that the DCPs are not a permanent long-term solution. We recognize that more must be done by the states to prepare for a drier future. The State of Arizona is committed to begin working on the renegotiation of the 2007 Guidelines soon after the DCPs become effective, and I believe that the other six Basin States share that commitment.

V. Need for Prompt Passage of Federal Legislation

With the adoption of the 2007 Guidelines, the Seven Basin States first agreed to criteria enumerating shortages in the Lower Basin and coordinating the operations of Lakes Powell and Mead, to address the risk of these reservoirs falling to critically low elevations.

The operating experience gained from the 2007 Guidelines, as well as emerging scientific information regarding a drier future in the Colorado River Basin, has caused the states and the Bureau of Reclamation to seek more flexible water management programs and

greater required reductions in use from, or contributions of water to, Lake Mead through the DCPs.

The immediate implementation of the DCPs provides immediate benefits to the Colorado River system. Delaying the implementation of the DCPs greatly reduces the sustainability of the Colorado River system. Federal legislation is needed to allow the immediate implementation of the DCPs, which will reduce the probability that Lakes Powell and Mead will decline to critically low elevations. The Seven Basin States have provided language to members of Congress that we believe is appropriate for the federal legislation. It is our hope that federal legislation can be finalized as soon as possible, allowing the DCP agreements to be executed as written and implemented in 2019.

Given the urgent need for action, I am asking your support to adopt federal legislation, so that the agreements can be executed and implemented.

VI. Conclusion

I urge the adoption of the federal legislation that was submitted as an attachment to the March 19 Letter to Congress from the Seven Basin States.

Thank you for the opportunity to provide this testimony to the subcommittee.

Senator MCSALLY. Thank you, Mr. Buschatzke.
Mr. Entsminger,

STATEMENT OF JOHN J. ENTSMINGER, GENERAL MANAGER, SOUTHERN NEVADA WATER AUTHORITY, AND GOVERNOR'S REPRESENTATIVE, STATE OF NEVADA

Mr. ENTSMINGER. Chairwoman McSally, Ranking Member Cortez Masto, my name is John Entsminger and I'm the General Manager of the Southern Nevada Water Authority and Governor Sisolak's representative for the State of Nevada.

Thank you for the opportunity to testify today on the Colorado River Drought Contingency Plans, also known as the DCP.

Rather than summarizing my written statement submitted for the record, I'm going to depart from my prepared remarks and address two issues raised by the Imperial Irrigation District (IID) that may be on your minds. One, that IID was cut out of the DCP, and two, that less agricultural runoff will reach the Salton Sea as a result of DCP.

IID was not in any way cut out of the DCP. From very early on in the process that has now spanned a period of approximately six years, IID principals, lawyers, staff and sometimes directors, actively engaged in the development of the DCPs. While IID professed support of the DCP throughout the process, IID's board never acted on or even put on an agenda the interstate agreements and operational rules that comprise the DCP. Rather, on December 10th, 2018, IID approved certain agreements internal to California's DCP obligations but only on the condition that, among others, "That the State of California and the United States have irrevocably committed to provide sufficient funding for the full completion of the ten-year Salton Sea Management Program at a one-to-one federal state funding commitment." Because IID unilaterally demanded condition precedent, an earmark amounting to approximately $400 million in federal and state funds has not yet been met, IID has taken no action on the interstate DCP package before you and thus prevented its own participation.

While each of the parties of the DCP would have preferred that IID participate from the outset as a signatory, the parties have built an onramp for IID to participate fully in the event its position changes. Until it does so, however, IID's exclusion is self-imposed.

The DCP will not result in less water reaching the Salton Sea and consequently, the assertion that the DCP will exacerbate the very real public health concerns affecting the Sea and its surrounding communities, is erroneous. IID, having removed itself from the plan by conditioning its participation on a requirement that has failed, will not be required to make contributions to Lake Mead under the DCP. Accordingly, the DCP package forwarded to Congress by the seven Basin States will neither impact the amount of water reaching the Sea nor the Sea's environment. Furthermore, if at any time IID elects to participate based upon previously approved interstate agreements, IID's 250,000-acre-foot contribution will be comprised of water already conserved in Lake Mead or with the Metropolitan Water District. Accordingly, the real connection between DCP and the Salton Sea exists only in IID's demand for money.

Nevada has responded to the drought with an aggressive conservation campaign, large-scale infrastructure improvements and contributions to Basin-wide initiatives designed to help mitigate the impacts of drought. We have invested more than $250 million in conservation programs that have reduced our consumptive use of Colorado River water by 26 percent during the same time period our population increased by 43 percent. We have spent nearly $1.5 billion on new facilities designed to protect our communities' access to our Colorado River supplies without any funding from the Federal Government. With a paltry 1.8 percent allocation of the river's flow, Nevada can't solve the problems facing an overallocated and drought-stricken Colorado River alone.

Fortunately, we're not alone. We have worked with our partners along the river to construct new facilities and implement new agreements and regional conservation programs to bolster Lake Mead water levels. Collectively our actions have conserved enough water to increase Lake Mead levels by 30 feet, effectively delaying the onset of shortages in the Lower Basin.

The seven states have chosen to take the actions that comprise DCP voluntarily because not one of us can bear the burden alone. It is our responsibility to nurture this river that sustains our communities. The future of the American southwest is dependent upon it.

Thank you very much, and I will look forward to answering any questions.

[The prepared statement of Mr. Entsminger follows:]

Written Testimony of John J. Entsminger
General Manager, Southern Nevada Water Authority
Governors' Representative, State of Nevada

Senate Committee on Energy and Natural Resources
Subcommittee on Water and Power

March 27, 2019

Chairwoman McSally, Senator Cortez Masto, and members of the subcommittee, my name is John Entsminger. I am the General Manager of the Southern Nevada Water Authority and Governor Sisolak's representative for the State of Nevada. Thank you for the opportunity to testify today on the Colorado River Drought Contingency Plans, also known as the DCP.

The Southern Nevada Water Authority (SNWA) serves 2.2 million people in Southern Nevada—more than 70 percent of our state's total population. We are dependent on the Colorado River for 90 percent of our municipal water supply. As the only major metropolitan city located on banks of the river, our community is highly aware that bold action is required—both inside our community and beyond the borders of our state—to respond to severe and sustained drought conditions affecting much of the American Southwest.

Today I urge congressional authorization be given to the Secretary of the Interior for implementation of the DCP, led by the seven basin states that share the Colorado River. This is a final step in a long and sometimes arduous process that has come about through collaboration and compromise among the river's many stakeholders. The authorization, which directs the Secretary to follow the Drought Contingency Plan that we have developed, is vital to protecting the populations and economies served by this river.

The role of the river.

The importance of the Colorado River cannot be overstated. This river is inarguably the most vital waterway in the West, sustaining the life and livelihood of seven western states and two countries located within some of the hottest and driest reaches of North America. The river supports the municipal water needs of approximately 40 million people in the United States and Mexico, including the states of Wyoming, Colorado, Utah, New Mexico, Arizona, Nevada and California, as well as 22 federally recognized tribes. The river irrigates 5.5 million acres of agricultural lands; supports the production of hydropower for much of the West; sustains 22 National Wildlife Refuges, Recreation areas and National Parks; and serves as an essential water supply for countless plant and animal species located within the Colorado River Basin, including at least seven that are threatened or endangered.

Historical context is useful to understand and appreciate the scale, magnitude and importance of the DCP, as well as the achievement it represents for the seven states that share this critical resource. The Colorado River's history is like the river itself—long, often turbulent and full of

many unpredictable turns. It is governed by a series of contracts, regulatory guidelines, federal laws, compacts, court decisions, decrees and a treaty with Mexico—collectively known as the "Law of the River." The 1922 Colorado River Compact divided the Colorado River Basin into two distinct divisions—the Upper Basin and the Lower Basin, allocating 7.5 million acre-feet per year (MAFY) to each. The 1928 Boulder Canyon Project Act and the 1948 Upper Colorado River Compact further divided the river among the Lower Basin states of Nevada, California and Arizona, and the Upper Basin states of Wyoming, Colorado, Utah and New Mexico, respectively. The Law of the River also recognizes Mexico's right to the river's flows and 1.5 MAFY was granted to Mexico through an international treaty between the U.S. and Mexico in 1944.

Current conditions and future outlook.

Over the last century, the flows of the river have ranged from a high of 26 MAFY in 1909 to a low of 4 MAFY in 2002. As chance would have it, the Colorado River Compact was negotiated during the wettest period in the river's recorded history. At that time, the river's flow was estimated at 18 MAFY. More recent modeling indicates an average flow of 14.8 MAFY. Meanwhile, current allocations in the U.S. and Mexico total 16.5 MAFY, excluding evaporation losses in the Lower Basin. Consequently, the sum of the actual compact apportionments and evaporation exceed the flow of the river in most years.

The challenges of this over-appropriation have been magnified by severe and sustained drought conditions in the Colorado River Basin. Between 2000 and 2018, overall snowfall and runoff into the basin were well below normal, representing the lowest 19-year average on record. These conditions quickly developed into the worst drought in the basin's recorded history and have resulted in significant water level declines in major system reservoirs.

Lakes Mead and Powell, formed by the construction of Hoover Dam in the mid-1930s and Glen Canyon Dam in the early 1960s, were designed in part to protect the states from such conditions—storing water in wet years for use when its dry. When full, these two reservoirs can hold approximately 50 million acre-feet of water, the equivalent of more than three years of supply for the seven Colorado River Basin states combined. Wet years, however, have been few over the last twenty years and these critical reservoirs are now 60 percent below their combined storage capacity. As a result, our supply buffer has been reduced by more than 8.6 trillion gallons of water.

Today's water planners can do something the river's early compact negotiators could not—we can glance back, beyond the historical record, and peer forward at possible future outcomes using complex modeling. Tree ring studies have provided insight to the paleorecord, a time before formal recordkeeping began. These studies indicate the river has endured much longer droughts than we are experiencing today. Likewise, modeling using probabilistic tools and climate change assumptions provide insight to our future and indicate the hydrology of the 21st century is markedly different than the hydrology of the past.

Multiple forward-looking studies over the years—including the U.S. Bureau of Reclamation's 2012 Colorado River Basin Water Supply and Demand Study, and the 2018 National Climate

Assessment—indicate that the challenges we face today are likely to follow us well into the future. These challenges include: rising temperatures; changes to precipitation patterns; reduced snowpack and runoff to rivers, lakes and streams; drastic decreases to critical storage reserves; dry soil conditions and increased occurrence of wildfires; and the encroachment of non-native species. Likewise, drought conditions are expected to become more frequent, intense and longer. Stakeholders on the river have continued to advance discussions on how to resolve long-term supply and demand challenges facing the system. However, the bulk of our efforts have focused on more immediate needs, both locally and regionally. We are working diligently to protect our critical water and power infrastructure, and water supply access in light of worsening drought conditions.

The drought, our recent experience and information brought about by research, studies and probabilistic modeling tools have fundamentally changed our collective understanding of the river. They have also given us a valuable opportunity—the ability to plan for the best possible outcome amid an increasingly formidable forecast.

Collaborative solutions over conflict.

It is well known that conflict is synonymous with this river, even in the best of times. But so too is collaboration, even in the worst. The challenges we have faced as a river community have been daunting, both in their magnitude and complexity. With so many stakeholders and so many needs to be met, the solutions are often complicated and slow to materialize. Developing new tools that respect and uphold the old rules that govern the river takes time, patience, persistence and a willingness to compromise.

The pace of progress is often slow, but extraordinary and beneficial change has come about by our willingness to work together. This approach has proactively and incrementally addressed evolving issues, providing water users greater and timelier certainty than would be possible through litigation. The seven states of the Colorado River have come together time and again since before the drought began, and in the years since, embarking on negotiations for improved flexibility and management of the river.

Our first major accomplishments in the late 1990s centered on ways to work across state lines to store unused supplies and divvy up surplus Colorado River flows. Despite our early challenges to agree and reluctance, at times, to give, we ushered in creative solutions that satisfied us all. By the turn of the 21st century, we had developed familiarity of the issues, concerns and perspectives of our upper and lower basin partners, and formed new foundations that led to historic changes on the river, including implementation of new rules for interstate water banking and the 2001 Interim Surplus Guidelines.

As drought took hold on the West, the prospect of surplus Colorado River flows began to diminish, and the Secretary of the Interior initiated a process in cooperation with the states to explore management of lakes Mead and Powell under shortage conditions. Difficult and challenging negotiations ensued, and once again the states rose to the challenges with the Seven States Agreement, a unified decision for how shortages would be shared among Lower Basin

water users. This work was the subject of an in-depth environmental review which included an analysis of the additional reductions in water use that are now reflected in the Lower Basin DCP. This comprehensive effort supported the Secretary of the Interior's 2007 Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead (2007 Interim Guidelines).

To date, a shortage has never been declared by the Secretary of the Interior, but future declarations are imminent and will be based on a projection of Lake Mead water levels as determined by the U.S. Bureau of Reclamation's Colorado River modeling efforts. The forecast is reviewed annually in August; if Lake Mead is forecasted to be at or below 1,075 feet on January 1 of the following year, a shortage declaration will be made. Under a shortage declaration, the amount of Colorado River water available for use by the states of Nevada and Arizona will be reduced as shown in Figure 1. California's share of shortage will be borne by Arizona in accordance with the Colorado River Basin Project Act.

Figure 1 – 2007 Interim Guidelines Shortage (in acre-feet).

Lake Mead Water Level	Nevada Shortage	Arizona Shortage
1,075 – 1,050 Feet	13,000	320,000
1,050 – 1,025 Feet	17,000	400,000
Below 1,025 Feet	20,000	480,000
	RECONSULTATION	

Nevada's response to drought.

Nevada is entitled to 300,000 acre-feet of Colorado River water annually, just 1.8 percent of the river's allocated flow. SNWA, serving the greater Las Vegas Valley and Nevada's largest population center, has contracts with the Secretary of the Interior for nearly all of the state's allocation. For our community, the Colorado River is our largest and most critical water supply.

Drought in the Colorado River Basin pose two challenges for SNWA and our community: possible reduction of Colorado River supplies associated with a federally imposed shortage declaration and challenges associated with continued operations of our intake and pumping facilities, which draw our Colorado River allocation from Lake Mead, during low lake level conditions. To offset risks, Southern Nevada responded with an aggressive conservation campaign, large-scale infrastructure improvements, water banking efforts, and contributions to basin-wide initiatives designed to help mitigate the impacts of drought. Key efforts are described below.

– We took quick and coordinated actions in 2002 to implement policies and programs designed to improve water efficiency and reduce water use in Southern Nevada. Today, SNWA operates one of the largest and most comprehensive water conservation programs in the nation. We have invested more than $250 million in education and water conservation incentive programs that have reduced our consumptive use of Colorado River water by as much as 100,000 acre-feet annually, despite the addition of more than 660,000 new residents.

- We constructed a new raw water intake and initiated construction of new pumping facilities, representing a near $1.5 billion investment, to ensure our continued access to Colorado River resources. These efforts are based, in part, on the recommendation of a citizen's advisory committee, which recognized the significant risk that Lake Mead could drop below and elevation of 1,000 feet, rendering our intake and pumping facilities inoperable and severing our access to Colorado River supplies. The new intake and pumping facilities will preserve our existing capacity to a Lake Mead elevation of 875 feet. The new intake is operational, and the new low-lake level pumping station is expected to become operational next year.
- Through Intentionally Created Surplus (ICS) established in the 2007 Interim Guidelines and interstate banking agreements with the states of Arizona and California and the U.S. Bureau of Reclamation, SNWA is able to store more than 200,000 acre-feet of water annually through on- and off-stream storage and recovery programs. Likewise, SNWA can store or "bank" water locally through the Southern Nevada Water Bank. To date, we have banked more than 1.8 million acre-feet of water through our water banking initiatives, nearly eight times Southern Nevada's 2017 Colorado River consumptive use. With continued emphasis on water conservation, we anticipate banking our conserved Colorado River resources, either under existing agreements or through new ICS accounting as proposed under the DCP. The latter is preferred to help proactively manage reservoir elevations by increasing water storage in Lake Mead.

