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MANAGEMENT OF THE COLORADO RIVER

OVERSIGHT FIELD HEARING

BEFORE THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

July 9, 2001 in Salt Lake City, Utah

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OVERSIGHT FIELD HEARING ON MANAGEMENT OF THE COLORADO RIVER

Monday, July 9, 2001
U.S. House of Representatives
Committee on Resources
Salt Lake City, Utah

The Committee met, pursuant to call, at 9:30 a.m., at the Department of Natural Resources, 1594 West North Temple, Salt Lake City, Utah, Hon. James V. Hansen (Chairman of the Committee) presiding.

STATEMENT OF THE HONORABLE JAMES HANSEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

The CHAIRMAN. Good morning. We welcome you here this morning to the Committee of Natural Resources of the U.S. House of Representatives. I'm the Chairman of the Committee, Jim Hansen. Grace Napolitano is from California, who is here on my left. Ken Calvert is the Chairman of the Subcommittee of Water and Power, and is from California. Seated next to him is Chris Cannon from the state of Utah in the Third District. We expect any moment to have Jim Gibbons of the state of Nevada. And I understand that these mikes work differently than they do in the House of Representatives. Jim Gibbons should walk in any minute from the state of Nevada.And so, because we believe in starting on time, we're going to go ahead. And I'll have some opening remarks and I'll turn to my colleagues.

This field hearing will explore the broad issues of the management of the Colorado River in the coming decades from the perspective of the Upper and Lower Colorado Basin states. Today's witnesses represent each of these states, will provide insight to the Committee of the various and often contentious issues that we must grapple with in the coming years.

In light of the legislation recently introduced which authorized the massive CALFED water projects, it is appropriate that we also explore the future management of the Colorado River and California's relationship with other Basin states as well.

We are all familiar with the contentious issues of the Colorado River, ranging from the operation of the Federal dams to the protection of endangered species, to Indian water rights, to the marketing of water between states and water users. While each of these issues have been the subject of numerous hearings, we will likely only be able to touch on these topics today. But as we discuss

the water needs of California and other states, we should strive to reach a reasonable balance between the water users, recreationists, and environmental concerns.

Unfortunately, some have already made up their minds to take an unreasonable and unbending position that is neither realistic nor conducive to public discourse. And so I think we should be very careful as we look at this; we would hope that people would have an open mind, that they would see that the southwest part of America is predicated on the Colorado River drainage. And there are a lot of states involved in this, and we would appreciate it if people, as this thing unfolds, would work on that.

Some people are of the opinion that we should drain Lake Powell. I think you might as well forget that. I don't think that will ever occur, but who knows. And that we have to realize if we find ourselves without the water and power that comes out of Lake Powell right now, we would be in very tough shape.

Some who advocate preaching recycling and conservation often refuse to accept the fact that the Colorado water and its tributaries are the cleanest source of energy in the West. All sources of energy need a fuel; in this case fuel is water. The Colorado River water is used and reused nearly a half dozen times between its headwaters and the delta through a series of highly efficient dams. Unfortunately, no one ever seems to talk about that.

I would challenge anyone to come up with an alternative source of power that uses the same fuel four or six times over, providing power to literally millions of homes and businesses, with zero greenhouse gas emissions. You just simply can't. Simply put, hydropower is among the most environmentally friendly sources of water we have, and we should not overlook that fact as we discuss the management of the Colorado River.

Unfortunately, I have no doubt that someday some well- meaning and naive Member of Congress from the East, eager to curry favor with the green lobby, will introduce legislation to decommission Glen Canyon Dam. I don't think that day is too far away. And as long as I'm Chairman of the Committee, don't count on it. At that time it will be our responsibility as Members of the Committee to educate that person to the reality of the role that water plays in the West.

In light of this drain-it movement under way, I believe that Members of this Committee should also be concerned with the discussion that will take place between the United States and Mexico in September regarding the Colorado River delta. There is significant pressure coming from these same environmental groups to reallocate substantial amounts of water to restore the Colorado River delta. This will undoubtedly have immediate and long-term ramifications on all the basin states. The secretary should be very careful not to enter into agreements without the consultation and agreement of the states.

I don't know if the witnesses are prepared to discuss this issue today. But the Committee should certainly be prepared to provide the Secretary with guidance if necessary. And as many you of folks know, what the secretaries do can be overturned by legislation, and is done on a very regular basis, whether it's the Defense Depart-

ment or the resources somewhere else, and in the last 8 years we spent an awful lot of time doing it.

I want to thank Chairman Calvert for all the work that he has done on these issues. Ken has just been a Godsend to us on the Committee, and he's working here with Josh Johnson, who's holding this button down so I can talk to you folks. Josh has served on my personal staff for a while, he's been over on Energy and Water, and now is Chief of Staff of this Subcommittee. Ken has devoted a tremendous amount of time and energy over the recent months in working for solutions to address California's long-term water and energy needs.

I also want to thank the other Members of the Committee who have arranged their schedules and travel plans to be here today.

Finally, I want to extend the Committee's appreciation to the Utah Department of Natural Resources and Director Kathleen Clark for hosting today's hearing. They have been most accommodating in making arrangement for this hearing in such short notice.

Now it is my pleasure to hear from the Chairman of the Subcommittee, Mr. Calvert of California, and then the gentlelady from California, the gentleman from Utah, and the gentleman from Nevada.

STATEMENT OF THE HONORABLE KEN CALVERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. CALVERT. Thank you, Mr. Chairman. And, you know, we hear a lot about exports of water from the Colorado River to California. I was happy when I came here today that—relieved that we're importing water here to Utah from California. So I just wanted you to know that it's not just a one-way street, you know, so.

The CHAIRMAN. Yes, you've stolen our water fair and square.

Mr. CALVERT. Recently I've been doing a series of field hearings in my home state of California, discussing issues related to water supply, quality, and reliability. And throughout these hearings I've learned that California's water security is directly tied to water security in the entire western United States.

Water issues cross borders here in the West like the meandering river. One issue that continually comes before my Subcommittee, particularly when it comes to California's water security, is the management and operations of the Colorado River. As each of you know, this river has been a focal point of water for all of us in the West for many decades, and promises to continue to be.

We speak of the collective body of law, how to regulate Colorado River water in the West as the Law of the River. Though we've made good progress defining that law, challenges certainly continue. The environment, the possibility of a long-term drought, California's 4.4 Plan, and the simple lack of enough water will be challenges in the future. So I certainly look forward to today's hearing and each state's perspective on issues surrounding the management and operations of the Colorado River.

And thank you, Mr. Chairman, for being the host in such a delightful location here in the state of Utah. Thank you.

[The prepared statement of Mr. Calvert follows:]

Statement of The Honorable Ken Calvert, Chairman, Subcommittee on Water and Power

Recently, I have been doing a series of field hearings in my home state of California'discussing issues related to water supply, quality and reliability. Throughout these hearings, I have learned that California's water security is directly tied to water security in the entire Western United States. Water issues cross boarders here in the West, like a meandering River. One issue that continually comes before my Subcommittee, particularly when it comes to California's water security, is the management and operations of the Colorado River. As each of you know, this river has been a focal point of water for all of us in the West for many decades, and promises to continue to be. We speak of the collective body of law about how to regulate Colorado River water in the West as the "Law of the River." While we have made good progress defining that law, challenges certainly continue. The environment, the possibility of a long term drought, the California 4.4 Plan and the simple lack of enough water will be challenges in the future.

I look forward today to hear each State's perspective on issues surrounding the management and operations of the Colorado River.

The CHAIRMAN. Thank you. Miss Napolitano?

STATEMENT OF THE HONORABLE GRACE NAPOLITANO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mrs. NAPOLITANO. Thank you, Mr. Chairman, and it is a pleasure to be here. And mine is very short and sweet. I have been involved with the Colorado River for a number of years simply because I was privy to a lot of the information at the state level. And essentially I have vested interests in the fact that the Colorado River provides good, quality water for the whole basin in my area. And it isn't just for my constituents that I'm concerned for the future of that delivery of that water, but also for my children and my grandchildren and their grandchildren.

I think all of us need to understand that no matter what we decide, what happens in the decades to come is something that we need to be concerned about, because things are changing. Not only do we not have what—we go through the cycles of drought all through this western area, and I think if we work together we can come to solutions that are going to be beneficial to all of the western states. It is my hope that we will continue to work together, as we did on getting the Colorado River Moab site addressed that had been sitting for a long time.

I was asked repeatedly, why do you have an interest? Well, we do drink the Colorado water, and so the interest has to be there for all of us. And I think working together we can come to some solution. I'm glad I'm here to listen to what is said so that we can then move forward and begin the work that needs to be done.

Thank you, sir, thank you, my colleagues.

The CHAIRMAN. Thank you, gentlelady. The gentleman from Utah, Mr. Cannon.

STATEMENT OF THE HONORABLE CHRIS CANNON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

Mr. CANNON. Thank you, Mr. Chairman, and thank you for holding this hearing today. Geez, being in Congress would be a lot more pleasant if we could have all of our meetings out here. Or at home, for those from other states. I'd also like to thank the gentlelady from California, Ms. Napolitano, for her interest in this subject

over the long- term. We've worked closely together on moving the tailings out of the Moab area and off the Colorado River. I know many people downstream have a concern about that.

I'm pleased to have this opportunity to examine the management of the Colorado River. We who live in the arid West know just how critical water supply issues are. The Resources Committee and the Colorado River managers are faced with dual tasks. We live in an era where we're more sensitive to environmental effects or actions, and on the other hand, we must ensure an adequate supply of water for a burgeoning population.

A study by the University of Colorado's Center for the American West projects that 48 million more people will be added to the 11 Western states by 2050. Utah alone will grow by about 59 percent, to reach about 3.6 million people, according to these projections, and therefore must adopt a forward-looking approach to water management to accommodate this growth. In other words, the Colorado River will play a key role in providing the water we need; both the Upper and Lower Basin states must find ways to make better use of the water that we have.

I'm pleased to be working on a bill to, among other things, encourage wastewater reuse in the Central Utah Project. This kind of innovative management applied to the Colorado River is the only way to ensure that we have the water necessary to sustain our Western population.

I look forward to hearing the testimony of the witnesses. They have a chance to offer us information that we need to make good policy decisions and ensure the preservation of the Colorado River, while continuing to provide for the needs of the generations to come.

Thank you Mr. Chairman.

[The prepared statement of Mr. Cannon follows:]

Statement of The Honorable Chris Cannon, a Representative in Congress from the State of Utah

Thank you, Mr. Chairman, for holding this hearing today. Being in Congress would be all the more enjoyable if we could always stay in the beautiful state of Utah to get our work done.

I am pleased to have this opportunity to examine management of the Colorado River. We who live in the arid West know just how critical water supply issues are. The Resources Committee and Colorado River managers are faced with dual tasks. We live in an era where we are more sensitive to the environmental efforts of our actions. ON the other hand, we must ensure an adequate supply of water for our burgeoning population. A study by the University of Colorado's Center of the American West projects that 48 million more people will be add3ed to the 11 Western states by 2050. Utah alone will grow by 59% to almost 3.6 million people. We must adopt a forward-looking approach to water management if we are to accommodate this growth.

Management of the Colorado River will play a key role in providing the water we need. Both the upper and lower basin states must find ways to make better use of the water that we have. I am pleased to be working on a bill to, among other things, encourage wastewater reuse in the Central Utah Project. This kind of innovative management applied to the Colorado River is the only way to ensure that we have the water necessary to sustain our western population.

I look forward to hearing the testimony of the witnesses. They are the true experts who can offer us the information that we need to make good policy decisions and ensure the preservation of the Colorado River, while continuing to provide for the needs of the generations to come.

The CHAIRMAN. Gentleman from Nevada, Mr. Gibbons.

STATEMENT OF THE HONORABLE JIM GIBBONS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA

Mr. GIBBONS. Thank you very much, Mr. Chairman. And as a Representative from Nevada whose state contains the southern part of the Colorado River Basin in that area, I'm honored and pleased to be here. Thank you for the invitation to invite us to attend.

And let me say that I do believe that the future of the Colorado River is not only more secure, but it's much brighter, through hearings that we're having here today and through the leadership of not only you, Mr. Chairman, and Mr. Calvert as well, but I think because of the groups and the interests that everyone is showing in now improving the Colorado River as we have here today.

As for my good colleague and friend, Mr. Cannon from Utah, I am in complete agreement with him that we should move at least to Salina, Kansas, the capital of the United States; it would make the commute a whole lot easier. And I do appreciate the fact to be here.

Once again, thank you for the invitation and your leadership on this issue.

The CHAIRMAN.All of the statements will be included in their entirety in the record. And if people want to abbreviate, by all means, please do it.

The CHAIRMAN. For today's hearing, we just have one panel, but we've structured it that way. We want to hear from you folks, what you want to say, what you feel strong about.

And normally we limit you to 5 minutes. We purposely did not bring our clock that cuts you off, but we would appreciate it if you would just kind of speak from the heart. If you want to read your statement, that's up to you. But following that, I will turn to Members of the panel here to ask you all the tough questions.

So this is the order they tell me we're supposed to do this in. Mr. D. Larry Young? Larry Anderson. Put my glasses on to get this straight, Larry. Director of Utah Division of Water Resources; Mr. Herb Dishlip, Assistant Director, Arizona Department of Water Resources; Mrs. Jeanine Jones, Drought Preparedness Manager, California Department of Water Resources; Mr. Kent Holsinger, is that correct?

Mr. HOLSINGER. Holsinger.

The CHAIRMAN. Close enough. Assistant Director, Colorado Department of Natural Resources; Miss Patricia Mulroy, General Manager, Southern Nevada Water Authority; Mr. Phillip Mutz, Upper Colorado River Commissioner, State of New Mexico; and Mr. Thomas J. Davidson, the Governor's Representative, Wyoming Attorney General's Office. We'd be happy to take you in that order. Larry, if you want to start, you're on.

STATEMENT OF D. LARRY ANDERSON, DIRECTOR, UTAH DIVISION OF WATER RESOURCES

Mr. ANDERSON. Thank you very much. I don't know if I have to touch this, or maybe it doesn't work. Anyway—

The CHAIRMAN. Have you got power? Can everybody hear Mr. Anderson?

Mr. ANDERSON. Congressman Hansen and Members of Congress, those from the Resources Committee, I want to thank you for the opportunity to testify today on behalf of the states—State of Utah concerning management of the Colorado River. I am Larry Anderson, the Director of the Utah Division of Water Resources, Utah Interstate Streams Commissioner, and Governor Leavitt's representative on Colorado River water issues.

From the dawn of recorded history down to our time, men have prayed and fought for the water that makes soil productive and sustains life. If an area receives less than 20 inches of precipitation annually, irrigation is necessary.

As you can see from the map over here that I brought in showing the annual precipitation, the western United States, and particularly the Colorado River Basin, there in those nice red—

The CHAIRMAN. Do you want to bring that out so the rest of the folks here in the audience can see it?

Mr. ANDERSON. Those nice red and orange colors there, the hot ones show that the western United States, particularly the Colorado River basin, is in what I would call the great American desert. We receive within the Colorado River basin about 14 inches of precipitation annually, and you can see as you move east how that—colors get a lot calmer and cooler as you move there, and see that the precipitation on the East Coast varies from about 30 inches up to as much a 100 inches. So we truly do live in the great American desert.

Because of the critical role of water in the arid West, the Colorado River has been the subject of extensive negotiations and litigation. This has resulted in the development of a complex set of Federal and state laws, compacts, court decisions, treaties, and other agreements, collectively known as a Law of the River. The principal documents forming the Law of the River again are shown over here on this poster.

While some may want you to believe that the Law is archaic and unresponsive to current problems, you will note that the list of items comprising the Law of the River continues to grow, showing a dynamic and static law—and not a static law, with the most recent additional item added to the Law of the River being the Interim Surplus Guidelines, which were added in January of this year.

In the mid-1990's, the Colorado River Basin states began discussions on the development of a plan to encourage California to implement measures to reduce its use of Colorado River water from 5.2 million acre-feet annually back to its allocated amount of 4.4 million acre-feet.

With the encouragement of the Secretary of Interior, the basin states were able to reach a consensus agreement of what we call Interim Surplus Guidelines. The Secretary of Interior adopted those guidelines in January of this year, and issued a record of decision that was acceptable to all of the basin states.

The advantage of the Interim Surplus Guidelines is it gives California water users more certainty on when and how surpluses will be determined for the next 15 years. The advantage to the other

six basin states is that it requires California to systematically ratchet down its use of Colorado River water, and by the year 2016, California has committed to live within its Compact allocation of 4.4 million acre-feet.

A document that goes hand in hand with the Interim Surplus Guidelines is the California 4.4 Plan. This plan outlines the measures California water users will implement to achieve the conservation benchmarks outlined by the record of the decision. We support and fully expect California to finalize the plan, their 4.4 Plan, by December of 2002.

Because a continuation of the Interim Guidelines is dependent upon California's being successful. We encourage Congress and all Federal agencies to support and assist California wherever necessary in completing all of the agreements that they must sign within the state of California and all the environmental regulations that they must comply with. And if necessary, expedite any Federal reviews required to help California be successful in their plan.

In recent years Federal legislation has been introduced to protect the Salton Sea ecosystem. I am concerned that such an effort may conflict with the California 4.4 Plan. Remind you that the Salton Sea is a man-made lake created in the 1900's by the failure of a canal carrying Colorado River water to irrigators in the Imperial Valley, and the Salton Sea is maintained today by agricultural inefficiency and runoff. Any efforts to guarantee additional flows to the Salton Sea could conflict with conservation efforts to transfer agricultural water to M&I uses as contemplated in the California 4.4 Plan and in the Interim Surplus Guidelines.

Environmental groups have recently expressed a concern over the Colorado River delta ecosystem in Mexico. The Federal Governments of both the United States and Mexico have agreed to meet to discuss delta concerns and issues, and have scheduled a joint educational symposium in Mexicali, Mexico on September 11th and 12th. The basin states request that the U.S. Government invite us to be involved in the development of any solutions to the problems in the delta.

I don't have to remind this group that the Colorado River is totally appropriated, the water has been allocated to the basin states and to the country of Mexico in the use of water. Any additional water will have to be—will have to come from one of those sources.

Even though there are many unresolved issues facing the Colorado River water users, the basin states are trying to work cooperatively with the Federal Government, Indian tribes, and nongovernment organizations to resolve them. While the process is not easy, history tells us that if those involved exercise trust and comity among themselves, acceptable solutions are likely to be found. Thank you.

[The prepared statement of Mr. Anderson follows:]

Statement of D. Larry Anderson, Utah Commissioner, Upper Colorado River Commission, and Director, Utah Division of Water Resources

The Colorado River falls more than 12,000 feet as it flows from the Rocky Mountains to its outlet in the Gulf of California. The river has a huge drainage basin that covers over 244,000 square miles. The seven Colorado River Basin states (Arizona, California, Colorado, Nevada, New Mexico, Utah, Wyoming) comprise about one-twelfth of the area of the continental United States. Despite the size of the wa-

tershed, the Colorado River ranks only sixth among the nation=s rivers in volume of flow, with an average annual undepleted flow in excess of 17.5 million acre-feet (MAF) (15 MAF at Lee Ferry, the compact division point). Demands on the Colorado River are not limited to needs within the basin. In fact, more water is exported from the basin than from any other river in the country. The river provides municipal and industrial water for more than 24 million people living in the major metropolitan areas of Los Angeles, Phoenix, Las Vegas, Salt Lake City, Denver, and hundreds of other communities in the seven states. It also provides irrigation water to about 2.0 million acres of land. The river has over 60 MAF of storage capacity and 4,000 megawatts of hydroelectric generating capacity. The river is often described as the most regulated river in the world. Considering its importance to the basin states, Native American Indian Tribes and Mexico, the agreements that have been reached to divide the rivers water must be considered of the utmost importance.

Over half of the state of Utah is located in the Colorado River Basin, and the river is an important economic, recreational, and environmental resource for the citizens of the state. A significant portion of Utah=s economy revolves around and is supported by the use of the Colorado River and its tributaries for power generation, irrigation, and tourism as well as a water supply for Utah=s growing population. Thus, Utah is vitally concerned with the management of the Colorado River in the 21st Century.

THE LAW OF THE RIVER

Because of the critical role of water in the arid west, the Colorado River has been the subject of extensive negotiations and litigation. This has resulted in the development of a complex set of federal laws, compacts, court decisions, treaties, state laws and other agreements collectively known as "The Law of the River." The principal documents forming "The Law of the River" include:

- The Colorado River Compact of 1922;
- The Boulder Canyon Project Act of 1928;
- The Mexican Treaty of 1944;
- The Upper Colorado River Basin Compact of 1948;
- The Colorado River Storage Project Act of 1956;
- The U.S. Supreme Court's Arizona v. California decision and decree of 1963;
- The Colorado River Basin Project Act of 1968;
- Criteria for Coordinated Long–Range Operation of Colorado River Reservoirs of 1970;
- Minute 242 of the International Boundary and Water Commission of 1973;
- The Colorado River Basin Salinity Control Act of 1974;
- The Grand Canyon Protection Act of 1992;
- Colorado River Interim Surplus Criteria of 2001

In addition to these documents, several other federal and state laws impact use of the river. Some are California=s Self Limitation Act, the federal Endangered Species Act, National Environmental Policy Act, Clean Water Act, and the Wild and Scenic Rivers Act.

While some groups may have you believe "The Law of the River" is archaic and unresponsive to current problems, it should be pointed out, as evidenced by the preceding information that "The Law of the River," has evolved over time and adapted to various needs and situations. The key to this process has been the comity and respect the participants have shown each other while also ensuring the newer elements are consistent with and conform to the principals embodied in the previously existing compacts, laws, treaties, and court decisions.

INTERIM SURPLUS GUIDELINES

One of the most important issues in the Colorado River Basin today is the increasing municipal and industrial demands in the Lower Division States of Arizona, California, and Nevada versus available water supply as allocated by "The Law of the River." Unless and until the Lower Division States take the necessary steps to live within their basic entitlement of 7.5 MAF per year, Utah=s ability to continue to develop and use its Upper Basin allocation could be impaired. With the goal in mind of protecting Utah=s future development and use of Colorado River Water, Utah joined with the other six Basin states in responding to a call from the Secretary of the Interior to develop a plan by which the short term needs of the Lower Division States could be met during a transition period while the Lower Division States, specifically California, develop and implement a plan to limit use of Colorado River water to the amount allowed under "The Law of the River."

The result of this process in essence is the "Colorado River Interim Surplus Guidelines" as adopted in the Secretary of the Interior=s Record of Decision (ROD) dated January of 2001.

The Surplus Guidelines allow the Secretary to provide water to meet municipal and industrial (M&I) uses in the Lower Basin, particularly in California, during an interim period 2001- 2016 when Colorado River reservoirs are projected to be relatively full. Water users in California have been using approximately 5.2 MAF annually over the past 20 years, 800,000 acre-feet more each year than their compact allocation. Interim surplus guidelines allow California 15 years to implement conservation programs to reduce their demand for Colorado River water by 800,000 AF annually. During this 15-year time frame, the basin states have agreed to give California a greater assurance than hydrology may afford that surpluses will be declared and M&I water demands met. These criteria, however, are structured in such a way as to also provide protection to the other basin states against the potential impacts of dry hydrology in the next 15 years. This protection will reduce the allowable California M&I water demands that can be met by surpluses as the reservoirs are lowered because of drought. Utah strongly supports the consensus reached by the seven Colorado River Basin states and requests the federal government and Secretary of the Interior continue to follow through on the commitments of all parties and be willing to enforce the provisions of the Interim Surplus Criteria Guidelines outlined in the ROD if that is necessary to assure that certain time sensitive bench marks are met. Utah believes such monitoring and, if necessary, enforcement is critical to protecting the rights of the Upper Division states (Colorado, New Mexico, Utah and Wyoming) and the water allocated to them under "The Law of the River."

CALIFORNIA 4.4 PLAN

Of great interest and concern to all the Colorado River Basin states is the success of the California 4.4 Plan (4.4 Plan), which is an integral part of the Interim Surplus Guidelines ROD. This plan outlines the necessary steps California water users must take to meet the requirements of the Interim Surplus Guidelines ROD. Utah supports California=s development of the 4.4 plan and fully expects this plan to be finalized and in place by December of 2002 with all necessary agreements and compliance documents executed. While we have some concern over the conflicts the 4.4 plan has generated in California, we fully anticipate and expect the water users in California to solve their problems as the viability of the "Interim Surplus Guidelines" hangs in the balance. Similarly, there are some agreements which involve parties in Arizona and Nevada along with parties in California that need to be completed. Utah encourages Congress and federal agencies to provide support for and facilitate these agreements wherever appropriate, and if necessary, expedite any required federal review processes.

SALTON SEA

Somewhat related to the 4.4 Plan are current federal efforts to protect/restore the Salton Sea. Some of the proposals being considered may be at odds with the 4.4 Plan. While the Salton Sea has become an important wildlife habitat, it should also be recognized that the Salton Sea is a manmade habitat dependent upon agricultural inefficiency and runoff. Any water dedicated for use in the Salton Sea will have to come from existing water uses in the area, which may conflict with the transfer of agricultural water to municipal use as contemplated in the 4.4 Plan and the benchmarks in the ROD. Given the relationship between the Salton Sea and Colorado River water use under the 4.4 plan, the impacts of both efforts should be carefully evaluated.

COLORADO RIVER DELTA

The Colorado River is an international resource. Recently several environmental organizations have raised concerns over the Colorado River Delta ecosystem in Mexico, and the Mexican government has asked the United States to enter into a dialog concerning the restoration and protection of the Colorado River Delta. Utah expects the federal government will continue to consult with the seven Colorado River Basin states concerning any and all issues related to Colorado River flows to Mexico. At the present time environmental groups, research institutions, the Basin states, and the federal governments of both the United States and Mexico are looking for options to find ways to protect and restore the Colorado River Delta in Mexico. A joint, two-country educational symposium is currently scheduled to be held in Mexicalli, Mexico on September 11 and 12 to discuss what is known about the Delta today.

As international issues are considered, the federal government and Congress should recognize that the Colorado River is fully allocated and used. Thus, any

water dedicated to the Delta will have to be taken from current water users and existing allocations. Also, once water has been delivered to the international boundary, the United States can do nothing about how the water is used in Mexico. The sovereign right of Mexico to control waters within Mexico is the same right the United States and the Colorado River Basin states have within their respective boundaries. Further any changes in Colorado River water deliveries to Mexico will have to take into account not only the traditional "Law of the River," but specifically state water rights.

