



# Colorado River District

*Protecting Western Colorado Water Since 1937*

## MEMORANDUM

January 3, 2018

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**TO:** BOARD OF DIRECTORS, CRWCD  
ANDY MUELLER

**FROM:** ERIC KUHN *EK*

**SUBJECT:** *COLORADO RIVER ISSUES*

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### 1. Drought Contingency Plans/Federal Legislation

#### Drought Contingency Plans

At the Upper Colorado River Commission and the Colorado River Water Users Association (CRWUA) meetings in Las Vegas there was quite a bit of discussion of the drought contingency plans (DCPs).

As you know, there are two plans: a relatively complicated plan in the Lower Basin that will require additional consumptive use cutbacks by Arizona, California, and Nevada if Lake Mead storage levels approach elevation level 1,025'; and, a separate Upper Basin plan that includes drought operations of the upstream CRSP units (Flaming Gorge, Aspinall and Navajo), system augmentation (cloud seeding), and further planning for demand management. NOTE: There is no commitment by any of the Upper Division states to actually implement demand management, aka, water banking, only to continue studying it.

The news on implementation of the Lower Basin DCP is mixed. On a CRWUA panel that I moderated, the director of the Arizona Department of Water Resources, Tom Buschatzke, told the audience that within Arizona, they are farther away from implementing the DCP now that they were last year at this time. The combination of the proposed DCP and the current shortage guidelines require water users within Arizona that receive water from the Central Arizona Project (CAP) water take large shortages. Under the 1968 Act, the CAP (being last) is the junior user on the system. The CAP serves a number of large central Arizona cities, irrigation districts, and Indian tribes. As you can imagine, the politics of how these customers will absorb the cutback (and pay for conservation) are very complicated. Additionally, Arizona is unique in that its DCP must be approved by the Arizona Legislature.

The California agencies have been making good progress on the two issues that are tied to their approval of the DCP: progress on a Salton Sea solution; and, progress toward the approval of a Bay-Delta solution. Kevin Kelley, manager of the Imperial Irrigation District (IID), told the CRWUA that his district is satisfied with the (lower cost) solution that is currently being pursued. The future of the Bay-Delta solution is still a little unsettled. Will there be one 40' tunnel or two?

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The one-tunnel solution is possible if the federal Central Valley Project chooses not to participate in the project. NOTE: Metropolitan Water District (MWD) manager Jeff Kightlinger said that when the cost of the Bay-Delta solution (\$17 billion) is spread out over the municipal customers it's only about \$2.70 per household per month.

### **Federal Legislation**

Implementing the Lower Basin DCP will likely require federal legislation. Arizona and Nevada believe legislation will be required whereas California believes legislation will be helpful, but not essential. Its position is that the states should not lock themselves into a solution that requires action by a dysfunctional Congress.

There are several reasons the Lower Basin wants legislation. First, the Lower Basin wants to use federal legislation to direct the Secretary of the Interior to operate the river under their DCP if/when there is a conflict with the 2007 Interim Guidelines. They do not want to wade through a formal amendment to the Guidelines, which could take years. Recognizing the urgency of approving the DCPs, most of the environmental NGOs appear to be okay with this approach.

The second reason for legislation is Arizona wants to change a provision in the 1964 Arizona v. California Supreme Court decree (II.B.6) which gives the Secretary the authority to deliver apportionment not used by a Lower Division state to another state (on an annual basis). Arizona would like to change this to require the Secretary first have permission of the "donating" state. Further, California has in past suggested that an amendment allowing the Secretary to deliver more than 4.4 million acre-feet per year to California, subject to payback (or forward) provisions. NOTE: A procedure has been in place for a number of years for payback of "inadvertent" overuses. I guess the difference is that this would provide for an intentional overuse. Given the variability and problems associated with the deliveries of water to MWD from the California State Water Project, this change makes sense from a water supply perspective. However, recognizing that California is currently lukewarm (some would say pragmatic) on the need for legislation, it could probably survive without this change.

Another interesting factor with this legislation is the idea that it would sunset with the expiration of the 2007 Interim Guidelines. The Guidelines technically expire on December 31, 2025, but are written to cover the operation of the 2026 water year. It's conceivable that the states could spend several years debating federal legislation that would expire in only a few more years. Is that really wise?

The possibility of Lower Basin-driven legislation raises the question of what should the Upper Division states ask for in return? The four states have been discussing this, mainly informally, for about a year. A number of suggestions have surfaced including legislative language that would direct the Secretary to operate the upstream CRSP units to protect Lake Powell (drought operations), allowing the Upper Division states to utilize existing space in the CRSP storage units (Powell, Flaming Gorge, Aspinall, and Navajo) to operate a system storage reserve (aka water bank), perhaps at no cost. NOTE: The 2007 Interim Guidelines allow the Lower Basin states to use Lake Mead storage for intentionally created surplus (ICS) at no cost, but with a 5% water tax.

Currently, while there are discussions, there is no clear consensus among the four Upper Division states and there have been no detailed discussions with the Lower Basin. Based on the few comments I've received, I expect these conversations will be very difficult.

The Upper Division states need to be very careful. Implementation of the Lower Basin DCP, reduces uses in the Lower Basin and Mexico by over 1.2 million acre-feet per year (if Lake Mead approaches 1,025'). This reduction in Lower Basin consumptive use has a major positive effect on the Upper Basin (Lake Powell storage). Does it really make sense to oppose legislation that will benefit the Upper Basin?

One of the major concerns that Peter Fleming and I have expressed (along with our Southwestern District colleagues Bruce Whitehead and Beth Van Vurst) is that at the appropriate time the State of Colorado needs to have an open discussion with its water users over the purpose and content of any legislation the Upper Basin proposes to attach to the Lower Basin legislation. Given that these discussions are delicate (and there is no real agreement among the states), now may not be the appropriate time.

We need to be careful and recognize that legislation could move quickly. This kind of legislation is often attached to other must-pass legislation. The conversation that Peter and I had with Bruce and Beth is that it may be an appropriate subject for a joint meeting of the two boards.

## **2. Upper Colorado River Basin Matters**

The formal renegotiations of the 2007 Interim Guidelines will likely start in 2019. At CRWUA Don Ostler commented that he believes that with the DCPs, we've already begun those negotiations, I agree with him. Through a number of task groups, the Upper Division states are looking at the issues related to the renegotiations. I believe that River District staff participation in these work groups is important and essential to the River District's mission and strategic plan.

## **3. Colorado River Basin Hydrology**

As of two weeks before the River District's January board meeting, the snowpack is well below average. It is especially poor south of I-70. For example, the snowpack in the San Juan is about 25%, 35-40% in the Gunnison, 65-75% in the Yampa/White, but about 100% in the Upper Green. The April-July runoff forecast for the Colorado River Basin above Lake Powell is 3.9 million acre-feet or 54% of average. Last year, actual April-July runoff into Lake Powell was 8.2 million acre-feet. NOTE: Since inflow to Lake Powell in 2017 was above average (111%), the annual release from Lake Powell for water year 2019 is likely to be 9.0 million acre-feet unless 2018 is extremely dry, similar to 2002 or 1977. If the water year 2019 release is 9.0 million acre-feet, it would be the fifth straight year of 9.0 million acre-feet releases (2014 was a 7.48 million acre-feet release).

The seasonal forecasts for the remainder of winter are mixed. A continuation of the below average precipitation with very dry conditions to the south is a real possibility. It's too early to panic, but not too early to be cautious. The River District board meeting in mid-January coincides with the

halfway point of the snow accumulation season. I recommend we discuss preparations for what could be a very dry year.

REK/ldp