Our community's sustained conservation response and adaptive management efforts have helped to avoid crisis in Southern Nevada. As a first responder, we are heartened to see similar efforts being undertaken by our partners along the river. Like Southern Nevada, many communities throughout the basin are developing and implementing aggressive water conservation programs, proving it's possible to decouple economic growth from water use.

Basin-wide drought response.

Regionally, the seven states have worked with federal partners and Mexico since 2007 to augment Colorado River water supplies, improve system efficiency, and protect power generation and access to water supplies. These efforts range from contributing funds to a cloud seeding program designed to increase the potential yield of snowfall in the Colorado River Basin, to system efficiency and conservation efforts that have mutual benefit to Colorado River Basin water users.

SNWA has joined other stakeholders in numerous agreements designed to help mitigate the impact of ongoing drought and bolster reservoir elevations. These efforts are intended to protect against critical reservoir elevations that threaten hydropower generation at Glen Canyon and Hoover dams, and preserve access to water supplies for millions of Lower Basin water users.

These collaborative efforts among the states, federal partners and other Colorado River stakeholders have reduced Lake Mead's water level decline by more than 30 feet.

Key basin-wide drought response efforts include:

- The 2007 Interim Guidelines, supported by the 2007 Colorado River Seven States Agreement, created a mechanism for the storage and recovery of ICS to encourage efficient use of Colorado River supplies, increase storage in major system reservoirs, increase surface water elevations in Lake Mead, and help to minimize or avoid the potential for declared shortages. More than 1.26 million acre-feet of ICS is stored in Lake Mead today.
- The U.S. Department of the Interior worked with project partners to fund budgeted costs of $172 million for construction of the Warren H. Brock Reservoir, an ICS project developed on the border between the United States and Mexico to improve system efficiency by conserving water ordered but not taken by Lower Basin contract holders.
- Signed in 2012 and 2017, respectively, Minute 319 and Minute 323 of the Mexican Water Treaty allows Mexico to store water in Lake Mead to buffer against shortages and provide environmental flows, access additional water when reservoir conditions are favorable, and reduce its entitlement during a shortage declaration. As part of Minute 323, Mexico committed to a Water Scarcity Plan (WSCP), which would add to the DCP storage contributions made by the Lower Basin states to mitigate against declining reservoir elevations in Lake Mead. Implementation is effective through 2026 and contingent upon finalization of the Lower Basin Drought Contingency Plan.
- The U.S. Bureau of Reclamation, philanthropic organizations and Colorado River water users committed to fund up to $36 million between 2015 and 2019 as part of a Pilot System Conservation Agreement for conservation projects that benefit the Colorado River system. Project partners evaluate and select projects, and compensate users for voluntary water use reductions. Resources created through reductions cannot be recovered by any individual water user. To date 170,000 acre-feet of water has been created and stored in Lake Mead.
- As an early precursor to DCP, the U.S. Department of the Interior and Lower Basin water users and states set a goal of developing 1.5 to 3.0 million acre- feet of water in Lake Mead before 2020 to serve as a "protection volume." As part of the agreement, parties agreed to use their best efforts to create a total of 740,000 acre-feet of protection volume between 2014 and 2017. This goal was achieved.

Despite these efforts, the risk of reaching critical levels at Lake Mead have increased substantially since the 2007 Interim Guidelines were approved and implemented.

A grim forecast for future conditions.

Modeling by the U.S. Bureau of Reclamation suggests a 69-82 percent probability of shortage in the next 5 years, assuming the hydrologic conditions of the last 100 years prevail. Frankly, these assumptions are optimistic given the realities of climate change. "Stress test" modeling using the same hydrology we've most recently experienced indicates a 45 percent probability Lake Mead could drop below 1,020 feet in less than a decade. At this elevation, we will hover just above the point at which the river can no longer deliver to downstream water users and power production is severely compromised. This is a worst-case scenario.

As shown in Figures 2 and 3, implementation of DCP will substantially reduce the risk of Lake Mead reaching a critical elevation of 1,020 feet.

Figure 2: Probability of Lake Mead Reaching < 1,020 Feet (Full Hydrology).

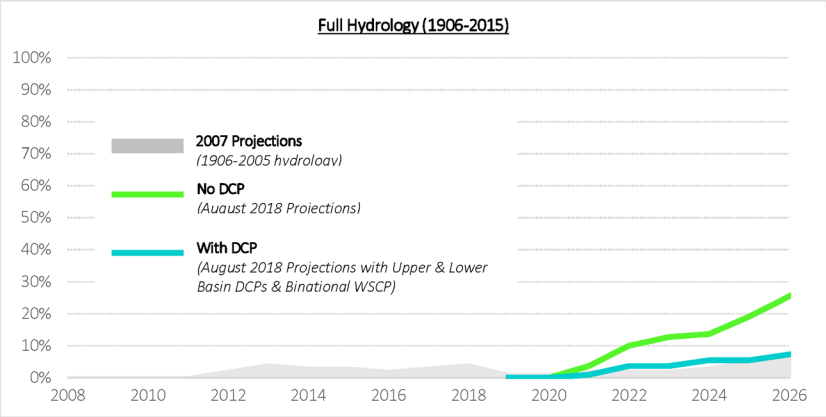
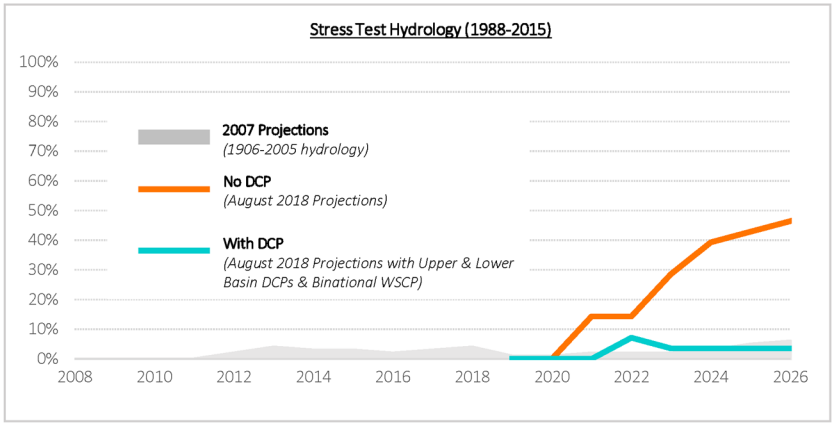


Figure 3: Probability of Lake Mead Reaching < 1,020 Feet (Stress Test Hydrology).



Precipitation and snowfall in the Colorado River Basin have improved for 2019, with heavy snows in the Rocky Mountains, which feed the river system. We could choose to be optimistic, but history, experience and recordkeeping cautions us to remember that even with normal

inflow—which we have not seen regularly in decades—Lake Mead water levels will continue to decline. This current drought has seen four years with above average inflow to Lake Powell. Yet only one of those years (2011) provided temporary relief to the declining trend in Lake Mead's elevation. The years following that temporary reprieve (2012 and 2013) were two of the driest back to back years on record. It would likely take decades of above-average inflows into the system to recover the storage we have lost over the last 20 years. While I remain hopeful that conditions will cause us to once again open the spillways of Hoover Dam as we did in the late 1990s, it would be ignorant to plan for anything more than our current reality.

Next steps – DCP.

The Basin states have worked for many years now to develop a plan that will provide greater surety for local and regional water supplies within the Colorado River Basin, and avoid catastrophic disruption to the people, economies and environments dependent upon the river. This has been a challenging exercise. There have been many bumps in the road, but we are proud of the agreements before you today.

The DCP works with and builds upon current operational guidelines by slowing Lake Mead's water level decline as critical elevations approach and by incentivizing water storage in system reservoirs. It more than doubles delivery reductions of the 2007 Guidelines below the 1,025-foot elevation threshold and brings more parties to the table to share in voluntary reductions (Figure 4). Further, DCP underscores the interdependent nature of the river's users and the need to share impacts. Mexico, recognizing the aggressive actions being taken in the United States, has already committed to share in these voluntary reductions. Although California is not required to participate in federally imposed reductions under the 2007 Interim Guidelines, California will share in voluntary reductions under the DCP.

Figure 4. Lower Basin and Mexico DCP Contributions.

LAKE MEAD ELEVATION	ARIZONA	NEVADA	CALIFONIA	MEXICO	
	DCP Contribution	DCP Contribution	DCP Contribution	Minute 323 Delivery Reduction	Binational Water Scarcity Contingency Plan
1090'	192,000	8,000	-	-	41,000
1075'	192,000	8,000	-	50,000	30,000
1050'	192,000	8,000	-	70,000	34,000
1045'	240,000	10,000	200,000	70,000	76,000
1040'	240,000	10,000	250,000	70,000	84,000
1035'	240,000	10,000	300,000	70,000	92,000
1030'	240,000	10,000	350,000	70,000	101,000
1025'	240,000	10,000	350,000	125,000	150,000

All volumes are shown in acre-feet. The United States Bureau of Reclamation commits 100,000 acre-feet at each trigger elevation.

As difficult as these agreements have been at times to navigate, they represent a historic achievement—individuals, states, tribes, and nations working together, respecting each state's legal interpretations, and crafting common sense compromises to proactively solve challenges presented by an uncertain future.

The Upper and Lower Basin plans are complementary and work together to achieve greater results in protecting system reservoirs. As the reservoirs decline, the additional water flowing to Lake Powell and the reduced demands from Lake Mead produce higher reservoir elevations than when implemented one basin at a time.

The DCP does not solve the totality of issues facing the Colorado River, but it is a bold step and a solid foundation for our collective future. I would be remiss not to acknowledge that there are real and related issues facing our communities, including the challenges of the Salton Sea. This is an important and pressing matter. It is an issue that has lingered too long, and the states agree that it must be resolved. But this current drought and the DCP actions that the States have presented to secure the water supply of the Southwest are not the cause of the Salton Sea's plight, nor will they exacerbate the situation in any way when implemented. Like our cities, the Salton Sea cannot count upon water from the river if the river fails. As such, it is within our collective best interest to protect Lake Mead from continued water level declines with the mechanisms agreed to by the states under the DCP.

Voluntary contributions with broad support.

Despite our celebrations for a strong snowpack this winter, we have little reason to believe that the worst of this drought is behind us. In fact, all indicators point to the contrary.

The shortage amounts prescribed by the 2007 Interim Guidelines are not enough to protect our communities against reservoir declines if dry conditions continue as we expect they will. Our fields, faucets, families and our strong economies are at grave risk if Lake Mead drops below critical elevations. The states that share the Colorado River recognize this; we recognize also our joint responsibility to protect this fragile system.

Once again, we have worked within the laws that govern this river it to find flexible solutions. Once again, we have chosen collaboration over conflict. Once again, we have moved slowly and deliberately and delicately to ensure that every voice at the table is heard, considered, weighed and recognized. And, once again we have found compromise.

A call to action.

On March 19, 2019, the seven Colorado River Basin States finalized and formally submitted the DCP to Congress. Today we seek your support for immediate implementation of our carefully laid plans. Simply put, the DCP needs to be authorized and executed by all parties in time to coordinate with Mexico on its contributions and to ensure that its elements are incorporated into 2020 water operations. This is imperative to ensure that the full range of conservation actions are implemented as soon as possible, which significantly minimizes the risk of lakes Mead and Powell falling to critically low levels.

We have come to this table voluntarily and with broad support from the states, environmental community, and nearly all other Colorado River stakeholders. We believe implementation of the DCP will resolve future conflict and reduce the risks we face as individual states and as the river community. The future of the American Southwest is dependent upon sustainable water supplies that are used efficiently and conjunctively managed. Your actions will support these efforts and help to secure the future of more than the 40 million people. Taking less water today will give us greater surety that this river will continue to serve us tomorrow.

I thank you for the opportunity to share my thoughts and look forwarding to answering any questions you may have.

Attachments:
Basin States Transmittal Letter to Congress
NGO Support Letter to Congress

March 19, 2019

Dear Members of Congress,

The designated representatives of the seven States of the Colorado River Basin collectively seek your support in promptly securing legislation to implement necessary actions in the Colorado River Basin in order to respond to the historic drought and ongoing dry conditions in the Basin.

The Colorado River provides water to approximately 40 million people and 5.5 million acres of irrigated agriculture in the Upper Basin (Colorado, New Mexico, Utah and Wyoming) and Lower Basin (Arizona, California and Nevada). Since 2000, the Basin has experienced historically dry conditions and combined storage in Lakes Powell and Mead has reached its lowest level since Lake Powell initially began filling in the 1960s. Last year's runoff into the Colorado River was the second lowest since 2000, and there is no sign that the trend of extended dry conditions will end any time soon even if 2019 provides above average runoff. Lakes Powell and Mead could reach critically low levels as early as 2021 if conditions do not significantly improve. Declining reservoirs threaten water supplies that are essential to the economy, environment, and health of the Southwestern United States.

Working together, the seven Basin States have developed drought contingency plans (DCPs) that are reflected in the agreements attached to this letter. We hereby request passage of federal legislation that would authorize and direct the Secretary of the Interior to sign and implement the agreements upon execution by the non-federal parties.

We look forward to working with you on legislation directing the Secretary of the Interior to implement the DCPs upon their execution by the Basin States and without granting any additional authority to the Secretary. Furthermore, the DCP agreements themselves reserve and recognize each party's existing rights and do not disturb the rights of other water users or stakeholders with interests in the Colorado River.

Federal legislation and subsequent implementation of the agreements will enable prompt action to enhance conservation of Colorado River water and provide us with water management tools necessary to address a looming crisis. These tools will assist us in reducing the probability that Lakes Powell and Mead will decline to critically low elevations. Our goal is

to have authorizing legislation in place so that the seven Basin States can execute the drought contingency plan agreements no later than April 22, 2019.

Over the past quarter century, the seven Basin States have worked together to better manage and share the waters of the Colorado River. Each Basin State has its own unique considerations and challenges. Historic dry conditions and the resulting decline in water supply in each of the states has contributed and will likely continue to contribute to significant economic, environmental and other impacts throughout the Basin. We support regional, state and local stakeholders in ongoing efforts to obtain federal funding through existing or future programs to help address those impacts.

We appreciate your support in advancing federal legislation that would allow us to implement the DCPs upon our execution of those agreements. We stand ready to provide additional information and background on the need for and the benefits of the DCPs, and to further explain the need for immediate legislative action. We look forward to working with you in this critical effort.

Respectfully,

Thomas Buschatzke
Governor's Representative
State of Arizona

L. James Eklund
Governor's Representative
State of Colorado

Peter Nelson
Governor's Representative
State of California

John J. Entsminger
Governor's Representative
State of Nevada

John R. D'Antonio, Jr.
Governor's Representative
State of New Mexico

Patrick T. Tyrrell
Governor's Representative
State of Wyoming

Eric L. Millis
Governor's Representative
State of Utah

March 14, 2019

Dear Members of Congress,

We write today to notify you of our strong support of the seven Colorado River Basin States Drought Contingency Plans (DCP). We support the ongoing work of the states to reach agreement on the DCP and the necessary federal legislation that is required to execute and implement those plans. The DCPs are intended to incentivize water conservation while protecting existing water rights, recognizing the values of the Basin's agricultural communities and respecting the need to protect its environmental resources. We appreciate that the DCPs establish processes that build on existing federal NEPA and ESA decisions.

From the headwaters to the Salton Sea and the delta, our groups have worked over the past two decades with the U.S. Bureau of Reclamation, the seven Colorado River Basin states, and water providers and users throughout the Basin to find solutions that work for both people and nature. We believe the states are close to a final agreement and we steadfastly support their actions. Once the states finalize the DCPs, we will continue our efforts during DCP implementation, as we also work with all parties to improve conditions at the Salton Sea and across the basin.

The Colorado River provides water to approximately 40 million people and 5.5 million acres of irrigated agriculture in the Upper Basin (Colorado, New Mexico, Utah and Wyoming) and the Lower Basin (Arizona, California and Nevada), as well as in Mexico. Since 2000, the Basin has experienced historically dry conditions and combined storage in Lakes Powell and Mead has reached its lowest level since Lake Powell initially began filling in the 1960s. Lakes Powell and Mead could reach critically low levels as early as 2021 if conditions do not significantly improve. Declining reservoirs threaten water supplies that are essential to the economy, environment, and health of the Southwestern United States.