FUTURE OF GLEN CANYON DAM AND LAKE POWELL

In connection with the Colorado River Delta discussions, we have begun to hear the first inkling of a supposed connection between the operation of Glen Canyon Dam, and the well-being of the Colorado River Delta downstream. The erroneous theory seems to be that if the dam were decommissioned, the Delta would thrive. Utah opposes this and other unwise efforts to drain Lake Powell. Lake Powell is an integral component of the management and operation of the Colorado River, is essential to the Upper Basin states= continued effort to implement their responsibilities under "The Law of the River," and provides uncounted recreation, flood control, power generations and other benefits. The Utah Legislature recently passed a resolution (copy attached) opposing the draining of Lake Powell. Utah, and, we believe, other Colorado River Basin states steadfastly oppose any efforts to decommission Glen Canyon Dam or drain Lake Powell. As stated in a Salt Lake Tribune editorial, it is "Dam Foolishness."

UPPER COLORADO RIVER ENDANGERED FISHES RECOVERY PROGRAM

Utah=s development of its remaining allocation of Colorado River Water is dependent upon compliance with the Endangered Species Act (ESA); particularly treatment of the four listed Colorado River fishes (Colorado Pikeminnow, Humpback Chub, Razorback Sucker, and the Bonytail). To comply with the ESA, Utah, Wyoming, Colorado, United States Fish and Wildlife Service (USF&WS), the United States Bureau of Reclamation, the Western Area Power Administration, and Environmental Defense Fund entered into a cooperative agreement in 1988 to recover these species. Much research has been completed during the last 12 years to help us learn more about these fish. Today participants in the Upper Colorado River Endangered Fishes Recovery Program (Recovery Program) have developed a Recovery Implementation Program and a Recovery Action Plan that will, to the best knowledge of the scientists involved, recover these fishes while still allowing water use and development in the Upper Colorado River Basin. With the help and support of Chairman Hansen and this Committee, long term funding authorization has been obtained from Congress, along with a commitment by the states to cost-share at substantial levels. Utah asks that federal appropriations for this purpose continue.

Revised recovery goals are currently undergoing review by the USF&WS and will be published this fall. Comparison of the preliminary drafts of the recovery goals with current population estimates indicate the Colorado Pikeminnow and the Humpback Chub are recovering to the point that down-listing is a distinct possibility in the near future if population trends continue. Utah is very supportive of the program and has committed $3.4 million over the next five years for capital construction of facilities for fish recovery. This is in addition to an ongoing commitment of resources for research, monitoring, and maintenance. The need for consensus in decision-making is an important factor in the success of the Recovery Program. The unity of purpose and trust among the participants along with a manageable committee size (currently nine members) helps the Implementation Committee make decisions and set policy that allows the program to succeed. Utah would also like to commend the federal agency participants and the environmental organization members of the Recovery Program for their willingness to discuss issues and work out solutions.

MULTI SPECIES CONSERVATION PROGRAM

Fundamental to the original intent of the Recovery Program Cooperative Agreement was the implicit understanding that the listed fishes could be recovered, downlisted, and eventually de-listed in the Upper Basin independent of the Lower Colorado River Basin status of the fish.

Utah supports the Multi–Species Conservation Program (MSCP) in the Lower Colorado River Basin. We note, however, that the size and scope of the MSCP both in terms of issues and species to be addressed, as well as the shear number of participants will make the success a difficult challenge, because consensus and unity of purpose and action becomes exponentially greater as the number of participants

and issues increase. Thus, Utah believes it is imperative that recovery, down-listing, and de-listing of currently-listed species in the Upper Basin not be tied in any direct or indirect way to the status of the fishes in the Lower Basin.

GLEN CANYON ADAPTIVE MANAGEMENT PROGRAM

The Grand Canyon Protection Act directed the Secretary of the Interior to operate Glen Canyon Dam to enhance the downstream resources along the river through the Grand Canyon while still meeting the purposes for which the dam was built. To reduce downstream impacts to fisheries and habitat, one of the changes made was to modify the hydroelectric power plant operation from a peaking power facility to a partial peaking power facility.

There is a growing concern over the objectives and goals of the Glen Canyon Adaptive Management Program principally because many participants fail to recognize this program is constrained by "The Law of the River." The Adaptive Management Workgroup, established by the Grand Canyon Protection Act, is an advisory group to the Secretary of the Interior and thus has no formal decision responsibility, a fact sometimes ignored by some members of the group.

CONCLUSION

In conclusion, while philosophical musings and an emotional desire to return to simpler times have a powerful appeal, we as a society must acknowledge that our standard of living is, in large measure, based on changes we have wrought to our natural environment, including rivers such as the Colorado. Changes to river operations will have to be based on facts established using sound science and need to take into account the social and economic costs and benefits derived from current operations. Congress and the Administration need to recognize that the constraints of "The Law of the River" have been carefully and painfully established by legislation, negotiation, and litigation over a period of many years. Even though there are many unresolved issues facing the Colorado River water users, the basin states are trying to work cooperatively with the federal government, Indian tribes, and non-governmental organizations to resolve them. While the process is not easy, history tells us if those involved continue to exercise comity, acceptable solutions are likely to be found to most problems.

{Attachments to Mr. Anderson's statement follow:]

RESOLUTION SUPPORTING
FLAMING GORGE DAM AND RESERVOIR
and GLEN CANYON DAM AND LAKE POWELL
2001 General Session

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, the existence of Glen Canyon Dam and Flaming Gorge Dam has allowed the seven Colorado River Basin states to share and cooperatively plan for the beneficial use of water for millions of citizens;

WHEREAS, Lake Powell and Flaming Gorge Reservoir provide water regulation and flood control capability in the Colorado River system for the citizens of the seven states;

WHEREAS, electric generating facilities at Glen Canyon Dam and Flaming Gorge Dam provide electricity to more than a million households;

WHEREAS, millions of visitors annually enjoy the recreational amenities and world-renown fisheries at Lake Powell and Flaming Gorge Reservoir; and

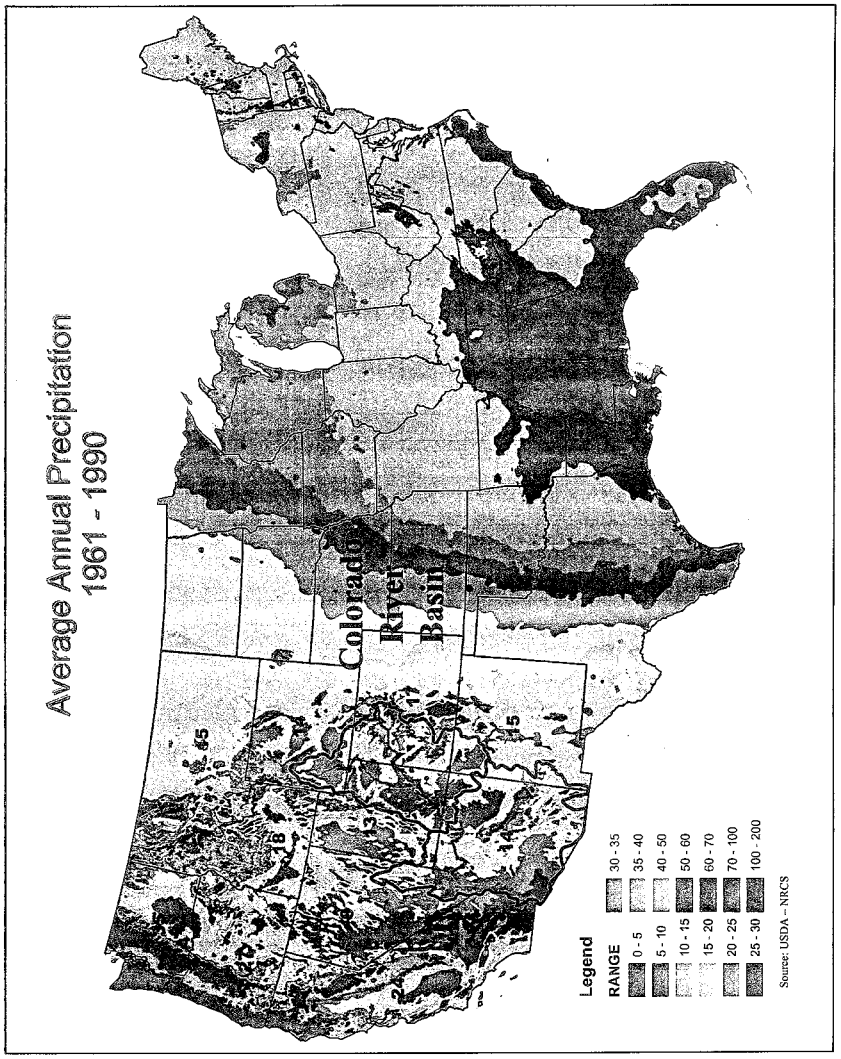
WHEREAS, the construction of the Glen Canyon Dam and the Flaming Gorge Dam has created a rich riparian habitat below the dams that did not previously exist:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, urge the United States Congress and the Department of Interior officials to recognize and protect the water, power, recreation, and environmental benefits of Lake Powell and Flaming Gorge Reservoir, and the water regulation and flood control benefits to United States citizens from Glen Canyon Dam and Flaming Gorge Dam.

BE IT FURTHER RESOLVED that the Legislature and the Governor urge the United States Congress and Department of Interior officials to oppose any effort to breach or remove Glen Canyon Dam or Flaming Gorge Dam, or drain Lake Powell or Flaming Gorge Reservoir.

BE IT FURTHER RESOLVED that the Legislature and the Governor urge Congress and Department of Interior officials to prohibit the use of federal funds for any studies concerning the breaching or removal of Glen Canyon Dam, Flaming Gorge Dam, Lake Powell, or Flaming Gorge Reservoir.

BE IT FURTHER RESOLVED that copies of this resolution be sent to the President of the United States Senate, the Speaker of the United States House of Representatives, the members of Utah's congressional delegation, and Department of Interior officials.


Average Annual Precipitation
1961 - 1990
Colorado River Basin
Legend
RANGE
0 - 5
5 - 10
10 - 15
15 - 20
20 - 25
25 - 30
30 - 35
35 - 40
40 - 50
50 - 60
60 - 70
70 - 100
100 - 200
Source: USDA – NRCS

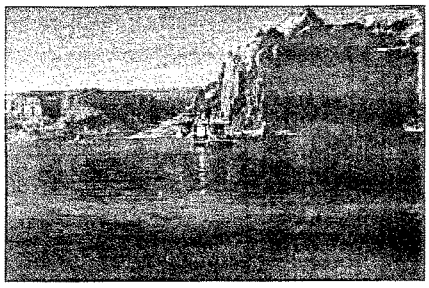
This document can be found on the Utah Division of Water Resources web page at WWW.NR.STATE.UT.US then click Division of Water Resources then click Interstate Streams then click Draining Lake Powell or type WWW.NR.STATE.UT.US/WTRRESC/INTERSTATE/LAKEPOW.PDF

Drain Lake Powell? It's a bad idea that ignores reality!

In 1996 the Sierra Club and the Glen Canyon Institute (environmental groups) proposed draining Lake Powell and possibly removing Glen Canyon Dam. They claim, among other things, the U.S. government misled its citizens about environmental damage more than 40 years ago when it constructed Glen Canyon Dam on the Colorado River that formed the vast lake in Utah and Arizona. The proposal is an irresponsible and bad idea that ignores reality. Here are some reasons why.

Adverse economic and recreation impacts would be staggering.

- More than 2.5 million people visit the Glen Canyon National Recreation Area and Lake Powell each year, generating more than $400 million annually to the local and regional economies. Boating days number about 500,000 annually. More than 700 houseboats and smaller water craft are rented each year, and 2,000 private boats are berthed at Lake Powell. Thousands of private boats and personal water craft are trailered to the lake for use each year. Such easy access allows young, old, disabled and other recreationists the opportunity to enjoy the environs of Lake Powell. This would be lost if the lake were drained.



Boating on Lake Powell

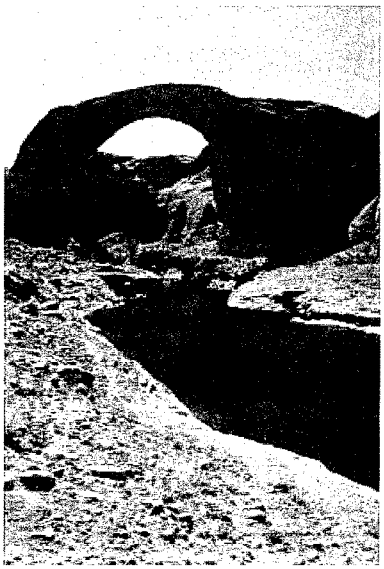
- The world-class blue ribbon trout fishery below Glen Canyon Dam that provides 30,000 angler-days yearly would disappear.

- The Navajo Nation could be significantly impacted because the Navajo Power Generation Station would be shut down unless a new source of cooling water could be found for the plant. This jeopardizes 1,900 jobs at the plant and power for operation of the Central Arizona Project. The Navajo Nation also holds mineral development rights to much of the area now inundated by the lake. The Navajos have expressed an interest in developing these mineral rights if the lake is drained, which might provide some economic benefit, but would have environmental consequences.

- Modifying Glen Canyon Dam to allow Lake Powell to be safely drained would cost millions of dollars.

Claims of environmental benefits from draining Lake Powell have been overstated.

- Riparian conditions in the Grand Canyon below Glen Canyon Dam appear no worse and may be better now than before the dam was constructed, but they are different. The biodiversity of the ecosystem below the dam has increased from pre-dam conditions. A refuge for birds with regional significance has been created below the dam. When the dam was built a world-class blue ribbon trout fishery was created on the Colorado River below Lake Powell that didn't exist before. The river today is well regulated with high bio-diversity. This would be lost if the lake were drained.



Rainbow Bridge National Monument

- The March 1995 U.S. Bureau of Reclamation Final Environmental Impact Statement on the operation of Glen Canyon Dam, that took more than 10 years to prepare and cost more than $80 million, attempted to answer many of the questions about what is happening to the environment in the Grand Canyon and what, if any, changes can be made to the operation of the dam to minimize its impact and enhance the environment. As a result of this study, the Glen Canyon Adaptive Management Program is being implemented today to reduce the impacts of dam operations and maximize benefits to the Grand Canyon environment.

- If the proposal to drain Lake Powell is pursued, another very lengthy and costly Environmental Impact Statement will be required to formally study the impact to the environment and regional economy.

- No one can honestly believe that after draining Lake Powell the vistas once enjoyed by a few hardy hikers and courageous boaters will be the same. The visual memory to future visitors to the Lake Powell area, at least for decades, will be an ugly "bathtub ring" and sediment-filled canyons. Much of the sediment that has been deposited in the reservoir will dry along the rock walls and become airborne during windstorms causing dust and air quality problems in the area for years.

Benefits derived by the basin states from Lake Powell would be dramatically affected.

- Glen Canyon Dam and Lake Powell allow the Upper Basin states to meet their water delivery requirements to the Lower Basin and still be able to develop and put to use their allocations of Colorado River water. This flexibility would be lost if the lake were drained.

- Because of disruption to the balance that has been struck under the Law of the River, Upper Colorado River Basin states would be further constrained from developing their remaining Colorado River Compact allocations.

- Lake Mead would fill with sediment at a faster rate and its life expectancy would decrease.

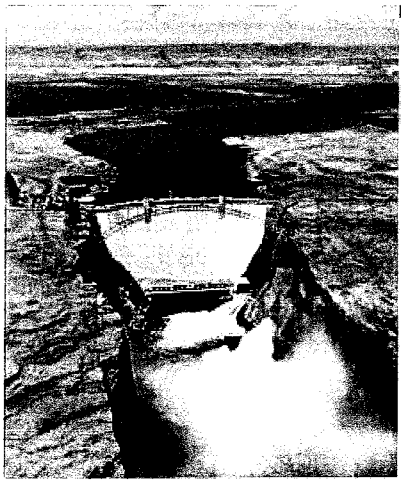
- Important flood control benefits to the Lower Colorado River Basin states and Mexico would be lost.

- Construction of the Lake Powell pipeline to deliver water to southwest Utah would not be feasible.

The important power supply from Glen Canyon Dam would be lost.

- The 1,350 megawatt capacity of the generators at Glen Canyon Dam would be totally lost, as would the 3,500 gigawatt hours of electrical energy used extensively by over 100 cities, towns and Indian communities in the upper and lower basins of the Colorado River. Power generation revenues amount to approximately $80 million annually to the U.S. Treasury. This power would have to be replaced by other generating facilities, most likely burning fossil fuels.

- Revenue from the sale of power from Glen Canyon is committed to repay most of the $1.5 billion invested by the federal government in participating



Glen Canyon Dam

irrigation projects authorized by the Colorado River Storage Project Act. This repayment is currently scheduled during the 2016 - 2063 time frame. Congress would have to make provisions to forgive this debt.

Solving legal and political issues would be costly and time consuming.

- Federal legislation would be required to drain Lake Powell. The delicate balance of water rights and water supply between the Upper and Lower Colorado River Basin states that has taken so long to accomplish could be destroyed. There is no question the proposal to drain Lake Powell would result in costly, long-term litigation in which there would be no real winners.

Remember, 50 years ago conservation groups (including the Sierra Club), water users, federal agencies, Congress and basin states negotiated an agreement to build Glen Canyon Dam and Reservoir. Whatever their perspectives may have been of the agreement that was reached, the results of the project have been positive. When considered against the enormous economic, recreation, legal and political benefits that have been produced and are flourishing, the proposal to return to pre-dam days can't be justified. As stated in a recent editorial in the *Salt Lake Tribune*, it is "Dam Foolishness." It is a bad idea that will cost Americans hundreds of millions of dollars in legal, environmental and study costs if the environmental groups are successful. There appears to be no middle ground (a win-win solution) to the proposal. There must be more productive ways to spend our time, efforts and environmental funds than to argue for years about destroying one of the most popular and beautiful recreation areas in the U.S.

This document can be found on the Utah Division of Water Resources web page at WWW.NR.STATE.UT.US then click Division of Water Resources then click Interstate Streams then click Draining Lake Powell or type WWW.NR.STATE.UT.US/WTRRESC/INTERSTATE/LAKEPOW.PDF

The CHAIRMAN. Thank you, Mr. Anderson. Mr. Dishlip?

STATEMENT OF HERB DISHLIP, ASSISTANT DIRECTOR, ARIZONA DEPARTMENT OF WATER RESOURCES

Mr. DISHLIP. Mr. Chairman, Members of the Committee, on behalf of Governor Hull, I'd like to thank you for the opportunity to be here today to address Colorado River issues to the 21st century as it relates to the state of Arizona.

I'm Herb Dishlip. I'm Assistant Director for the Arizona Department of Water Resources. Within the Arizona state government, the Department of Water Resources is the agency that is responsible for policy development and coordination of activities with regard to the Colorado River. Within Arizona, the Colorado River is probably our most important renewable water resource.

Our current use of water averages about six and a half million acre-feet a year. We're a growing state. One of our biggest challenges is to manage the water supply, to accommodate growth, and still be able to live within our means. The 2.8 million acre-feet of entitlement that we have for the Colorado River between the Upper and Lower Basins represents about half of our water supply. Especially when you consider the fact that we are able to use water more than one time, use the water, generate return flows, and recycle that same water supply more than one time. So it is obviously the critical renewable water resource.

By comparison, our local rivers generate about 1.5 million acre-feet, and the balance of our water supply comes from groundwater. And a great deal of that groundwater supply has been chronically mined, resulting in lowering of water tables over the last 60 years.

Within our state, our biggest challenge is to reverse the overdraft situation and become much more reliant upon a renewable and reliable supply such as the Colorado River. In large part because of the importance of the Colorado River and the allocation of that river to our state, Arizona's had a long history of being very cautious and somewhat contentious with regard to the Colorado River supplies.

Back when they did the first issue on the Law of the River in 1922, our state was only 10 years old; we'd become a state in 1912. And so one of the very first major political issues faced by our leadership was the Colorado River and the formation of the Colorado River Compact. And while we participated in the negotiation of the Compact, when they brought that Compact back to our state legislature, our state legislature refused to ratify it; we were the holdout. And so that didn't make them very popular, but it was a message really that in Arizona, when it comes to the Colorado River, people take it very, very seriously.

Ultimately, our holdout didn't work; the Compact was ratified without our signature, and Hoover Dam was allowed to be built and development of the river supply moved forward.

Finally, in 1944, the state realized being recalcitrant wasn't getting anywhere, and they did ratify the Compact and entered into a contract to utilize our Lower Basin supply of 2.8 million acre-feet. Once they did that, they got fairly serious about putting that water to use.

And probably the cornerstone of the ability to put that water to use was the development of a major diversion project from the river to bring it into the central basins in the Phoenix and Tucson area called the Central Arizona Project. But development of the Central Arizona Project was very long, it was hard-fought, it ended up in having to go to the Supreme Court for long years of litigation in the Arizona versus California case. And coming out of that case, there finally was a decision, and finally in 1968 it did lead to the authorization and beginning of construction of the Central Arizona Project. But again, I think it left kind of a feeling of a siege mentality within our state historically; that in order to get Colorado River supplies put to use, we were going to have to fight very hard for it and we were going to have to protect that water supply any way we can.

With the utilization of the Central—construction of the Central Arizona Project though, now we are fully utilizing our water supplies. And it really is a new era with regard to water and water management in Arizona that we have now full capability to use all 2.8 million acre-feet of our Lower Basin entitlement.

Realizing that things really have turned the corner with regard to the development and use, we really have focused our attention now on management of the Colorado River. And that's where, in today's issues, the interim surplus criteria was so important.

As we look to the development of the river supply, one of the things that are—is our greatest concern is that over the long-term this supply is overallocated, that there is not enough water generated from the Colorado River to meet all the needs in the basin. And one of the compromises made to get the Central Arizona Project was that that project would take on a junior priority relative to California in particular in times of shortage. And that compromise that was made, that we accepted to take shortages, really has had a critical factor with regard to how we've looked at use of the Colorado River and trying to make sure that other users live within their means.

Considering where we are with regard to use within our state, we're just building up to full utilization. The development of surplus criteria would have normally been a fairly low priority for our state; we're not really in need of water above the 2.8 million acre-feet on occasion, although we are trying to develop ways to take advantage of it through groundwater recharge projects. But it normally would not have been a high priority. But when California raised the issues with regard to needing more flexible reservoir operating criteria, we did become engaged, along with the other basin states, in a strong dialogue, seeing if ultimately we could get California to agree to reduce their overall demand, especially for municipal use of water, to get it back down to within their normal year entitlement.

We feel that's probably the greatest security policy that the State of Arizona could buy, that having California living within its means lowers the risk of shortages to Arizona considerably. So we were willing to enter into these interim surplus arrangements.

Part of the agreement we worked out with California and Nevada on the Interim Surplus Agreement is that in many years Arizona will actually forebear its use of the 46 percent of our legal

entitlement to surplus water, and we will do that in deference to the promise by California that they will be reducing their demand over a 15-year period.

Now historically, with that background I gave you about how contentious Arizona's been, you would have thought that a proposal for us to waive our rights to water would have been dead on arrival in our legislature. But quite frankly, there is a new attitude in Arizona, much more willingness to work with the other states to have a better management program. And I'm pleased to say that at the end of the last legislature, both House and Senate passed a concurrent resolution, and Senator Hull signed that resolution, which fully endorsed the interim surplus criteria and allowed the provisions of that criteria to go into place with regards to Arizona and Arizona water use.

That's kind of—fortunately now, that took an awful lot of time, maybe six to 10 years of discussion and negotiation. Hopefully, that issue is now behind us and the interim surplus criteria in place, and we can look forward to future working together with the other states.

A number of issues are emerging with regard to the Colorado River. First of all, just coming off of the interim surplus criteria, the need to reduce the 4.4 million acre-feet by California. Inherent in that agreement is an understanding that we're going to have to better manage and account for the Colorado River water. We need to know who is using water, how much, how much return flow is generated, and are we living up to these agreements by living within our means. We definitely need to have better accounting mechanisms. And included in that determination, we need to know whether the water that is pumped from the flood plain near the Colorado River should be considered Colorado River water, subject to Federal law, or should it be considered groundwater, subject to state law. These are important decisions that have to be made, mostly on a technical basis, but it's critical to doing that better accounting.

We have a number of issues emerging. Arizona shares the border with Mexico, our southern border, and in particular, we even have a section of Arizona that has—about 26-mile section where we share the border, that the Colorado River west of Arizona is the Republic of Mexico. And this is in our Yuma area. And the management of water supplies in the Yuma area has long been subject to a lot of issues, especially with regard to the salinity of the water and how return flows are generated. And really emerging issues have to do in large part with how are we managing the water supply that we deliver to the Republic of Mexico.

The salinity issue at the south international boundary has been raised through the International Boundary Water Commission. We are working with the Bureau of Reclamation and the IBWC to see if we can find ways at certain periods of time to improve the quality of the water that is delivered at the south boundary.

Related to the issue of south boundary deliveries is the issue of the Yuma Desalting Plant. I think the—coming out of the interim surplus criteria was a recognition that as we manage the water supply, what happened back in the early 1970's under the Salinity Control Act and the authorization of the desalting plant, which has

not been operated, that issue is now coming into focus, should it be operated, shouldn't it be operated, if it's not operated, what alternative means can be done. The primary focus is not really so much in most years to improve the quality of the water so much to deliver to the Republic of Mexico, but to actually reclaim some water and make it more usable within our entitlement, and save water supplies in Lake Mead from being released.

One of the difficult issues with the Yuma Desalting Plant is that in the interim period that has evolved, drainage water from the Wellton-Mohawk project has resulted in a very high quality riparian habitat in the Republic of Mexico called the Cienega de Santa Clara. There's a great deal of wildlife value and benefit associated with that use of that water.

The State of Arizona is very interested in making sure that some kind of solution is put in place, whether we run the desalt plant or find an alternative, but something that's done that doesn't create an impact to our water users, does not create increased risks of shortages.

But we are willing to work with the Bureau of Reclamation and the IBWC to see if other alternatives are out there. Right now I don't know that there are any, but we are willing to try to solve that problem as well.

The delta has been mentioned by Mr. Anderson. This is another emerging issue. The delta again is a valuable wildlife resource in the Republic of Mexico. The difficulty is on an overappropriated river where a treaty, an international treaty has been in place for many years, where can we generate additional water resources to restore the delta. This is a very difficult problem.

I think as Arizona has looked at this issue, we want to make sure that if any effort is put into delta restoration for wildlife, it's being done in the most scientifically useful way. And again, it has to be done in a way that has no impact on Arizona water users and on the reliability of that supply.

