



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

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

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

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

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

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

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

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

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

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

Federal Legislation is an Important Element of the DCPs

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

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

Upper Basin Benefits

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

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

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

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

Lower Basin Benefits

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

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

² Id., Section I (c)(4).

³ Id., Section II(A)(3)(f).

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

Arizona:

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

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

California:

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

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

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

Conclusion

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

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

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