Now is the time we all must work together for the sake of the future of the Basin. Therefore, it is critical that we support the goals of the DCP agreements in both basins and urge your support for these agreements and the necessary legislation as well. We look forward to working with you on these historic agreements.

Sincerely,

Matt Rice, American Rivers
Kevin Moran, Environmental Defense Fund
Julie Hill-Gabriel, National Audubon Society
Melinda Kassen Theodore Roosevelt Conservation Partnership
Steve Moyer, Trout Unlimited

Senator MCSALLY. Thank you.
Mr. Tyrrell.

STATEMENT OF PATRICK TYRRELL,
WYOMING STATE ENGINEER

Mr. TYRRELL. Thank you, Chairman McSally, Ranking Member Cortez Masto and members of the Subcommittee. My name is Pat Tyrrell. I am the Wyoming State Engineer and the Wyoming Governor's representative to the Colorado River.

I wish to express Wyoming's and the Upper Basin's support for the DCPs you've heard about, developed in a consensus manner by seven Basin States over roughly the last six years.

The Colorado River Basin has been experiencing severe drought since 2000, longer and more severe than was considered during the development of the 2007 interim guidelines. We now know that those operating rules cannot sufficiently address one of the worst drought cycles ever seen.

The seven Colorado River Basin States, working with the Department of Interior, have carefully developed a plan which is a complex compromise that helps protect critical reservoir elevations in both Lakes Powell and Lake Mead, thereby benefiting the entire river Basin.

Implementation cannot begin until the agreements have been executed by all parties which is predicated upon securing legislative authorization.

The DCPs will provide an opportunity, a bridge, for the Basin States, Federal Government and other key stakeholders to collaborate on a longer-term set of sustainable solutions for managing the river until 2026 when the '07 guidelines are renegotiated. The DCPs are the only plans that will reduce the probability that both reservoirs will decline to critically low elevations which could occur as early as 2021.

We see two ways to respond to the severe drought in the short-term. One is to watch it happen and risk lateral secretarial action in the Lower Basin and dispassionate mandatory regulation of uses in the Upper Basin. The other way is to authorize the DCPs which expand concepts outlined in the 2007 interim guidelines, lay lighter upon our water users and are a product of collaboration and consensus. In either case, if drought continues, some water uses will be reduced.

As a water manager, I'm compelled to offer my water users the second alternative, a drought plan developed with water users and contractors and which avoids heavy government intervention and mandatory curtailment is what DCP represents.

The Upper Basin cannot fail to satisfy the 1922 compacts, 75 million acre-feet and ten years' obligation at Lee Ferry below Lake Powell. Additionally, we have never had to implement the difficult curtailment provisions of the 1948 Upper Colorado River Basin Compact in the face of a looming violation. But we know it will be difficult. The risk of under- or over-regulating is significant.

The Upper Basin DCP helps sustain critical elevations at Lake Powell in compliance with the '22 Compact while avoiding or reducing mandatory curtailment of Upper Basin water uses.

The first tool in the Upper Basin plan is the Drought Response Operations Agreement which establishes a process where we can move water already stored in Lake Powell to protect critical elevations, to Lake Powell, excuse me. If it reaches those critical elevations the hydraulic ability to release water is jeopardized. If we cannot get water past that dam, we violate the compact.

Additionally, if that power pool elevation is breached, we lose the ability to generate hydropower and funding for operations, critical environmental programs related to endangered fish and salinity and power resources for customers and the grid are risked.

Even without the agreement the Bureau will seek to move uncommitted storage from its upstream initial unit reservoirs to prevent that from happening. If drought operations are ever needed, the agreement provides a process of outreach to our stakeholders to influence how that movement of water will occur and requires its subsequent recovery of water levels in those reservoirs. We have committed that those activities will occur under existing NEPA analysis, records of decisions and other authorities already in place.

Our second tool is a demand management storage agreement. Demand management cannot generate, we've learned, enough water in one year to mitigate a compact curtailment event if one is required.

So the storage space authorized through the agreement is critical to its success. If the Upper Division States conclude after study that a demand management program is feasible, and we can incentivize the program to ensure participation, the temporary voluntary reduction of existing consumptive use in the Basin would provide water to be released when needed to help assure compliance with the '22 Compact.

The Colorado River Basin needs the DCPs implemented now.

Madam Chairman, I see I am out of time. And if you like, I will stop right there. I missed a little bit, but I'll quit right there.

Senator MCSALLY. Sorry, if you want to just summarize and wrap up, I will give you a few more seconds.

Mr. TYRRELL. Thank you.

The Colorado River Basin needs the DCPs implemented now. The plans were developed through years of collaboration, compromise and consensus and function within the rigorous environmental analysis review and permitting processes that have already been completed. The plans require the passage of federal legislation to become effective. We request your support in adopting that legislation as soon as possible.

Thank you.

[The prepared statement of Mr. Tyrrell follows:]

Testimony of Patrick Tyrrell, P.E.
Wyoming State Engineer
Before the
Subcommittee on Water and Power
Committee on Energy and Natural Resources
U.S. Senate

Hearing:
"An Examination of the Colorado River Drought Contingency Plan"

March 27, 2019

Introduction

Chairman McSally, Ranking Member Cortez Masto, and Members of the Subcommittee, my name is Patrick Tyrrell. I am the Wyoming State Engineer and the Wyoming Governor's representative regarding the Colorado River. Thank you for providing me the opportunity to present testimony on behalf of the State of Wyoming and the Colorado River Upper Basin States of Colorado, New Mexico, Utah and Wyoming regarding the Colorado River Drought Contingency Plans (DCPs).

The Colorado River Basin needs the DCPs implemented now. The Basin has experienced 19 years of drought. Our current operating rules cannot sufficiently address one of the worst drought cycles over the past 1,200 plus years. The entire system faces a crisis that cannot be remedied by one or two good water years. Two countries, seven states, 40 million people, 5.5 million acres of irrigated agriculture, an economy of $1.4 trillion dollars per year, and all that rely on the Colorado River need a plan. They all need a plan now.

We have developed a plan. The seven Colorado River Basin States, working with the Department of Interior, have carefully developed a plan over the last six years. Our plan was built through collaboration and consensus and represents a complex compromise which considerers all of the potential impacts. Only through such collaboration and compromise are we able to fully achieve the flexibility and innovation found within the DCPs, while at the same time effectively respecting each State's rights under the Law of the River. Plans in the Lower Basin states of Arizona, California and Nevada have been drafted separately, but parallel to, plans drafted in the Upper Basin states of Colorado, New Mexico, Utah and Wyoming. These plans help protect critical reservoir elevations at Lakes Powell and Mead and provide a synergistic benefit to the entire River Basin when operating in tandem. They are now in front of you for consideration and authorization. Our plans are needed now.

The DCPs must be implemented without delay. The new operational flexibility created by the Lower Basin DCP will enable Lower Basin water contractors to put Intentionally Created Surplus into storage this year, rather than needing to draw it down, helping preserve the level of Lake Mead. Determinations regarding reservoir operations for water year 2020 will be made in August 2019. Timely implementation is important with regards to contributions by the Republic of Mexico. Those contributions are conditioned upon the effectiveness of the Lower Basin DCP and

will require several months to effectuate, potentially precluding Mexico's participation in water year 2020 if the DCPs are not implemented by April 22, 2019. Moreover, implementation cannot begin until the agreements have been executed by all parties, which is predicated upon securing congressional legislation.

The DCPs will enhance existing water management tools and will address the looming water crisis in the near term, but they are only temporary. They will provide the opportunity—a bridge—for the Basin States, federal government and other key stakeholders to collaborate on a longer-term set of sustainable solutions for managing the Colorado River. We need that opportunity. Only by immediately enacting the proposed federal legislation and implementing the DCPs will the plan work. The DCPs will reduce the probability that Lakes Powell and Mead will decline to critically low elevations—which could occur as early as 2021—and are the only plans which can adequately address the crisis in the short term.

My colleagues from the Lower Basin will describe the Lower Basin plan, and my testimony will focus on the Upper Basin plan. The Upper Basin DCP is designed to assure continued compliance with the 1922 Colorado River Compact (1922 Compact) and help protect critical elevations at Lake Powell. The States of Colorado, New Mexico, Utah and Wyoming developed the Upper Basin DCP along with the Department of Interior and water users and other stakeholders in each state.

Upper Basin Drought Contingency Plan

Background

Water management and operations in the Upper Basin differ from those in the Lower Basin. These differences necessarily result in different kinds of drought planning tools than those proposed to be employed in the Lower Basin.

Unlike the Lower Basin, the Upper Basin entered into a Compact to divide its allocation made under the 1922 Compact. The 1948 Upper Colorado River Basin Compact (1948 Compact) not only divides the water between the states, it also establishes the Upper Colorado River Commission (UCRC). The UCRC is composed of commissioners representing each Upper Division State of Colorado, New Mexico, Utah and Wyoming, and a commissioner representing the United States. The 1948 Compact contains provisions regarding the mandatory curtailment of Upper Basin water uses if necessary to comply with obligations under the 1922 Compact. Most specifically, it contains provisions regarding curtailment to satisfy the Upper Basin's obligation not to deplete the flow of the Colorado River at Lee Ferry below 75 million acre feet over a ten year running average. The UCRC has the authority to make findings regarding the necessity for, the extent of, and the timing of curtailment. But the individual states determine how curtailment will be implemented within each state. While curtailment has never been necessary, diminishing Colorado River supplies have increased the risk the Upper Basin may need to curtail its uses in the future to satisfy its Compact obligation. And the risk of under- or over-curtailing is high.

There is no water master in the Upper Basin. Water right holders in the Upper Basin, including the Bureau of Reclamation, obtain the right to store and use water in accordance with state law in each state. There are thousands of individual Colorado River system water right holders in the Upper Basin, as compared to the relatively few water contractors and entitlement holders of mainstream

Colorado River water in the Lower Basin. As such, any reductions in use require the involvement of a large number of users. This makes curtailment, or implementing any other method of reducing demands in the Upper Basin, a complicated endeavor.

The location of large reservoirs in relation to most Upper Basin water users is also different than in the Lower Basin. Reservoirs like Lake Powell lie downstream of water users. Therefore, any water conserved and stored in those large reservoirs cannot be called on later for use within the Upper Basin. Instead, that water becomes subject to the rules governing the coordinated operations of Lakes Powell and Mead and is ultimately released to the Lower Basin. If water conserved in the Upper Basin does not provide a benefit to the Upper Basin, there is little incentive to voluntarily conserve that water.

Even though it lies below Upper Basin water users, Lake Powell is critical to developing and utilizing the Upper Basin's Colorado River apportionment. It acts as the Upper Basin's savings account by storing water in wet years to assure the Upper Basin can meet its compact obligations in dry years. With the continuing dry conditions, that savings account has become more depleted thereby increasing the risk that Upper Basin uses will need to be curtailed for compact compliance.

Intended Goals of the Upper Basin DCP

The principle goal of the Upper Basin DCP is to help assure continued compliance with the 1922 Compact. It does so by protecting the critical elevations at Lake Powell. Protecting those elevations reduces the risk that the Upper Basin will fail to meet its compact obligations. Protecting Lake Powell elevations also reduces the risk that Upper Basin water users will see mandatory curtailment.

The Upper Basin DCP is also intended to maintain the ability to generate hydropower at Glen Canyon Dam. If Lake Powell reaches critical elevations, it could lose the ability to generate hydropower or even release sufficient water to comply with the 1922 Compact. Losing the ability to generate hydropower could interrupt electrical service to power customers, including municipalities, cooperatives, irrigation districts, federal and state agencies and Native American Tribes, and the continued functioning of the western Interconnected Bulk Electric System that extends from Mexico to Canada and from California to Kansas and Nebraska. In addition to losing a large clean power supply and soft start capability for western grid that allows power to be safely restored after blackouts, revenues from hydropower fund many important purposes, including:

- Repaying construction costs of federal projects;
- Continued operation and maintenance of the Initial Units and participating projects authorized under the 1956 Colorado River Storage Project Act, as amended ("CRSPA");
- Continued funding and implementation of environmental and other programs for compliance with the Endangered Species Act, the National Environmental Policy Act, and Grand Canyon protection legislation;
- Mitigating salinity in the Colorado River and its impacts; and
- Funding water projects within each Upper Division State.

Funding provided by hydropower generation not only provides these direct benefits, but also provides the Upper Basin the ability to develop and use it 1922 Compact apportionment. Without

the benefits provided by hydropower funding, the ability for the Upper Basin to develop and use its compact apportionment faces increased risk.

To achieve these goals, the Upper Basin DCP as presented to you for authorization consists of two agreements: The Drought Response Operations Agreement[1] and the Demand Management Storage Agreement.[2]

Drought Response Operations Agreement

The Drought Response Operations Agreement establishes a process to make operational adjustments or releases at the CRSPA Initial Units, within existing authorities, in order to help protect Lake Powell from reaching critical elevations. Essentially, it's a plan to move existing water supplies from where it is already stored to where it is needed.

The Drought Response Operations Agreement applies to the CRSPA Initial Units. The CRSPA Initial Units are Glen Canyon Dam, Flaming Gorge Dam, Curecanti (the "Aspinall Unit"), and Navajo Dam. The Agreement relies on available water supplies as needed to reduce the risk of Lake Powell dropping below the target elevation 3,525'. This target elevation appropriately balances the need to protect infrastructure, compact obligations, and operations at Glen Canyon Dam as storage approaches minimum power pool, with the Upper Division States' rights to put Colorado River System water to beneficial use.

The Agreement establishes a process to develop a drought response operations plan. That process begins when forecasts project Lake Powell elevations will reach elevation 3,525' or below. The process includes outreach with stakeholders, as well as consultation with the Lower Division States. The Agreement ensures all CRSPA Initial Units are considered given water availability, hydrology, resource conditions, and operational limitations. Any plan will contain sufficient flexibility to begin, end, or adjust operations as needed based on actual hydrologic conditions. The Agreement further provides for emergency actions if actual hydrology or actual operating experience demonstrate an imminent need to protect the target elevation at Lake Powell. Any final drought response operations plan will be submitted to the Secretary for approval. Drought response operations will continue until the target elevation is no longer at risk, and end only after each CRSPA Initial Unit has recovered any storage released under a plan.

Importantly, a drought response operations plan developed pursuant to the Agreement will comply with existing authorities. Project-specific criteria govern the operation of each CRSPA Initial Unit, including applicable Records of Decision and Biological Opinions to satisfy the requirements of the National Environmental Policy Act and the Endangered Species Act, the authorized purposes for each facility, as well as state water right systems and decrees. The Agreement explicitly

[1] Entitled "Agreement for Drought Response Operations at the Initial Units of the Colorado River Storage Project Act," and attached as Attachment A1 to the Agreement Concerning Colorado River Drought Contingency Management and Operations.
[2] Entitled "Agreement Regarding Storage at Colorado River Storage Project Act Reservoirs Under an Upper Basin Demand Management Program," and attached as Attachment A2 to the Agreement Concerning Colorado River Drought Contingency Management and Operations.

commits to operating the CRSPA Initial Units with the maximum flexibility practicable consistent with those existing authorities in both the release of water and the later recovery of storage.

Drought response operations relying upon existing storage is a first line of defense to protect critical elevations at Lake Powell. But that existing storage is not infinite. If dry conditions persist or worsen, existing storage will diminish and the Upper Basin may need to reduce its uses to comply with the 1922 Compact and protect critical reservoir elevations. To avoid mandatory, dispassionate curtailment of existing uses, the Upper Basin is exploring the feasibility of a demand management program.

Demand Management Storage Agreement

Upon Congressional approval, the Demand Management Storage Agreement authorizes the Secretary to make unfilled storage capacity at the CRSPA Initial Units available for use by the Upper Division States, through the UCRC, at no charge. Such storage capacity is available provided that the UCRC requests use of the storage capacity for the purpose of storing water conserved as part of an Upper Basin demand management program. The storage authorization does not expire.