The last issue I want to mention is Endangered Species Act. The Endangered Species Act, while many people feel needs to be modified, I think most water users now are of the understanding that it's not going to go away, and that we have to accommodate the needs of the endangered species somewhat as a cost of doing business.

In that regard, the state of Arizona is participating with Nevada, California, and the Federal Government to develop a multispecies conservation program, to invest funding and resources in trying to restore habitat along the Lower Colorado River Basin. We think this is a very valuable program.

One of the difficulties though is that the cost of doing business for endangered species can become very high, and there is a lot of uncertainty with where the funding will come from with regard to putting that program in place, how much will it cost, how much will that translate into impacts on existing power and water users.

Those are some of the highlights of the issues with regard to the Colorado River as we look at the 21st century. I just want to reiterate how important the Colorado River is to the state of Arizona. It really is our lifeline. And as our history has shown, we're willing to invest a great deal of time, money, energy, hopefully not any

more litigation, that's hopefully not the direction we're headed with the Colorado River any more, but it is a really critical water supply for our state. Thank you.

[The prepared statement of Mr. Dishlip follows:]

Statement of Herb Dishlip, Assistant Director, on behalf of Joseph C. Smith, Director, Arizona Department of Water Resources

Good Morning. I would like to thank the House Committee on Resources for the opportunity to provide the State of Arizona's perspective regarding management of the Colorado River for the 21st century. The Arizona Department of Water Resources is the agency within Arizona that is statutorily authorized to represent the State's position regarding Colorado River matters in dealings with the Department of the Interior, other federal agencies and the representatives of the other basin states.

The Importance of the Colorado River to Arizona

The Colorado River is Arizona's largest and most valuable renewable water resource. Arizona has an annual water demand for about 6.5 million acre feet (maf). Our primary internal stream systems, the Salt, Verde, Gila and Little Colorado Rivers produce only about 1.5 maf annually. On the other hand, our Colorado River entitlements in the Lower and Upper Basins total 2.85 maf. Some of that supply is used more than once since irrigation uses along the Colorado River produce useable return flows. When that fact is considered, the Colorado River can meet over half our needs. The final primary water source used in our State is groundwater, and much of that withdrawal and use represents a mining condition. In many of our State's basins, water tables have dropped by hundreds of feet over the last sixty years.

In large part due to the importance of the Colorado River in Arizona's water budget, the State has had a history of being very conservative and protective with its supplies and its claims for water rights. While Arizona participated fully in the negotiation of the Colorado River Compact in the early 1920's when it came time to ratify that agreement, the Legislature refused. The Compact negotiations were successful in apportioning water between the Upper and Lower Basins, but did not apportion the water between the Lower Basin states. Arizonans believed that they would need, and indeed deserved, a much larger share of the Colorado River supply than what California was offering. The Arizonans believed that if they continued to hold out and use their political influence to delay the construction of Hoover Dam, the California representatives would relent and Arizona would get a larger share of the Colorado River. While that was the theory, the reality was that the other Basin states lost patience with Arizona's recalcitrance and moved forward to have the Compact ratified by six states as long as California ratified and as long as they agreed to limit their share to no more than 4.4 maf. This event allowed the beginning of the development of the Colorado River, but it also fixed in place within Arizona a very long-term perspective of caution regarding Colorado River management.

Arizona finally relented to the inevitable and agreed to ratify the Compact in 1944. It then began to move forward aggressively to develop its water share, primarily through the construction of the Central Arizona Project (CAP). Federal authorization for the construction of the project came slowly due to objections first from California and then from the Upper Basin states. This process, which finally came to a head in 1968, left Arizona with somewhat of a siege mentality regarding protecting its Colorado River supplies. Another outcome of the CAP negotiations was that Arizona had to accept a lower priority for its CAP water in times of river shortage. In other words, California would be entitled to all of its 4.4 maf so long as the CAP received any water. This one compromise of establishing priorities between the states, while very common in the west, was new to the Colorado River. The risk of having to bear shortages to our basic entitlement has had a greater impact on Arizona's perspective on Colorado River management than any other factor.

While it is clear that the water supply from the Colorado River is critical to Arizona's economy, there are many other ways that Arizona benefits from the Colorado River. Hydroelectric power from the Bureau of Reclamation (Bureau) dams is widely used within Arizona. Recreational activities, including boating and rafting, are very important to our citizens and to a much broader national and international community. The Colorado River is also very valuable as a wildlife resource. It provides both sport fishing and extremely valuable riparian habitat for non-sport fishing and other wildlife.

Today's Colorado River Issues

This background history sets the stage for dealing with today's Colorado River issues. By far the greatest issue in recent years has been the development of Interim Surplus Criteria. While California has been using more than its basic apportionment of 4.4 maf for many years, Arizona is just now approaching full use of its entitlement. Without a significant need for additional water, the development of surplus criteria would normally have been a low priority. Arizona water users would be perfectly satisfied to hold reservoirs high thereby maximizing carryover storage to protect against shortages.

Arizona could have dug-in like we have in the past and refused to cooperate with California. However, in recognition that the conditions and issues of the late 1990's were very different than the early 1920's, Arizona's water community decided that reaching a reasonable compromise with California was preferable to continuing to fight. Somewhat due to a strong linkage between the two state's economies and somewhat due to the recognition that our interests have a lot more in common than we have differences, we attempted to put together a package which provided California with the necessary relief it needed, but still protected Arizona from impact of shortage. We believe that the seven basin states proposed agreement presented to the Secretary of the Interior and ultimately adopted as his preferred alternative, while somewhat complex, set the stage for a new era in dealing cooperatively to solve future water management issues.

In recognition that the overall agreement will result in a reduction of California's water demand to 4.4 maf over 15 years, Arizona has agreed to a surplus criteria that will in many of those years waive its rights to its 46% of annual surplus entitlements. Previously, such an agreement would be dead on arrival in Arizona, but that was not the case. The good faith agreements made by California water agencies, especially the San Diego County Water Authority, the Imperial Irrigation District, the Coachella Valley Water District and the Metropolitan Water District of Southern California, have been treated with a new sense of trust. Recently, the Arizona Legislature passed, and Governor Jane Hull signed, a concurrent resolution that will provide Arizona's official blessing to the agreements that underlie the surplus criteria.

Emerging Colorado River Issues

With the surplus criteria issue hopefully behind us it is time to look forward to solving new critical issues along the Colorado River.

• Better measurement and water accounting

The Interim Surplus Criteria and the California 4.4 Plan define limits on various water users. Those limits must be enforced. The Bureau must now begin to act as the water master or state engineer. The Bureau must refine its definition of the Colorado River water accounting surface to more firmly establish what water is considered Colorado River water subject to the "Law of the River "and what is considered groundwater subject to state laws. Another part of enforcement will be to define when water users have exceeded their entitlement and then require payback or mitigation. More accurate methods of determining consumptive uses must be adopted including more accurate accounting of measured and unmeasured return flows.

• Mexican border issues

Salinity levels have long been an issue and resulted in a modification of the 1944 treaty through adoption of Minute 242. Management of irrigation return flows in the Yuma area plays a critical role in deliveries to Mexico. The Mexican officials have expressed concern about rising salinity levels at the southern international boundary. Opportunities are being investigated to provide an alternate water supply during critical periods to alleviate some of the water quality concerns.

The implementation of the Interim Surplus Criteria has put focus on the issues associated with the running of the Yuma Desalting Plant (Desalting Plant). This Desalting Plant was constructed as an authorized feature of the Colorado River Salinity Control Act, but it has never been operated. Currently, over 100,000 acre feet of irrigation return flows in the Yuma area are being bypassed to Cienega de Santa Clara. The Salinity Control Act established a national obligation to reclaim that supply and make it useable for delivery to Mexican water users. However, in the intervening years, the return flows have created a very valuable wildlife resource in the Cienega. The Bureau must find ways to meet the obligation established by the Salinity Control Act. Arizona is willing to work with the Bureau in identifying alternatives that will not require the use of the Desalting Plant. However, Arizona is not willing to bear any additional risks to its water supplies or increase the risk of shortages to the CAP that could be the result of alternatives that would be less

effective than the original concept of reclaiming the water through the Desalting Plant.

Restoration of the wildlife habitat associated with Colorado River Delta in Mexico has been the subject of much recent discussion. Arizona, along with the other basin states, has begun to engage in a dialogue with non-governmental organizations and the International Boundary and Water Commission to better define the problems and needs of the Delta. Arizona believes restoration efforts must be done using the best scientific information about the needs of region. Arizona is cautious about proposals that might require water resources that would be in addition to those provided to the Republic of Mexico in the 1944 Treaty. As mentioned earlier in this testimony, Colorado River resources are extremely important and valuable to Arizona. We cannot foresee support for any plan that would put Arizona's ability to fully utilize its share of that resource at risk because more water would need to be made available to the Delta.

• Endangered Species Issues

The Lower Colorado River area has been identified as critical habitat for a number of endangered species. Arizona has joined with the other Lower Basin states and the federal agencies to develop a comprehensive management approach called the Multi–Species Conservation Program (MSCP). Arizona believes that the MSCP currently represents the best approach to providing for recovery of existing endangered species while at the same time providing adequate habitat to avoid the listing of any new species. The comprehensive nature of the MSCP is intended to provide the means to allow the Bureau and the various water and power users to continue to operate the Colorado River system to provide traditional benefits while still protecting critical habitat. While there are many who advocate that the Endangered Species Act should be modified, it is not going away. It must be dealt with as part of the "cost of doing business". The MSCP is a positive cooperative Federal, state and private process to mitigate endangered species impacts and to recover species. Unfortunately, this new cost of business can be very expensive. How will the funding be obtained? What is a fair distribution of the costs? Resolution of these issues will make or break the program.

Conclusion

Arizona has long recognized the importance of the Colorado River to its economy and its quality of life. As the 21St century begins, we recognize that without increased attention paid to the management of the River's resources, new issues and conflicts will arise. Arizona's involvement in the development of the Interim Surplus Criteria should be viewed as an example of how the State and its water and power users have recognized that parties with differing points of view can work cooperatively to find innovative solutions and avoid litigation. New issues are emerging and will undoubtedly be difficult to solve. It is Arizona's desire to be an active participant in finding solutions to those issues.

The CHAIRMAN. Thank you. Ms. Jeanine Jones.

STATEMENT OF JEANINE JONES, DROUGHT PREPAREDNESS MANAGER, CALIFORNIA DEPARTMENT OF WATER RESOURCES

Ms. JONES. Mr. Chairman, Members, thank you for inviting California to testify at your field hearing today. I'm Jeanine Jones, the Drought Preparedness Manager for the California Department of Water Resources, and an alternate board member of California's Colorado River Board.

The Colorado River is our largest interstate water supply and it's very important to urbanized southern California, which is about 60 percent reliant on imported supplies. About half of California's population lives within the service area of the Metropolitan Water District in southern California, and more than half of the service area's imported water supply comes from the Colorado River.

If we were limited today to our basic annual interstate apportionment of 4.4 million acre-feet, MWD's Colorado River Aqueduct would be flowing only about half full. And this fact has been one of the significant inducements for our local agencies who use river

water to work together to develop the Colorado River Water Use Plan. The Plan describes actions that the local agencies will take to reduce their use of river water, such as, for example, transfers of conserved agricultural water to the urban areas, lining the remaining unlined portions of the major U.S. Bureau of Reclamation conveyance facilities, and groundwater storage projects.

Implementing the Plan can't be accomplished, however, without further quantification of the agencies' historical rights to river water that were established in the 1931 agreement. So therefore, this entails negotiating a new agreement among the local agencies that's known as the Quantification Settlement Agreement, or the QSA. This master agreement, together with a number of other documents and accompanying agreements, will establish the framework to allow Plan activities, such as the agricultural to urban water transfers.

In 1999, the local agencies reached agreement on the key terms to be used for this QSA and its water budget, and work since then has focused on finalizing the QSA, the related agreements, as well as on the state and Federal environmental compliance activities that will allow the agencies' boards of directors to execute this package of agreements.

The QSA and related agreements are expected to be finalized for environmental review by the end of this year, leaving next year for completion of the Federal and state environmental processes. It is imperative that the QSA and its accompanying agreements be executed by the end of 2002, as was already mentioned, or else the benefits to California of the recently adopted Interim Surplus Guidelines will be suspended until such time as California does execute the agreement. The Guidelines, in essence, are providing a safety net for California while the measures in the Water Use Plan are being put in place, and their suspension would put urbanized southern California at substantial risk of shortages.

California appreciates the recognition of the other basin states of this risk of substantial M&I shortages as well as the other states' cooperation in developing the joint proposal that eventually became the Interim Surplus Criteria that were approved earlier this year.

The local agencies are making good progress toward implementing on-the-ground actions to reduce use of river water, assisted by substantial state funding that's been made available through the state's general fund and through voter- approved bond measures for the water management actions. For example, we recently executed a contract providing $74 million of state financial assistance to Metropolitan Water District for lining the remaining portion of the Coachella Canal, and we're very near signature of another contract providing $35 million in state funding for MWD's Hayfield Groundwater Storage Project, which will cost a little more than double the amount of our contribution.

The most significant obstacle at this point to the local agencies being able to finalize the QSA package and move forward with the Water Use Plan is uncertainty associated with Salton Sea environmental restoration plans. When the agencies had agreed to the key terms in 1999, it was expected that a Salton Sea restoration program would be adopted fairly soon, prior to QSA execution, therefore defining a baseline against which the environmental impacts

of the proposed urban water transfers could be assessed. As it has turned out, selection and implementation of the Salton Sea Restoration Plan remains pending. And if these issues aren't addressed in a timely manner, the local agencies may not be able to reach agreement on the QSA before the initial compliance date for the Interim Surplus Guidelines, which is, of course, a concern to everyone. We remain hopeful that a way can be found to accommodate Salton Sea restoration programs while allowing the QSA to go forward. Thank you.

[The prepared statement of Ms. Jones follows:]

Statement of Jeanine Jones, Drought Preparedness Manager, California Department of Water Resources

Mr. Chairman, Members, thank you for inviting California to participate with the other Basin States in your field hearing. My testimony will briefly describe the role of the Colorado River in California's overall water supplies, then summarize the status of implementation of California's Colorado River Water Use Plan and the Colorado River Interim Surplus Guidelines affecting Lake Mead operations. The Colorado River Water Use Plan is a framework document identifying how California will reduce its use, over a multi-year period, to the basic interstate apportionment provided in statute. The Interim Surplus Guidelines, adopted by the Department of Interior this January, are a key component of the Water Use Plan.

Role of Colorado River in California's Water Supplies

The Colorado River is California's largest interstate water supply. To put the river into perspective with California's overall water supplies, the State's average annual intrastate surface water runoff is about 71 million acre-feet; average annual interstate Colorado River supplies have historically been about 5.2 MAF. Colorado River supplies have been highly reliable, buffering urbanized Southern California against the impacts of the State's 1987–92 drought. Nearly 60 MAF of surface water storage has been developed on the river system as a whole, corresponding to about four times the river's average annual flow. This substantial storage capacity makes possible the operational flexibility key to implementing the Interim Surplus Guidelines.

Much of the area within California served by the Colorado River has no other significant water supply. The river supports agricultural water users in the southeastern corner of the State—providing virtually all of the water used by Imperial Irrigation District (IID), Palo Verde Irrigation District (PVID), and the Yuma Project, as well as much of the water used by Coachella Valley Water District (CVWD). The river supports urban water users in the intensively developed Southern California coastal plain, an area that includes all or parts of six counties and half of the State's population. More than 60 percent of urbanized Southern California's water supplies have historically been imported from elsewhere—from the Central Valley by the California Department of Water Resources' (CDWR's) State Water Project, from the Mono–Owens River area by the City of Los Angeles Aqueduct, and from the Colorado River by Metropolitan Water District's (MWD's) Aqueduct. More than half of the region's imported water supply has historically come from the Colorado River. The river provides valuable hydrologic diversification for Southern California in the event of dry conditions in Northern California watersheds.

Use and management of Colorado River water is governed by the complex body of statutes, decrees, court decisions, and contracts known collectively as the Law of the River. One key California element is the Seven Party Agreement of 1931, which divided the Colorado River waters apportioned to California among local water users—PVID, Yuma Project, IID, CVWD, MWD, the City of Los Angeles, and the City of San Diego and the County of San Diego. (The City of San Diego and the County of San Diego are both now represented in Colorado River matters by the San Diego County Water Authority (SDCWA)). The local water users receive their share of California's apportionment through contracts with the U.S. Bureau of Reclamation (USBR). Expanding upon the Seven–Party Agreement to further quantify rights and priority to use of Colorado River water lies at the heart of implementing California's Colorado River Water Use Plan.

Development of a Plan

California's use of Colorado River water has historically exceeded its basic apportionment of 4.4 MAF annually (plus half of any available surplus water in the Lower Basin), because California has been able to put to use surplus water as well

as the unused apportionments of Nevada and Arizona. Completion of USBR's Central Arizona Project, Arizona's 1996 enactment of a state groundwater banking act, population growth in Nevada and Arizona, and increased Upper Basin water use have all contributed to the diminution of unused apportionment water and surplus water. Water use in the Lower Basin States is now exceeding the yearly 7.5 MAF basic limit established by the Law of the River.

Renewed interest among the other Basin States regarding California's need to reduce its historical reliance on river water began during the 1987–92 drought, when shortages in imported Northern California supplies highlighted urban Southern California's dependence on the Colorado River. As set forth in the Seven Party Agreement of 1931, this densely urbanized area is the junior water user within California with respect to its basic apportionment of Colorado River water. MWD's Colorado River Aqueduct would flow only about half full if California were to be suddenly limited to the 4.4 MAF basic annual apportionment, reducing Southern California's water supplies by as much as 600 thousand acre-feet and creating severe economic impacts. Discussions among the Basin States regarding California's need to live within its apportionment resulted in preparation of a document by the Colorado River Board of California (CRB) illustrating how the local agencies would reduce their use of river water through actions such as the conservation of agricultural water and its transfer to urban agencies. The first of these conservation and transfer actions was embodied in a 1988 agreement between MWD and IID. Subsequently, initial agreements were reached between SDCWA and IID for another project of this type.

CRB's document, then known as the draft "4.4 Plan", was released in December 1997; it has expanded over time into the draft Colorado River Water Use Plan. The Plan remains in draft form today, pending completion of the Quantification Settlement Agreement (QSA), other related agreements, and resolution of Salton Sea environmental issues. The Plan, also intended to resolve pending legal disputes within California, is based on the premise that its interlinked water management actions and agreements among California's users of river water will be implemented as a package; its components are not intended to be separable.

The draft Plan describes water management actions to be taken in the near-term to reduce river water use, and identifies other actions that need further evaluation before they can be implemented. Actions identified for near-term implementation by the local agencies involved in Plan preparation include lining the remaining unlined sections of USBR's All–American and Coachella Canals, implementation of the IID–SDCWA transfer, and development of groundwater conjunctive use and storage projects. The Plan also describes actions that may be taken by individual water retailers or water users, especially within urbanized Southern California, to reduce their dependence on imported water supplies. These actions, including water conservation, water recycling, and groundwater management projects, are eligible for State financial assistance from voter-approved bond measures. Department of the Interior adoption of the Interim Surplus Guidelines for Lake Mead operations and the development of certain water administration/water accounting procedures are also key components of the Plan. The accounting procedures include an inadvertent overrun and payback policy under development by USBR in consultation with the Basin States.

It was apparent during initial development of the 4.4 Plan that new Colorado River water management practices, such as the proposed agricultural to urban water transfers, could not be implemented without further quantification of rights and priority to use of Colorado River water. In essence, the negotiators of the 1931 agreement simplified the task before them by making only a partial division of California's apportionment, leaving it for others to complete the task. Most importantly, the agreement does not specifically quantify the 3.85 MAF of water contained in its first, second, and third priorities and allocated to the agricultural agencies, nor does it quantify the division of third-priority water among the agencies. The agreement also does not contain water operations or accounting provisions, such as measurement locations and methods and treatment of return flows.

Much of the time needed for Colorado River Water Use Plan development has been spent by the local water agencies in negotiating the further quantification of rights and priority to the use of Colorado River Water needed to enable Plan implementation. The initial result of these negotiations was a document known as the Key Terms for Quantification Settlement, completed in October 1999. This document sets forth water budgets and transfers associated with Plan implementation. As stated in the document, This is not a contract or an enforceable legal document. Rather these key material terms will be utilized by the Districts to obtain public input and by the Districts' attorneys and negotiators to prepare legal documents that will contain all of the terms and provisions of the Quantification Settlement.

Following release of these Key Terms, the local agencies began negotiation of the QSA, an over-arching agreement to incorporate the Key Terms and link together other separate agreements (among the local agencies themselves, between individual local agencies and the Secretary of the Interior, and between individual local agencies and the State of California) associated with elements of the QSA. These other agreements include, for example, local agencies' water acquisition agreements to match the water budgets established by the Key Terms. Related work includes preparation of environmental documentation pursuant to the California Environmental Quality Act and National Environmental Policy Act.

Current Status of Plan Implementation

It is expected that the QSA and its related agreements will be completed for consideration by the boards of directors of the local water agencies by the end of this year, pending completion of environmental documents. The local agencies are now focusing much of their time on preparing the environmental documents. Addressing Salton Sea impacts associated with planned projects such as the IID–SDCWA transfer is key to moving forward with execution of the QSA and its related agreements. When the Key Terms were adopted in 1999, Salton Sea restoration work—the outcome of studies being prepared by the Salton Sea Authority and by the federal government—was expected to be implemented before the effective date of the QSA. The restoration work subsequently did not proceed as expected, substantially complicating QSA negotiations.

Meanwhile, a major milestone was reached in January 2001 when the Secretary of the Interior signed a Record of Decision for the Interim Surplus Guidelines, as jointly recommended to him by all seven Basin States. Subsequently, the State of Arizona ratified a Surplus Guidelines Agreement with MWD as part of enabling implementation of the guidelines. A Surplus Guidelines Agreement is also under development between MWD and the Southern Nevada Water Authority. Surplus conditions have been declared for 2001, allowing MWD to maintain a full Colorado River Aqueduct. If the QSA and its related agreements are not fully executed in their final form by December 31, 2002, the benefits to California of the Interim Surplus Guidelines will be suspended until such time as the agreements are completed, and the reliability of Southern California's water supplies will be at risk.

The Guidelines describe how USBR will manage Lake Mead releases over the next 15 years, and have been characterized as providing a "soft landing" for California water agencies while they carry out Plan actions to reduce their use of river water. The Guidelines allow a greater fluctuation in reservoir operating levels within the historical range of Lake Mead operations, providing increased certainty that urban water users in MWD's service area will continue to experience a full Colorado River Aqueduct through federal declarations of surplus conditions. The Guidelines also provide surplus water benefits to urban water users in Southern Nevada and Arizona. California has appreciated the cooperative spirit with which its neighboring Lower Basin States have helped make this limited-term reservoir reoperation possible.

The Guidelines contain incentives for California to implement the Water Use Plan in a timely manner. They provide that if California does not meet specified water use reductions during the 15-year period, Lake Mead operations will revert to the historical spill-avoidance mode and MWD will bear the associated risk of shortages to its urban service area. In particular, it is critical that the Plan's canal lining projects be completed by 2006 for MWD to avoid the risk of shortages.

In 1998, California legislation authorized the provision of $235 million from the State General Fund to support Water Use Plan implementation by providing financial assistance for lining parts of the All American and Coachella Canals and for groundwater storage and conjunctive use projects. CDWR has executed an agreement with MWD to provide $74 million for the Coachella Canal lining; this project is now at the design stage. CDWR is nearing completion of a similar agreement with MWD to provide $35 million for its Hayfield groundwater storage and conjunctive use project. Up to 800 TAF of surplus Colorado River water, when available, could be stored in a groundwater basin adjacent to the Colorado River Aqueduct at Hayfield Valley, located in a desert area east of the Coachella Valley. This estimated $68 million project is expected to be completed by 2006. Negotiations have also begun on an agreement with IID for funding the All American Canal lining. The 1998 legislation placed conditions on the availability of State canal lining funding, including a requirement that no money be expended until specified environmental compliance actions were completed. Expenditure of State funds is pending completion of environmental compliance actions.

In addition to these State monies specifically targeted for Colorado River Water Use Plan implementation, financial assistance provided by recent State bond meas-

ures will further help local agencies in Southern California reduce their reliance on Colorado River water. Statewide, the 1996 Proposition 204 made available $60 million for water recycling loans/grants and $25 million for groundwater recharge and water conservation loans, plus $2.5 million for Salton Sea environmental studies. Proposition 13 in 2000 provided $40 million for water recycling loans/grants, $155 million for recharge and water conservation loans/grants, $200 million for groundwater storage grants, and $235 million for Santa Ana River watershed project grants that include groundwater reclamation/water conservation/water recycling.

In summary, water agencies throughout Southern California have been moving forward with projects to lessen their dependence on imported supplies from both the Colorado River and the SWP, facilitated by the substantial State bond funding recently made available, and by initial implementation of the CALFED Bay–Delta Program. It remains important for the State and federal governments to support the agencies' efforts to maximize their locally available supplies and to maintain the quality of the environmental resources associated with use of the imported supplies.

The CHAIRMAN. Thank you. Mr. Holsinger.

STATEMENT OF KENT HOLSINGER, ASSISTANT DIRECTOR, COLORADO DEPARTMENT OF NATURAL RESOURCES

Mr. HOLSINGER. Thank you, Mr. Chairman, Members of the Committee. I'm Kent Holsinger, Assistant Director of Colorado Department of Natural Resources. It's a real pleasure and a real honor to be here today before the Committee here in Salt Lake City to talk about Colorado River issues.

Nearly four-fifths of the flow at Lee Ferry in Arizona originates from Colorado, the headwaters of Wedge Harbor, the Colorado River. From there it begins its 1,400-mile descent over 12,000 vertical feet until it eventually reaches the Sea of Cortez in the Republic of Mexico.

Millions of Coloradans on both sides of the Continental Divide depend upon the Colorado River for drinking water, irrigation, power production, and other uses, such as recreation. We are allocated some 51.75 percent of the Upper Basin's allocation of the Colorado River. That equates to about 3.855 million acre-feet, as set forth under the compacts.

But Colorado, as you well know, as many of the Western states, is experiencing rapid growth and rapid increases in demand on Colorado River water from a variety of different sectors, and our infrastructure has not kept up with the demand. With 4.2 million people, we have more and more demand on the Colorado River for increasing drinking water supplies for municipal areas and other uses.

And as we know, the best protection against increasing demand, against drought that is certain to occur, prolonged drought, is new water storage in the basin. The Army Corps of Engineers estimates that water storage in Colorado has saved some $20 billion against flooding and drought in the state; that's about $6 for every dollar spent on new water storage in our state. And demand is certain to point to the need for more in the future.

