THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Board Report

Colorado River Resources

- **Report on Metropolitan's Colorado River Interests and the Law of the River**

Summary

Development of the post-2026 guidelines for operations of Lake Powell and Lake Mead is underway. Two processes are moving forward in parallel. The federal process, led by the Bureau of Reclamation (Reclamation) through its environmental impact statement (EIS) and the Basin States negotiations where the states are working with the Interior Department and Reclamation to develop a consensus alternative to be included in the EIS. The review of the 2007 Interim Guidelines found current operations have been inadequate in addressing declining reservoir elevations and drier hydrology since the Colorado River drought started in 2000. What changes should be made to future operations of Lake Powell and Lake Mead and how the states will take water use reductions in the new guidelines has led to disagreements between the Upper and Lower Basins and among the Basin States regarding their rights and obligations. Additionally, the Lower Basin States and California contractors continue to develop agreements on how to share reductions needed to protect Lake Mead.

Purpose

Informational

Detailed Report

Introduction

After being formed in 1928 by election and an act of the California legislature, Metropolitan's first project was to build the Colorado River Aqueduct (CRA). Metropolitan continues to bring Colorado River water into Southern California through the CRA. The Colorado River has been Metropolitan's most secure source of imported water since the district was formed. Metropolitan shares this resource with water users across the seven states and Mexico within the Colorado River Basin. Since the 1990s, Californians, and Metropolitan in particular, have faced shrinking supplies of Colorado River water due to increased use by others in the Basin and drought intensified by the effects of aridification.

The "Law of the River" refers to the complex body of interstate compacts, federal laws, Supreme Court decrees, regulations, and agreements that govern the allocation and management of the Colorado River among the seven Basin States and Mexico. The sheer complexity of the legal structure defies easy and concise explanation. This report is intended to provide a summary of some of the elements of the Law of the River relevant to the process to develop the post-guidelines.

Upper Basin and Lower Basin

1922 Colorado River Compact

In a 1907 case, the Supreme Court established the doctrine of "equitable apportionment" – the legal doctrine that states along interstate rivers share the right to use water from those rivers. Rather than having a court determine the equitable apportionment of the Colorado River, the seven states in the Colorado River Basin received congressional authorization to enter an interstate compact for this purpose. The Colorado River Compact was the first compact that determined an equitable apportionment of an interstate river. After the Basin States started negotiating the Colorado River Compact, the Supreme Court issued another opinion that applied prior appropriation to an equitable apportionment of an interstate river. Prior appropriation is the system that allocates water rights on a "first in time, first in right basis". At that time most of the water uses developed in the basin were in California. Concern in the Upper Basin about a court applying prior appropriation to the equitable apportionment of Colorado River water among the Basin States led to agreement by all of the seven states' negotiators, and the Colorado River Compact was signed in November 1922.

The Compact did not allocate water among the individual Basin States or resolve every issue, but it established the framework on which all subsequent agreements have been built. The Compact did a few key things, it:

- Divided the basin into the Upper Basin and Lower Basin, at Lee Ferry in northern Arizona. The Upper Division States are Colorado, New Mexico, Utah, and Wyoming. The Lower Division States are Arizona, California, and Nevada.
- Apportioned 7.5 million acre-feet (MAF)/yr of beneficial use to each basin and gave the Lower Basin the right to increase its beneficial use by 1.0 MAF/yr.
- Anticipated the U.S. entering a treaty with Mexico and made the Upper and Lower Basins each responsible for supplying half of the Mexico treaty delivery when there is insufficient surplus above the apportioned volumes. The Upper Basin is obligated to deliver such volumes to Lee Ferry when these conditions exist. The 1944 U.S.- Mexico Treaty requires the United States to deliver 1.5 MAF annually in normal conditions.
- Obligates the Upper Division States to "not cause the flow of the river at Lee Ferry to be depleted below" 75 MAF in any 10-yr period.
- Provides that the Upper Division not to withhold water and the Lower Division not to require delivery of water that cannot reasonably be applied to domestic and agricultural uses.
- Makes "present perfected rights" - rights existing at the time of the Compact to the beneficial use of water "unimpaired" by the Compact.