By securing this storage authorization, the Upper Division States and the UCRC can effectively consider the feasibility of a demand management program. The storage authorization does not guarantee the development and implementation of a demand management program. Nor does it predetermine the type of any program that may be adopted in the future. However, without securing the authorization for storage capacity, investigation regarding the feasibility of such a program is likely unwarranted because any conserved water would be released to the Lower Basin under current operating rules.

The purpose of an Upper Basin demand management program will be to temporarily reduce consumptive uses in the Upper Basin or augment supplies with imported water, if needed in times of drought, to help assure continued compliance with Article III of the 1922 Compact and without impairing the right to exercise existing Upper Basin water rights in the future. Like mandatory curtailment, any demand management program will be a state-based effort implemented under state law. The Upper Basin has learned through investigating aspects of demand management that no demand management program is likely to conserve enough water in any single year to help assure continued compliance with the 1922 Compact during extended drought conditions. Therefore, an Upper Basin demand management program will require the ability to store conserved water over multiple years.

There are many outstanding issues that must be investigated before an Upper Basin demand management program can be established. Those issues include, among other things, determining transit losses that will occur by moving conserved water downstream to Lake Powell, securing sufficient demand management water volumes, measuring conserved consumptive use volumes, evaluating local impacts from non-use, ensuring delivery of conserved consumptive use volumes to the CRSPA Initial Units without diminishment by downstream diverters, and developing the expertise and resources necessary to administer such a program. These issues, as well as others, are complicated by the fact that a demand management program must work in all four Upper Division States where differing water laws apply. Funding is another significant issue.

Considerable funding will be necessary to compensate water users for their voluntary participation in the program for conserving consumptive uses. Securing federal storage space is crucial because if additional funding is necessary to pay for the storage of any conserved water, the program is likely infeasible.

In addition to authorizing storage, the Demand Management Storage Agreement sets forth the minimum framework under which the Upper Division States can access the authorized storage prior to 2026. If, after study, the UCRC determines that a demand management program is feasible, then it may develop and implement a program. A program can only be implemented if approved independently by each of the Upper Division States. The Upper Division States, through the UCRC, and the Secretary must enter into agreements on the methodology, process and documentation for verification and accounting for the creation, conveyance, and storage of conserved water. During the study and development of a program, and prior to entering any agreement, the UCRC and the Secretary must also consult with the Lower Division States.

If a program is developed prior to 2026, upon verification of the conserved water in storage, the water will not be subject to release from Lake Powell through 2057 except upon the request of the UCRC for compact compliance purposes. The stored water cannot cause a different release than would otherwise occur under current operational rules. Any water stored must be water that would have been otherwise consumptively used but for conservation as part of a demand management program. The Agreement provides a maximum combined storage limitation of 500,000 acre feet and subjects the stored water to its proportionate share of evaporation losses. The stored water will be reduced by a physical spill from Glen Canyon Dam and will be subject to annual verification and reporting. After 2026, any demand management program will be informed by and considered as part of the renegotiation of the current operating rules.

Conclusion

The Colorado River Basin needs the DCPs implemented now. The plans were developed through years of collaboration, compromise and consensus, and function within rigorous environmental analysis, review and permitting processes that have already been completed. They will enhance existing water management tools and will address the looming water crisis in the near term. The plans require the passage of federal legislation to become effective. We request your support in adopting the legislation as soon as possible so that the plans can be implemented this year.

Thank you for the opportunity to testify here today. I am happy to answer any questions you may have.

Senator MCSALLY. Great. Thank you, Mr. Tyrrell.

We will now move to questions from the Subcommittee, and I will kick that off.

Mr. Buschatzke, again, thank you for your leadership and all the hard work for the many stakeholders, some of which are represented here today, also in the audience. Both the interstate and Arizona-specific agreements are quite complex and require Arizona to conserve water in Lake Mead earlier than would otherwise be required.

Can you explain in a bit more detail how this agreement helps protect Arizona from more severe impacts down the road and the importance of Arizona savings for the Colorado River system as a whole?

Mr. BUSCHATZKE. Chairman McSally, so there's multiple ways that Arizona is protected with the DCPs in place.

So first, the DCP in the Lower Basin has a backstopping trigger provision in which, if we see a projection from the Bureau of Reclamation two years ahead of time that the lake is going below 1,030 in elevation, then the states have agreed to take additional collective actions to protect the lake from going below 1,020. This is the first time that the states have agreed to such a specific trigger to protect a specific elevation in Lake Mead. That will avoid the draconian, potential draconian reductions that might fall into the Lower Basin on Arizona.

And again, the other big benefit in how Arizona is protected is that California, Nevada and Mexico are going to share in the risks and share in the benefits of the river and for, again, the first time we have a serious agreement in which collective, collaborative actions will be taken regardless of how the priority system works in the Lower Basin.

Senator MCSALLY. Great. Thank you.

Can you also share what are the next steps in Arizona for the implementation of the plan?

Mr. BUSCHATZKE. So again, Chair McSally, we have about 15 intra-Arizona agreements that are put in place to, kind of, share the pain among the water users, move water from higher priority to lower priority users, to help offset those negative impacts of DCP on those users.

We also have money available to do some compensation for those who are also reduced from the incremental impacts of DCP as compared to the 2007 guidelines.

And maybe more importantly, we have an opportunity in 2019 to start conserving additional water in Lake Mead.

The Gila River Indian Community, one of the several tribes who has come to the table with us to collaboratively work with us within our state, has offered to put water up in Lake Mead this year and to keep that water in Lake Mead as Intentionally Created Surplus through the end of the 2026 dependency of the DCP. So we can get a head start on protecting Lake Mead through that process. So we will be moving forward to complete the rest of the agreements and with the implementation of DCP to help facilitate with the Gila River Indian Community that Intentionally Created Surplus.

And I do want to mention that within the State of Arizona the DCP allows for an increase of storage in Lake Mead for Intentionally Created Surplus, doubling our total accumulation capacity.

We have chosen, through our collaborative process, to set up a paradigm inside our state where tribal entities and non-tribal entities will split that capacity 50/50. That is a very big milestone within our state to allow greater participation by tribal entities.

So there are many benefits and many protections that come out of the Drought Contingency Plan for Arizona.

Senator MCSALLY. Great. Thank you.

One issue that has come up through the discussion on our legislative language in the last few days is one of legal certainty. It makes sense. And again, in Arizona, major investments are needed to implement these agreements for everyone, including tribes, to begin banking water in Lake Mead. But there need to be assurances that they are not going to be stranded there.

So, Commissioner Burman, can you start? Can each of you touch on legal risk factors and how important it is in a successful implementation of these agreements?

Ms. BURMAN. So, the Drought Contingency Plans have been developed to be implemented immediately. And to do that it's to provide certainty that there will be incentives, that we will buy down the risk so that there are incentives to put conservation of water behind Lake Mead.

I think the states will be prepared to talk about the actual effects for them at home about having more certainty. But from the federal perspective, we have worked with the states to know we have a plan that works, to know that this is a seven-year emergency plan to address critical risk on the system. And to do that, to invest in the system, we believe that the parties need certainty.

Senator MCSALLY. Great. Thank you.

I am out of time. I will get to the rest of you on my second round.

I want to hand it over to Senator Cortez Masto.

Senator CORTEZ MASTO. Thank you, and thank you all again.

First of all, let me just say and commend you for all of the good work on the collaboration that you have done. And I agree, this is monumental and it is legislation that we need to move and we need to move it quickly.

Mr. Entsminger, let me ask you this. Is Southern Nevada prepared to deal with the additional reductions that are required under the DCP?

Mr. ENTSMINGER. Thank you for the question, Senator.

Yes, we are prepared. Right now, under the 2007 guidelines Nevada would face a maximum reduction of 20,000 acre-feet. Our maximum contribution under the DCP is an additional 10,000 acre-feet, so that would take us up to 10 percent of our total allocation that we would be leaving in Lake Mead at lower elevations to help protect the reservoir.

However, as you're aware, we are very close to completing that $1.5 billion in new infrastructure that will allow us to pull water from Lake Mead even if the reservoir elevation was to get to dead pool.

We have reduced our overall use by about a third since 2002 through our conservation measures, and we currently have eight

years of our total demands in banked reserve. So we're in a very strong position, not only to help the rest of the river but to protect ourselves as well.

Senator CORTEZ MASTO. Can you address why it is important to implement the DCP as soon as possible?

Mr. ENTSMINGER. I think that's a great question because we've already finished negotiating Minute 323 which is an addendum to the 1944 treaty between the United States and Mexico. And pursuant to Minute 323, if we get this done about by the end of April, that will kick in the water scarcity plan and we'll have the country of Mexico leaving water in Lake Mead during the next water year.

It will also, if we finalize this before the August 24-month study, Nevada and Arizona will be adding water into the Lake next year, and it also removes some disincentives.

Right now under current law, people are incentivized actually to move water out of the reservoir right as we're on the brink of a shortage. And by tweaking, you know, the way we're allowed to deliver water we will actually now be incentivizing those people to leave the water in the lake.

So, if you add all that up, you know, you're in the range of five to six feet of elevation in Lake Mead by acting immediately rather than waiting into next year.

Senator CORTEZ MASTO. And can you address, what is the worst-case scenario if the DCP is not implemented?

Mr. ENTSMINGER. Well certainly if you look at the Bureau's modeling when they start looking at individual traces where you're stacking a 2002, 2012, 2013 in a row, without the DCP in place by 2026 during the operation of DCP you could have a situation where Lake Mead does get to dead pool. And again, that's the elevation at which the Bureau of Reclamation cannot release water downstream to California, Arizona and the country of Mexico.

Senator CORTEZ MASTO. Thank you.

Commissioner Burman, I know you have been, and we have had these conversations, you also have been supportive of coming to an agreement and moving forward with this, with the DCP. Are there any concerns that you have right now with the plan that has been presented before Congress?

Ms. BURMAN. As I said in my testimony, I commend the states for pulling together and bringing two drought contingency plans that will address the risk on the system.

In the last ten years we've seen the risk of reaching critical low elevations in Lake Mead and Lake Powell increase fourfold. What this plan does is it's a seven-year—I call it an insurance plan. It is buying down the risk on the system. It is putting measures in place that are going to keep Lake Mead and Lake Powell at above critical elevations if at all possible.

So, I say this plan has been put together over many years. To bring seven states together is no easy feat. It shows the history of collaboration on the Colorado River. And so, we look forward to working with the states to implement it.

Senator CORTEZ MASTO. Thank you.

Can you also, I have just a little bit of time left, but do you mind addressing what steps you have taken or plan to take to increase resilience in the Basin and ensure that communities and states

have the resources they need to plan for a drier and more drought prone future?

Ms. BURMAN. So, I would say it's an all-of-the-above approach.

The Drought Contingency Plans which are in front of us today, I think John Entsminger said it well, "Right now, we have disincentives on the river system."

If you are holding water in Lake Mead and you believe we will have a shortage, you want to take that water out because you won't have access to that water. The Drought Contingency Plans create new incentives. They create new incentives to conserve water in the system and new incentives to move water in the system. And that allows parties to know they have that certainty, to know they can save more water.

In the Upper Basin it gives the certainty to know that Reclamation will be working with the states to protect power pool in Lake Powell, and that's what they've identified as a necessary action. So, working with the states, we've heard them about what they need in order to make this work and that's what we've been trying to do.

Senator CORTEZ MASTO. And thank you.

I know the drought is really our norm, correct? It is not something that is unique. It's norm and that's why this is so important as we work together.

Ms. BURMAN. After 19 years you start to think that's something——

Senator CORTEZ MASTO. Sure is. Thank you.

I notice my time is up. Thank you.

Senator MCSALLY. Senator Gardner.

Senator GARDNER. Thank you, Madam Chair, and thank you to all of you for being here. I know this has been a lot of hard work. Blood, sweat and tears have gone into this effort. So thank you very much for coming together today for your time and testimony.

If you look at the map the Commissioner shows, there is Yuma, Arizona, down here at one end and I live in Yuma, Colorado, that is almost at the very opposite end diagonally across at the end of the South Platte River, adjacent areas that receive Colorado River water.

Now we are not on the South Platte but this is an incredibly important issue for those of us out in the Plains of Colorado, those of us in Western Colorado and throughout the Upper Basin, Colorado and the Lower Basin. Colorado has the unique distinction of being a state where all water flows out and no water flows in. So thank you for this timely meeting.

Mr. Entsminger, I appreciate the testimony and history that you provided. It is important for those of us who are not steeped in the history of Colorado River history to understand what we are talking about in the Drought Contingency Plan and what it means. We have negotiated apportionments of the Colorado River over the wettest periods in our history.

That is what your testimony talks about, the allocation of the river, 16.5 million acre-feet. Recent flows show 14.8 million acre-feet averages. Building in this structural deficit of at least 1.7 million acre-feet that is causing more water to flow out of the system,

the storage system, than is coming in. And that is before we even start talking about the impact that drought has on the system.

This drought that started, as Senator Cortez Masto was talking about, all of you have talked about in the early 2000s caused us to come together resulting in the 2007 Interim Guidelines that you talked about, a tool that helped us navigate the shortage declaration. But that and other efforts of conservation have not sufficiently mitigated the risk at Lake Mead dropping below critical levels in the face of this prolonged drought.

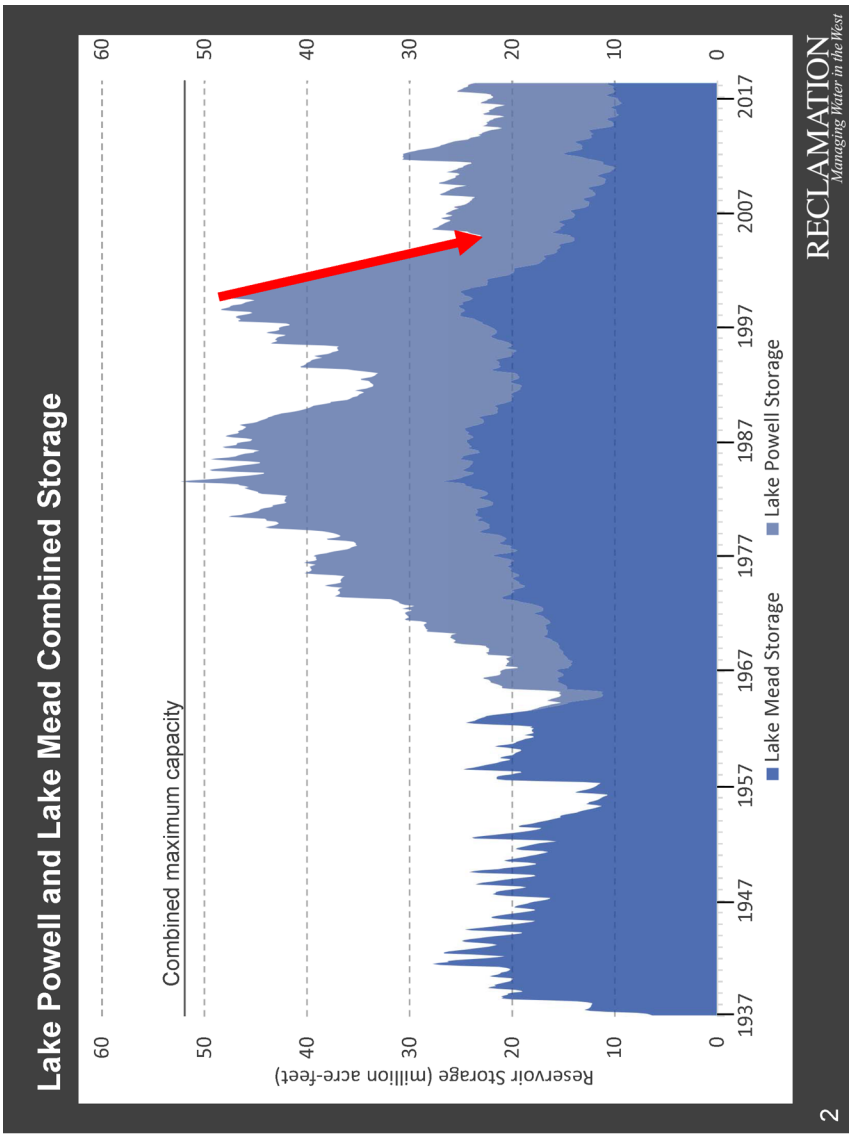
And so also here, here we are, talking about drought contingency plans that will build upon those 2007 guidelines. And while Colorado has received more snow, I was listening to the radio the other day, we were at 80 percent drought. We have had amazing snow. We are at 50 percent drought, and we still have portions of the state that are in extreme drought conditions even with the blessings of the water that we have received this year.