Today we have several challenges on the Colorado River. One is implementing California's Water Use Plan. The State of Colorado greatly appreciates the work of the other basin states, and particularly of California, to coming to this historic agreement to limit them to their 4.4 million acre-feet. But now we need to see that

that Plan is implemented in a way that comports with the Plan itself and the Law of the River.

Pressure from environmentalists on the Mexican delta is a topic that you've heard about today and one that we share great concerns about. I might point out to the Committee that we're in compliance with the 1944 treaty that regards Colorado River water use among the two nations, and certainly with the Law of the River.

I might also add that Mexican agriculture lies between the border of the United States and the Sea of Cortez, and nearly every drop of the Colorado River is diverted for that agriculture in Mexico. Similarly, they have plans, great plans for development along the delta, and we urge the Committee to consider how Mexico's use of Colorado River water affects the environment in the delta. And we strongly oppose using Colorado River water from the United States to address any perceived problems there.

We also see Federal challenges to Colorado River water use. The Endangered Species Act was mentioned earlier today. We also have Federal reserved rights claims, bypass flows, and other challenges to grapple with. Among the foremost in that arena may be recovery goals for the endangered Colorado River fish. The State of Colorado is working very hard to see that any goals published are consistent with the Law of the River, state laws, and interstate compacts that make it up, and that recovery goals are based on species response and not Federal control over the Colorado River.

We also face quantification of the National Park Service's reserved rights claims to the Black Canyon and the Gunnison. The flows claimed by the Park Service there are so great they would greatly impact power production, they would ruin gold medal trout habitat, and potentially cause dam safety and flooding problems in the towns of Delta and Grand Junction in Colorado.

We have the U.S. Forest Service continuing to impose bypass flows on our water providers whenever they have permits that come due, and we hope the Committee will take an interest in maybe creative ways to resolve problems with the Forest Service in protecting flows on forest lands without extorting them from our water providers.

We have forest management issues as well. The same—the same problems that have caused the wildfires in recent years in the West are also greatly diminishing water yields on National Forest lands that otherwise would be in the system for the states to use. With 40 million acres subject to catastrophic wildfires, we've got a real problem with the density of our forests and how that affects our water yields.

The best state of the science says that there is a direct relationship between our forest and our water, and would urge the Committee to consider that, and the United States Forest Service and the administration as well.

Glen Canyon Adaptive Management Work Group, we have concerns with where we're going there, where we've been. It's been several years now without significant oversight, I think, or even an audit into how this process was proceeding, how what they're doing affects power production and water supply issues in the West.

In conclusion, Mr. Chairman, there's a myriad of difficult issues along the Colorado River. We greatly look forward to working with

the other basin states, the Congress, and the administration to address these issues. We have much in common. Perhaps, most importantly, we share a need to educate the public about the value of our water resources and the risk to our water resources.

With that, Mr. Chairman, I'll conclude my remarks. And again, I appreciate the chance to be here today.

[The prepared statement of Mr. Holsinger follows:]

Statement of Kent Holsinger, Assistant Director, Colorado Department of Natural Resources

Mr. Chairman and Members of the Committee, thank you for this opportunity to appear today to discuss management of the Colorado River for the 21st Century. With ever-increasing demands on Colorado River water, the seven Colorado Basin States must protect their ability to manage, allocate and use it under the complex array of state laws, interstate compacts, treaties and agreements that comprise "the Law of the River." For over a century, some form of the doctrine of prior appropriations has guided Western states through economic prosperity and depression, through wet years and dry years, through thick and through thin. Water defined the history of the West, as it will surely influence its future.

Background

The first European explorers labeled what is now the State of Colorado an arid wasteland—a "Great American Desert" unfit for settlement or cultivation. Easterners considered agriculture in Colorado impossible and irrigation absurd. But thousands traversed the Great Plains and followed Horace Greeley's call to "Go West young man and grow with your country." With courage, ingenuity and grit, the pioneers transformed the arid desert into the fertile land we recognize as Colorado today.

Perhaps no river defines the State like the Colorado River. It begins in the tundra of the Rocky Mountains as trickle of frigid snowmelt cascading down the West side of Longs Peak. There, it begins its fourteen hundred mile, winding descent. From its humble beginnings, the Colorado River quickly swells, sweeping in runoff from countless tributaries in Western Colorado. It then carves through mountains, canyons, plains and desert before quietly disappearing into the Sea of Cortez. Millions of people in Colorado and the West depend upon the Colorado River for drinking water, irrigation, recreation and power generation. It has earned the reputation as the most "legislated, litigated, and debated" river in the world.

Colorado's Use of the Colorado River

The Colorado River is a vitally important resource for the State of Colorado. Approximately 11.0 million acre feet (MAF) of the River's average annual flow of 15.0 million acre feet at Lee Ferry, Arizona originates in Colorado. Of this 11.0 MAF, Colorado consumptively uses roughly 1.9 MAF. The balance currently flows out of the State for the benefit of downstream users. Under the Compacts, Colorado is entitled to the consumptive use of 3.855 MAF or 51.75% of the flows of the Colorado River allocated to the Upper Basin.

More than 4.2 million people currently reside in Colorado. Within the State and within the Colorado River Basin, farmers and ranchers irrigate roughly 850,000 acres. Irrigated agriculture uses roughly 1.5 MAF of Colorado River water and contributes hundreds of millions of dollars to the State's economy each year. Thousands of families depend on these irrigated farmlands for their livelihoods and their sustenance. Within the basin, rural communities are held together by the bonds of agriculture and water. But the river also serves some 3.0 million people outside the basin. Eastern Slope water providers divert 500,000 AF annually from the river to serve growing needs on Colorado's booming Front Range.

The Colorado River Basin offers the only significant source of new developable water for the State with approximately two million acre feet still available under Colorado's compact apportionment. The State favors incentives to more efficiently use water, building additional water storage and improving forest management to increase supplies for the benefit of people and the environment. Several challenges loom in regards to Colorado's compact apportioned share of the Colorado River.

The California Water Use Plan

The State of Colorado commends the State of California and its stakeholders for all of the hard work, negotiations and compromise that led to the development of the Colorado River Interim Surplus Criteria. Limiting California to its compact ap-

portioned 4.4 MAF is of primary importance to the State of Colorado. However, the efforts to fully implement this plan are far from complete.

The present plan requires over 30 separate agreements in order for successful implementation to occur. Those agreements will include federal legislation and funding mechanisms. While Colorado strongly supports California's efforts, such support should not come at the expense of present and future needs to develop compact water within the State of Colorado. We urge the Congress to carefully evaluate these agreements, and particularly any federal legislation, and to work with the seven Colorado River Basin States to ensure such proposals comport with California's Water Use Plan.

State officials will be closely monitoring several other issues related to the implementation of this plan. For example, some of the legislative proposals to address water quality problems with the Salton Sea may complicate implementation of the California 4.4 plan. Any use of Colorado River water for the Salton Sea will be hotly contested.

Given the short time frame anticipated before publication of the proposed inadvertent overrun accounting policy, several issues remain unresolved. We will be working with the other states to schedule a meeting soon to complete these discussions. We hope to see an example of the proposed accounting from California prior to any such meetings.

The State of Colorado has received assurances from California officials that the power crisis will not affect the implementation of California's Water Use Plan nor negate the benefits of the Interim Surplus Criteria set forth in the January 17, 2001, Record of Decision. Nevertheless, we remain concerned about how increasing demands for power generation will affect water supplies in this dry year.

Mexican Delta Issues

The State of Colorado wishes to emphasize the importance of proceeding with due caution on issues related to the Mexican Delta. The Congress should be aware that all water resource use on the Colorado River within the United States has been consistent with the 1944 Mexican Treaty and other aspects of the "Law of the River." The State of Colorado stridently objects to any suggestion that water for restoration efforts in Mexico come from the Colorado River in the United States. We urge the Congress and the Bush Administration to ensure any discussions regarding the Colorado River Delta be done in full and complete consultation with the seven Colorado River Basin States.

Between the American border and the Sea of Cortez, lies Mexico's largest and most productive agricultural land. Each year, Mexico diverts nearly every drop of the Colorado River into the Central Canal for agricultural uses. Moreover, President Vicente Fox plans a vast network of upscale marinas around Baja California and the Mexican Delta. The program, labeled "Nautical Steps" would cover more than 2,500 miles of coast, and is aimed at luring the 1.6 million boat owners from California and other nearby states into a new system of harbors, wharves, hotels and restaurants. President Fox says the development is critical for economic growth but some environmentalists call it a threat to the Mexican Delta.

The previous Administration initiated discussions with Mexico and environmental organizations to address perceived water needs of the Colorado River Delta in Mexico. These efforts have resulted in a new conceptual Minute (306) to the International Treaty with Mexico. A symposium on these issues is planned for September. The State of Colorado has serious concerns with the symposium and believes Mexico should be responsible for water use issues within its borders. If environmental issues need to be addressed, we encourage Mexico to pursue flow management and structural alternatives within their borders.

We urge the Bush Administration and the Congress to carefully consider how actions within Mexico affect the Delta. Specifically, more information is needed on water use, fishing pressure, development proposals and environmental laws in Mexico. A complete understanding of complex intrastate, interstate and international issues must predicate further decisions on this important issue.

Federal Challenges to State Administration

Federal reserved water rights, bypass flows and endangered species requirements also strain Colorado River resources. Water rights, water laws and interstate compacts must be protected from unwarranted federal intervention. At the same time, the federal government must be held accountable for its own actions related to the management of land and water resources. For example, sound management of federal forest lands in the Colorado River Basin could lead to healthier, more diverse forests and increased water supplies for endangered species, agriculture and drinking water.

Endangered Species Act Issues

The State of Colorado recognizes the importance of balancing the needs of native species with continued economic development. With an emphasis on collaboration, voluntary action, partnerships and property rights, the State of Colorado will take aggressive steps to keep species from being listed, and to delist those that are already federally protected. Meanwhile, the State continues its involvement in the Upper Colorado River Recovery Implementation Program and the San Juan River Recovery Implementation Program. Work continues on the Glen Canyon Dam Adaptive Management Program, and Lower Basin Multi–Species Conservation Program (MSCP) as well. All of these programs need to be collectively coordinated.

In the 1960s, the federal government and the states attempted to eradicate native Colorado River fish in favor of non-native trout, catfish and other species. The State is now working with stakeholders and the federal government to recover these native species. Recovery program participants have long recognized the need to remove non-natives and restock the endangered species. Recently, and most importantly, the State of Colorado has been working with other program participants to develop achievable recovery goals based upon sound science. Through these efforts, we hope to achieve the ultimate goal of the these efforts'recovery and delisting of the species.

These goals must, however, be consistent with State laws, interstate compacts and the Law of the River. Moreover, recovery goals must be based upon species response—not federal control and influence over flows in the Colorado River. The State of Colorado will veto the continuation of the Upper Colorado River Recovery Program until those two conditions are fulfilled. Without the program, programmatic biological opinions will be invalidated and millions of acre feet of decreed water rights will be subject to rigorous Section 7 consultations under the Endangered Species Act.

The State of Colorado believes both basins will benefit from sound goals that will lead to the recovery and delisting of the species and expects the U.S. Fish and Wildlife Service to publish recovery goals soon. The Colorado pikeminnow are increasing to the point where de-listing, or at least down-listing, is a distinct possibility. Similar progress is being made with the humpback chub. Razorback suckers are also beginning to show signs of improvement, but we need additional emphasis on the bonytail chub. The State does not support the designation of Distinct Population Segments for the pikeminnow and humpback chub. Rather, they should be recovered and delisted throughout their historic ranges. Any such designation for the razorback sucker or bonytail chub should be made only when more information on the species is available.

Glen Canyon Adaptive Management Program

Revised recovery goals are being developed for the basin and the Upper Colorado and San Juan programs appear to be on fairly solid ground. However, we have serious concerns about the effectiveness of the Glen Canyon Dam Adaptive Management Program. The Glen Canyon Adaptive Management Workgroup established pursuant to the Federal Advisory Committee Act has not operated within the documents that were to govern its actions. As a result, its activities have far exceeded the scope of the program. Section 1804 of the Act calls for an audit of the costs and benefits of the adaptive management program to water and power users and to natural, recreational and cultural resources. It is high time for such an audit to occur.

National Parks Service Reserved Water Rights Quantification on the Black Canyon

The State of Colorado filed a Statement of Opposition to the ill-founded National Park Service quantification of a water right filing in Colorado water court. After repeated requests to work with the State were ignored, the National Park Service filed for quantification of reserved water rights to the Black Canyon of the Gunnison National Park. State officials believe flows requested on this major tributary to the Colorado River will seriously impact Colorado's right to develop compact apportioned water, power production, fish habitat and cause dam safety issues and potentially flooding in the towns of Delta and Grand Junction.

Some 383 Statements of Opposition were filed to the National Park Service claims'more than any other filing in the State's history. State representatives will be working closely with water providers and the Department of Interior to see that these issues are coordinated with flow recommendations pending for endangered fish and eventually resolved in a way that protects Colorado's compact apportionment.

Western States Join Colorado's Fight Against Federal Bypass Flows

Many of Colorado's water supply facilities are located on, or transport water across, federal lands. The U.S. Forest Service (USFS) has imposed bypass flows

requirements on water providers as conditions to permit renewals in an attempt to provide instream flow protection on federal lands. These hotly controversial, and largely unsuccessful, bypass flows fail to provide any real environmental protection and instead create an environment of hostility and distrust. Bypass flows fly in the face of well-established principles of federalism and property rights. Moreover, they simply don't work.

Opposition to bypass flows is a bipartisan issue in Colorado. Attorney General Ken Salazar, in an article published by the Colorado Water Congress, pointed out that the federal government has spent some $70 million dollars fighting the states over water with little to show for it. Last fall, the Forest Service stated its intent to use bypass flows more frequently. Recently, it even advocated condemnation of water rights. On March 15th, the States of Alaska, Arizona, Idaho, Nevada, New Mexico and Wyoming filed an amicus brief in support of Colorado's position that the U.S. Forest Service has no legal authority to impose bypass flows on water providers as a condition of permit renewals. The case at hand was filed in federal court by Trout Unlimited against the U.S. Forest Service. Trout Unlimited argues in their complaint that not only is the federal government authorized to impose such extortive requirements'they are obligated to do so.

Rather than continue with this unnecessary and wasteful practice, the State of Colorado favors the creation of an incentive program funded by the Land and Water Conservation Fund (LWCF). One of the purposes of the Land and Water Conservation Fund Act of 1965 is to "authorize the purchase of lands, waters or interests in land or waters within the National Forest System. In the past, this fund has primarily been used for the purchase of new recreational lands. Over the past 35 years, 7 million acres of land has been protected using the LWCF. With the help of the Congress, we may be able to achieve similar success protecting water. Given this kind of incentive, there will be tremendous opportunities for the states to work with the U.S. Forest Service to protect water resources on forest lands.

The State of Colorado proposes Congress amend the LWCF to direct the Forest Service to use its allocated LWCF monies, some $130.9 million if fully funded, to provide incentives for water right holders to transfer their rights to the agency. The amendment could then instruct the agency to donate those rights to states with instream flow programs, enter into contractual arrangements, or pursue other creative means to work with the states. Any and all measures, however, must be consistent with State laws, the McCarran Amendment, interstate compacts, and the Law of the River.

Drought and the Need for Water Storage

Continued growth within the State of Colorado strains our ability to meet increasing demands on water. The failure to develop new water supplies has not slowed Colorado's rampant growth. It has contributed to the dry up of irrigated agriculture. Without new water supplies, the conversion of agricultural water rights will continue to threaten communities, ranches and farms, open space and wildlife habitat.

The last two summers' hot, dry conditions provide a sobering reminder of cyclic drought and devastation. In December of 1999, Colorado Governor Bill Owens convened a state-wide conference on flood and drought preparedness. There, we learned the question is not "if" but "when" we will enter another severe, long-term drought like the dust bowl of the 1930s or the drought of the 1950s. Only water storage provides adequate protection against these natural disasters. So a recent survey that found 90% of Coloradans believe we should build reservoirs to conserve surplus Colorado River water did not come as a surprise.

The first Europeans to explore what is now Colorado labeled it an arid wasteland. In this century, water storage and irrigation transformed the State. Cottonwoods and willows dot the once-treeless plains. Rivers that dried up in the summer months now provide drinking water, irrigation, recreation and wildlife habitat year-round. However, last year, Colorado suffered a dry spring and record-breaking summer heat which led to drought conditions. South Platte River flows were lower than ever in recorded history and demand for irrigation water drained several key reservoirs. Nearly two dozen counties were forced to seek federal drought disaster relief. Several other communities placed restrictions on lawn watering, showers and even toilet flushing. Conditions are not markedly better this year.

In a sustained drought, farmers and ranchers would lack water required to produce food. Many could be forced to sell their land or water, thereby encouraging development of open space and loss of wildlife habitat. Even farms with senior water rights could be gobbled up by municipalities thirsty for drinking water. The impact on rural communities could be devastating. Conservation measures help stretch limited supplies, but conservation alone may not be enough. Some water users are collaborating to stretch supplies through innovative new measures such

as conjunctive use and water reuse. These efforts, which examine how to recharge aquifers in wet years and reuse municipal water for irrigation and industrial use, hold real promise. But the most certain drought protection is a long-term water supply through storage.

At Governor Bill Owens' flood and drought conference, the Army Corps of Engineers calculated reservoirs have saved Coloradans $19.8 billion from natural disasters like floods and droughts. That equates to a six dollar savings for every dollar spent on reservoirs for flood control and drought mitigation. Water storage also provides resources for recreation and wildlife. Our challenge is to bring together diverse interests to find common goals for the benefit of local communities and the environment. Without adequate planning, innovative measures and new water storage, the West could once again resemble the hostile and arid wastelands disparaged by early travelers.

Power Production

Because today's society is driven, more and more, by electronic devices such as computers, cell phones, pagers and electronic address books, the importance of dependable supplies of electrical power is more important than ever. However, power generation in the Colorado River Basin must be consistent with the Law of the River. Some legislative proposals to alleviate power demand would upset the delicate balance of state laws, compacts, treaties and agreements along the Colorado River. We urge the Congress to work with the seven Colorado River Basin States on any such proposals.

Forest Management

National forests along the Colorado River are losing their diversity and ecological balance. A dense understory has choked out the hardy, fire-resistant ponderosa pines that were typical of historic Western forests. Paired, then-and-now photographs reveal the open meadows and productive savannas that once dotted healthy forests have been replaced by overcrowded forests choked by dense understories and canopies. These crowded, unnatural stands are left susceptible to fiery infernos, insect infestation, disease and decay. They also degrade the quantity of water in river systems. Only through careful, but active management can these destructive trends be reversed.

An April, 1999 report from the General Accounting Office (GAO) to a congressional subcommittee concluded, "[T]he most extensive and serious problem related to the health of national forests in the interior West is the overaccumulation of vegetation, which has caused an increasing number of large, intense, uncontrollable, and catastrophically destructive wildfires." These fires threaten not only the forests but human lives, safety, property, and infrastructure and the species that inhabit the forests. These crowded forests are also depriving river systems of valuable water in the arid West.

For over one hundred years, the relationship between forests and water has been acknowledged. In fact, the 1897 Organic Act established the national forest system for two primary purposes: to secure favorable supplies of timber and water (the Multiple Use Sustained Yield Act of 1960 provided other uses, but the United States Supreme Court in U.S. v. New Mexico ruled they are merely secondary or supplemental to the primary purposes).

Since 1937, U.S. Forest Service scientists have been studying the relationship between forest management and water yields in the Fraser Experimental Forest near Fraser, Colorado. Their studies conclude that water yields from the forests have been decreasing due to dense stands with low rates of soil moisture and high rates of evapotranspiration. The scale at which we are losing water resources is staggering. As an example, flows in the North Platte basin in Colorado are said to have decreased by a staggering 185,000 acre feet per year (one acre foot is sufficient to supply a family of four for a year) over the last 140 years due to excessive vegetative growth. Without action, future yields in the basin are projected to diminish even more!

The deficit results from the same mismanagement that fueled nearly seven million acres of catastrophic wildfires in the West last summer. These super-hot, unnatural wildfires have taken lives and property, ruined fish and wildlife habitat, fouled the air with smoke and denuded water quality. The aftermath can persist for years. Battling sediment and erosion from the 1996 Buffalo Creek fire in Colorado, (which burned a mere 12,000 acres) has already cost the Denver Water Board $25 million.

Public lands management has far-reaching impacts on forest health, wildfire risk, water, wildlife and even endangered species. Forest Service scientists warn the state of our forests is not sustainable. To reverse this trend, policy makers should pursue

a cohesive strategy of thinning, prescribed fire and other treatments to address forest health problems. Sound science and proven techniques could improve the state of forests and watersheds.

Conclusion

Across the West, our future is forever linked to our water. Given ever-increasing demands, the basin requires more, not less, water storage. The seven Colorado River Basin States have much in common. Perhaps most importantly, the states share a common need to educate the public about the value of water resources and the risks to water supplies.

Mr. Chairman, we hope that you will continue this dialogue with the seven Colorado River Basin States as these important issues progress. Thank you for your interest in this important issue.

The CHAIRMAN. Thank you very much. Patricia Mulroy.

STATEMENT OF PATRICIA MULROY, GENERAL MANAGER, SOUTHERN NEVADA WATER AUTHORITY

Ms. MULROY. Chairman Hanson, Chairman Calvert, on behalf of Governor Guinn I'd like to thank you very much for the opportunity to testify here before you today. Chairman Hansen, it's a pleasure to be here in the state of Utah and a pleasure to see you again.

I'd like to tell you that your water officials have been a delight for us in Nevada to work with. Kathleen Clark and Larry Anderson, Don Christiansen and Ron Thompson over the years, they have been great partners and wonderful friends to the State of Nevada.

I'd also like to thank you and your staff for your help in passing the Southern Nevada Public Lands Management Act. As you know, southern Nevada has exploded in growth, and this Act has been of great benefit to southern Nevada to help us manage our growth in our community.

Congressman Calvert, it's been some time since this Committee has had a hearing on the Colorado River and one has been convened like that, and I'd like to thank you for your leadership. I think the timing of this hearing is extremely appropriate, because I think Herb expressed it very well, what we have here is a history of states that have been cantankerous with one another and have mastered the art of battle and of warfare, and have evolved in the last 10 years to a group of seven states that have proven that they can work together and solve some major issues, some would have said 10 years ago would not have been possible.

Southern Nevada has been late coming to the table. And over the past decade the Southern Nevada Water Authority, in partnership with the Colorado River Commission under the leadership of its Chairman, Richard Bunker, has aggressively been pursuing a strategy to augment our measly 300,000 acre- feet of water that we have in southern Nevada. As little as that amount of water is, it represents 85 percent of the water in the—in southern Nevada, which is 75 percent-plus of the population of the state of Nevada. So you can appreciate the significance of this river system to those of us in Nevada.

We realize that being the fastest growing community in the nation presents its own set of unique challenges. And even though our—we've been very successful with water conservation and

wastewater reuse programs that can stretch our supply, we also realize that without additional water resources, we are going to be out of water by the year 2007. Just like all the bones of the body are connected, that's the way the water supply in the West is all interconnected.

We've labored for the past decade with the other Colorado River Basin states through countless meetings to achieve a consensus among the states around solutions that are innovative and bold. And I'd like to point out at the outset that this has been a state-driven process, that we've appreciated the support and encouragement and partnership of the Department of Interior, but the solutions that my friends in the other states have laid out to you were born from within the seven-states process. They have made it possible.

And I've often said that the Law of the River, as immovable as some would paint it, really is a protection to all the states, that none of the states can get rolled. If all seven states agree to a solution, then the Law of the River is flexible enough to allow for that solution to occur. I think the interim surplus criteria that were just recently signed and adopted stand testament to that. It wasn't easy for the states to come to an agreement around those interim surplus criteria.

And Nevada found itself in a unique position. On the one hand, we sit on the shores of Lake Mead, and any subsidence or drop in Lake Mead's water levels would have had severe impacts on southern Nevada's economy and, quite candidly, on our environment. On the other hand, we stand to benefit by the interim surplus criteria. And the reality of it is now that it is—assures southern Nevada's water supply through the year 2016. Because we too, just like California, will be allowed to use that water for M&I purposes and sustain southern Nevada's existence.

One of the things that's unique about the interim surplus criteria is that for the first time it went opposite of what would be considered the traditional law of western water. For the first time M&I uses have priority over first in time, first in right. And the interim surplus criteria very carefully drafted around supplying municipal and industrial water first.

Insofar as southern Nevada's water future is dependent on the interim surplus criteria, it also creates a unique relationship between ourselves and our friends in California. Because whether the interim surplus criteria sustains or not through 2016 depends on southern California's success in reducing its use of its Colorado River water along a very tight time frame, with trigger points along the way in which its ongoing success and progress will be measured. So we have a vested interest in California's internal efforts to conserve water and for things such as the IID transfer to San Diego to succeed.

And so we support your efforts, Representative Calvert, and those of Senator Feinstein to pass the CALFED authorization bill, but we would not presume to tell California which CALFED projects should be built and which should not be built. But just like the other states, we are watching very closely to make sure California does meet its triggers and achieves its targets on its way to 4.4.

The other thing that's happened in the last decades for southern Nevada has been a unique partnership with the State of Arizona. And we intend over the next years to bank 1.2 million acre-feet in Arizona's groundwater basin.

I can tell you with all sincerity and honesty that 10 years ago, when I first started in this, I would probably have been shot and run out of the room had anyone suggested that we would be banking water in the state of Arizona; relationships were that tense at the time. Over the last 10 years, however, the State of Arizona has come forward and has, in great partnership with the State of Nevada, presented Nevada solutions that will solidify its water use well—or its water supply well beyond the year 2040. Because in banking that much water in the state of Arizona, we will be able to use it through a forbearance agreement with the State of Arizona when we need it.

And when you look at southern Nevada's water needs to the year 2050, it only represents one-tenth of 1 percent of the flows of the Colorado River. So from a volume standpoint, southern Nevada's need for additional Colorado River water is truly infinitesimal, but in terms of its significance to the state of Nevada, it is tremendous.

My friends in the other states mentioned the issues that are facing us in the future, and I would agree with them that the Mexican delta is probably one of the more significant things that we're going to be facing. I think, sitting here today, none of us know what ultimately a solution for the delta would be. But one thing that I think we can all agree to, and that is that if a solution is to be found, that solution can only be found with the full cooperation and participation of the seven states. No one understands that river better and no one understands the consequences of various solutions better than those of us in the states who live with this river system and depend on it so heavily. So as we begin the discussions on the delta on September 11th and 12th, I would also ask that the seven states become an integral part of that process.