The Compact is not a historical artifact. It is the legal foundation for Reclamation's operations at both Lake Powell and Lake Mead. Every subsequent law or agreement including the 1928 Boulder Canyon Project Act, the 1944 Treaty with Mexico, the 1956 Colorado River Storage Project Act, the 2007 Interim Guidelines, and the upcoming post-2026 framework must be consistent with it.

1922 Colorado River Compact: crcompct.pdf

1970 Long Range Operating Criteria and 2007 Operating Guidelines

The 1968 Colorado River Basin Project Act required the Secretary of the Interior to establish Long Range Operating Criteria (LROC) for its facilities on the Colorado River and to provide annual reports on river operations in accordance with the adopted criteria. The 1970 LROC includes provisions for making releases from Lake Powell and Lake Mead, as well as establishing criteria for determining the amount of water to be stored in Lake Powell.

The LROC states that "the objective shall be to maintain a minimum release of water from Lake Powell of 8.23 million acre-feet." This volume, when combined with 0.02 maf of inflow to the Colorado River below Lake Powell, was sufficient to cover the Lower Basin's 7.5 maf entitlement plus one-half of the Mexico Treaty delivery (750 thousand acre-feet (taf)). More water may be released to maintain equal active storage in Lake Powell and Lake Mead, when that release meets specified criteria.

In 2007, Interior adopted the recommendation of the Basin States in Interim Guidelines, a more comprehensive set of operating guidelines for operations of Lake Powell and Lake Mead. These guidelines, that run through 2026, address coordinated operations of Lakes Powell and Mead, storage of conserved water in Mead, and defined Mead elevations that trigger shortages in the Lower Basin. The 2007 Guidelines include rules for the storage of conserved water in Lake Mead - Intentionally Created Surplus (ICS) – that may be delivered in future years. Metropolitan has accumulated credits for over 1.5 maf of ICS. The ICS rules incentivize water conservation efforts and provide flexibility in using supplies across years with highly variable hydrologies.

In order to better balance the storage of two reservoirs, the 2007 Interim Guidelines provided annual releases from Powell range from 9.5 maf to 7 maf based on elevation triggers at Lake Powell and Lake Mead. The 2024 Supplemental Environmental Impact Statement to the 2007 Interim Guidelines modified those triggers and reduced the annual Powell annual releases to a minimum of 6.0 maf. A Lower Basin shortage condition is declared when Lake Mead reaches specified elevations, triggering cuts in Arizona and Nevada. Mexico also agreed to take reductions in Treaty Minute 319 and 323 based on Lake Mead elevations. Water reduction commitments were increased for Arizona, Nevada, and established for California based on Lake Mead elevations in the 2019 Colorado River Drought Contingency Plan.

1970 Long Range Operating Criteria: opcriter.pdf

2007 Interim Guidelines: 2007 Interim Guidelines| Bureau of Reclamation

Lower Basin

1928 Boulder Canyon Project Act and 1968 Colorado River Basin Storage Act

In the years after the Basin States' negotiators signed the Compact in 1922, all of the Basin States' legislatures ratified the Compact except Arizona. In 1928 Congress passed the Boulder Canyon Project Act (BCPA) that authorized the Compact to become effective with the approval of six Basin States on the condition that California agree to limit its basic appropriation to 4.4 maf/yr. In response, California's legislature adopted the required Limitation Act.

The BCPA made the Secretary responsible for contracting for and managing the distribution of Colorado River water in the Lower Basin. While the term itself does not appear in the statute, in its *Arizona v. California* decision the U.S. Supreme Court described the Secretary's authority in the BCPA as the "water master" of the Lower Basin. The Court held that, under the BCPA, the Secretary of the Interior has broad authority to allocate and distribute the mainstream waters of the Colorado River among the Lower Basin states, subject to the congressional limits in the Act.