Commissioner Burman, as you are well aware, in the West when you touch water, you touch everything. How important is it that we come together on this program for the Colorado River system to keep it stable, to prevent a crisis for 40 million people who depend on it?

Ms. BURMAN. I've seen some reports out there that say it's a wet year, do we really need to do this? And we didn't get into this drought in one year, and we're not going to get out of this drought in one year.

I attached a map on page 2 of your handout.

[The information referred to follows:]


Lake Powell and Lake Mead Combined Storage
Reservoir Storage (million acre-feet)
60
50
40
30
20
10
0
Combined maximum capacity
1937
1947
1957
1967
1977
1987
1997
2007
2017
Lake Mead Storage
Lake Powell Storage
RECLAMATION
Managing Water in the West
2

Ms. BURMAN. And this is the combined storage of Lake Powell and Lake Mead. And if you can see there's a red arrow to point it out.

When we started this drought, we were almost full. Lake Powell and Lake Mead were almost full, and we had four years of bad hydrology. So that's just 48 months and we lost half of the system. Half of our storage across the entire Basin.

And since then, through partnerships, through incentivizing, more conservation, we've been able to keep ourselves out of shortage, but just barely. But if we were to experience 2003–2004 again, we would be in a very devastating place. So the risk on the system is too great not to act.

Senator GARDNER. It is. Thank you.

Mr. Tyrrell, in your testimony you talked about the implications for the Upper Basin states if the various drought contingency plans are not executed. First and foremost is compact compliance with the Lower Basin. Can you explain why that compact compliance is critically important?

Mr. TYRRELL. Thank you.

Chairman McSally, Senator Gardner, yes. Compact compliance is what keeps us from being curtailed. We know that under the '22 Compact there's a non-depletion requirement at Lee Ferry. And if we endanger or jeopardize that number, the Upper Basin states must curtail their use. In other words, we actually need to curtail ahead of time so that that number is not met. If we look like we're going to fall below 7.5 per year or 75 in ten, we must curtail in advance. That is the risk to the Upper Basin.

We do not want to have a compact compliance violation staring us in the face. The advantage of our demand management and drought operations agreements is that they can blunt that from happening whether we move water down from the upper initial units or whether we can intentionally conserve water, store it and release it.

Senator GARDNER. May I jump in here, real quick? I am running out of time.

I know Colorado, in Colorado, one of the big hurdles our water users had to clear was the creation of a downstream water bank, so to speak, where we would be able to store conserved water. There were concerns that the creation of this storage capacity would make a demand management program almost a certainty.

It is my understanding that the creation of the storage account does not automatically create a demand management program. Is that correct?

Mr. TYRRELL. Yes, sir. That is correct.

Senator GARDNER. And could you quickly walk through some of the issues that would have to be considered prior to the creation of any Upper Basin demand management program?

Mr. TYRRELL. Chairman McSally, Senator Gardner, first of all we need the authorization for storage, to store the water. Once we get that, the program itself is going to go back to our stakeholders. We've got to deal with issues on how that water is conserved. How do we quantify it? How do we shepherd it? And then we have to get verification that what we say we conserved, we actually have stored, ultimately in Lake Powell.

A lot of that work needs to be done, a lot of science on the movement of that water. We've learned something in the system conservation program we've had running for four years, but we need to learn more.

Senator GARDNER. Well, thank you.

These are states where history is written in water. So this is incredibly important.

Thank you.

Senator MCSALLY. Thanks, Senator Gardner.

Senator Barrasso.

Senator BARRASSO. Thank you very much, Madam Chairman.

Before I begin the questions, I would like to really recognize my friend, Pat Tyrrell, for your incredible service to Wyoming. You are a native of Cheyenne, Wyoming. For the past 18 years you have served as Wyoming State Engineer. You are an expert when it comes to western water and the law of the river. Wyoming sits at the headwaters of the Colorado River so when snowmelt flows into the Green River and travels south, you know exactly what is going on. So from irrigation, ranching, power production, recreation, the water is center to the way of life in Southwest Wyoming and you have been there.

You know, in facing nearly two decades of drought, new management practices are needed to sustain these uses for future generations, so I am just so glad that you are here today to share your insights.

That is why we have the Drought Contingency Plan before us. It provides the flexibility while preserving longstanding water rights. It is the product of years of negotiation. I know you have been there.

Years of science. Years of compromise. You understand the importance of strong coordination and consensus among state, local and federal parties because you have had that leadership role when I was in the State Senate and now the time I'm in the U.S. Senate, pretty much a direct overlap of our time together.

So we are so pleased to have you with us here today to testify on behalf of the water users in Wyoming and in the Upper Basin. I know many people in the room know Pat, have worked with him over the decades, have come to respect his knowledge of the subject matter.

But you are testifying in the House tomorrow. I talked to Liz Cheney about that today. She said you are going to be in the House tomorrow, that this was, kind of, the warm-up act today.

[Laughter.]

And then on Friday you are going to be retiring from your job but hold the title of Wyoming's longest serving State Engineer.

So I know you are going to continue on in a number of committees, continue to play an active role. I just want to specifically recognize you for the great work you have done for Wyoming, for water users throughout the West. And I just think I speak for many here in this room to just say, thank you for your service.

Mr. TYRRELL. Thank you.

Senator BARRASSO. In the few seconds I have remaining——

[Laughter.]

You know, Pat, you mentioned in your testimony that you believe that the Drought Contingency Plan is going to serve to protect Wyoming water users from the risk of mandatory curtailment. Can you provide some details around that statement and maybe describe why Wyoming's water users should support the effort?

Mr. TYRRELL. Certainly, thank you, Chairman McSally and Senator Barrasso.

The risk of curtailment brings with it economic issues associated with people who can't use water to grow crops or from municipalities or industries in the Basin who might be junior to the 1922 Compact. That curtailment is a dispassionate mandatory turning off under our priority system of the uses of water.

There are other risks as well. Among them are the funding that comes from Lake Powell that goes toward salinity control, and endangered fish recovery also allow Upper Basin states to develop more of their unused apportionment. Those programs are critical to our development. Losing them risks our water users.

Senator BARRASSO. Any other risk would be avoided by implementing this program?

Mr. TYRRELL. Senator Barrasso, one of the risks we've always tried to avoid in this Basin, the reason we have seven states here today, is the risk of interstate litigation. We obviously want to avoid that because that's not a winning situation for this group. So I would certainly offer that as another risk avoidance.

Senator BARRASSO. Okay.

And under the Upper Basin Drought Response Operations Agreement, some water may be moved out of the CRSP Initial Units, including Flaming Gorge and in order to support critical levels in Lake Powell. You know, Flaming Gorge provides significant recreation and economic benefits to Southwestern Wyoming. So can you explain why this is necessary and what plans are in place for Flaming Gorge or any of the initial units to recover if they move more water to Lake Powell?

Mr. TYRRELL. Thank you for that question.

By the way, I retire Monday, and not Friday, unless I do really poorly tomorrow.

[Laughter.]

Chairman McSally, Senator Barrasso, the Drought Response Operations to which you refer—first understand that Lake Powell is paramount in protecting that power pool and the ability to get water out—keeps all the lights on, all those programs running, protects the grid, et cetera. The Bureau will move water down that is uncommitted from other reservoirs to protect Lake Powell.

What our agreement gets us is a seat at the table to influence how that occurs, involve our stakeholders, and it does not, if we ever have to enter drought operations, which we hope we don't, we hope it's a plan we create and never have to use, then it is not complete until those reservoirs are recovered. The states were successful in getting recovery into that plan.

Senator BARRASSO. So then, under the plan will Wyoming ever be required to send more water to the Lower Basin than currently required?

Mr. TYRRELL. No, Mr. Senator. All it does is allow us to continue to comply with the '07 guidelines and the existing law of the river makes them more sustainable.

Senator BARRASSO. Well again, I just want to thank you for the work you have done. I appreciate the good work you have done for Wyoming, serving as our State Engineer. Thanks so very much.

Thank you, Madam Chairman.

Senator MCSALLY. Thank you, Senator Barrasso.

We will now go for a second round of questions.

Commissioner Burman, there are a number of federal and non-federal investments included in the Arizona implementation plan to mitigate for reduced water deliveries. This is especially important for the Pinal County agricultural community, as you know, so they have time to prepare for this new water regime.

Are you starting to look at potential funding sources to implement this mitigation, and will you commit to working with me on this as the DCP is implemented?

Ms. BURMAN. Senator, Madam Chair, we absolutely commit to working with the Senate and with the state and with local parties in moving forward to implement the DCP.

Senator MCSALLY. Great.

Anything in particular you can give us insight on related to the Pinal County question?

Ms. BURMAN. I would say that the first step the Federal Government is looking at has been with the Gila River Indian Community and accelerating some of our work with the Gila River as far as firming commitments, providing ability to put water in Lake Mead which helps protect Pinal County and others in that area.

Senator MCSALLY. Okay, great.

Also, you know, in addition to the critical water security benefits of the DCP which have been talked about, protecting hydropower generation is an important aspect of these agreements. This has been touched on a little bit already.

But Commissioner Burman, can you discuss how the DCP affects hydropower generation at Glen Canyon and Hoover Dams and how Reclamation is working with hydropower stakeholders in this process?

Ms. BURMAN. Absolutely.

We are completing analysis that will look at the full range of effects to hydropower of the Drought Contingency Plans. We're doing that with Western Area Power Authority and with hydropower stakeholders.

But I can say, for example, that at full capacity Hoover Dam's turbines are able to generate over 2,000 megawatts of power. But currently, given all the lower elevations in Lake Mead, they're only able to generate about 1,500 megawatts. So that's a 25 percent reduction in the ability to generate power at Hoover Dam. We lose about 5.7 megawatts of capacity for every foot in Lake Mead that it drops. So I would say it's very important for hydropower to shore up elevations in both Lake Mead and Lake Powell. If we were to drop down past power pool, there would be zero hydropower generated. And this plan is designed to protect Lake Powell and Lake Mead and the hydropower that they generate.

Senator MCSALLY. Great. Thank you.

Mr. Buschatzke, the flow of water in the Arizona Implementation Plan is very complex, as you know. Can you go into a bit more detail about how offsets will be used to ensure the water banked by CAP in Lake Mead for mitigation will not further diminish reservoir levels?

Mr. BUSCHATZKE. Chairman McSally, so in our Intra Arizona Mitigation Plan probably about 400,000 acre-feet through dependency of the plan 2026 stored as Intentionally Created Surplus by Central Arizona Project to come out of the lake to help mitigate impacts on agriculture, tribes and cities.

At the same time, we are facilitating the conservation of at least 400,000 acre-feet to replace it so that we at least have a net zero impact on the elevation of Lake Mead. That was a critical component from the state's perspective, and that perspective was also shared by many of the stakeholders in the process. So that was a key to finding a path forward in the State of Arizona Intra Arizona DCP plan.

Senator MCSALLY. Great. Thank you.

I just want to wrap up. Senator Cortez Masto asked about what is going to happen if we don't get this done in an urgent manner, and I appreciate the answers because I think it is really important for everybody up here to understand this.

I haven't been here very long, but I have been here long enough to know that sometimes we need some urgency created for people to move things in a timely manner and get them signed into law. So what I heard from the testimony is at the end of April there is a critical element there for if we get it all done and signed into law by the end of April then there are additional benefits. I mean, as soon as possible. This week we should get it done.

But there are some immediate risks, if we don't get it done by the end of April then we are going to have missed opportunities, specifically related to Mexico. Is that what you said, Mr. Entsminger?

Mr. ENTSMINGER. That's correct, Madam Chair.

Senator MCSALLY. Okay.

So to all of our colleagues who were here and those who will need their support to move this to the Senate and the House, this is just critically important to move forward for 40 million people and all that is involved.

You all did your hard work. It is now our time to do our hard work, and so I will finish my questions and comments with that sense of urgency for everybody. Let's please move this legislation. It should be non-controversial and let's just get it through both bodies and on the President's desk and signed into law.

Senator Cortez Masto.

Senator CORTEZ MASTO. Thank you.

I agree that this is an important agreement that has come together, and everyone has worked so hard. It is time for us to do our job and get it done, just for the reasons that we have heard today.

Let me just make sure I can, and you touched on this a little bit, Commissioner Burman. The DCP, when it comes to hydropower, the DCP does mitigate potential impacts to hydropower operations in the Basins, correct, so it protects?

Ms. BURMAN. Correct, along with all the resources of the Colorado River.

Senator CORTEZ MASTO. Okay, thank you. I just want to make sure that is the case.

Is there anything else that we need to be aware of that we have not talked about today that either we need to be aware of or our colleagues, as we look to move this through Congress and get this done for the reasons that we have talked about? And let me just go down the panel here.

Commissioner, anything else that we need to be aware of?

Ms. BURMAN. I think, Ranking Member Cortez Masto, Chair McSally, you've been working with your state entities for a long time. So I think you recognize the risk.

I think those who do not represent the seven Colorado River states, it's probably difficult to understand what a crisis we could be facing here. I hope that 40 million people resonates with people. I hope the fear of reaching dead pool resonates with people. I hope an agreement with Mexico and seven states where everyone is coming to the table to save more water resonates with people.

And so, I would say, like how do we explain ourselves to the rest of your colleagues?

Senator CORTEZ MASTO. Thank you.

Mr. Buschatzke.

Mr. BUSCHATZKE. So, Senator Cortez Masto, I would just add that for Arizona the certainty that the DCP provides is a key element. I've been involved in many agreements on water issues and that's something we always look for.

I'll also say, referring to Pat Tyrrell's testimony, that we do not want litigation. We want to continue to collaborate.

Senator CORTEZ MASTO. Let me just say as the former Attorney General of Nevada, we do not want litigation.

Mr. BUSCHATZKE. Yes, that is the path forward, collaboration, not litigation.

Senator CORTEZ MASTO. Yes, I think that is the verse.

Mr. BUSCHATZKE. And that is one of the prime things that, hopefully, folks back here will understand as we've created almost a unique, but not totally unique, situation on the Colorado River where we've been able over the last 20 years to find collaborative paths forward.

And if DCP starts to unravel people might go back to their corners and we would lose a huge benefit that we've had over the last couple of decades.

Senator CORTEZ MASTO. Thank you.

Mr. ENTSMINGER. I guess my addition would be, you know, please help us to continue being successful. There was a point in time when the Colorado River was referred to as the most litigated river in the world. And thanks to a lot of my colleagues that are here in the room with us today since the mid–'90s, I think we have been a model for how you can come together as a region, how not just Congress, but city councils and county commissions and tribal councils can all approve the same agreements and move forward. So I believe the Colorado River is a model for how to manage water across state lines, across international boundaries.

This is the first time in my career that we've had to come to Congress to ask for your help, so please help us on our journey.

Senator CORTEZ MASTO. Thank you.

Mr. Tyrrell.

Mr. TYRRELL. Thank you.

Chairman McSally, Ranking Member Cortez Masto, I think for the Upper Basin we have to remember that today is crucially important. The legislation is critical to get this program moving.

But we in the Upper Basin don't stop working then. All it does for us is set up two processes for a demand management storage program, demand management program and the drought operations. Those procedures and those plans still need the involvement of our local stakeholders, our irrigators, our interest groups to develop.

While the program becomes implemented immediately in the Lower Basin, we need to get to work so then when we can put those two plans together, they are ready. We won't stop working when this law passes, and I don't think anybody in the Lower Basin will either.

Senator CORTEZ MASTO. Thank you.

Thank you for being here today. Thank you for all of the hard work; it is so appreciated. And good luck tomorrow in the House.

Mr. TYRRELL. Thank you.

Senator MCSALLY. Wonderful.