We also have the challenges of the endangered fish in the lower basin, and recovering some of those is going to be very difficult, if not impossible. We also know that we face...

The CHAIRMAN. I didn't do it, just go ahead.

Ms. MULROY. We also know that we—that the challenge of finding a practical and an affordable solution for the Salton Sea looms out there. As you can see, all of these stretch the normal confines of what was traditionally perceived as the Colorado River supply. But I also know that in this collection of people within the—from the seven states, solutions can be found.

And so with that I would conclude, and thank you for this opportunity to testify, and just reiterate that I know that the innovative solutions that I know are going to be needed for the future, not only for southern Nevada and for California but for the delta and for the environment as well, can be found from within the seven states. Thank you.

[The prepared statement of Ms. Mulroy follows:]

Statement of Patricia Mulroy, General Manager, Southern Nevada Water Authority, Representing the State of Nevada

Introduction

Chairman Hansen, Chairman Calvert, I thank you for the invitation to testify today. Chairman Hansen, it is a pleasure to come to Utah and to see you once again. I am sincere when I say that Nevada has no better friends along the Colorado River than your water officials in Utah. I have tremendous respect and admiration for Kathleen Clark, Larry Anderson, Don Christiansen and Ron Thompson. They are leaders in the field of western water resources. I also want to thank you and your staff for your help passing the Southern Nevada Public Lands Management Act. It has been a great benefit to our community as we try to manage our growth and I know of the significant role you played in its enactment.

Congressman Calvert, it has been some time since a Committee of the Congress was interested enough in the Colorado River to convene a hearing such as this one. Thank you for the leadership you have shown during your short tenure as Chairman of the Water and Power Subcommittee.

For over a decade, the Southern Nevada Water Authority and the Colorado River Commission of Nevada, which is chaired by Richard Bunker, have aggressively pursued a strategy to augment Nevada's minuscule 300,000 acre foot entitlement to Colorado river water. As the fastest growing community in the nation, we recognized that although our successful water conservation and wastewater reuse programs would only serve to stretch our supplies and that without additional resources, we would be out of water by 2007.

Do you remember the song that goes, "the head bone's connected to the neck bone, the neck bone's connected to the back bone" etc. etc? Well that is the way it works in water. Everything is connected. For that reason we have labored for almost a decade with the other Colorado River basin states through countless meetings to achieve consensus among the seven basin states around solutions which are innovative and bold and still preserve the underlying fabric of the Law of the River. I want to point out at the outset that this has been a state driven process. We have appreciated the support and encouragement of the Interior Department, the solutions which have evolved all had their genesis within the seven state process and not in Washington.

Interim Surplus Criteria and the California 4.4 Plan

Possibly the most difficult issue we have faced is the need for California to ween itself away from overuse of the Colorado and live within its 4.4 million acre foot entitlement. This will require nearly 800,000 acre feet reduced deliveries from the amount California has been regularly using. The seven states developed a proposal which allows California an assured water supply for the next fifteen years during which time it must make substantial progress with periodic milestones to reduce its use of Colorado River water. This assured supply comes in the form of what we call Interim Surplus Criteria, which in layman's terms means that all the states agree to allow the Secretary of the Interior as water master for the lower basin, to declare each year for the next fifteen years, that there is enough surplus water in the reservoirs to release an extra amount above the lower basin's entitlement of 7.5 million acre feet. The surplus amount that is to be released each year depends upon the elevation of Lake Mead.

This remarkable plan was signed by the Secretary of Interior last January and for the first time schedules the delivery of this additional water based upon type of uses, with Municipal and Industrial needs first, then agriculture, rather than on the old western water law doctrine of prior appropriation or put another way, first in time is first in right.

Nevada benefits significantly from these surplus deliveries. Because we are an M&I delivery, the Interim Surplus Criteria will all but ensure an adequate water supply for all of southern Nevada's needs through 2016. Nevada shares with California these interim surplus supplies and therefore are vitally concerned that California meet its milestone targets to ramp down usage of Colorado River water. If California fails to do so, we will lose our assured water supply rights along with them. In other words, we are connected to California at the hip bone.

For that reason, Nevada has a vested interest in the success of California internal efforts to conserve water such as the IID to San Diego transfer as well as to develop additional sources of supply for southern California. We understand the relationship between the Salton Sea issue and the IID–San Diego transfer and we are supportive of the proposal we have reviewed to provide federal funding to assist with the Salton Sea environmental studies and other projects needed to ensure the success of that water transfer.

To the same end we support your efforts Rep. Calvert, along with those of Senator Dianne Feinstein to pass a CALFED authorization bill providing for funding for water development projects throughout California. These projects will help California reduce its over dependence upon the Colorado. Nevada is not going to presume to tell you Californians which CALFED water projects to build or not to build, that is up to you to fight out amongst yourself.

Groundwater Banking

Another innovative solution for Nevada's problems came from Arizona and is called water banking. This concept was discussed for years by the seven states and with the Bureau of Reclamation. Just last week on July 3 Nevada and Arizona signed an agreement that will allow Nevada to store or "bank" unused Arizona entitlement in the ground water aquifers within Arizona. Over the next decade or so before Arizona's own needs require the full use of its Colorado river entitlement, we hope to be able to bank up to 1.2 million acre feet which we can use in the future as needed. This banking opportunity is also available for California and even the federal government for some of its needs.

Conclusion

In conclusion, Nevada's water future looks far more secure today than it did ten years ago. This is the result of some significant achievements brought about by the seven basin states working together along with a supportive Interior Department. There is more to do. California has just begun its difficult task of conserving and finding enough water to meet its needs. We face significant and important environmental challenges such as the endangered fishes recovery program, finding a practical and affordable Salton Sea solution and addressing the international consequences associated with the Mexican Delta. I am confident in our ability to find more innovative solutions, working together, connected. Thank you again for the opportunity to testify.

The CHAIRMAN. Thank you very much. Mr. Mutz.

STATEMENT OF PHILLIP MUTZ, UPPER COLORADO RIVER COMMISSIONER, STATE OF NEW MEXICO

Mr. MUTZ. Mr. Chairman, Members of the Committee and the Subcommittee, my name is Philip Mutz. I am Upper Colorado River Commissioner for the State of New Mexico and represent the State on the Upper Colorado River Commission, which is an interstate agency created by the Upper Colorado River Basin Compact of 1949. The Compact—the Commission is charged with administration of the Compact and represents the four states on matters concerning operations of the Colorado River.

Someone once observed that no river is asked to do so much with so little water as has the Colorado. Every acre-foot of water of the river's average annual flow has been apportioned and, as the Chairman indicated earlier, every acre-foot is used and reused.

The Colorado River supplies water indirectly or directly to more than 25 million acre—or 25 million people located both within its drainage boundaries and without its drainage boundaries due to the large transbasin aqueducts that transport the river water outside the basin. With so many—much reliance for so many people, it might appear that management and distribution of the waters of the Colorado River for the next decades is somewhat predetermined. All the works—or at least most all the works are now in place to distribute its waters, and with the experience of existing management, it would appear that much of the future administration of the river is merely to improve efficiency. The implication may be then that change should not be effected, but that's not realistic. Change has become necessary, and will continually need to be

implemented to accommodate the growing and differing demands placed on the river.

Among the challenges of the past several decades has been to accommodate environmental needs of endangered species. The recovery programs for endangered fishes in the Upper Basin and the effort to establish a multiconservation—a multispecies conservation program in the Lower Basin are recent examples of changes brought about to accommodate differing needs.

New Mexico is generally satisfied with the progress and results of most of the programs and initiatives initiated in the Colorado River Basin in recent years. The Interim Surplus Guidelines is a very important step to manage available supply to meet the growing demand on the river. Coupled with California's Colorado River Water Use Plan to step-down its current use, these two major accomplishments resulted from the collaborative efforts of many people, and likely would not have succeeded if those individuals involved had not recognized the need to cooperate to achieve a workable solution rather than rely on an unpredictable result via the litigation process to resolve differences.

The other six states of the Colorado River Basin have insisted that the Surplus Guidelines be an interim measure and that benchmarks be included to measure California's progress in reducing its current use of Colorado River water. The continued implementation of the Surplus Guidelines is entirely dependent upon that progress by California to reduce its annual use of Colorado River water. Implementation of the steps necessary to reduce its use have taken and will continue to take time, a concentrated effort, and a large investment of money. We support California and its water use agencies involved in these efforts.

As indicated by the previous commenters, an emerging issue concerns efforts by some to increase the flow of the Colorado River in its limitrophe section and its associated delta in Mexico to restore and preserve the riparian and estuarine ecology. The International Boundary Water Commission, through its respective Commissioners of the United States and Mexico, have executed Minute 306. The Minute states the intent of the two governments to establish a framework for cooperation in studies looking toward recommendations for the work needed.

By letter dated June 18, 2001, the Governor's representatives of the seven Colorado River Basin states have directed letters to the Secretary of the Interior and the Secretary of State expressing their views on and requesting a meeting to discuss emerging issues on the Colorado River delta. The letters noted the United States has been in full compliance with its obligations under the treaty, and pointed out that there is no existing or anticipated action within the United States, including operations under the Interim Surplus Guidelines, that would result in any violation of any obligation under the treaty.

The letter stressed that any proposal to manage or deliver water for any purpose in the delta must be undertaken pursuant to the Law of the River and must not enhance, diminish, or abrogate any provision of the treaty or the Law of the River.

Further, the letter requested that the United States recognize the legal authority of the Colorado River Basin states over the

appropriation and management of their apportioned water and the important role of the states in the operation and management of the river established by Federal law.

What does New Mexico get out of all this management of the Colorado River in the Lower Basin? The competition for water has been a fact of life for New Mexicans for several generations and it continues. More than 80 years ago, New Mexico achieved its first goal for a reliable, though at that time not completely defined, share of the Colorado River by becoming part of the Colorado River Compact. Then about 50 years ago, a circumscribed share of the water available to the Upper Basin was apportioned in perpetuity in New Mexico under the Upper Basin Compact.

The current use of Upper Basin water in New Mexico by authorized projects will require about 90 percent of New Mexico's apportioned share of its supply now reasonably available in the basin.

Quantification of Indian water right claims in the San Juan River, which is the primary source of water for New Mexico from the Colorado River, is a key element to ensure reliability to both Indian and non-Indian water users in New Mexico.

Two Indian water rights settlements have been completed in the San Juan River Basin in Colorado, but remain to be fully implemented pending completion of the Animas-La Plata project. Although these settlements are in Colorado and use Colorado's water, they're important to New Mexico downstream water users because a differing settlement could adversely affect their supply.

Also in New Mexico, the claims of the Jicarilla Apache Nation have been settled; however, not all that water has yet been put to use. The water right claims of the Navajo Nation remain to be quantified, and they are quite large. The Nation and the State of New Mexico have been involved in formal discussions for some time now, and we believe considerable progress has been achieved.

New Mexico also has considerable area in the western part of the state that is in the Lower Basin of the Colorado River, in the Little Colorado and the Gila River drainages. The available supply in the Little Colorado River is very meager and essentially developed. Use of water from the Gila River and its tributaries in New Mexico was apportioned by decree of the United States Supreme Court in 1964, but that apportionment was only sufficient to cover existing uses. New Mexico was able to secure recognition in the decree that should conditions prevail in the future that would provide for additional water, the decree could be adapted, and that additional water can be provided under the Central Arizona Project Act of 1968, which authorized an additional 18,000 acre-feet of water per year for use by New Mexico, subject to the provisions of the legislation. That supply is vital to the future of that area and must be preserved.

This discussion is intended to convey that New Mexico has much to benefit from the Colorado River. To ensure the availability and reliability of water in this state, we're committed to guarding that supply and to putting it to beneficial use at the earliest practical time.

I'd like to stress that the Law of the River, however complex some might characterize it, has resulted primarily from an effort of those individuals who recognized the need for a basic foundation

on which the apportionments and the operation and administration of the river are built. I believe the seven basin states have established a collaborative working relationship to approach the issues that face us in the future.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Mutz follows:]

Statement of Philip B. Mutz
Upper Colorado River Commissioner for the State of New Mexico
to the
Committee on Resources
United States House of Represenatives
Field Hearing on
Management of the Colorado River for the 21st Century - A 7 State Perspective
July 9, 2001 - Salt Lake City, Utah

This testimony is to provide the Committee a perspective on the role of the Colorado River and its relationship to the availability and reliability of water to the State of New Mexico. The San Juan River, a tributary to the Colorado River, is New Mexico's largest river in terms of volume of flow. The supply available for consumptive use by New Mexico from the river, however, is much less than the total flow and is dictated by interstate compact apportionment. New Mexico is approaching full development of it's Upper Basin apportionment.

Thus management of the Colorado River in near future, as well as for many years into the 21st Century, is of crucial importance to New Mexico. New Mexico has participated in the several ongoing management programs that have been undertaken, including the Colorado River Basin Salinity Control Program, the San Juan River Implementation Program to recover and conserve endangered fish species and the Glen Canyon Adaptive ManagementProgram, and has been active in development of the recently approved Interim Surplus Guidelines for the operation of Lake Mead in the Lower Colorado River Region. New Mexico is generally satisfied with the collaborative efforts in which the Colorado River Basin states are currently engaged in concert with the Department of the Interior to address the issues involved.

Mr Chairman and Members of the Committee and Subcommittees. My name is Philip B. Mutz. I am Upper Colorado River Commissioner for New Mexico and represent the state on the Upper Colorado River Commission. The Upper Colorado River Commission is an interstate administrative agency created by the Upper Colorado River Basin Compact which became effective in 1949. The Commision has representatives from the four Upper Division States (Colorado, New Mexico, Utah and Wyoming) and a Commissioner representing the United States appointed by the President. The Commission is charged with administration of the Compact and represents the four states in matters concerning operations of the Colorado River.

Someone once observed that no river is asked to do so much with so little water as has the Colorado River. Every acre foot of the river's average annual flow has been apportioned, and the river's average annual flow is

intensively used and reused.

The Colorado River is relied upon either directely or indirectly by more than 25 million people located within the drainage basin and adjacent areas served by major transbasin aqueducts that transport the river's waters outside of the basin boundaries. The river also provides water to irrigate 3.5 million acres of productive farm land, provides electricity to meet the power needs of millions of people, makes available numerous recreational opportunities and supports dozens of fish species, most introduced, but some native and found nowhere else.

With so much reliance by so many people, it might appear that management and distribution of the waters of the Colorado River for the next decades is somewhat predetermined. With all the works now in place to distribute its waters and with the experience of existing management, it could appear that much of the furure administration of the river system will be to refine and improve efficiency of management, distribution and use of water.

Now having said that, the implication may be that change should not be effected, but that is not realistic. Change has become necessary, and will continually need to be implemented to accommodate the growing and differing demands placed on the river. Among the challenges of the past two decades, has been to accomodate enviromental needs of endangered species. The recovery programs for endangered fishes in the Upper Basin and the effort to establish a multi-species conservation program in the Lower Basin are recent examples of changes brought about to accomodate a differing need in considering how to manage the river system.

New Mexico is generally satisfied with the progress and results of most of the programs and new initiatives initiated in the Colorado River Basin in recent years. The Interim Surplus Guidelines approved by the Secretary of the Interior in January 2001 is a very important step to manage the available water supply to meet the growing demand on the river. Coupled with California's Colorado River water use plan to step-down its current use of about 5.2 million acre feet per annum to its basic apportionment of 4.4 million acre feet in a "normal" year, these two major efforts resulted from the collaborative efforts of many people and likely would not have succeeded if those individuals involved had not recognized the need to cooperate to achieve a workable solution rather than rely on an unpredictable result via the litigation process to resolve differences.

The California Colorado Water Use Plan (California Plan) includes use of Colorado River water made available from surplus determinations made by the Secretary of the Interior for the period 2001-2016 under the Interim Surplus Guidelines. The other six states of the Colorado River Basin have insisted that the Surplus Guidlines be an interim measure and that milestones (benchmarks) be included to measure California's progress in reducing its current use of Colorado River water. Thus continued implementation of the Surplus Guidelines is entirely dependent on progress by California to reduce its annual use of Colorado River water. Implementing the steps necessary to reduce its use have taken, and will continue to take, time, a considerable investment of money, and concentrated effort. We support California and

its water use agencies involved in these efforts.

An emerging issue concerns efforts by some to increase the flow of the Colorado River in its limitrophe section (boundary between United States and Mexico) and its associated delta in Mexico to restore and preserve the ripariam and estuarine ecology. The International Boundary and Water Commission through its respectiveCommissioners for the United States and Mexico have executed Minute 306. The Minute states the intent of the two goverments to establish a framework for cooperation in studies looking toward recommendations for the work needed. The Commissioners recommend that the studies be performed by the existing binational task force and that the Commission support the binational task force by establishing a forum for the exchange of information and advice among government and non-government organizations having an interest.

Subsequently, the International Boundary Commission, working with planning committees in both countries, is arranging a binational Symposium in September of this year on Colorado River Delta issues that would be involved. The purpose of the Symposium is to provide basic information and an education opportunity for the stakeholders in both countries.

By letter dated June 18, 2001, the Governor's representatives for the seven Colorado River Basin states on Colorado River Operations directed letters to the Secretary of the Interior and the Secretary of State expressing their views on, and requesting a meeting, to discuss the emerging issues of the Colorado River Delta. These letters noted that the United States has been in full compliance with its Colorado

River obligations under the Treaty and Minute 242, and pointed out that there is no existing or anticipated action within the United States, including operations under the Interim Surplus Guidelines, that would result in any violation of any obligation under the Treaty or Minute 242. The letters stressed that any proposal to manage or deliver water for any purpose in the Delta must be undertaken pursuant to the Law of the River, and must not enhance, diminish or abrogate any provision thereof. Further, the letters requested that the United States, through the International Boundary and Water Commission and the Department of the Interior, recognize the legal authority of the Colorado River Basin states over the appropriation, administration, development, use and management of their apportioned water and associated water rights, and the important role of the States in the operation and management of the River as established by Federal law. Also, that the United States should cooperate and comminicate closely with, and seek the participation of, the Basin states. The letters state that the Basin states are committed to playing a cooperative and constructive role in addressing the issues at hand.

What is the benefit to New Mexico resulting from management of the Colorado River in the Lower Basin? The competition for water has been a fact of life for New Mexicans for several generations, and continues.

A little more than 80 years ago, New Mexico achieved its first goal for a reliable, though at that time not completely defined, share of the waters of the Colorado River System by becoming a party to the Colorado River Compact.

Then, a bit more than 50 years ago, a circumscribed share of the waters of

Colorado River System was apportioned in perpetuity to New Mexico when the Upper Colorado River Basin Compact was approved. That share, 11.25% of the supply available to the Upper Basin, is the smallest share apportioned by the Compact, except for the apportionment to the state of Arizona.

The current use of Upper Colorado River System water, plus use by authorized projects, will require about 90 percent of New Mexico's apportioned share of the supply now reasonably available to the Upper Basin. The remainder of the supply now reasonably available can provide a water supply for the Navajo-Gallup Municipal Water Supply Project now being planned. This project would provide water to a number of Navajo Nation Chapters in western New Mexico that currently do not have a reliable domestic water supply as well as providing additional water for the City of Gallup.

Quantification of Indian water right claims in the San Juan River basin is a key element to ensure reliability of supply to both Indian and non-Indian water users in New Mexico. Two Indian water rights settlements in the San Juan River basin in Colorado have been negotiated but remain to be fully implemented pending completion of the Animas-La Plata Project. Although these settlements are in Colorado and involve use of Colorado's Upper Basin apportionment, they are important to downstream New Mexico water users whose supply could have been adversely affected by a different settlement. Also, in New Mexico, the water right claims of the Jicarilla Apache Nation have been settled, however not all of the water involved has yet to be put to use. The water right claims of the Navajo Nation remain to be quantified. The Nation and the

State of New Mexico have been involved in informal discussions for some time now and we believe considerable progress has been achieved. The claims of the Navajo Nation are large and could command the major portion of New Mexio's Upper Basin apportionment.

New Mexico also has a considerable area that is in the Lower Basin of the Colorado River System. The local areas are in the Little Colorado River drainage and the Gila River drainage. The available water supply in the Little Colorado is very meager and essentially developed. Use of water from the Gila River and its tributaries in New Mexico was apportioned by decree of the U.S. Supreme Court in *Arizona v California* in 1964. However, the apportioment was only sufficient to cover existing uses at that time with no provision for water for future use. Because of the need to make some provision for future use, New Mexico was able to secure recognition in the decree that, should conditions prevail in the future that would provide for additional water, the decree could be adapted.

The Central Arizona Project Act of 1968 authorized an additional 18,000 acre feet of water per year for use by New Mexico subject to provisions of the authorization. None of that supply has yet to be put to use by New Mexico. That supply is vital to the future of that area of the state and must be preserved.

The foregoing discussion is intended to convey that New Mexico has much to benefit from the relationship of the Colorado River System to the availability and reliability of water in our state. We are committed to guarding that supply and to

putting it to beneficial use at the earliest practicable time

Even though there is an apportioned water supply available, whether by compact, by U.S. Supreme Court decree, or by Congressional authorization, the water remaining available for future development, or even completion of authorized projects or Indian water right settlements, is of no benefit if successful biological opinions pursuant to Section 7 of the Endanged Species Act cannot be secured, or even other required Federal permits. We are optimistic that the San Juan River Recovery Implementation Program can continue its early successes to reach its goals of conserving the listed species and proceeding with water development to the extent of full use of the apportioned waters.

On behalf of the State of New Mexico, I express our thanks to Chairman Hansen and the members of the Resources Committee for their effort and support in enacting legislation, Public Law 106-392, which authorized funding to the Bureau of Reclamation to continue cost-sharing for the fish recovery implementations program for the San Juan River Basin and for the Upper Colorado River Basin. It is of crucial importance to the continued development of the water resource that these programs continue and succeed.

In conclusion, I wish to stress that the "Law of the River", however complex some might characterize it, resulted primarily from the efforts of those individuals who recognized the need for a basic foundation on which the apportionments and the operation and administration of the river are built. I believe the seven Basin states have established a collaborative working relationship to approach the issues and

problems involved in the administration of the use of a finite amount of water.

Again on behalf of the State of New Mexico, I express our appreciation for the attention this Committee has given to the issues of the Colorado River by holding this hearing in the West and the opportunity to submit this testimony. Futher, I wish to thank the staff of the Subcommittee for their assistance to me personally in preparing for this hearing.

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The CHAIRMAN. Thank you, Mr. Mutz. Mr. Davidson, can you get that mike over there?

STATEMENT OF THOMAS J. DAVIDSON, GOVERNOR'S REPRESENTATIVE, WYOMING ATTORNEY GENERAL'S OFFICE

Mr. DAVIDSON. Thank you Mr. Chairman. Mr. Chairman and honorable Members of the Committee and Subcommittee, on behalf of myself and on behalf of Governor Geringer, I'd like to thank you for the opportunity to address you today.

My compadres that have gone before me, and I can safely say they are compadres these days, a little different scenario than we might have encountered, as has been indicated to you in the past, several years ago, but now we have a very close and good working relationship. They have addressed the main issues that are confronting us, and so I'm going to utilize the luxury of going last. And I'm going to heed the Chairman's suggestion that I summarize my comments, and I think I can be fairly brief.

I am the Commissioner for Wyoming on the Upper Colorado River Compact Commission. I also, in another different life, I guess, am also the lead litigator for Wyoming in interstate water disputes. I can certainly attest firsthand to the difference between the litigation route which we have just hopefully concluded with respect to a water dispute over the flows of the North Platte River with the State of Nebraska. After in excess of $20 million expended by each state in prelitigation costs, we finally wound up on the courthouse steps, and hopefully resolved the dispute before we ever actually opened the courtroom doors.

That, in contrast to the relationship that has been developed with the other six states with respect to the Colorado River, I think makes a very profound statement as to the desirability and the utility of working together with our compadres, working together with the other basin states to try to reach the solutions, the solutions that allow the Law of the River to be flexible into the future.

And I will state that the main theme of my testimony to you today is one that I'm merely echoing from many of the others, is the reason that the interim surplus criteria were able to be achieved, the reason that we had success like we did and didn't have to have the kind of litigation that I've referenced with respect to Wyoming and Nebraska is because of the basic premise that was recognized by each of the seven basin states, including California, as we're not going to mess with the entitlements under the Law of the River.

California didn't come into the process contending that it needed to change its entitlement from 4.4 million acre-foot a year, it came into the process with the view that, we're over, we've got a problem, we got to address the problem, we need your help; we're not trying to take your entitlement, Wyoming, we're not trying to take your apportionment, Colorado, we're trying to address the problem of getting back to 4.4 million acre-feet; we don't deny that that's what our entitlement is, we don't deny that Wyoming has its entitlement, that the Upper Basin states have their entitlement, that all of the states have their entitlements; what we need to do is try to work out a solution. And that's what we were able to achieve with the interim surplus criteria in the California 4.4 Plan.

I think Pat put it best. The reason that the deal came together is nobody was in jeopardy of getting rolled. I can assure you that Wyoming, and I know my friends from the other states, are not going to allow themselves to get rolled, and whether it's $20 million or $200 million that has to get spent, if someone's going to take one of the state's entitlements under the Law of the River, it's going to be a long, protracted, agonizing litigation.

Again, the reason that this deal came together, the interim surplus deal came together is because that concept was maintained,

and the states were provided the certainty that they were provided under the Law of the River.

I was encouraged to hear the Chairman in his opening remarks state that clearly water won't be provided for some of these other uses without the concurrence of the seven basin states. Certainly that is Wyoming's view, certainly that is the view of the other basin states.

I guess in quick summary, we have a long history of fighting hard for our water in Wyoming. This procedure has resulted I believe in a much better, much preferable end result and process; it provides flexibility that is not provided through litigation. And though I do love to litigate these big cases, this—the result that comes out from this kind of approach certainly is a preferable result to the 300 pages of settlement documents that we have in the Nebraska versus Wyoming litigation.