However, continued disputes between Arizona and California ultimately ended with litigation in the United States Supreme Court. After a decade of litigation in *Arizona v. California*, the Court upheld the BCPA Lower Basin apportionment of 2.8 maf/yr to Arizona, 4.4 maf/yr to California, and 0.3 maf/yr to Nevada; authorized Arizona to have exclusive use of its tributaries in addition to its annual apportionment; and ruled that the Secretary has broad discretion to allocate shortages among the States, subject to limits imposed by Congress. Nevada also benefits from the Supreme Court's decision in use of its tributaries.

The outcome of the *Arizona v. California* litigation was crucial to Arizona's efforts to obtain federal authorization to construct the Central Arizona Project (CAP) which allowed Arizona to divert over 1.5 maf/yr to reach its full 2.8 maf/yr entitlement. But the federal statute (Colorado River Basin Project Act (1968)) includes a provision protecting California's right to use 4.4 maf/yr when the Interior Secretary declares a Lower Basin shortage until all post-1968 water rights are cut. This junior priority for CAP was reflected in the shortage provisions of the 2007 Guidelines that imposes shortages on Arizona and Nevada at specific trigger elevations in Lake Mead. California is not subject to these shortages in the 2007 Interim Guidelines.

1928 Boulder Canyon Project Act: bcpact.pdf

1968 Colorado River Basin Storage Act: crbproj.pdf

California

1931 Seven Party Agreement and 2003 Quantification Settlement Agreement

Metropolitan was the first agency to execute a contract with the Secretary of the Interior for delivery of Colorado River water. But a dispute immediately arose with agricultural agencies that had long-standing claims to use river water for irrigation. The agricultural interests were concerned that Metropolitan’s first contract would give it priority over their water rights. The dispute was resolved with execution of the Seven-Party Agreement in 1931. That agreement established the right of agricultural agencies (Palo Verde Irrigation District, Bard Irrigation District, Imperial Irrigation District, and Coachella Valley Water District) to share 3.85 maf/yr of senior rights, with urban agencies (Metropolitan, San Diego, and Los Angeles) having junior rights to 1.2 maf/yr. This agreement exceeded California’s 4.4 maf/yr allocation, meaning that the junior urban water right was only 550 taf/yr in the absence of surplus water supplies.

For many years, California took surplus deliveries in excess of 5 maf using water that was apportioned to, but not used in, Arizona and Nevada. As those States developed their full allocations, California relied on Secretarial determinations that surplus water was available to satisfy California’s demands in excess of its entitlement. In 2003, the Secretary declared the end of surplus and California scrambled to limit its use to 4.4 maf/yr.

The reduction in use was achieved through the Quantification Settlement Agreement (QSA). Under the QSA, the agricultural allocation of 3.85 maf/yr was effectively allocated as 3.1 maf/yr to IID, 0.33 maf/yr to CVWD, and an assumed average of 0.42 maf/yr to PVID and the Yuma Project Reservation Division. The cap on IID’s allocation allowed Reclamation to measure compliance with the agricultural allocation of 3.85 maf/yr and for IID to develop water conservation programs to transfer conserved water to CVWD, Metropolitan, and San Diego County Water Authority. The quantification has further allowed Metropolitan to execute a long-term fallowing program with PVID and conservation programs with Bard and the Quechan Indian Tribe. Together these conservation efforts and water stored in Lake Mead as ICS augment Metropolitan’s basic entitlement of 550 thousand acre-feet and enable diversion of Colorado River supplies within the capacity of the Colorado River Aqueduct when needed.

Conclusion

Operation and management of the Colorado River system is governed by the complex framework of the Law of the River. The Interior Department, Reclamation, the Basin States, as well as contractors like Metropolitan, are negotiating to develop post-2026 guidelines that both work within and build upon the existing Law of the River in order to address the challenges of drier hydrology due to drought and climate change in operations of Lake Powell and Lake Mead in the future.