Before I close, I ask unanimous consent to place a statement of my colleague from Arizona, Senator Sinema, into the record.

[No response.]

Without objection, so ordered.

[Statement from Senator Sinema follows:]

KYRSTEN SINEMA
ARIZONA

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Statement for the Record
Senate Committee on Energy and Natural Resources, Subcommittee on Water and Power
Hearing to Examine the Colorado River Drought Contingency Plan
Wednesday, March 27th, 2:30pm
U.S. Senator Kyrsten Sinema

Thank you to the Subcommittee on Water and Power for holding this important hearing and to our witnesses including Tom Buschatzke, Director of the Arizona Department of Water Resources.

As Arizona's senior Senator, I recognize the importance of water to communities in my state. I understand the pivotal role that water plays for the environment, economic development, and cultural heritage of Arizona. I look forward to ensuring Arizona continues to be a leader in sustainable water policy.

Unfortunately, two decades of drought have significantly increased the risk of shortage on the Colorado River. The dry conditions threaten the health of the river, surrounding ecosystem, and water supply in Arizona. The seven states of the Colorado River Basin have responded by submitting the Drought Contingency Plan to Congress. Now, it is critical that Congress pass legislation to authorize the Bureau of Reclamation to enter into the basin states' agreement.

Arizona takes a huge step towards securing its water future under the Drought Contingency Plan. The plan provides all Arizona communities, from Native American tribes to rural and agricultural regions to metropolitan cities, with greater certainty for reliable and secure water supplies. It shows what can be accomplished when stakeholders work together for the benefit of the state.

The Drought Contingency achieves greater water certainty for Arizona and the other basin states through conservation and collaboration. It allows the states to make their own decision on how to save water and share reductions, preempting federal action. As the west prepares for a drier future, it is important for me to help Arizonians gain greater water certainty by supporting this plan.

I am proud to continue the legacy of water policy leadership in Arizona. For generations, Arizona has set a strong example for the nation, securing clean reliable water supplies while preserving the state's natural beauty. I ask that my colleagues in the Senate and House recognize the importance of water to communities in Arizona by passing this legislation.

Senator MCSALLY. Mr. Buschatzke, I think we want to have a hashtag trending today, hashtag collaboration, not litigation.

[Laughter.]

So everybody out there listening from all of our states, start trending on Twitter. I think that is the theme of this whole approach.

I would like to thank all of you for sharing your time and expertise and all the hard work that went behind these historic agreements.

For the information of the members, questions may be submitted for the record before the close of business on Thursday. The record will remain open for two weeks. We ask you please respond as promptly as possible and your responses will be made part of the record.

With the thanks of the Subcommittee, this first hearing of the Water and Power Subcommittee is now adjourned.

[Whereupon, at 3:29 p.m. the hearing was adjourned.]

APPENDIX MATERIAL SUBMITTED

U.S. Senate Committee on Energy and Natural Resources
Subcommittee on Water and Power
March 27, 2019 Hearing: ***An Examination of the Colorado River Drought Contingency Plan***
Questions for the Record Submitted to the Honorable Brenda Burman

Questions from Senator Martha McSally

Questions: Commissioner Burman, House Natural Resources Committee Chairman Grijalva and I, working with the seven states, developed legislation to ensure water conservation activities in the Colorado River Basin can begin in 2019 and be built in to the planning of operations for 2020. The statutory language was drafted to ensure the transmitted Drought Contingency Plan agreements can be immediately executed and implemented in a manner consistent with the environmental analyses undertaken for the 2007 Interim Guidelines and other relevant compliance documents for Colorado River System Project reservoirs above Lake Powell. As such, any further environmental compliance would only be required if future federal actions are outside the range of effects analyzed in these documents.

Have you seen the final legislative language that Chairman Grijalva and I have agreed to and introduced on April 2, 2019, and is my characterization of NEPA and ESA compliance in line with the way the Bureau of Reclamation and the Department of Interior would interpret this statute?

Response: Chairman McSally, thank you for your leadership on this issue. Yes, I have seen the final legislative language you and Chairman Grijalva introduced on April 2, 2019 and signed into law by the President on April 16, 2019. Your characterization of the environmental compliance is accurate. Further, we anticipate immediate execution by Interior, and implementation following execution of the transmitted Drought Contingency Plan agreements by the non-federal parties.

Statement of Alexandra M. Arboleda
Board Member
Central Arizona Water Conservation District

Before the
Subcommittee on Water and Power
Committee on Energy and Natural Resources
United States Senate
Hearing on the Colorado River Drought Contingency Plan
March 27, 2019

Chairman McSally, Ranking Member Cortez Masto and members of the Subcommittee, I am Alexandra M. Arboleda, a board member of the Central Arizona Water Conservation District (CAWCD), which manages the Central Arizona Project (CAP). Thank you for the opportunity to submit this statement for the record. As a member of the CAWCD Board of Directors, elected by the people of Maricopa County, and as an attorney involved in southwestern water policy for two decades, I urge you to approve the legislation authorizing the Colorado River drought plan. The Drought Contingency Plan (DCP) will provide three important things for the Colorado River Basin and the 40 million people who call it home: Certainty, Reliability, and Sustainability. It does so in a system marked by over-allocation and high variability of flows.

For the last two and a half years, I participated in Arizona's drought contingency planning and can tell you that DCP is the result of the 'painstaking work of building consensus.' DCP is an example of individual interests negotiating for the greater good, with a belief that principled compromise towards a common goal results in the best outcomes. DCP is the result of bipartisan cooperation and a recognition of the legitimate policy concerns of those with whom one might disagree. DCP implements creative, innovative solutions that resulted from listening to others' viewpoints with an eye towards problem solving. Water users, the seven basin states, the federal government, and Mexico have voluntarily agreed to curtail Colorado River diversions with an understanding that we all share in the benefits that the River provides; so, we must also work together to conserve and to use our water responsibly.

In Arizona, DCP reduces Colorado River use by creating incentives for conservation and storage of water and through agreements to voluntarily reduce water use. Further, CAWCD and the State of Arizona are providing mitigation resources to soften some of the immediate impacts to Arizona water users. It should be noted that Arizona, and specifically CAP water users, bear the brunt of the DCP voluntary reductions. For example, CAP diverts about 1.6 million acre feet of water per year of Arizona's entitlement to 2.8 million acre feet. Under the DCP, if Lake Mead elevations were to fall to elevation 1,025', CAP and its water users have agreed to reduce their use by 720 thousand acre feet per year. That is a reduction of *almost half* of CAP's allocation from the Colorado River. Furthermore, water users in other basin states, the federal government and Mexico have all agreed to reduce their water use from the River, so that jointly and voluntarily the collective reduction at elevation 1,025' is 1.475 million acre feet per year. These collective actions reduce the risk of Lake Mead reaching critical levels from 43% to 8%.

Much work remains ahead to bring about sustainable water management in the Colorado River Basin, but DCP will stabilize a threatened system and may serve as an example of how to achieve voluntary and mutually beneficial water management agreements in the future. Thanks

to the leadership of Ted Cooke, General Manager of CAP, Tom Buschatzke, Director of the Arizona Department of Water Resources, and Hunter Moore, Governor Ducey's Policy Advisor for Natural Resources, Arizona has chosen a path towards certainty, reliability and sustainability for its Colorado River water. The collaborative solutions the parties to DCP have reached exemplify the old adage: 'It's better to bend a little than to break.'

Please vote in favor of the legislation authorizing implementation of the Colorado River drought plan.

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Water Administration
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Aurora, Colorado 80012
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March 25, 2019

The Honorable Martha McSally, Chairman
Water and Power Subcommittee
U.S. Senate Committee on Energy & Natural Resources
B40D Dirksen Senate Office Building
Washington, D.C. 20515

The Honorable Catherine Cortez Masto, Ranking Member
Water and Power Subcommittee
U.S. Senate Committee on Energy & Natural Resources
516 Hart Senate Office Building
Washington, D.C. 20510

Re: Colorado River Basin Drought Contingency Plans (DCP)

Dear Chairman McSally and Ranking Member Cortez Masto:

I write to let you know that Aurora Water wholeheartedly supports the Colorado River Basin Drought Contingency Plans (DCP) as agreed to and set forth by the seven Colorado River Basin States. Because of the urgency of the water supply situation, the importance of that water supply and the unique consensus regarding the DCPs, Aurora Water urges immediate action by Congress to authorize the implementation of the Drought Contingency Plans.

Aurora Water is a municipal utility that provides drinking water, stormwater and sewer services to over 380,000 residents. Aurora is located on the Eastern Plains in Colorado a semi-arid state where water supply is variable and becoming more scarce. Approximately 25% of Aurora's water supply comes from the Colorado River basin. This supply is critical to our ability to provide clean, safe drinking water to our citizens every day.

Over the last 19 years, sustained drought conditions have caused vital Colorado River system reservoirs to approach critically low elevations, threatening severe shortages to significant urban and agricultural economies and the environment. This water supply is at risk unless the seven Colorado River basin states take immediate steps to ensure system reservoirs are maintained above critically low elevations.

The basin states have taken these steps. Through intense public processes and discussion, the basin states developed the Drought Contingency Plans, which are broadly supported throughout the basin by municipal, environmental, and agricultural water users as absolutely necessary to protect the economies and environment dependent on the Colorado River and its tributaries. We need Congress to support these efforts by passing legislation which enables the Department of Interior and the Bureau of Reclamation to help implement the DCPs.

It is particularly important that the legislation allowing the DCPs goes into effect immediately. The authority for the Department of Interior must be in place before August, when it begins reservoir operations planning for 2020. The legislative language proposed by the basin states will ensure this happens.

Thank you for your leadership in moving this important legislation forward.

Sincerely,

Marshall P. Brown
General Manager
Aurora Water

Cc: U.S. Senator Bennet
U.S. Senator Gardner

IID

A century of service.

www.iid.com

April 11, 2019

The Honorable Lisa Murkowski
Chairman
Senate Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Joe Manchin
Ranking Member
Senate Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Murkowski and Ranking Member Manchin:

I appreciate the opportunity to submit this statement on behalf of the Imperial Irrigation District (IID) for inclusion in the Water and Power Subcommittee hearing record on the Colorado River Drought Contingency Plan (DCP). My statement addresses key misstatements of fact made by several witnesses during the March 27, 2019, hearing regarding IID's DCP participation, the DCP's impacts on the Salton Sea and the question of whether existing environmental compliance documents anticipated DCP-related Salton Sea environmental or public health impacts. It also provides background on the importance and value of this national resource.

At the outset, it is important to note that with respect to the DCP, no other party has the authority to sign the agreements on behalf of IID. And, by virtue of IID's exclusion from the DCP, the DCP agreement advanced by Congress on April 8, 2019, is missing 21 percent of the Colorado River's delivered water and fails to address the greatest environmental challenge facing the entire river system. While IID is sincerely grateful that Congress rejected Reclamation and the Basin States' efforts to eliminate federal environmental protections for the Salton Sea in the DCP legislation, it is our strong view that a DCP that excludes both IID and the Salton Sea is deeply flawed and ultimately unsustainable.

We hope to work with you to expeditiously address the federal government's responsibility to partner with the state of California to address the public health and ecological crisis affecting the Salton Sea. It is only through advancing this important work that the sustainability of the Colorado River system can truly be assured.

Imperial Irrigation District and the Salton Sea

Established in 1911, IID is legally entitled to 3.1 million acre-feet (MAF) annually of Colorado River water, making it the largest water contractor on the Colorado River and the largest irrigation district in the nation. IID provides water to irrigate approximately 500,000 acres of highly productive farmland located in Imperial County, California, and also serves seven municipalities and a Navy base. IID has over 1,400 employees, maintains more than 3,000 miles of irrigation canals and drains, and operates extensive on-farm and system water conservation programs that generate more conserved water for the benefit of the Colorado River Basin (CRB) than any other single contractor.

Together, IID and the agricultural producers it serves have created over 5.3 million acre-feet of conserved water to ensure state and regional water supply reliability since the early 2000s.

IID has long been a willing and generous partner in CRB conservation efforts, but it is important to recognize that its Colorado River entitlement is its sole source of water and is absolutely vital to the economy of Imperial County, which ranks among the nation's top agricultural counties, with a gross production valued at over $2 billion. IID's Colorado River entitlement sustains an agricultural industry that provides more than two-thirds of the winter vegetables consumed in the nation. The agricultural industry is key to Imperial County's economy — approximately 50 percent of employment opportunities are in this sector.

Cutbacks to agricultural production to benefit the water supply security of the CRB hurt our economy. Imperial County has a very substantial low-income population; 24.1 percent of the population falls below the poverty line, and the county's unemployment rate has fluctuated between 15.5 and 31.9 percent over the last decade — among the highest in the nation.

Water conservation efforts have also had very significant public health and environmental impacts in this community. The Salton Sea, California's largest lake, occupies approximately 370 square miles in Imperial and Riverside counties. The sea is sustained primarily by agricultural drainage flows from farmland served by IID. Since the early 2000s, inflows to the Salton Sea have been significantly affected by IID's voluntary water conservation efforts that have greatly benefited California and the CRB's water supply security.

Decreasing agricultural return flows to the sea have resulted in the exposure of emissive lakebed (playa), and have negatively impacted area air quality. The region is in severe non-attainment with federal air quality standards, and has the highest rate of childhood asthma and respiratory illness in California. Imperial Valley farmers bear the brunt of increasingly stringent air quality regulation. Poor air quality also has a negative impact on agricultural production, as dust and dried salts from the exposed playa blow on area crops.

The ecological significance of the Salton Sea is due largely to its habitat value for over 400 species of birds, including threatened and endangered species. According to the Bureau of Reclamation, the sea's "combination of avian biodiversity and importance as breeding habitat is unsurpassed." The Salton Sea is also a major stopover on the 5,000-mile-long Pacific Flyway. Because over 90 percent of Southern California's wetlands have been lost to urban development, maintaining the bird habitat provided by the Salton Sea is crucial to the survival of migratory birds in the region.

But reduced inflows to the sea as the result of conservation efforts and drought have increased salinity levels of the sea to twice that of the Pacific Ocean, bringing it to the brink of ecological collapse. Reduced inflows have also resulted in a drop in elevation that has exposed more than 20,000 acres of barren salt-covered playa. Over the next decade, three times that amount of playa will be exposed, subjecting the region to worsening dust storms and increasing exposure to harmful air contaminants.

IID Considered and Approved the DCP Pending Satisfaction of Three Conditions

IID participated in DCP negotiations for four and a half years as a key contracting party and full partner. During these years of negotiations, IID was always clear that its participation would depend on a ten-year roadmap for the Salton Sea, and a plan to fully fund it. During these negotiations, Reclamation assured the parties that there would not be a DCP unless all the contracting parties in each of the seven states participated in its development and approved the final negotiated package.

We would all cross the finish line together, or not at all.

While a witness at the March 28, 2019, hearing maintained that IID "never acted on or even put DCP on the agenda" for consideration, in fact, IID both considered and acted upon DCP-related agreements at a December 10, 2018 board meeting. IID also held four DCP workshops leading up to the December 10th, meeting.

At that board meeting, IID voted to support the DCP, but placed three conditions on its implementation. Those conditions were approving final DCP agreements as a package, securing a 1:1 federal funding match for completion of the state of California's 10-year Salton Sea Management Program, and securing IID approval of proposed federal DCP legislation.

At Full Implementation, DCP Could In Fact Impact the Salton Sea

Several witnesses at the March 28, 2019, hearing testified that the DCP would not impact the Salton Sea, suggesting IID's concerns about the DCP are misplaced. Our colleagues argued that since the DCP's intra-state agreements provide for an IID contribution of 250,000 acre-feet towards California's commitments — and IID has already conserved this water — the DCP will have no impact on the sea.

IID's concern arises not from this 250,000 acre-feet commitment, conserved water that is largely stored today within The Metropolitan Water District of Southern California's (MWD) system. Our issue stems with the DCP's exclusive reliance on the seemingly inexhaustible water portfolio of MWD — an entity with a junior priority to Colorado River water. This might be fine when water is plentiful, as it is this year, but what about when water is not? The DCP, after all, is premised on the argument that we are facing a grim water supply future on the Colorado River — not an abundant one, due to record-breaking droughts and climate change.