So if I can leave you with three concepts that are very important to the State of Wyoming and I believe all of the basin states. One is preserve the certainty of the Law of the River; and that is, more emphatically, don't mess with our apportionments. And finally, we will do all that we can to ensure that California meets its obligations and that we all can meet these new environmental, Mexican, and other requirements for the future, while maintaining the preservation of the certainty of the Law of the River.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Davidson follows:]

Statement of Thomas J. Davidson, Wyoming Commissioner, Upper Colorado River Commission, and Deputy Attorney General, Wyoming Attorney General's Office

This testimony provides the perspective and views of the State of Wyoming concerning ongoing and prospective Colorado River water use, reservoir operations and basin management activities in the context of a House Resources Committee field hearing. Wyoming is generally pleased with the current and recently implemented collaborative and cooperative efforts that the seven States are conducting collectively and in concert with the Department of the Interior. The implementation of the Interim Surplus Operating Guidelines for the Colorado River System in early 2001 was an important step in implementing a comprehensive plan to reduce California's long-term dependence on the Colorado River. Management of the Colorado River in this new century involves not only reservoir operations but environmental management efforts of varying types and scopes. Wyoming has long been a participant in the Colorado River Basin Salinity Control Program and a partner in the collaborative Upper Colorado River Endangered Fish Recovery Implementation Program. These and other efforts, Wyoming believes, are critically important to Wyoming's ability to continue to develop its compact-apportioned water supplies in the future.

Chairman Hansen and Members of the Committee and Subcommittees, thank you for the opportunity to testify on behalf of the State of Wyoming at today's field hearing concerning management of the Colorado River. My name is Thomas J. Davidson. I am the State of Wyoming's Commissioner on the Upper Colorado River Commission and Deputy Attorney General of the State of Wyoming. The Upper Colorado River Commission is an interstate administrative agency created by the Upper Colorado River Basin Compact of 1948. Since its inception, the Commission (made up of Commissioners appointed by the Governor of each Upper Division State [Colorado, New Mexico, Utah and Wyoming] and one appointed by the President of the United States) has actively participated in the development, utilization and conservation of the water resources of the Colorado River Basin. The Commission was created to administer the apportionment of the waters of the Upper Colorado River Basin system and represents the Upper Basin States in consultations with the Secretary of the Interior on matters pertaining to the operations of the Colorado River.

Long known as the "Lifeblood of the West," the Colorado River is often referred to as the most intensely regulated and over appropriated river in the country. Neither the biggest nor the longest river in the West, it is among the most disputed rivers in the world. The Colorado River has played a crucial role in this country's history, a role often overlooked or misunderstood. Perhaps no other river has been asked to do so much with so little. The Law of the River was born out of the necessity to provide secure water supplies. It is the product of two interstate compacts, a U.S. Supreme Court decree, and a treaty with Mexico allocating the River's water. It reflects the fact that, for over 100 years, the financial strength and national authority of the Congress have been absolutely necessary to avoid interstate and intergovernmental disputes and to secure economic stability for the entire Colorado River Basin.

Before the Federal Government could construct a dam on the lower Colorado River, and as a result of California's increasing diversions, the states with an interest in the Colorado's waters needed to sort out their rights. The upstream states feared that a storage facility that made water available downstream before they could put their share to use upstream might form a basis for claims of appropriative rights in the water by downstream states. Appropriative rights are based on the rule "first in time, first in right." Likewise, the downstream beneficiaries of such a storage facility feared California's existing lead in their race toward development. It appeared that a resolution could only be achieved either by a suit in the United States Supreme Court under its original jurisdiction over disputes between states, or by an agreement of the parties. The seven basin states chose the latter. The significance of the decision to utilize the more flexible interstate compact option, even though this method had never before been used to allocate waters of an interstate river, was realized in 1922. In that year, the Supreme Court decided Wyoming v. Colorado (259 U.S. 419), which, in part, utilized the doctrine of prior appropriation to allocate rights to water across state lines.

Wyoming's State Engineer (and later Governor) Frank C. Emerson served as Wyoming's Commissioner on the Colorado River Commission that negotiated the compact. It is very clear that Emerson, as Wyoming's negotiator, recognized the very long-term perspective that this seven-state agreement necessarily had to take and the certainty that it would provide. Emerson noted in his Sixteenth Biennial Report of the State Engineer of Wyoming (1921–1922):

> "The present apportionment of the use of 7,500,000 acre feet per annum to the Upper Basin is "in perpetuity." These two words are of especial significance as their use means that Wyoming and the other States of the Upper Division will find water supply available for the developments of the future whenever our projects may become economically feasible of undertaking, and whether the time may be in the near future or a century or more from now."

The seven states recognized the importance of the Colorado River at the time of the Compact and correctly understood that the River would become ever increasingly important over time. The Compact provided a means to recognize the profound differences between the development the two segments -- Upper and Lower -- of the Colorado River Basin. On page 19 of Emerson's report on the Compact to the Wyoming State Legislature, he succinctly noted:

> "All can realize the natural physical situation which causes the division of the river into two great basins; that the economic conditions that apply to the two basins are entirely different, and that therefore a division of water between the two basins is a very logical plan; that the additional development of the Green River and the Little Snake River basins in Wyoming will be very tardy as compared with development in California; that if proper agreement can now be had between the great conflicting interests upon the Colorado River this accomplishment would be most desirable for all."

Wyoming's leaders and citizens believe that the Compact really means what it says -- that Wyoming will, to again cite our Compact negotiator, "find water supply available for the development of our future whenever our projects may become economically feasible of undertaking, and whether that time be in the near future or a century or more from now."

The State of Wyoming has recently engaged in river basin planning for each of the seven major river basins in the State. The intent of this water-planning program is to provide accurate, contemporary water information to enable state and local decision makers to manage water resources efficiently, maintain a water data inventory and project future water demands so the state can prepare for the effects of growth. In addition, Wyoming believes this planning process will provide the State with information to assist in responding to the mandates of federal legislation and regulation. Under the Upper Colorado River Basin Compact of 1948, Wyoming was

apportioned 14 percent of the total quantity available for use each year in the Upper Colorado River Basin as apportioned by the 1922 Colorado River Compact, after deducting the 50,000 acre-feet per year apportioned to Arizona. Using this percentage and making several best-case assumptions, Wyoming has estimated its probable long-term available water supply from the Green River and its tributaries is 833,000 acre-feet per year. In our Green River Basin Water Plan, we have estimated our current, normal year uses to be approximately 611,200 acre-feet per year. Depending on whether a moderate or high growth forecast scenario is assumed, Wyoming's present estimate of our consumptive use of the Upper Colorado River system's waters will be between 683,000 and 767,000 acre-feet per year in the year 2030. In the instance of the high growth forecast scenario being used, Wyoming would therefore be consuming about 92 percent of its share of the water resources of the Colorado River by 2030.

On account of the certainty created by the Compact, the development of the large projects that has occurred in the lower basin has not jeopardized the water supply remaining for future Wyoming water development activities nor has it precluded or impeded additional beneficial consumptive uses of water in our State. The Compact did, and has continued to, provide "broad basic principles for the equitable apportionment and use of the waters of the Colorado River System..." (cited from page 18 of the Emerson Report on the Compact). Consistent with principles that were recognized in Wyoming from the initiation of its water law (first as a territory of the United States and later, by virtue of the Wyoming Constitution), beneficial consumptive use was adopted as the measure of the allocation of the waters of the Colorado River. It is Wyoming's belief that management of the Colorado River in the 21st Century must continue to rely on the preservation of sovereignty, integrity and self-determination of welfare, in short, the certainty, which has been afforded to Wyoming and each of the seven Colorado River Basin states through the legal framework of the Law of the River.

Contrary to popular perception, California and the other Lower Division States of Arizona and Nevada have not been using "Wyoming's water." The Colorado River Compact of 1922 allocated to the Upper Division States, which include Wyoming, a perpetual right of development. It avoided the untenable situation where we in Wyoming might have been forced into a race for development with California (under the application of the prior appropriation doctrine on an interstate basis), requiring us to hoard water and prevent California from getting it. The Compact preserves our future economic opportunity and our ability to rationally plan for our future here in Wyoming.

This interstate agreement expressly preserved state-created water rights systems. It is the foundation upon which the large federal reservoirs, including Lake Mead, Lake Powell, Blue Mesa, Navajo and Flaming Gorge, were built and are operated. These reservoirs hold water for use in the Upper Basin and for delivery to the Lower Basin. The security for future development provided by the Compact, and operating flexibility of Flaming Gorge and the other Upper Colorado River Basin reservoirs, allows for water to be managed in environmentally enhancing ways. Were Glen Canyon Dam and the others not in place, the situation would be entirely different with regard to our ability to engage in many ongoing cooperative efforts, including the Colorado River Basin Salinity Control Program and the Upper Colorado River Endangered Fish Recovery Program.

Just as Emerson drew attention of the "especial significance" of the words "in perpetuity" in his report to the Wyoming Legislature, any discussion of the future, from Wyoming's perspective, must be laid upon the foundation of continuity assured by the administration of the provisions of the Colorado River Compact. That future must continue to provide the certainty of a water future for Wyoming's citizens dependent upon development of our share of the water resources of the Colorado River Basin.

While a primary intent of the Compact was to provide certainty of a future water supply from the River for each of the affected States, many Federal statutes and policies affecting water and related natural resources use and management can and do affect Wyoming's and the other Basin States' abilities to use and develop additional water. Thus, the search for certainty that was being sought in negotiating the Colorado River Compact is still a paramount factor in our present day views and concerns with regard to Colorado River management. Among the federal statutes and policies of concern are the federal Endangered Species Act (ESA) and the Clean Water Act (CWA), for example. Further, the manner in which these laws, regulations and policies are administered by the many federal agencies, each having different and often conflicting missions and jurisdictions, can profoundly impact Wyoming's water developmental difficulties. Accordingly, Wyoming has found it necessary to assist in developing, implementing and to continue to be involved in many

programs, collaborative activities and multi-state and multi-entity endeavors. We view our participation in these collaborative processes as being essential and necessary to avoid further and future impediments to developing our Compact-apportioned water supplies. In my testimony today, I wish to draw attention to several of the major efforts underway and to provide Wyoming's perspective on the progress of those efforts and their significance.

CALIFORNIA'S COLORADO RIVER WATER USE PLAN

Wyoming is encouraged by the progress presently being made by the Colorado River water users within the State of California, who are endeavoring to implement an enforceable program to reduce California's dependence on Colorado River water over its basic entitlement. If implemented as envisioned, California's plan to gradually step-down from its current use of over 5.2 million acre-feet ("maf") of Colorado River water to its basic apportionment amount of 4.4 maf over a fifteen year period will be an extremely significant accomplishment.

Wyoming has been directly and substantially involved since its onset in 1991 in the ongoing dialogue which and effort that will result in California reducing its annual dependence on the Colorado River to its basic apportionment level in "normal" water supply years. Just as California's dependence on using more than 4.4 MAF did not occur "overnight," implementing the steps to reduce its use are taking, and will continue to take, considerable time, investment and hard work. We heartily support these ongoing efforts.

The California Plan works by conserving California's agricultural water and redirecting that water for urban use. The Surplus Guidelines adopted this year allow water anticipated to be surplus to reservoir storage to flow to California for 15 years, while the conservation/transfer programs are being implemented. This "bridge" of surplus water allows California to reduce its demand at an achievable pace, without economic dislocation. The continuation of the Surplus Guidelines is contingent upon California Plan progress, including completing a binding agreement among the California agencies to implement conservation/transfer programs, and achieving defined conservation /transfer targets by specified dates.

The California Colorado River Water Use Plan ("California Plan") is dependent upon using Colorado River water made available from surplus declarations on the Colorado River as a way to ease the State's transition to living within its basic apportionment. The other Colorado River Basin States have been insistent that changes to the reservoir operating criteria on the Colorado River to accommodate California must only be an interim measure while California steps down its Colorado River water use. The Six States insisted that California demonstrate a tangible commitment to reduce its water use before entertaining discussions of reservoir operating criteria that might facilitate that reduction. That commitment has been demonstrated in several ways, including the appropriation by the California State Legislature of over $238 million dollars for the lining of the All–American and Coachella Canals.

Further, it seems prudent to address why the Interim Surplus Guidelines were needed and what would have happened in their absence. "Surplus water" is available to agencies that have contracted with the Secretary for delivery of surplus water, for use when their water demand exceeds their basic entitlement, and when the excess demand cannot be met within the basic apportionment of their state. By adopting these specific interim surplus guidelines, the Secretary will be able to provide California users of surplus Colorado River water a greater degree of predictability and certainty with respect to the likely existence, or lack thereof, of surplus conditions on the River in a given year. Adoption of the interim surplus guidelines recognizes California's plan to reduce reliance on surplus deliveries, will assist California in moving toward using only its basic apportionment during years of "normal" water supply (as determined in the AOP process) and softens the impacts during the transition period and avoids hindering such efforts.

Importantly, continuing implementation of the interim surplus guidelines is entirely dependent on progress by California in reducing its dependence on the Colorado River. The surplus guidelines will be used to identify the specific amount of surplus water which may be made available in a given year, based upon factors such as the elevation of Lake Mead, during a period within which demand for surplus Colorado River water will be reduced. The increased level of predictability with respect to the prospective existence and quantity of surplus water will assist in planning and operations by all entities that receive surplus Colorado River water pursuant to contracts with the Secretary. Without the guidelines, there would be no capability for a transition period during which California can and will reduce its Colorado River dependence and use "rather, there would be surplus until it is gone

and all of a sudden California would have to cut back. This would create severe hardship that would have attendant economic impacts in California.

REDUCING THE RIVER'S SALINITY BENEFITS ALL USERS

Since the enactment of the Colorado River Basin Salinity Control Act in 1974 (Public Law 93–320), the seven Basin States and the Federal Government have been engaged in a basin-wide program to manage the salinity concentration of the waters of the Colorado River. The importance of implementing basin-wide water quality standards, as opposed to the very common approach of instituting Stateline standards, should be recognized at the onset of any discussion of what has been perhaps the nation's most successful non-point water pollution control program. Improving the quality of water received and available for use in the Lower Colorado River Basin is not dependent upon curtailing in any manner the development of compact-apportioned water in the Upper Colorado River Basin states.

All states regulate water quality constituents related to health concerns. Other constituents may be regulated for aesthetic and economic reasons pursuant to the provisions of the Clean Water Act. This is the case with salinity in the Colorado River System, where the seven States who share the River's water adopted basin-wide water quality standards in 1974. For all practical purposes, the terms "total dissolved solids" (TDS) and "salinity" are synonymous and are used interchangeably. High salinity levels make it difficult to grow winter vegetables and popular fruits. Water containing high TDS will more quickly corrode plumbing and water-using appliances and industrial equipment. Highly saline water has limited use for irrigation of agricultural crops and landscaping vegetation. Economic impacts (reduced crop yield, higher drainage and soil leaching requirements, water treatment costs, equipment repair and replacement, etc.) from salinity damages associated with dealing with highly saline water in the Lower Colorado River Basin are currently estimated at $330 million per year, while those suffered in Mexico are presently unquantified.

About one half of the salinity in the Colorado comes from natural sources and the other half from human uses of the water and activities near the river. Near its headwaters in the Rocky Mountains, the salinity concentration of the Colorado River is typically 50 milligrams per liter (mg/l) or less. Large amounts of salt load are added as the River flows downstream. At Hoover Dam, the River delivers about 9 million tons of dissolved salts a year. Upon reaching the last diversion point in the United States at Imperial Dam, concentration frequently exceeds 800 mg/l.

When Congress enacted the Colorado River Basin Salinity Control Act in 1974, primary responsibility for the federal program was given to the Secretary of the Interior, with the Bureau of Reclamation (Reclamation) being instructed to investigate and build several salinity control units. Amendments to the Act in 1984 mandated the creation of comprehensive salinity control programs by the Department of Agriculture and the Bureau of Land Management (BLM). The USDA has instituted a highly successful, voluntary on-farm salinity control program which provides for voluntary replacement of incidental fish and wildlife values foregone due to the installation of on-farm salinity reduction measures. The 1984 amendments to the Act (P.L. 98–569) also directed the BLM to implement comprehensive salinity control activities on the large land area administered by BLM within the Basin and, further, directed the Secretary of the Interior to give preference to those projects that reduce salinity for the least cost per ton of salinity control.

In 1996, the Farm Bill (the Federal Agriculture Improvement and Reform Act, P.L. 106–20) combined the USDA's Colorado River Salinity Control Program and three other conservation programs into the new Environmental Quality Incentives Program (EQIP). Since that time, funding for the USDA's salinity control efforts has dramatically decreased, despite the efforts of Wyoming and the other Basin States urging USDA to adequately fund these important basin-wide water quality maintenance program efforts. With this Congress enacting a new farm bill to go into effect for the next fiscal year (2002), we are quite hopeful that the Congress will see fit to direct the Department of Agriculture to give it Colorado River salinity control program the emphasis and funding which the Basin States believe it deserves.

While we are generally supportive of the concept that government closest to the people is better, in the case of the USDA's EQIP there is a disconnect. EQIP's locally led, locally derived resource management priorities are both displacing and preempting salinity reduction program activities that have both international and basin-wide significance and importance. Working experience gained with EQIP has shown that local working groups and state technical committees are unable and cannot be expected to maintain the "national perspective" regarding maintenance of basin-wide water quality standards and a water quality commitment to the Republic of Mexico. Further, the great majority of the water quality improvements occurring as a direct result of the CRSCP irrigation water management practices are accruing

to beneficiaries far downstream (in Arizona, California and Nevada) and distant from the point at which the practices are being implemented (in Colorado, Utah and Wyoming). EQIP's locally led process also does not provide a forum for the many municipal and agricultural interests in the Lower Colorado River Basin who are directly benefiting from the salinity reduction efforts to engage in dialogue with local working groups and state technical committees in the Basin's upstream states.

As noted above, the Bureau of Land Management was directed by Congress in the 1984 amendments to the Salinity Control Act to implement a comprehensive program to reduce salt loading to the Colorado River System. Nearly 40 percent of the Basin's land area is BLM-administered public land. Through improved management practices, there is tremendous opportunity for the BLM to decrease salt contributions from public lands. Public Law 106–489, enacted to increase the funding authorization for the Bureau of Reclamation's basin-wide salinity control program, also contained a directive to the BLM to report to the Congress on the status of its salinity control program [1]. We appreciate the interest the Resource Committee has shown in this program by including this directive to the BLM in that law.

Frankly, we have been disappointed for many years at the lack of emphasis that BLM places upon its responsibility to implement a comprehensive salinity control program. In its agency section of the Federal Accomplishments Report to the Colorado River Basin Salinity Control Advisory Council (created by Section 204 of P.L. 93–320) dated October 2000, BLM began with the following: "The Bureau of Land Management recognizes and is committed to its role in reducing the mobilization of salt from public lands. As in past years, we undertake this responsibility through the multitude of individual management decisions that are made within each BLM jurisdiction. While salinity is not segregated as a specific program, it is affected by almost all other land management decisions that are made" (emphasis added). This acknowledgment that the BLM does not segregate salinity as a specific program is contrary to BLM's Land Use Planning Manual which states: "The Colorado River Basin Salinity Control Act, 43 U.S.C. 1593, requires a comprehensive program for minimizing salt contributions to the Colorado River from BLM lands." How can the BLM be meeting the directive, recognized in its own agency planning manual, requiring "... a comprehensive program for minimizing salt contributions..." through efforts, explicitly acknowledged in its October 2000 progress report that are not even "... segregated as a specific program?" This presents a clear incongruity. Either BLM has a salinity control program or it does not. We sincerely hope that the BLM will address this incongruity in its report to your Committee, and we look forward to working with your Committee on this matter.

Ongoing support of the Congress is necessary to maintain the needed implementation of the Colorado River Basin Salinity Control Program. The Program is a carefully designed series of sequentially staged elements that are only put in place as needed. The Program's success is dependent upon continued funding by Congress of the federal portions of the three agency's successful, cost-sharing, salinity-reduction partnership programs. Greater levels of Environmental Quality Incentives Program (EQIP) funding dedicated to the Colorado River Salinity Control Program for implementing on-farm salinity reduction practices would assist in reducing the backlog of USDA projects awaiting federal cost-share financial assistance. More focus on the lack of initiative and accountability on the part of the BLM to actually conduct a comprehensive salinity control program is warranted.

MANAGING ENDANGERED SPECIES AND WATER DEVELOPMENT CONFLICTS IS CRITICAL

Having a compact-apportioned water supply remaining available for further use and development is of no practical benefit whatsoever if users cannot obtain federal permits (be they CWA Section 404 dredge and fill permits, right of way or special use permits) on account of "jeopardy" biological opinions rendered under Section 7 of the federal Endangered Species Act. An impasse occurred in the early 1980s between further water development and administration of the federal ESA, with the U.S. Fish and Wildlife Service taking the position that any additional depletion of the waters of the Upper Colorado River system would jeopardize the continued existence of the endanger native fish species. Faced with this tremendous problem, water users, the States of Colorado, Utah and Wyoming and involved federal

[1] The Secretary of the Interior shall prepare a report on the status of implementation of the comprehensive program for minimizing salt contributions to the Colorado River from lands administered by the Bureau of Land Management directed by Sec. 203(b)(3) of the Colorado River Basin Salinity Control Act (43 U.S.C. 1593). The report shall provide specific information on individual projects and funding allocation. The report shall be transmitted to the Committee on Energy and Natural Resources and the Committee on Resources of the House of Representatives no later than June 30, 2000.

agencies, along with power consumer and conservation community interest groups negotiated, and in 1988, initiated, an innovative, collaborative partnership program to resolve these difficult endangered species and water management and development conflicts. The Program's negotiators were very clear in establishing dual objectives for the Program: allow further water development to occur while carrying out the mandate of the ESA to recover, and delist, the four Upper Colorado River endangered fish species. A sister program was initiated in the San Juan River Basin in 1992.

On behalf of the State of Wyoming, let me take this opportunity to thank Chairman Hansen and members of the Resources Committee for their leadership and support in enacting H.R. 2348, which became Public Law 106–392 on October 30, 2000. This Act's authorization of funding for the Bureau of Reclamation to continue as a cost-sharing partner in implementing the endangered fish recovery implementation programs for the Upper Colorado River and San Juan River Basins was critically important to continuing the success that these programs are enjoying.

As you may be aware, then Secretary of the Interior Babbitt, in the last of what had become annual addresses to the Colorado River Water Users Association, on December 14, 2000 praised the Upper Colorado River Endangered Fish Recovery Program as an "ongoing success story." Secretary Babbitt stated that Public Law 106–392 could provide a pattern for both funding and collaboration for the Lower Colorado River Multi-species Conservation Program (LCR MSCP) currently being developed. While we recognize that the levels of cost and commitment required in conducting endangered species recovery programs such as the Upper Colorado River Endangered Fish Recovery Program are very high, we believe that in the current climate, these types of approaches are the only viable approach available. We in Wyoming will work with your Committee in seeking refinements and revisions to the Endangered Species Act that can facilitate, simplify and generally improve collaborative, species recovery programs. Certainly, Mr. Chairman, it is our view that revisions to the ESA must recognize that the U.S. Fish and Wildlife Service cannot accomplish recovery of species by itself. Reform of ESA must include this acknowledgment and provide more meaningful and greater roles for the states.

INCREASING PRESSURE FOR ADDITIONAL WATER SUPPLIES TO MEET COLORADO RIVER DELTA ENVIRONMENTAL USES

Over the past several years, those seeking to increase the flow of the Colorado River at its mouth in the Gulf of California have become more vocal and visible in their calls for more water for maintaining and "restoring" the ecological values of the estuary area at the Colorado River's terminus. On December 12, 2000, the International Boundary and Water Commissioners (IBWC) for the United States and Mexico executed Minute 306 entitled "Conceptual Framework for United States—Mexico Studies for Future Recommendations Concerning the Riparian and Estuarine Ecology of the of the Colorado River and Its Associated Delta."

The Minute indicates the intent of the United States and Mexico to establish a framework for cooperation for developing studies and recommendations for preservation of the riparian and estuarine ecology of the Colorado River Delta. This work will be carried out through an existing binational technical task force that was established to facilitate such studies. Further, the IBWC will establish a forum for the exchange of information and advice among government and non-government organizations in the United States and Mexico.

As a follow-on to that agreement, the IBWC, working in concert with small planning committees in both the United States and Mexico, is completing arrangements to hold a Symposium on Colorado River Delta ecosystem issues on September 11–12, 2001 in Mexicali, Baja California, Mexico. The intent of this symposium is to provide United States and Mexican stakeholders with "baseline information" on the Delta. The two country's planning committees have agreed that the symposium will address three topical subjects. These are: 1) the legal framework for water use and allocation in both countries; 2) the water conveyance systems in the Lower Colorado River Basin from Imperial Dam to the Gulf of California; and 3) the ecological/scientific knowledge based on existing studies and research of the Colorado River Delta ecosystem and its geographical area. We believe that it is important that the upcoming symposium be on the Congressional "radar screen" and that you are aware there are numerous interests pressing the Federal Government to provide additional Colorado River water to Mexico. It is, of course, problematic, to consider that -- even if there were additional sources of water that could be provided across our Nation's border -- we have no ability to control how or whether another sovereign nation, in this case Mexico, decides to allow those flows to pass down to the estuary environment or diverts that additional increment of water to consumptive uses enroute to

the Gulf. The Colorado River is fully appropriated so finding additional sources of water to meet environmental needs is a most challenging proposition.

On June 18, 2001, on behalf of Wyoming, I joined with the other Governor's Representatives on Colorado River Operations for the other six states, in sending letters to Secretary of the Interior Gale Norton and Secretary of State Colin Powell concerning the matter of additional water to meet the estuary environmental needs in Mexico. Our letter expressed several key points, including the United States' past and continuing full compliance with all provisions of the Mexico/United States Treaty of 1944 and all subsequent minutes thereto. Our letters requested that the United States, through the IBWC and the Department of the Interior, recognize the legal authority of the Basin States over the appropriation, administration, development, use and management of their apportioned water and associated water rights, and the important and central role of the States in operating and managing the Colorado River, as established under U.S. law. The letter requested that the U.S. "cooperate and communicate closely with, and seek the participation of, the Basin States" and noted that each of the "States are committed to playing a cooperative and constructive role in addressing these issues." Further, "any proposal to manage water and other natural resources for environmental purposes in the Delta that includes the cooperation, participation or funding by the United States should be consistent with clearly articulated and agreed-upon habitat, species or environmental goals."

As with regard to recovery of endangered species, the federal government of the United States must realize and recognize that these issues cannot be solved without the Basin States and that attempts to broker a deal for providing additional flows to Mexico cannot be placed upon the backs of the Basin States.

CONCLUSION

There are several foundations upon which the "Law of the River" rest. Centrally important to Wyoming's long-term interests is the certainty that is provided to the Upper Basin by the Law of the River, including the right of future development. Further, the Law of the River defines the apportionments of the states. Under "normal" water supply determinations, there is a limit in the Lower Colorado River Basin of 7.5 million acre-feet per year of beneficial consumptive use from the mainstem Colorado River. The implementation of the California Plan is necessary on account of that fact. Wyoming's efforts in each of the management arenas discussed above, and others not addressed and beyond the scope of this testimony, are important components of maintaining our ability to develop our apportioned share of the Colorado River in the 21st Century, and beyond.

As the Basin States, working cooperatively together on a myriad of issues within the complex framework of the Law of the River, have certainly come to appreciate, the best escape from a problem is to solve it. Since water is such an indispensable and scarce natural resource in the American West, resulting disputes and the manner in which they are resolved, whether through litigation, or through the cooperative approaches being undertaken in the Colorado River Basin presently, deserve careful attention. We greatly appreciate the interest, concern and attention which this Committee places in these matters and which are reflected in the conduct of today's field hearing. Thank you for the opportunity to submit this testimony.

The CHAIRMAN. Thank you, Mr. Davidson, and I thank the witnesses for their excellent testimony. And what we intend to do now is recognize each Member for 5 minutes. Keep in mind it will go as many rounds as these folks can handle. If you get so you can't handle any more, walk out. Of course, if you walk out, we're going to hammer you and your respective state. Just kidding.

Ms. Jones, let me say something to you if I may. Mr. Anderson, Mr. Holsinger, Mr. Dishlip, Patricia Mulroy, Mr. Mutz, and Mr. Davidson all alluded to California stepping up and living within their 4.4. This agreement's there, you all feel good about it, you think it's going to work. And yet they've all alluded also—Mr. Anderson alluded to the Salton Sea. If Mary Bono was sitting here, who represents that area, she would go in great detail how important it is to flush out the Salton Sea. It would take all of Lake

Mead and Lake Powell probably to do it, but she talks about that on a regular basis.

You have alluded to some drought figures you've got. California is a growing—I mean, let's face it, the biggest state in America right now. Two members of this panel are from California. You really think you can do it, I mean we're all counting on it. I kind of got the impression from everybody else here that they're counting on California living up to their agreement. To add, even more complicated than that, we're going to talk about the same with our friends from the south, from Mexico, how are we going to resolve all that. I'd kind of like to hear your opinion of those things.

Ms. JONES. Well, I think I might start off by noting that in your opening remarks, Mr. Chairman, you had mentioned the massive bill introduced by our Subcommittee Chairman here with respect to the CALFED Bay-Delta Program. I think that if you looked at the CALFED program or the Bay-Delta issues perhaps 10 years ago, as people have mentioned with regard to the Colorado River, you would never have thought that people came as far on that issue as they have so far, and that is giving us encouragement that we can move forward with these Colorado River issues in a similar way. Certainly, as has been mentioned, the CALFED Bay-Delta program is a very expensive proposition to move forward.

The Salton Sea is one of those emerging environmental issues that has perhaps been in the shadow of more well known environmental resources to the north in the Bay-Delta, but we are hopeful that we will be able to work out among the competing interests and the folks that have different views about what the future of the sea should be a way that allows that to be resolved, as well as being able to go forward with implementing the 4.4 Plan, which is very key to California, and which we do believe that our local agencies are working with us to make good on-the-ground progress in some of the projects such as the canal lining projects, the groundwater storage projects, and putting together the water transfers.

It hasn't been mentioned here yet this morning, but this week Metropolitan Water District of Southern California, in its board meeting, will be asked to consider approving yet another ag-to-urban water transfer with Palo Verde Irrigation District, located in the Blythe area of California, yet another thing to move forward on the 4.4 Plan. So we are hopeful that with continued effort in this area, we will be able to keep this process moving.

The CHAIRMAN. It's going to be very interesting. It should be a real challenge to California, because you're accustomed to using a lot of our Upper Basin water. Mr. Dishlip pointed out that Arizona was using their full allotment during his testimony. Mr. Anderson, does Utah use their full allotment?

Mr. ANDERSON. At the present time the State of Utah's allocation would be about 1.37 million acre-feet. We're currently using about 950 to one million acre-feet of water within the state of Utah. The remainder of our water either goes down into Glen Canyon Dam and is stored there, or if Glen Canyon needs to be released downstream because it may spill, then it would go on downstream to Lake Mead.

The CHAIRMAN. And Parker and Davis in California. Mr. Holsinger, what about Colorado, are you using your full allotment?

Mr. HOLSINGER. No, Mr. Chairman, at this time Colorado is using, on a rough average, about 2.6 million acre-feet per year. The remainder of our Compact apportionment flows downstream for storage in Lake Powell and use by the other states.

The CHAIRMAN. Ms. Mulroy, are you using yours?

Ms. MULROY. Almost.

The CHAIRMAN. You don't have much, but how much do you use?

Ms. MULROY. We expect to use our full apportionment by the year 2004. That's what we're estimating. We're diverting our full apportionment at this point, but we're recharging our own groundwater basins with it. So from—for river purposes from a diversion standpoint, yes, we are diverting our full 300,000, but we're not using it for M&I yet.

The CHAIRMAN. Mr. Mutz?

Mr. MUTZ. Mr. Chairman, New Mexico's Upper Basin allotment is a little over 700,000 acre-feet. We're presently using about 450,000 acre-feet of that water. But projects are authorized, and some under construction, most under construction except for the Animas-La Plata, that will utilize about 90 percent of that allocation. We are planning a project that will use the remaining 10 percent of that basic apportionment in the Upper Basin.

And of course the Upper Basin Compact provides that one state may use another state's unused apportionment with no right to it. And we're not bashful about using that for a short period of time.

In the lower basin, as I indicated earlier, we still have not put to use any of the 18,000 acre-feet authorized by the Central Arizona Project, but we're working on it.

The CHAIRMAN. Mr. Davidson?

Mr. DAVIDSON. Mr. Chairman, no, we are not, and we're proud of it. And just as the original framers of the Compact, we believe that the certainty that we're provided under the Law of the River and under the Compact allows us to develop that remaining portion. We have probably, depending on the estimates, roughly 200,000 acre-foot a year that we're not using right now that we want to be able to develop reasonably and responsibly, rather than hurry up and develop before California gets their hands on it.

The CHAIRMAN. So there are only two states that are using their full capacity, that would be Arizona and Nevada; is that right? Well, California, they use over their capacity, which they've done—well, that's what I'm saying. You really got your work cut out for you, if I may respectfully say so.

Chairman of the Committee on Water and Power, Mr. Calvert, you're recognized.

Mr. CALVERT. Thank you, Mr. Chairman, I think. As was pointed out, southern California is dependent upon the Colorado for 60 percent of its water needs. Los Angeles is not able to import as much water from the Owens Valley area, based upon recent court decisions; the same applies to the Mono Lake area. Imported water from northern California has been threatened by recent decisions both for the Endangered Species Act, and Native Americans most recently on the Trinity River, which involves 300,000 acre-feet of water which, by the way, is the entire allocation for the state of Nevada within the Colorado River.

On top of that, of course, California, under this interim agreement, must meet its 4.4 million acre allocation by 2016, and put on top of that the demand in California, as throughout the entire West, is going up dramatically. That's before we get into the Mexican delta, before we get into the Salton Sea, before we get into ESA and the rest of it. So when people refer to HR 1985 as a massive bill, it may be, but we've got a massive problem.

I guess the question, and I think everyone here pretty much answered that question, is that—and I think Mr. Dishlip of Arizona said that the best security for Arizona, I suspect the best security for both the Upper and Lower Basin state, is make sure that California lives within its 4.4 million acre-foot allocation. Does everybody agree to that? Yes, I don't see any disagreement with that. So how do we do that? And that's why we have legislation that we want to move forward that most Californians are already on board with.

Miss Jones, do you believe that California in the future can meet its future needs without additional storage in the north, on top of—obviously we'll get into other programs, but let's talk about additional storage, both off stream, groundwater and the rest.

Ms. JONES. The storage is a very important part of our package of meeting California's water reliability, as was alluded to by the other states. Right now the focus has been on the groundwater storage side. To some extent we have neglected large-scale groundwater storage programs, you might say, in past years, and only are recently beginning to implement these kind of actions. Since California's last drought, for example, we now have another half dozen or so of large-scale groundwater storage programs on line, some with capacities of as large as a million acre-feet, bringing to nearly 20 the number of large-scale groundwater management programs—

Mr. CALVERT. Specifically—

Ms. JONES. Semitrophic Water Storage District, Arvin-Edison Water Storage District, the programs by the two Alameda districts in the Bay area, those kinds of projects—

Mr. CALVERT. Miss Jones, reclaiming my time. Surface storage, how about surface storage, is your office prepared to support additional surface storage in the state of California?

Ms. JONES. I might have to punt that question for the Governor's office to answer. Surface storage, as you know, is a—surface storage outside of what is under discretion in the CALFED Bay-Delta Program remains a controversial subject politically within California, certainly—

Mr. CALVERT. Reclaiming my time again, I just want to make this point because we're limited to these 5 minutes, and certainly we'll come back, is that within HR 1985, obviously it supports all the groundwater storage solutions that we can possibly come up with, also it does not preclude the fact that we can move toward surface storage in the state of California if it—obviously, is what we need. Based upon everything that I've heard in this testimony today, California's diminishing supply of water, based upon existing reality and its increasing demand, we're going to need all of that water in order to meet our requirement by 2016 to the 4.4 million acre feet Plan allocation. Wouldn't you agree?

Ms. JONES. Absolutely. We need every resource we can get our hands on.

Mr. CALVERT. Talk to the Governor, if you can get a hold of him, and let him know that we need to make sure that we—we're all supportive of this legislation, and so we can develop additional water resources in the state of California.

The issue on Salton Sea came up, and obviously that's a tough issue. But—and obviously there's some discussion about the link between the 4.4 million acre feet allocation and the Salton Sea. Somebody wanted to get more specific about that. In the interim agreement is there some legal requirement that the Department of Interior come up with a preferred solution to the Salton Sea prior to some of the litigation work with the irrigation district and the water transfer in San Diego, is someone aware of that? Is there some kind of—Miss Jones, is there—

Ms. JONES. The real requirement for us is within the Interim Surplus Guidelines themselves, which say that if by the end of 2002 California has not executed the Quantification Settlement Agreement package and is moving forward, then the surplus criteria do not take effect. That's the rule.

Mr. CALVERT. So that's a real problem that we're going to have to—Has the Department of Interior indicated to you yet when they're going to come up with a preferred solution on the Salton Sea?

Ms. JONES. Not directly, no.

Mr. CALVERT. I'll come back for a second round, Mr. Chairman.

The CHAIRMAN. Ms. Napolitano.

Mrs. NAPOLITANO. Thank you, Mr. Chair. I feel like I've been battered. California seems to be the target. And the reason, as I stated in my opening statement, that I'm very concerned is because all of us have a vested interest in it.

I've heard a lot of the talk concentrated on the allocations, on the issues between the different states, but I've heard nobody talk to the quality of the water of the river. And my concern, of course, has been Moab, which we pushed through last administration. And the second one that is totally a very big bone of contention in my area is the cost of the salinity, taking the salinity out of the river water. Yet I've heard nobody say that this is an issue that we need to look at. Because there's a big cost to taking that salt out of the water that can be used to promote the underwater—the underground, the river—underground river, I'm sorry, my mind is a little on California time yet, the storage of water, extension of the infrastructure of recycling of water, I mean all of that can be utilized to be able to help California, yet I'm not listening to anybody saying these are issues that may be able to help California meet that 4.4. And I'd like to ask anybody how they feel about it. Yes, we are under great time constraints, if you will, we all know it, at least those of us that have been involved in the water. And we need to undertake, of course, a big program of education for everybody to understand how important the correct usage of water, where that includes agriculture, urban, et cetera. But I'd like to hear from any of you as to how you feel you could help us deal with that issue.

Mr. ANDERSON. I was just going to say we have a program called Colorado River Basin Salinity Control Program in place in the

Colorado River Basin. All seven states are involved. Many of us here at the table are involved with that program, serve on the Colorado River Basin Salinity Control Forum. And it's one of the best programs, if not the best water quality program in the country. And I know we're trying to do a lot to control the salts that get into the water.

Much of the salts that enter the water comes in naturally. The Basin itself sits on an old sea bed and the formations are such that as the water goes down through, travels through the country, picks up about 400 part per million of salts. The remaining salts, another approximately 400 part per million, almost doubles, comes from irrigation, generally irrigation runoff, much of it from the Upper Basin, probably most of it from the Upper Basin. And the Colorado Basin Salinity Control Program is an effort that we are working on to improve irrigation efficiency, therefore reducing deep percolation, reducing runoff from irrigated ground, that has proven to be very cost-effective in controlling salt loading.

And so I think the reason that we probably haven't talked about it is we think we have a program in place that is addressing the issue, and we are meeting all of the water quality criteria that has been established under the Clean Water Act for the Colorado River system.

We continue to implement these programs in Utah. We have numerous programs in the Uintah Basin and in the Price San Rafael area where we're funding irrigation improvements through this program—

Mrs. NAPOLITANO. Mr. Anderson, I understand that, and I'm very happy to hear that you have those very wonderful programs. The issue though is that a lot of the water that we receive in the southern basin, the south basin is heavily—well, it is a problem for MWD and other water agencies, that they have to take salt still out of that water.

Now, my understanding, and this is in speaking to the former Secretary of... I've lost it, Mr. Richardson, Secretary Richardson, that the lands that provide a lot of the salinity to the river, over half of them are Federal lands. My concern then is why are we not asking the Federal Government to take its share of the cost of taking the salt out of the water, helping the states that deal with the issues, especially in the Lower Basin, that will allow us to be able to again conserve funds to be able to deal with our own reduction of the 4.4 Plan?

Mr. ANDERSON. Again, some of the others may want to respond. One of the—you're right, one of the big issues is that in—for example, in Utah, about 67 percent of the state is owned by the Federal Government. You get out in the Colorado River Basin, that percentage goes up much higher than that; it might be 75 percent of that area is operated—is owned and controlled by the Federal Government.

The Bureau of Land Management is the biggest landowner out in that part of the country. Bureau of Land Management is a participant in the salinity control program. We, as the basin states, have been trying to get the Bureau of Land Management to do more, to go into their lands and try and put some money in to

control runoff from their land, to control the amount of salinity that's coming.

I think there was a bill passed earlier this year requiring the BLM to submit a report to Congress on their activities. We support that legislation, and are hoping that will help put some additional pressure on the Bureau of Land Management—

Mrs. NAPOLITANO. Well, I think it goes beyond helping BLM do its job, I think we need to force BLM to do its job to a certain degree.

All of you mentioned Mexico. My understanding is you have a desal plant down near Yuma, if I remember correctly, that sometimes does not go on line. I don't hear anybody saying that it is on line, that it is used to be able to clear the water before going to Mexico, per the treaty. And that's an issue also. If we're all going to say, well, let's give them water, what about the quality of water that's required, even for those riparian areas, or especially for the riparian areas that they're talking about?

Ms. MULROY. Herb may want to jump in on the desalter, but I'll go ahead and take that. We mentioned earlier that the lack of using the desalter has created the Cienega de Santa Clara, which is a huge bird sanctuary. I think if the desalter were to be started and that water would no longer flow into Mexico and that habitat would be destroyed, you would have a major international incident. Because there is huge value to the Mexicans in the Cienega de Santa Clara, so it's not that simple.

Mrs. NAPOLITANO. Right, no, I understand, and there's also litigation currently.

Ms. MULROY. By United States environmental groups.

Mrs. NAPOLITANO. And Mexican environmentalists, right. You might also note that part of the water that flows into the Rio Bravo and eventually into the Rio Grande is being dammed on the Mexican side, creating about a $90 billion loss to Texas farmers.

The CHAIRMAN. The gentleman from Utah, Mr. Cannon.

Mr. CANNON. Thank you, Mr. Chairman. Again, I would like to thank all of our panelists for being here, and welcome to my district. We're right on the edge here of Mr. Hansen's district and mine. He got the airport because he loves to fly, but we got the Department of Natural Resources buildings in my district. All that may change here in the near future though.

I was pleased to hear about the collegiality among the states and the development of working relationship that's happening there. I couldn't help but think about in Utah here, where we have a bit of a water shortage. And so the last few days, as the heat has gone up and the ditches have decreased in their volume, I've gotten to know my neighbors a lot better, and I'm hoping that we can maintain that same kind of collegiality that you have.

Interestingly, we have about 12 families that use a pressurized sprinkler system, and it is so much more efficient that the water district doesn't even count what we do because we're way under what our rights would allow there. And that all worked quite well until recently; one of our neighbors was unhappy with the flow, and so he decided instead of sprinkling he would open all his valves and flood his area, which leads us back I guess to the salinity problem that Ms. Napolitano was concerned about. So these

issues that we're dealing with are important issues. They go all the way up from individuals and up to states, of course.

There are a couple things that I was interested in if I could just get a bit of a follow-up. I appreciate, Miss Mulroy, your information about the Cienega de Santa Clara. And I'd actually like to know a little bit more about that, how big it is, how it works. And Mr. Dishlip, if you could address that, I would appreciate that.

Mr. DISHLIP. Well, the Cienega de Santa Clara is the result of a project constructed by the Bureau of Reclamation to remove the drainage water from the Wellton-Mowhawk Irrigation District that at the time was, back in the 1960's, I guess, was adding a great deal of salt to the—drainage waters were being discharged back to the Colorado River and being delivered to Mexico. And because of that, it was creating a great deal of problems with irrigation in Mexico. And so it led to an international negotiation, which led to a Minute to the Mexican Water Treaty. Part of the result of that Minute was an agreement that the United States would not put too much salt or much greater salt loading in the salt—in the Colorado River than what would divert at Imperial Dam. Well, the solution to that problem was to make sure that this drainage water did not discharge any longer to the Colorado River, at least at the high parts per million that it was.

And for a period of time it was felt we could divert that water around the Colorado River and discharge it to the ocean in Mexico, and so the Congress passed the Salinity Control Act, and on Title 1 of that led to a construction of a bypass canal. And now the water that's pumped to a drainage in the Wellton-Mowhawk area which is high is salt is bypassed from the river and it's discharged. And instead of being discharged actually to the ocean, it was discharged near the ocean in an area that historically had some marshlands in Mexico.

Well, what was thought to be a fairly short-term solution until the Yuma Desalt Plant was up and running turned out to be a 25- or 30-year issue. And as a result of that, this about 130,000 acre-feet of discharge water annually has been bypassed to the Cienega. And I believe it's created about 10,000 acres, or hectares, I'm not sure which, of marshland habitat. That marshland habitat is very high quality for bird life. The water is very salty that is discharged there, so you don't get a diverse riparian habitat, but you get a lot of cattails and marshes. And as a result it's developed a very high quality habitat in the Republic of Mexico for bird life.

Now the issue really has come about, I believe, as a result of these limits being placed on the use of water in the United States, and California no longer having access to an unlimited supply of water, the Lower Basin now must live within its entitlement. As a result of that process that led to the construction of the desalt plant, which was now we have to treat that water and not bypass it to the ocean any more, but treat it and deliver it to Mexico as higher quality water has become the issue of the day.

And the issue really comes about, what do we do? Do we turn that desalt plant that has been constructed and it's kind of mothballed in the Yuma area on—carry out the activity as it was planned in the early 1970's to offset and reclaim that water and make it useful and deliverable, or do we maintain that habitat in

Mexico and find some other way to meet the intent of the Salinity Control Act. And this is a real challenge.

On top of that challenge is that the operation of the Yuma Desalt Plant is quite expensive; I think the estimate is it could cost as much a $25 million a year to run that desalt plant. And even after you run that desalt plant, it will only treat about two-thirds of the water supply. The way the desalt plant works is it treats a portion of the water to very high quality, and then that's released to the river and blended, but the remaining part is very high concentration in salts, it's called the brine stream. And so about a third of the water supply would continue to have to be discharged to the Cienega even if you ran the plant, and now the quality of that water is going to increase in salinity by a multifactor because now you're dealing with a much higher level concentration.

The Bureau of Reclamation is actively involved in looking at alternatives of what to do about this issue. From the State of Arizona standpoint, we look at it as a combination of a water quality issue, but also water supply issue. This water that's being discharged to the Cienega is usable water, all it needs to do is to be treated. And considering the value and the shortage of supply in the Colorado River, a hundred or 130,000 acre-feet is a significant water resource available not just to the state of Arizona, but to the entire basin states. But things have happened over those 30 years and the situation's changed, and I don't know right now what the answer is.

Mr. CANNON. I think my time has about expired, but can just I ask one quick—if you turned the desalinization plant on, what would the cost per acre be? Do you have any idea?

Mr. DISHLIP. I believe the Bureau of Reclamation estimates the cost per acre-foot of treated water, on the order of $350 an acre-foot.

Mr. CANNON. Great. Thank you for your patience, Mr. Chairman.

The CHAIRMAN. The gentleman from Nevada, Mr. Gibbons.

Mr. GIBBONS. Thank you very much, Mr. Chairman. Coming from the state that has the smallest appropriated allocation of Colorado River water, I'm very pleased also to be here as officious intermeddler on this Committee. I'm also pleased to see the State of Nevada representative in this issue as well because of the significance, as Miss Mulroy has said, about the state of Nevada.

My concern, however, is the fact that there's so much complexity in our legal system with regard to this, the complexity of state versus state, state versus Federal, Federal versus international laws, all riding together to come to some sort of uniform agreement, and the effect that's going to have not only on the users, but on the ultimate condition and quality of the Colorado River as well.

I was very pleased when I read Mr. Holsinger's testimony. I came to page 6 and in that, Mr. Holsinger, you proposed that Congress amend the Land/Water Conservation Fund to direct the Forest Service to use its allocated Land/Water Conservation Fund moneys to acquire water rights, and then transfer those water rights to each state. This, to me, sounds like a far better idea than having the United States own and control water rights themselves because, as we in the West know, states do have the right and title to the water that's within the states themselves. So is Colorado

prepared from a political standpoint to make that recommendation in Congress?

Mr. HOLSINGER. Thank you, Congressman. The State of Colorado just recently contacted our delegation about this very idea. We've yet to have a great deal of dialogue, but we're optimistic that working with our delegation and others, we'd be able to try to do something like that.

Mr. GIBBONS. Good. Let me, in the bit of time I've got remaining, talk about some of our state of Nevada issues. Miss Mulroy, you know, obviously the State of Nevada is either—very close to its allocated share right now, 300,000 acre-feet. Knowing that we've gone through a series of steps internally in the State of Nevada to make more efficient our utilization of water, in turn, using return flow credits to be able to extend the utilization of that water, what—what's the State of Nevada preparing to do in the year 2016, when it reaches the ultimate cap, even with the bypass surpluses, in terms of its utilization? What are we—what do we plan to do beyond 2016? That date is not that far away, and we certainly have a great deal resting on any planning that may take place.

Ms. MULROY. That's correct. In the—after 2016, we would first begin to use the water that we've banked in the State of Arizona. We have also put some things into place, we have bought significant shares in the Muddy River within the State of Nevada, and that's a tributary to the Colorado River, and it would be our intent to begin utilizing those. We have an agreement with the Muddy River Irrigation District that will allow us to begin utilizing that water. So we're looking at any and all alternatives.

But our safety net is the water that we have banked in the State of Arizona. Because the combination of the interim surplus criteria, water conservation, and banking in the state of Arizona will take us beyond the year 2040.

Mr. GIBBONS. Thank you very much, Mr. Chairman, I appreciate that. And I'll reserve any future questions till the next round.

The CHAIRMAN. I thank the gentleman. If Josh here figured this right, when you all told me what you weren't using, there's about three million acre-feet that's flowing to California that's not being used by the other states. Did I figure that right, Josh? Anyway, this hearing, to me, jumps out as the problem that's going to happen in 2016. And I guess it's kind of a responsibility for all these other states to, as Miss Mulroy just pointed out, make sure they're able to take care of their water after that time.

And what I really feel good about is the cooperation that seems to be here among the seven states on how they're going to do this. You know, and I hope that stays there. But sometimes I've seen these things happen, over my 20 years of Congress, when it finally comes down to push and shove, we're back in court. And I hope that doesn't happen. So I think what would avert that is if people make the—whatever is necessary to take care of those things prior to that date coming about.

I appreciate Mr. Holsinger's comment on what he just said to Mr. Gibbons. That's a very interesting concept, we'll look forward to seeing that. There's just a lot of things that are pretty sacrosanct, you know, when you start talking these areas of who has control

of water. I don't know of anything in the West that's more important than water; we live and die with water.

This isn't a hearing on the Endangered Species Act or energy, but the Colorado River has those two problems also. I don't think a lot of people realize the ramifications of the Colorado River. A few of you have alluded to the Endangered Species Act. Does anyone want to tackle some of that? Let me tell you what we'll do. The Committee has put together a working group, comprised of five Republicans and five Democrats. The Endangered Species Act was passed in 1973, and I assume most of us probably would have voted for it if the intent of the Act was carried out. If you go back and read the original hearing on it and what was said on the House floor and the Senate floor, it was for kind of major species, for example, the bald eagle was mentioned a number of times, the grizzly bear was mentioned a number of times. The Act just somehow got a little carried away, in the opinion of a lot of us, and has gone way beyond that. And if there's any Act that is difficult for BLM, Forest Service, Park Service, you folks who work with water, people that work with energy, it turns out to be the Endangered Species Act. We're hoping that it can be somewhat worked out. It will not go away. I mean, I get letters every day saying repeal it. It's not going to happen. What has to be and what should be done is to modify the Act so it's a more working Act and we can work with it.

I'll throw out one recommendation just that the Committee has worked on, and you tell me what you think about other recommendations that you may have that you feel would be workable, because I'm sure every one of you has to work on it. Do you know, if you wanted to go into the Grand Canyon right now and do something, you'd have to have a permit from the Superintendent of the Grand Canyon? And that's how the Park Service works.

Now what if someone came in to one of your states and wanted to explore the possibility of putting some species on to the Endangered Species Act. Would you feel comfortable if, right here in the state of Utah, if Kathy Clark, the Natural Resource Director, if she had a peer-review group, and that peer-review group said, well, let's see your qualifications, and let's also see what this species is and why you want to preserve it. And then if they agree, you get the go-ahead. Now this is done in other areas, we've done it in the Park Service. And in a way, it puts a little more responsibility on the states, but it would probably curtail the listing problem that we have. Biggest problems we have are listing and delisting, they're the two biggest problems we have with the Act.

Now with that said, I've used more than half of my time. Does anybody want to respond to that? Mr. Davidson, you looked like you could hardly wait to say something. I'd like to turn to you.

Mr. DAVIDSON. Thank you, Mr. Chairman. Pretty good mind reader too, I guess.