MWD's contributions toward California's DCP obligations are projected to average approximately a half-million acre-feet. However, if the Colorado River hydrology continues to decline, those MWD commitments could require nearly 2 million acre-feet of conserved water.

Should unfavorable hydrologic conditions continue on the Colorado River, particularly if they occur in parallel with a California drought that decimates MWD's access to Northern California water supplies, MWD will invariably turn to IID, once again, given IID's position as the largest California Colorado River water contractor — and those additional demands for water from IID would impact the Salton Sea.

It is these potential Salton Sea impacts that are now being brushed off with pat predictions and empty promises as the system experiences a brief respite from drought with current snowpack improvements. In IID's view, the Salton Sea would be far easier to deal with on the front end of this river-sharing pact, than at the back — when a true crisis reveals the MWD promise now at the heart of California's DCP contributions to be one it can't keep.

In 2003, IID was told that the Quantification Settlement Agreement (QSA), discussed below, would resolve Colorado River issues and bring "peace on the river" and to IID. Yet only a decade or so later, here we are again working at an urgent pace for a federal DCP that, at full implementation, will lead the Colorado River community back to IID's doorstep — and threaten more harm to the Salton Sea.

State and Federal Failures to Fulfill Salton Sea Commitments Are Key to Understanding IID's Salton Sea DCP Condition

IID and the Imperial Valley community have been there and done that on state and federal predictions and promises for the Salton Sea. Both the state of California and the federal government — particularly the Department of Interior — have a history of not keeping their promises when it comes to the Salton Sea. IID adopted the DCP condition for a 1:1 federal-to-state firm funding commitment for the Salton Sea because it has learned the hard way that the only way to truly protect this region is to require Salton Sea protections upfront.

While Interior likes to point to the state of California as the major transgressor in the story of the Salton Sea's decline, Congress has long directed a role for Interior at the Salton Sea. That is due, in part, to the fact that the federal government is a major landowner of over 110,000 acres at the Salton Sea, and has tribal trust responsibilities to the Torres Martinez Desert Cahuilla Tribe, whose reservation occupies roughly 2,000 acres at the Salton Sea's north end. It is also due to the fact that the Salton Sea is a national environmental resource.

As a result, Congress has repeatedly affirmed the federal interest in the Salton Sea, requiring Interior to develop Salton Sea Management Plans in 1992, 1998 and 2007. These efforts produced a succession of federal plans, but no concrete action.

The 2003 QSA and the failure of the state of California to fulfill its associated Salton Sea commitments — now 17 years later — also helps to explain why there is no time to waste and no risk that can be taken with respect to ensuring that the Salton Sea is addressed on the front end of any federal drought deal.

Under the Law of the River, California is entitled to use 4.4 MAF per year of Colorado River water, and IID holds senior rights to over 70 percent of that entitlement. For decades, the availability of surplus and unused water on the Colorado River allowed California to exceed this 4.4 MAF entitlement. Beginning in the late 1990s, as other states began to use their full Colorado River apportionment, the federal government pressed California to limit itself to its 4.4 MAF entitlement.

That effort posed a serious threat of reductions in deliveries to California users with water rights junior to IID's — most notably MWD. In 2003, IID entered into the QSA to address this crisis. The centerpiece of the QSA was a proposal that IID conserve water and arrange for its long-term transfer to the San Diego County Water Authority, Coachella Valley Water District and MWD. Through the QSA, IID, recognizing the needs of the entire state, agreed to extensive conservation — including fallowing productive farmland.

All who participated in the QSA recognized that the transfers carried the potential for significant adverse environmental, economic and public health consequences at the Salton Sea and in the Imperial and Coachella valleys. There was no question in the minds of the parties that orchestrated the QSA water transfer — the largest in U.S. history — that without a commitment to ensure the Salton Sea would be restored and the other effects of the transfer mitigated, implementation of the QSA transfers would destroy the Salton Sea ecologically and result in disastrous public health consequences.

In order to address these concerns, the state of California committed to restore the Salton Sea, and the QSA parties — including IID — agreed to jointly assume the costs of QSA-related impacts. As a result, under the agreement, IID was required to deliver mitigation water to the Salton Sea for 15 years, until the end of 2017. It was believed by the parties that 15 years would be an adequate period of time to allow the State to study the feasibility of restoration, develop a plan and begin its implementation.

While the State studied concepts and crafted proposals to address its QSA obligations, it made no actual progress toward the fulfillment of its obligation for well over a decade. With no restoration plan or projects in place, the public health and ecological harm associated with the shrinking Salton Sea progressed. At the same time, IID honored all of its QSA obligations, to the great benefit of California urban water users and the Colorado River system as a whole. In 2014, anticipating the termination of mitigation water to the Salton Sea in 2017, IID filed a petition with the State Water Resources Control Board to force a solution.

In March 2017, this effort culminated in the state of California's Salton Sea Management Program (SSMP) Ten-Year Plan, which calls for roughly 30,000 acres of habitat and air quality measures to address the ecological crisis at the Salton Sea. The state of California has made roughly $280 million available to implement its SSMP, over half the amount of the total funding required for plan completion. The first major effort called for in that plan — a 3,770-acre shallow water habitat project off the New River — is fully permitted and scheduled to break ground next year.

The state of California's QSA obligation and this recent progress, however, doesn't absolve Interior from its Salton Sea obligations as a landowner and tribal trustee, nor from planning for and addressing the potential impacts of a federal agreement like the DCP.

This obligation has, in fact, been the subject of negotiations and commitments in the context of the DCP.

But Interior failed to meet those commitments.

In 2016, in the context of efforts to reach agreement on the DCP, Interior and the California Natural Resources Agency (CNRA) negotiated a Memorandum of Understanding (MOU) wherein Interior pledged to become a full and active partner at the Salton Sea. In this agreement, Interior acknowledged its legal duties to follow federal environmental laws. It pledged to "pursue a multi-year partnership with USDA ... to advance projects to protect air quality and improve water quality of major inflows to Sea habitat." The intent of seeking this commitment with respect to USDA was to secure Interior's engagement in galvanizing additional support from USDA.

In the MOU, Interior further pledged to perform a federal funding analysis that would identify ways to meet the "anticipated financial need to reach acreage goals and creative means to meet them." Finally, Interior pledged to dedicate a senior level official and convene a Salton Sea Working Group tasked with ensuring MOU implementation and expediting permitting processes at the Sea.

Interior failed to fulfill *any* of these commitments.

In 2017, Senators Feinstein and Harris, and Congressmen Ruiz and Vargas together wrote to the Secretary of the Interior to urge implementation of the MOU. No action was undertaken by Interior in response to this request. Also in 2017, CNRA Secretary Laird wrote to then-Interior Deputy Secretary Bernhardt to urge MOU implementation. No action was undertaken by Interior in response to this request.

Senator Feinstein included direction in the FY18 Energy and Water Appropriations Act to urge Interior to implement the MOU, to provide a Salton Sea budget request to Congress, and to report to Congress on its MOU progress on a biannual basis. No action was undertaken by Interior in response to this request.

Senator Feinstein Secured Federal Legislation for Salton Sea Restoration — the Administration Has Failed to Implement It

Beginning in 2014, IID, CNRA, the Salton Sea Authority (SSA) and agricultural producers developed a strategy of building a partnership with USDA in order to create a robust source of federal funding to address Salton Sea resource concerns. USDA's conservation programs are funded at roughly $6 billion annually, and this funding is mandatory — meaning once it is authorized in a Farm Bill no further appropriation is required. Further,

USDA funding is directed to be targeted to help agricultural producers address major natural resource concerns.

As the Salton Sea is surrounded by roughly 600,000 acres of prime farmland and its decline directly affects agricultural producers, we identified USDA programs as a good fit for the Salton Sea.

In an effort to take concrete steps to this end, IID and its partners developed proposals and competed for USDA funding support. USDA scores proposals for funding higher if the proposed project affects a significant regional or national resource — and we argued successfully that Salton Sea restoration was not only critical to maintaining the agricultural productivity of the Imperial Valley, but also critical to assuring the sustainability of the Colorado River system as a whole. These initial efforts resulted in the funding of a Regional Conservation Partnership Program (RCPP) project and a Watershed Act pilot project for the Salton Sea.

To further push Interior to fulfill its MOU commitment to form a multi-year funding partnership with USDA and CNRA at the Salton Sea, IID, CNRA, SSA and Imperial Valley growers worked with Senator Feinstein to craft legislation for the 2018 Farm Bill. Senator Feinstein's successful work increased overall conservation funding in the Farm Bill by $2.6 billion, created multiple streamlined, non-competitive contracting tools through which USDA could partner directly with the State of California to expand the existing Salton Sea pilots, and directed USDA to use this authority to address critical water resources, like the Salton Sea, impacted by regional drought control efforts.

On January 31, 2019, following the enactment of the 2018 Farm Bill, Senator Feinstein wrote to then-Acting Interior Secretary Bernhardt and USDA Secretary Perdue to ask them to work with her to quickly implement her Farm Bill legislation to leverage $200 million in state of California funding for the Salton Sea. On the same day, however, IID was advised that Reclamation officials visited with USDA Undersecretary Northey and encouraged USDA not to grant the Senator's request — arguing that it would disrupt DCP negotiations.

USDA responded to Senator Feinstein that the 2018 Farm Bill programs required implementing rules that needed to be worked out prior to making any further commitment, and that all program funds are allocated on a purely competitive basis. This answer, however, ignored the clear terms of Senator Feinstein's legislation which permitted — and in fact directed — non-competitive targeting of funding to a major resource concern like the Salton Sea. And implementing rules were not required for three of the four legislative provisions in the Feinstein Farm Bill legislation directed to benefit the sea.

This response also ignored USDA's long practice of non-competitively targeting major natural resource concerns administratively, and its roughly 67 nationwide conservation initiatives that do so. Such initiatives are typically created after the establishment of smaller pilot projects that have been approved by USDA through a competitive process to address a major concern — as IID and its partners had established for the Salton Sea.

Reclamation's admonishment undermined years of work by IID and its partners to develop a partnership with USDA at the Salton Sea, the work of Senator Feinstein to expand those partnerships and tools in the 2018 Farm Bill, and Interior's inability to fulfill its own 2016 MOU commitment. Inexplicably, it also undermined Reclamation's stated goal for the DCP — that all parties would reach the finish line together.

While Reclamation later wrote to USDA to express tepid support for Senator Feinstein's request, its action in January undermined IID's ability to secure federal funding for the Salton Sea, according to the schedule that the Commissioner had set for the completion of DCP. It was a confusing development given the investment IID and its partners had made in developing a funding source that could address the Salton Sea on the front end of a DCP agreement, and which could secure the participation of the largest Colorado River contractor in DCP.

A DCP "Designed to Fit" within Existing 2007 Environmental Reviews Never Evaluated Salton Sea Impacts

As Reclamation took steps to stand in the way of the satisfaction of IID's DCP condition for Salton Sea funding, it was at the same time aggressively pushing IID to approve the federal DCP authorizing legislation drafted by Reclamation and the Basin States. IID declined to support that legislation, raising the concern that the language would waive federal environmental protections for the Salton Sea. IID sought to modify that language with Reclamation and the Basin States, but those attempts were rejected out of hand by its peers, who forwarded the proposed legislation to Congress in March.

At the March 28th hearing, several witnesses and Commissioner Burman maintained that the DCP was specifically "designed to fit within existing environmental compliance," strongly implying that the DCP did in legal fact comply with federal environmental laws. In particular, they argued that DCP implementing actions had already been analyzed and reviewed in the 2007 final environmental impact statement (EIS) for Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead, and therefore the DCP is compliant with NEPA.

This argument raised concerns for IID because, like this DCP, the Salton Sea is nowhere to be found in that 2007 document. Our colleagues at Reclamation and the Basin States are free to argue that the 2007 EIS is sufficient for NEPA compliance, and IID would have

strong legal arguments to ensure the enforcement of federal environmental protections for the Salton Sea. But Reclamation and the Basin States weren't simply making an argument in the DCP negotiations and to Congress, they were seeking to codify their perspective in federal law. The federal DCP legislation proposed by Reclamation and the Basin States would have rendered IID's ability to enforce those federal environmental protections for the Salton Sea invalid in court.

This was no guess on IID's part or on the part of the few environmental groups willing to speak out against Reclamation and the Basin States' anti-environmental waiver. There was a case on point from our own backyard that clarified the meaning and intent of the DCP language. That case involved the lining of the All-American Canal (AAC), which brings water to the Imperial Valley. In 1994, a NEPA analysis was performed on the lining project. When the project moved to implementation in 2005, environmentalists sued, arguing Interior was required to perform a supplemental EIS. The Ninth Circuit Court of Appeals granted an injunction halting the lining project.

Congress then intervened, directing that the project proceed "notwithstanding any other provision of law" and "without delay." Interior argued that these eight words waived the applicability of all federal laws to the lining project. The Ninth Circuit held that when Congress uses these key terms in combination, all federal environmental laws are waived with respect to the underlying action. *Consejo De Desarrollo v. United States*, 482 F.3d 1157 (9th Cir. 2007).

When IID raised the concern that the DCP language identical to the AAC waiver would remove Salton Sea protections, the other parties refused to modify the language — arguing that the notwithstanding and without delay clauses were included for non-environmental concerns.

But once the draft legislation was modified by Congress to ensure that federal environmental laws applied to DCP implementation, it became clear that Reclamation's proposed legislation was, in fact, intended to waive federal environmental laws. This intent was revealed by Reclamation and the Basin States' aggressive effort to secure report language in both the House and the Senate — wisely rejected — aiming to deem DCP nonetheless compliant with federal environmental laws.

In particular, Reclamation and the Basin States sought report language to express the view of Congress that the "actions to be undertaken [in DCP] are within the analyses and range of effects reviewed in the environmental documents prepared pursuant to the National Environmental Policy Act (NEPA) in the 2007 final environmental impact statement (EIS) on Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead ... [and] additional NEPA

compliance is only applicable should future actions be undertaken that are outside the range of effects analyzed in those documents ..."

Report language of this nature is intended to convey the view of Congress that existing environmental documents for a particular action have met the requirements of an underlying statute or obligation. Quite problematically, Reclamation's proposal also provided that only "future actions" not called for by DCP would be subject to environmental review — language which could have blocked a consideration of DCP impacts on the Salton Sea.

IID objected to this report language because it was aimed at weakening the environmental protections secured in the bill language for the Salton Sea. As noted above, the 2007 NEPA document referenced in the proposed report language never considered or analyzed the Salton Sea. But the report language would have expressed the view of Congress that such impacts to the sea had been analyzed, and that as a result any actions called for under DCP did not require additional environmental review. Under this language, if IID was called upon to back up MWD's obligations, this report language could have been interpreted to exempt this action from federal environmental review and protections.

Fortunately, both the House and the Senate rejected both the anti-environmental bill and report language proposed by Reclamation and the Basin States.

Conclusion

In 2014, the Pacific Institute estimated that failing to take swift action to address the shrinking Salton Sea would result in $70 billion in public health, economic and environmental costs. With that price tag, we know the true cost of inaction at the Salton Sea may one day be the loss of our community's way of life.

That is why in this DCP process, IID stands with the Salton Sea, even when no one else will. It has become a familiar, if lonely, place to be, but it's also home and that, in the end, is the biggest difference between IID and the rest of the Colorado River community. IID has one agenda — to be a part of a DCP and a Colorado River community that treats the Salton Sea with the dignity and due consideration it deserves, not as its first casualty.

Whether the passage of this DCP will improve the sustainability of the Colorado River is an open question. What we know for sure is that it is a dramatic setback for the sustainability of the Salton Sea.

Thank you for allowing IID the opportunity to correct the record. We sincerely appreciate your efforts to ensure that the Salton Sea was not left without the protections of federal environmental laws as the DCP moved forward in Congress, and we hope to work with you to develop a meaningful federal response to the public health and ecological crisis facing our community.

Sincerely,

Enrique B. Martinez
General Manager

A10 FRIDAY, MARCH 29, 2019 Los Angeles Times LATIMES.COM/OPINION

OPINION

EDITORIALS

The Salton Sea disaster ahead

California's largest lake is drying up, threatening an ecological and public health catastrophe.