The—without knowing the details of this peer-review group itself, certainly I don't know how capably I can respond to it, although I think it probably gets at one of the issues that I believe is at the heart of some of the problems with the Endangered Species Act, and that is the whole, as you mentioned, the listing determination. And right now, basically it takes a postage stamp for an

individual organization to request or insist upon the listing of species. And then of course, as you all know, that triggers a number of requirements for the Fish and Wildlife Service, and ultimately can trigger a number of obstacles for anyone who wants to, for example, float a portion of the river that—under a situation where they require some kind of a major Federal action.

So certainly from Wyoming's perspective, we believe that there needs to be some kind of a realistic assessment of the science that goes into determination of whether there's a listing or not. As you all know, it's based upon—currently based upon the best available science, but that determination of best available science is oftentimes left to individuals who use their discretion pretty broadly, I might say, and we believe that some kind of a peer review to assess the science behind any type of a listing determination, or delisting determination, for that matter, would certainly be very useful.

The CHAIRMAN. Do you think the economy of the area should be a consideration on listing species?

Mr. DAVIDSON. Again, Mr. Chairman, absolutely. And I believe it technically is required to be a determination, but it is given very short shrift, generally, in the determinations.

The CHAIRMAN. Do any of you feel that when Fish and Wildlife takes over private property, that they should pay the market value, or should they pay the depreciated value because of the species? Does anyone want to tackle that one?

Mr. DAVIDSON. Mr. Chairman, this would be my own personal viewpoint, not that perhaps of the Governor of the State of Wyoming, although perhaps it would be, I don't know. Certainly my viewpoint is that it should be the fair market value, not the value that's been depreciated as a result of listing.

The CHAIRMAN. Coming out of the Attorney General's office, you read the Constitution where it says just compensation?

Mr. DAVIDSON. That's correct, Mr. Chairman.

The CHAIRMAN. That's the way I read it too, as Chairman of this Committee. The gentleman from Colorado, Mr. Calvert.

Mr. CALVERT. Thank you, Mr. Chairman. California certainly must help themselves, and certainly we're trying to do that in California to meet our obligation for future water, but would you all be supportive of Federal assistance leverage to build water projects in California if it helps us meet the 4.4 Plan? Why don't we start off with Mr. Anderson.

Mr. ANDERSON. Again, we've been very supportive. I think California's been very honest with us in their desires. I believe them when they say they will do whatever's necessary to be done to comply with the Interim Surplus Guidelines, the record decision, and implement their four point plan. If it requires Federal funding for that to be successful, then from our—from my perspective as a person who visits with them and sits at the table with them, I would support that.

Mr. CALVERT. Thank you. Mr. Holsinger?

Mr. HOLSINGER. Thank you. Mr. Chairman, the State of Colorado is very supportive of actions such as that for California to implement their water use plan.

I might qualify it with, so long as it doesn't affect our ability to go forward with the implementation of Animas La Plata in

Colorado; that's also very important for Colorado and New Mexico. But yes, we're very supportive of that.

Mr. CALVERT. We'll work with you on that. I would hope you say yes, Miss Jones.

Ms. JONES. Oh, absolutely, and as you probably know, some of our California water users are starting to talk about a proposed legislative proposal for such a system.

Mr. DISHLIP. I think through the discussions we had with the 4.4 Plan, we were all educated to a high degree on the interconnection between state water projects, central valley projects, Colorado River supplies, and how the plumbing all links together, including Arizona's perspective that California does have enough water available if they can find ways to put it to use. And our interest in the Colorado River was that we recognize that California's going to have an increasing need for water, but they needed to reduce on the Colorado River side, and might require additional expenditures in the northern California side. We clearly are supportive of that.

But on the other hand, we believe that the proposal that's been put forth on the 4.4 Plan can be accomplished within California even without funding from—on the northern California side.

Ms. MULROY. We concur with the State of Arizona. We are—we are very supportive of any funding for CALFED projects, but would have to leave the burden on the State of California to meet its obligation. And as—we would be concerned if it would be in competition with any of the water quality issues that we have, requests for funding out in front of Congress to help improve the water quality in Lake Mead, to remove perchlorides and urban contaminants from entering Lake Mead. And we, with Congressman Gibbons' assistance, are looking for assistance in that area. So to the extent that it doesn't compete.

And let me throw in one other thing. We would be supportive of northern California projects, but there is a project in the state of California being looked at that we would not only not be supportive of, but we would violently oppose, and that would be another aqueduct for diversion into San Diego. If that were part of any funding plan, then that would crater any support.

Mr. MUTZ. Congressman, we, as indicated in our statement, are supportive of California's efforts to reduce its use of Colorado River water. And they've got a big job ahead of them. We recognize the effort that's been put forth to date.

Again, as indicated by my colleagues, we would look carefully at any competition for funds with projects with which we are interested in at home. But generally we would support California in its efforts, looking, however, to California to take the initiative in doing its development.

Mr. DAVIDSON. Thank you, Congressman Calvert. We also would support request for funding from California's part that would result in their ability to comply with the 4.4 Plan. I would caution though, sometimes things work slowly through the Federal processes, and we would not be supportive of any slippage in the schedule, I guess, whether that's caused by lack of Federal funds or just through California's own actions.

Mr. CALVERT. Yeah, and I'm glad that you primarily seem to be supportive of this, or you are supportive of that, because obviously

cooperation is important, not just with all of the Western states in order to meet our future water demands. And certainly we know water is fungible just like electricity, and that has an effect on the entire West. And I assure you as the Chairman of the Subcommittee, I have been and will continue to work with each one of you to try to meet your future water needs and demands.

But I just want to make the point that based upon my earlier statement, based upon the fact that California must meet its 4.4 Plan based upon the interim decision, based upon the fact that we have at this point a diminishing supply of water in California, increasing demand on water, that we're going to have to do a lot, and we'll need to leverage Federal money to assist California to meet future demands and make sure we don't have a problem down the road which will affect the entire western United States. So I appreciate your support in that, and look forward to working with each one of you.

And now I will recognize Miss Napolitano from Los Angeles, California.

Mrs. NAPOLITANO. Thank you, Mr. Calvert. I'm very interested in a lot of the dialogue on some of the solutions. One of the questions that I have is—had since the Chairman brought up the endangered species, and Mr. Dishlip, is there any program similar to the Upper Colorado River Basin Fish Recovery Program being—I know there was talk of it to the Lower Basin to help maintain the endangered species, fish.

Mr. DISHLIP. Yes, Congressman Napolitano, the program in the Lower Basin is called the Multispecies Conservation program. It's a little different than the recovery program in the Upper Basin. The recovery program in the Upper Basin is geared at recovery of certain listed endangered species. In the Lower Basin, we looked more toward a comprehensive approach to recover existing endangered species, but also to look at a wide range of additional species to avoid future listing. And so it's taken on a broader scale, you might say, in the Lower Basin. It's a cooperative effort. Right now it's just still in the formulation standpoint. We really don't have other than a pilot program anticipated that the current time. But the idea is to move forward potentially with a 50-year program to lead to recovery of the species and avoiding of additional listing.

It's a cooperative effort between the water users, the power users, the Federal Government obviously is a very critical player in all of this, both because they manage the Lower Colorado River Basin, and also a considerable amount of water use in the Lower Basin is for Federal purposes, including Indian tribes'.

Right now what some of the difficulties are is getting established exactly what that program will be. There has been some contractors hired to help a Steering Committee put that program together to get a better concept of what needs to be done. Then that has to be costed out, and then some kind of a funding mechanism has to be put in place.

I think the idea right now know though is to move forward with a pilot program as soon as possible. And I believe Members of the Steering Committee have gone back to Washington, maybe a few weeks ago, even, to discuss that with some of the Members of Congress about getting some potential funding for some pilot programs.

I think the idea of a multispecies conservation program is a very good one, it's a creative program, again, a collaborative program. Exactly how it's going to work is not quite in place yet.

Now one of the comments that I had to Chairman Hansen is that in the lower Basin, one of our particular issues is that under the Endangered Species Act, Federal actions, and in this case, since the river really is a Federalized river, it's run by the Secretary of the Interior, leads directly to consultation between the Federal Government and the Fish and Wildlife Service, the Interior Department, the Bureau of Reclamation and Fish and Wildlife Service. And yet the direct water users, the beneficiaries, the people who have a big stake in the water supply is not the Federal Government, it's the private and the Indian tribes who use the water and the power. And just the structure of the Section Seven consultation makes it fairly difficult sometimes for the people who have the most at stake to be at the table to—

Mrs. NAPOLITANO. How do we improve it?

Mr. DISHLIP. Well, we hope that the multispecies approach does improve that, because that creates a Habitat Conservation Program where everyone works together, including the Fish and Wildlife Service, to avoid that problem.

Mrs. NAPOLITANO. That's in a sense just a task force, so to speak. What if the Federal Government were to allow the input at—dealing with different—

Mr. DISHLIP. I think that is exactly what most of the water users would like. They would like to be at the table as well as the Federal Government. I believe that might take a modification to the Act though. And so short of that, we found this other solution which may work as well, which is be at the table through this cooperative effort.

Mrs. NAPOLITANO. Does it also include Indian—

Mr. DISHLIP. Yes.

Mrs. NAPOLITANO. —groups?

Mr. DISHLIP. Yes.

Mrs. NAPOLITANO. And the players are then the lower basin states?

Mr. DISHLIP. The lower basin states and the water users in the lower basin states, and the power users, the game and fish departments within the three lower basin states, and also the Steering Committee and many nongovernmental/environmental groups.

Mrs. NAPOLITANO. Are they also looking at contamination in the rivers?

Mr. DISHLIP. Not particularly. This focus is to be in compliance with the Endangered Species Act.

Mrs. NAPOLITANO. Okay, but is it not—the water quality affecting the future of the endangered species?

Mr. DISHLIP. Well, to the extent it would, I'm sure that would be a factor. I think right now the focus really is on habitat, restoration and recovery of currently listed endangered species.

Mrs. NAPOLITANO. Thank you very much. Mr. Chairman.

Mr. CALVERT. Mr. Cannon?

Mr. CANNON. Given the time frame for flights this afternoon, I think I'll pass, Mr. Chairman.

Mr. CALVERT. Mr. Gibbons?

Mr. GIBBONS. Thank you. Mr. Calvert, I have just a couple of brief questions and maybe some follow-up with regard to what we discussed earlier. And I was curious if all of you would agree that once we reach these accommodations and these agreements and put these programs into place, do you feel confident that we are fairly well out of the woods with regard to any long-term protracted litigation over the river? Mr. Davidson, we'll start down there with you, because you always have that wonderful smile on your face that you want to talk, and then we'll work our way back this direction.

Mr. DAVIDSON. Thank you, Congressman Gibbons. My belief is that if we can pull all these pieces together with respect to California and the 4.4 Plan, that we will avoid—we will be able to avoid an interstate dispute, we will be able to avoid interstate litigation.

What I can't predict, what I can't give you any assurance of is that we will be able to avoid a dispute between the states who comprise the seven states entitled to the flows of the Colorado River and either environmental groups or some activity for or on behalf of Mexico. That's just—those are two unknowns that are—that are out there that we just don't have enough of a handle on to be able to provide that assurance.

Mr. GIBBONS. Well, let me add a part to that question, if I may. If in fact the states are permitted to join in this agreement and in the September negotiations in Mexico over the wetlands down there, do you feel that there is a strong likelihood that the agreement or any discussions that are reached would have a likelihood of taking effect contra to the idea that if you weren't involved with it, there is less of a likelihood that the seven states would agree?

Mr. DAVIDSON. I'll take a shot and then I'll pass it on to my compadres here.

I believe that certainly we are going to be involved, because we believe that there is that possibility, maybe even rising to the level, we hope, of a likelihood, that we can avoid those kinds of disputes. And that's why we are intending to be involved, we are hoping to be included as much as possible so that we can avoid it. If we're not included, then I think the disputes are almost inevitable.

Mr. MUTZ. Congressman, I would echo what my colleague, Mr. Davidson, has said. I would observe, however, that one does not know what might be thrown off the wall by groups that we have not had a lot of experience with. We have not dealt a lot with the Mexican nongovernmental agencies, and I'm not—I just cannot predict where we might come from with them. But as Mr. Davidson said, that's what we're in this for. We hope to preclude further dispute.

Ms. MULROY. I agree with Mr. Davidson, with one extension on that. I mean I think over the last 10 years I think one of the things that we as the states have realized is that shared solutions are really the only solution that can be found on the river. Litigation is a luxury of abundance, and as the river becomes tighter and tighter in terms of its supply, the immediate consequences of litigation become very real. They're not something that will occur 15, 20 years, 30 years down the road; they'll happen tomorrow. So in pursuing litigation, I think all of us are reluctant and would prefer not

to go that route. We would really have to be pushed against the wall.

As this river system becomes tighter, the only real solutions are those in which we appreciate the situation of our neighbor and can walk in their shoes, and not ones where we manage the river as seven separate water supply sources.

Mr. DISHLIP. Basically I think that coming out of our more recent experience, the attitude in Arizona is to avoid litigation wherever we can. I think our concern in the future would be that we would still have to be prepared to protect our rights and protect our interpretation of the Law of the River as we see it. And the concern may arise, it has not arisen to date, but it may arise, that the Secretary of the Interior really is the master of the river, and it's his job to interpret how he sees the Law of the River. And it could well be that his interpretation of the Law of the River and how he chooses to operate it is in conflict with how we see it. That would be something we would certainly not look forward to, suing the Secretary of the Interior. But I think that's probably the hardest issue right now in the future looking—the Secretary of the Interior wears so many hats and he has so many trust responsibilities in so many different areas, sometime or other it could well be that an issue will arise where the hat that he wears to be the master of the river and the hat that he wears to be the head of the Fish and Wildlife Service or the head of the Bureau of Indian Affairs could conflict him in a way that would lead us to a position where we feel we'd have to go to court to seek remedy.

Ms. JONES. I wholeheartedly agree with the previous speakers about the desire that we have to avoid future litigation. And I think we all recognize that the money that would be otherwise expended on litigation buys a lot in terms of on-the-ground habitat restoration or water management improvements.

Mr. HOLSINGER. I don't really have much to add, other than that perhaps the comity that's arisen as a result of the negotiations that led to the California Water Use Plan is certainly a good step in the right direction.

Mr. ANDERSON. Again, I can support the statements that have been made. I think to me it's obvious that from the perspective of those who are involved today, we're not looking to litigation, we're looking to try to find a solution. But we absolutely have no control of outside groups who may initiate lawsuits and—but we will be very protective. Our Attorney General staffs are always meeting when lawsuits are filed to determine whether we as states should join in in one side or the other to protect our rights, and we will do that. But I believe the seven basin states, we have a desire to try to find solutions to the problems that don't include litigation.

Mr. GIBBONS. Thank you very much. And thank all of you for your presence here and your testimony, it's certainly been enlightening to hear from you.

And Mr. Chairman, Chairmen, with regard to Chairman Hansen's question about ESA, I find it very difficult to envision any statute in the United States that could be applied outside or extraterritoriality to the borders of the United States with regard to any Endangered Species Act. First of all, we have no means of enforcement, we have no means to ensure that there is a recovery

plan that would benefit the species. And I think that begs a very serious legal challenge, one which could be directed to the heart of the Endangered Species Act itself if there is an application of that outside the borders of the United States.

The CHAIRMAN. Almost impossible, I agree with the gentleman. I don't think a lot of people realize out of all of the things that have been put on the list, there's only been about 11 or 12 recoveries. So it's kind of a disaster. I mean huge amounts of money we've put into that thing, huge amounts of money, and we don't see any recovery, so we wonder where we're going.

Is this our last round? Okay, I'll start it out. You know, there's been some talk by a lot of folks, and a lot of money raised, about draining Lake Powell. What would that do to you? Mr. Mutz?

Mr. MUTZ. That might bring on a fight, Mr. Chairman. And I should mention that litigation is a pretty good stick, and the states, at least New Mexico, is not willing to hold that stick back when it comes to things like draining Lake Powell. The future development of the Upper Basin depends on that.

The CHAIRMAN. Well, if you consider everywhere you're talking about the necessity of water, that we're overallocated, that there's not enough to go around, we can't live with the growth, the supply, the demand, this whole thing would go down the tubes. I mean this whole agreement you're just talking about, it's gone. If you drain the Lake Powell, the whole shooting match is gone, is that right, am I wrong?

Mr. ANDERSON. That's right.

Ms. MULROY. Yes.

The CHAIRMAN. All this work, the Law of the River, all the things we've done, all these times, it's gone.

Ms. MULROY. There would be no Interim Surplus Guidelines without Lake Powell, none of this would be feasible without it.

The CHAIRMAN. People in the United States, regardless how they feel, have certain rights to talk to Congress, and we did have one hearing, what was that, about four or five, 6 years ago? We had a hearing on this issue. We didn't get much out of it. Got a lot of talk, but we didn't really get much as far as the meat of it, the science, the water, the power, all that type of thing.

Excuse me, did somebody have a comment? Mr. Dishlip?

Mr. DISHLIP. Well, obviously Lake Powell has been a major point of discussion in our state. Glen Canyon Dam's in Arizona, and it's a major recreation area and a destination resort area for people in Arizona, and the Navajo Nation are very supportive.

Probably most important from a water supply standpoint, what makes the Colorado River work is the storage capability, that we have more storage on the Colorado River than almost any other river basin in the United States relative to the average annual flow. And when you look at the erratic nature of the flows of the Colorado River, 1 year it may be the driest year on record and the next year may be the wettest year on record. The storage is what's evened out the water supply and really what's allowed the development to occur in the Lower and Upper Basins. And having those two very large reservoirs, Lake Mead and Lake Powell, are really the linchpin.

And not only the political and the legal aspect to make sure that the Compact works, but just to the physical aspect, to make sure that water supplies are reliable, I just can't imagine a system without tremendous disruption without a Lake Powell or something similar.

The CHAIRMAN. So every state would oppose that, all seven of you would really oppose this big time; is that right?

Ms. MULROY. Yes.

The CHAIRMAN. You point out, Mr. Dishlip, the amount of water that is stored, starting at Fontanelle I guess in Wyoming and working all way down Parker and Davis and all those in between, that's a sizeable amount of water stored.

Mr. DISHLIP. It's on the order of 60 million acre-feet of storage, and 54 million of that is located in those two large reservoirs, 24 million in Lake Powell. Without it, the system is completely different.

The CHAIRMAN. So let the record show that these seven states totally oppose this. Is that correct?

Mr. MUTZ. Agree.

Ms. MULROY. Yes.

The CHAIRMAN. Mr. Calvert.

Mr. CALVERT. Thank you, Mr. Chairman. I have just one question. I was kind of curious more than anything else. The gentlelady from Nevada, Miss Mulroy, you mentioned a conveyance system from—I assume from the purification district area into San Diego.

Ms. MULROY. No.

Mr. CALVERT. Or from—directly from the Colorado River, all right. I hadn't heard of that so I was just curious.

Ms. MULROY. The state of California has funded a feasibility study for that.

Mr. CALVERT. If California met its 4.4 million acre-foot allocation, why would any state be opposed to any kind of conveyance system within state?

Ms. MULROY. Well, it wouldn't be within state. California has more than enough capacity to move its full allocation into the state of California.

Mr. CALVERT. Well, I was just curious, that hadn't been brought up to me so—as far as a way to convey water.

But I—since this is the last of my time, I wanted to thank this panel and look forward to working with all of you to try to work out the very difficult problem with the Colorado River. It's a little bit like playing three-dimensional chess, because there's so much demands that are placed upon such a body of water that many millions of Americans depend upon. So again, I look forward to working with all of you, and certainly with Miss Jones and the State Legislature in California, and we certainly need the help of the Chairman of this Committee and the entire House of Representatives to help resolve some of these major issues that are affecting the West. And I say that water is right on top of the list, Mr. Chairman.

The CHAIRMAN. I couldn't agree more. Gentlelady from California.

Mrs. NAPOLITANO. Thank you, Mr. Chair. I'd like to introduce for the record as a courtesy a letter from Tom Graff, Environmental

Defense. It's a letter that supports timely implementation of the 4.4 Plan and expresses support for legislation to amend the Interim Surplus Guidelines and related documents.

The CHAIRMAN. Without objection, it's admitted.

[The letter from Thomas J. Graff, Regional Director, Environmental Defense, follows:]

July 5, 2001

Hon. Gale Norton
Secretary of the Interior
1849 C. Street, N.W.
Washington, D.C. 20240

Hon. Barbara Boxer
U.S. Senate
112 Hart Senate Office Bldg.
Washington, D.C. 20510

Hon. Dianne Feinstein
U.S. Senate
331 Hart Senate Office Bldg.
Washington, D.C. 20510

Dear Secretary Norton and Senators Boxer and Feinstein:

I write on behalf of Environmental Defense to urge your concerted attention to a proposal for federal legislation now being circulated on a draft basis by the Coachella Valley Water District, the Imperial Irrigation District, the Metropolitan Water District of Southern California, and the San Diego County Water Authority.

The underlying purposes of the draft legislation are crucial to California's future, as they are to the other six Colorado River Basin states, to northern Mexico, and to the environments impacted by lower Colorado River water development and management. These purposes are to facilitate implementation of the San Diego—IID water transfer agreement, of the four agency quantification settlement agreement (QSA) establishing rights within California's 3.85 million acre foot agricultural entitlement from the Colorado River, and of the California plan to reduce California's annual usage of Colorado River water to 4.4 million acre feet. Also implicated are a variety of other agreements, administrative actions, and environmental commitments related to the Colorado River, including commitments to various Indian tribes, to the Colorado River Delta, and to the Sacramento–San Joaquin Delta.

The most immediately crucial objective of the draft legislation the four above-enumerated agencies are floating is the authorization of a program to implement a set of habitat enhancement projects meant to offset the incremental negative environmental effects occasioned by the San Diego–IID water transfer, the QSA, and the California 4.4 plan.

Given the many environmental benefits that should arise out of the timely implementation of those agreements, and the risks that would attend a failure to complete the agreements on the timetable set forth in the QSA and elsewhere, there is cause here for especially prompt action on Congress' part.

The proposed legislation as drafted has a number of controversial provisions, the most significant of which relate to the desire of the four agencies involved to be called upon to reckon with the negative environmental impacts only of the subject agreements themselves. It appears to me that the four agencies are particularly concerned that other environmental problems, whose origins predate the agreements, should be addressed in other processes and forums and that solutions to those problems, including the ultimate solution to the problem of salinity in the Salton Sea, not be attributed to the San Diego–IID transfer, the QSA, and the 4.4 plan.

Environmental Defense has long been on record as having sympathy for this perspective. When EDF published Trading Conservation Investments for Water: A Proposal for the Metropolitan Water District of Southern California to Obtain Additional Colorado River Water by Financing Water Conservation Investments for the Imperial Irrigation District in 1983, we advocated a water conservation-and-transfer scenario for southern California even though we recognized that this could accelerate the rate at which salinity would increase in the Salton Sea. Administrative and Congressional decisions on what to do about the increasing salinization of the Sea are pending and should be forthcoming on an expeditious basis, particularly insofar as they bear upon the health of endangered species and their habitat. To wait for those decisions, however, before acting on legislation to facilitate the San Diego–

IID water transfer and other agreements promoting water conservation in the Imperial and Coachella Valleys, in our judgment, would be to risk those agreements' fruition, without corresponding benefits.

Significant elements of the draft legislation do require further discussion and likely amendment, especially those provisions that affect the proper administration of the Endangered Species Act, that deal with judicial review of the subject agreements, and that distribute risks and financial obligations between the United States and the parties. But, with your assistance and active involvement and with the continued good faith of the four agencies, I am convinced that these difficult issues can be resolved on a satisfactory basis.

Please let me know if we at Environmental Defense can be helpful to you on this matter. Years ago, I personally served on the Colorado River Board of California. Based on that experience and on subsequent involvement in many water policy issues in California and elsewhere, I am convinced that a positive resolution of the issues involved here would make a crucially important contribution to California's, the nation's, and even North America's future.

Sincerely yours,

Thomas J. Graff
Regional Director

Mrs. NAPOLITANO. Thank you. I'd like to ask Miss Jones if she'd heard of any such plan that Miss Mulroy was referring to, because it's news to me also.

Ms. JONES. This has been kicking around for a while. In our State Bond Act in 1996, the Legislature directed that a share of the money provided for feasibility studies be given for a feasibility study of what the San Diego Water Authority would call an alternate conveyance facility from the Colorado River in the area of Imperial Valley, as a shared facility through Mexico, going to the San Diego area. And in fact the water agencies in the San Diego area are continuing to discuss with their neighbors over the border about joint water management activities, particularly with the city of Tijuana, that would include such a feature. There are no plans at the state level to do anything further with it unless we are otherwise directed.

Mrs. NAPOLITANO. Thank you. One of the other things that strikes me as we were listening to the testimony about California reducing its allocation to 4.4 is that we have been notified, I say "we," my sanitation district, that tertiary treated water must now effect a fourth treatment, which will cost billions of dollars for the taxpayers for a treatment plant. Has anybody heard anything? Because understand that the utilization of recycled water is key for not only industrial and commercial use, but for community use. And that could mean a great impact, because that's a costly proposition.

I have requested EPA to let us know why they're doing it, on what basis, what findings they're relating to, and I have not heard anything. I don't know if you have. But that would mean a lot of funding from the taxpayer pocket to set up a fourth treatment plant for use of that recycled water. Nobody's heard? Well, it will affect every other state, and my suggestion is look into it. Thank you.

The CHAIRMAN. Thank you, gentlelady. Gentleman from Nevada.

Mr. GIBBONS. Thank you very much. Mr. Chairman, I can only say that I believe at this point in time that what needs to have been said has been said by everybody, so I'm going to yield back

and thank you for the invitation to come to your Congressional District. That is, since Mr. Cannon's not here.

The CHAIRMAN. I thank the gentleman. Let me thank the witnesses who have all been very good, excellent testimony, well thought out, well delivered. We really appreciate it, believe me. Everything that you've said we will pour over. Also, I would like the prerogative to be able to send you questions that we may have from time to time that come up, and we would like to ask you to elaborate on something. If you wouldn't mind, we would appreciate it if you would take care of that.

Let me also thank the Members of the Committee who came here today for this testimony, and it was very good. I appreciate the Members being here, as well as the staff people who had to come from Washington to do this. These field hearings require more logistics than you can believe, and so we appreciate the staff for coming, and everyone who is here, for having the interest to come to hear this very, very important issue.

Water is the critical thing in America, basically. I got into this business 42 years ago, trying to fix a water system in Farmington, Utah, and so the theory is if you've got any sense, don't try to fix your water system, you'll end up a Congressman.

Anyway, with that said we'll stand adjourned, and thank all of you.

[Whereupon, at 11:53 a.m., the Committee was adjourned.]

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