California's largest internal body of water is steadily drying up, exposing a lake bed that threatens to trigger toxic dust storms and exacerbate already high levels of asthma and other respiratory diseases in Southern California. Yet there is something about the Salton Sea that leads many lawmakers to ignore the urgency and put off remediation pro-grams. It's just so far south — off the mental map of officials who represent more densely populated urban areas to the north, like Los Angeles. It is a disaster in the making, yet it is an afterthought.

That attitude is understandably galling to residents of the adjacent Imperial Valley, who are (for now) the ones most affected by the increasing dust and who have witnessed firsthand the degrading ecological conditions. They have heard officials promise repeatedly to fix this catastrophe by creating wetlands that moisten the exposed bed and sustain an ecosystem that continues to support migratory birds on the Pacific Flyway. They have repeatedly seen those promises broken.

The dimensions of the failure were for many years merely theoretical, but they became real in the winter just past. As the rain and snow washed away drought and at least temporarily diminished environmental problems in the rest of the state, the con-traction of the Salton Sea accelerated. In-creasing salinity kept the lake from sustain-ing even the salt-hardy tilapia. The birds failed to appear.

Until recently, lake levels had been sustained by Colorado River water under a 2003 agreement between the Imperial Irrigation District and the San Diego County Water Authority. It was an innovative and responsible arrangement. San Diego would pay for projects (lining earthen canals, for example) to help the Imperial Valley use water more efficiently. The water no longer needed in the valley would be exported to San Diego for residential use. Without excess water flushing through valley farmland, however, the runoff that formerly fed the Salton Sea would taper off, so for 15 years the Imperial Irrigation District would use some of its river water to counter evaporation at the lake. That would buy enough time or the state to develop and fund plans for the wetlands and other measures to keep the dust from blowing.

Or at least, that was the theory. The 15-year program of supplying "mitigation water" to the lake ended a little more than a year ago, but the state has so far failed to meet its benchmarks for developing wetlands.

This month, as the California Water Re-sources Board met at the Salton Sea lake-shore to discuss the remediation program's progress, members had to acknowledge that there hasn't been any. None of the promised projects have been completed. The Newsom administration has vowed a new focus on the Salton Sea, and there is reason for hope — but the lake is shrinking rapidly and action must now be accelerated to prevent a public health and environmental disaster.

Meanwhile, the Imperial Irrigation District tried but failed to leverage its massive Colorado River water rights into federal funding for Salton Sea projects.

A 19-year drought in the Colorado River Basin has been drying up lakes farther up-stream that are crucial to the Southern California water supply, including massive Lake Mead. To prevent the water there from dropping too low to operate Hoover Dam's hydroelectric generators, California and six other states entered into talks over a drought contingency agreement to cut back their use of river water. The Imperial Irrigation District is the largest holder of river water rights and held out in the hope of winning a $200-million federal commitment for the Salton Sea.

But the Metropolitan Water District of Southern California wanted to move things along and covered Imperial's portion, so the drought agreement is proceeding without any funding for the Salton Sea. The Imperial Irrigation District asked members of Congress this week to not allow the drought contingency plan to move forward unless the district is included, and to ensure that federal funding legislation provides money for the Salton Sea, but the district has lost much of its leverage.

That leaves a shrinking lake, lots of bro-ken promises and a looming disaster. Both California and the feds have to do better than this — especially if they want to encourage agreements such as the one that makes Imperial Valley farmers more water-wise while keeping San Diego residents from deep rationing. The Salton Sea is not going away, even if it goes away. It can become a wetland and wildlife preserve, or it can be-come — if we let it — a health and ecological catastrophe.

x

MICHAEL S. LEE
UTAH

ALLYSON BELL
CHIEF OF STAFF

United States Senate
WASHINGTON, DC 20510–4404

COMMITTEES:
JUDICIARY
ENERGY AND NATURAL RESOURCES
COMMERCE, SCIENCE, AND TRANSPORTATION
JOINT ECONOMIC COMMITTEE

Statement for the Record
Senate Committee on Energy and Natural Resources, Subcommittee on Water and Power
Hearing to Examine the Colorado River Drought Contingency Plan
Wednesday, March 27th, 2019
U.S. Senator Mike Lee

Thank you, Senator McSally, for holding this hearing today to examine the Colorado River Drought Contingency Plan. I'd also like to thank the many individuals from all the states involved for their careful negotiation of this agreement. As you well know, the Colorado River is managed under a complicated set of compacts, statutes, court decisions, and other agreements; and given these constraints, negotiating a compromise among all the stakeholders to address concerns of the water supply is quite the accomplishment.

I'd like to express my support for this important effort to implement the agreement. Congress has a limited, but necessary, role in this process. I look forward to working with my colleagues on this committee and here in the Senate on legislation to give the Secretary of the Interior the Congressional directive he needs to implement the plan for the benefit of the many water users throughout the West who depend on the Colorado River each and every day.

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NAWC
National Association of Water Companies

MOVING WATER FORWARD

Robert F. Powelson
President & CEO

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April 1, 2019

RE: Support for Colorado River Basin Drought Contingency Plan Enabling Legislation

Dear Member of Congress,

The National Association of Water Companies (NAWC)[1] actively seeks your support for promptly securing legislation to implement much-needed actions in the Colorado River Basin in response to historic drought and continuing dry conditions in the Basin.

The Colorado River Basin provides water supplies to approximately 40 million people and irrigates 5.5 million acres of agricultural lands in the Southwest. Since 2000, the basin has suffered historically dry conditions, and two of the nation's largest reservoirs, Lake Mead and Lake Powell, have reached their lowest levels since Lake Powell was first filled in the 1960s. Runoff in the basin last year was the second lowest level since 2000. While runoff this year may provide a temporary reprieve from expected shortages, drought conditions are projected to continue for years to come. Historic drought conditions and declining reservoirs endanger water supplies and threaten the economies, environment and health of the citizens of the southwestern United States.

Stakeholders within the seven Basin States of the Colorado River Basin (Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming) have collectively developed drought contingency plans (DCPs) and associated agreements. The DCPs were developed involving stakeholders from all water use sectors including, municipal and private utilities, agricultural and industrial users, and tribal entities, all cooperating to ensure conservation of a common vital resource, water. The DCPs further reserve each party's existing rights and do not interfere with other parties' rights or interests in the Colorado River.

We urge you to support federal legislation authorizing the DCPs and directing the Secretary of the Interior to implement the DCPs and associated agreements. Enactment of this legislation and the subsequent execution of the DCP agreements will enable the seven Basin States to take much-needed actions to reduce the probability that Lakes Powell and Mead will reach critically-low levels. Failure to

[1] The National Association of Water Companies (NAWC) represents regulated water and wastewater companies, as well as ones engaging in partnerships with municipal utilities. NAWC members provide 73 million Americans with safe and reliable water service every day and have an exceptional record of compliance with federal and state health and environmental regulations. Ensuring this high standard of quality requires extraordinary amounts of capital investment. NAWC estimates that its six largest members alone are collectively investing $2.7 billion each year in their water and wastewater systems.

take action will increase the likelihood of water shortages, potentially triggering a crisis situation by threatening the water supplies of tens of millions of people.

Sincerely,

Robert F. Powelson

Robert F. Powelson

President and CEO

Statement of
Thomas Tortez, Jr.
Tribal Council Chairman, Torres Martinez Desert Cahuilla

Hearing on
The Colorado River Drought Contingency Plan

Before the
U.S. Senate Committee on Energy and Natural Resources
Subcommittee on Water and Power

March 27, 2019

Chair McSally, Ranking Member Cortez Masto, and Members of the Subcommittee, thank you for holding today's hearing on the Colorado River Drought Contingency Plan. I am Thomas Tortez, Chairman of the Tribal Council for the Torres Martinez Desert Cahuilla.

While I support local, state, and Federal cooperation to resolve water allocation and management challenges in the Colorado River Basin, I oppose a problematic provision in the current drought contingency plan legislation that the Bureau of Reclamation has been advocating. It would require water management and operations decisions for the Colorado River Basin to be made and executed "[n]otwithstanding any other provision of law," "without delay." If Congress passes the legislation as drafted, this provision would set a harmful precedent by granting the Administration a powerful blank check to waive all environmental laws that relate to its decisions on water in the Colorado River Basin. And sadly, it could be used to write yet another chapter in the U.S. Government's long history of disregarding its trust responsibility to protect tribal treaty rights, lands, assets, and resources.

The Torres Martinez Tribe respectfully reminds this committee that for nearly a century before the current attempt to avoid public responsibility, the federal government has continued to ignore its promises to address tribal land ownership inequities created by the federal government at the Salton Sea.

On a positive note, I understand that your Committee may be working to address these concerns and improve the DCP legislation, and I stand ready to assist you in that effort.

The Torres Martinez Desert Cahuilla Indians are the largest private landowner of property in and around the Salton Sea. This is our aboriginal homeland and it must be protected now and for future generations. Because the health of the Salton Sea is vital to those future generations' health and welfare, the Tribe has steadfastly led efforts to protect and restore the Sea. Although I am submitting today's testimony in my capacity as Chairman of the Tribal Council for the Torres Martinez Desert Cahuilla, I also serve as President of the Salton Sea Authority Board of Directors. The Salton Sea Authority is a joint authority of local and tribal governments engaging in successful state and Federal partnerships to restore the Sea and prevent serious threats to human health, the environment, and regional economy.

The Salton Sea is the largest lake in the California. It is the modern incarnation of Lake Cahuilla, a prehistoric, intermittent freshwater sea that filled and evaporated multiple times over thousands of years as the Colorado River meandered on its delta between emptying into the Gulf of California or diverting northwest into the Salton basin. Its latest incarnation was created in 1905 by a breach in an irrigation canal from the Colorado River, and since then it was maintained by agricultural runoff from the Imperial and Coachella valleys. It is a vital stop for migratory birds on the Pacific Flyway and was the top tourist destination in California in previous decades.

Following a 2003 agreement to transfer water to San Diego, agricultural irrigation and runoff in the Imperial Valley and Coachella Valley were reduced in 2017, and the Sea has been receding rapidly. Lowering water elevations and rising salt concentrations at the sea pose harm to human health, ecosystem habitat, and economic opportunities for communities around the Sea. Without action, contaminated dust from the exposed lakebed threatens to create an air pollution and health

disaster for the Tribe and the entire region. Local residents at the Sea, including members of the Torres Martinez Desert Cahuilla, are regularly hospitalized for asthma conditions at twice the national average.

Through cooperation and consultation among private landowners and Tribal, local, and state governments, we have begun to make progress addressing the Sea's challenges and restoring it as a vital resource. In partnership with the Salton Sea Authority and the California Department of Water Resources, the Torres-Martinez Tribe has developed and completed an 85-acre wetland pilot project at the mouth of the Whitewater River, where it enters the Sea. We are working with our partners to expand on this example of successful restoration along the Sea's perimeter. Recent advances include:

- In June 2018, California voters approved Proposition 68, which provides $200 million toward projects that will accelerate progress at the Salton Sea, including $30 million for the Salton Sea Authority, and $170 million to the California Natural Resources Agency for a 10-year plan to deploy habitat and dust suppression projects.
- In December 2018, Imperial County and Riverside County signed an historic agreement to work more closely together on complementary infrastructure investments that will accelerate the pace of progress restoring lake and wetlands habitat along the perimeter of the Salton Sea.

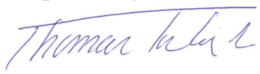
If the Federal Government matched these state and local commitments, it would place the Salton Sea and surrounding communities firmly on a path toward a healthy and successful future.

The Federal government owns nearly half of the land in and around the Salton Sea, and Federal partnerships are critical to improving conditions at the Sea. The Federal government also has trust responsibilities to protect the Tribe's treaty rights, lands, and resources. In 2016, the U.S. Department of the Interior entered into a Memorandum of Understanding with the State of California that included commitments

to strengthen cooperation and complement state, local, and tribal efforts to restore the Salton Sea.

Unfortunately, the Federal government has been inconsistent in following through on its obligations and responsibilities to the Salton Sea and the region. The U.S. Department of Agriculture has supported collaborative work with agricultural producers to benefit the Sea through its Regional Conservation Partnership Program, which we hope to expand under the 2018 Farm Bill. On the other hand, we have seen little follow-through by the Interior Department on its 2016 agreement to step up as an important partner. And now, problematic language in the proposed legislation could be used to repudiate many Federal responsibilities to the Sea altogether. We encourage Congress to reject the current provision that would waive all laws that protect the environment and Federal responsibilities to tribal nations. Instead, Congress should demand and require that the Federal government work with state, local, and tribal partners to resolve challenges in managing the Colorado River while also fulfilling its responsibility to protect the Salton Sea and honor its trust responsibilities to tribal nations.

Respectfully,



Thomas Tortez, Jr, Chairman
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Statement of Mark A. Gabriel
Administrator and Chief Executive Officer
Western Area Power Administration
Committee on Energy and Natural Resources
Water and Power Subcommittee
U.S. Senate
on the Colorado River Drought Contingency Plan
March 27, 2019

Since 2000, drought conditions in the Colorado River Basin have led to significant decreases in water storage in several key Colorado River reservoirs. The Seven Basin States, through their Commissions, are developing Drought Contingency Plans (DCP) (one for the upper basin, and another for the lower basin) to address the possibility of mitigating the reservoir levels at Lakes Powell and Mead from declining below critical elevations that would trigger water shortage provisions. Hydropower would also be impacted by shortages.

An agreement has been reached in the Upper Basin (Wyoming, Utah, New Mexico and Colorado). The primary goal of the Upper Basin strategy is to maintain sufficient water levels at Lake Powell during drought conditions to preserve water deliveries and power generation. Lake Powell is the largest reservoir and largest source of hydropower generation in the Upper Basin and singularly controls deliveries of Colorado River water to the Lower Basin. The Upper Basin States have agreed on a strategy that primarily calls for increased deliveries to Lake Powell by releasing water from higher elevation reservoirs, in excess of normal releases but consistent with all Records of Decision, to ensure Lake Powell remains above its dead pool level and water can be released. Shifting of water from different reservoirs may impact power generation ability in the higher reservoirs as well as impact water deliveries in subsequent years. Power from Lake Powell is delivered to 135 customers across Arizona, Colorado, New Mexico, eastern Nevada, Utah, and Wyoming. Power contracts extend through 2057.

The Lower Basin states (California, Nevada and Arizona) have had more difficulty reaching an agreement, particularly due to Arizona legislation and now concerns from the Imperial Irrigation District (IID) in California regarding funding for the cleanup of the Salton Sea. The Bureau of Reclamation Commissioner Brenda Burman required that an agreement be reached by January 31, 2019. Unfortunately this deadline was not met and additional pressure was set by the Commissioner via a Federal Register Notice requiring input from each State's Governor by March 19th. On March 18th the States satisfied this deadline by signing a letter of intent and agreement to sign the DCP in the following days, without IID's signature.

Lake Mead water releases in the lower basin are part of the Boulder Canyon project (Hoover Dam). WAPA is obligated to deliver wholesale energy to approximately 45 customers in southern California, Arizona, and Nevada, and the available capacity is highly dependent on the elevation of Lake Mead. If power is insufficient to support customer electrical capacity entitlements, each customer's capacity entitlement would be reduced or increased on a pro-rata basis to align with the available capacity at any given time. Electric service contracts provide for the marketing of power through September 30, 2067.

Water demands in the Lower Colorado River Basin and hydropower operations of the Parker-Davis Project (PDP) in Arizona are directly impacted by upstream releases from Hoover Dam. Power from the PDP is currently marketed to 37 customers in southern Nevada, Arizona and southern California,

supplying the electrical needs of more than 300,000 people. All firm power contracts are effective through September 30, 2028.

WAPA is engaging with Reclamation and state representatives to represent hydropower interests in discussions about the drought contingency plan to fully understand the impacts on hydropower costs and the Colorado River Basins Power Marketing Fund. The focus of the interpretation of that data has been and will continue to be understanding the overall impact to the cost of hydropower if a DCP is triggered and for the subsequent years when recovering from drought mitigation measures.