



**Governor's Representatives on Colorado River Operations
States of Arizona, California, Colorado, Nevada, New Mexico, Utah and
Wyoming**

July 27, 2009

The Honorable Ken Salazar
Secretary of the Interior
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

Dear Secretary Salazar:

We have become aware of escalating controversy involving the National Park Service (Park Service), Bureau of Reclamation (Reclamation) and other Department of the Interior (Interior) agencies concerning control over the storage and release of water in Lakes Powell and Mead. These discussions are matters fundamental to the security of water supply and power generation that serve tens of millions of people and a vital agricultural industry in the southwest United States and Mexico, and thus are of grave concern to us, as representatives of the seven Colorado River Basin States.

We are writing to urge that as you consider the positions of the Park Service, you bear in mind the legal requirements that govern Colorado River operations and the important initiatives developed by Interior – on behalf of all of its agencies including the Park Service – in consultation with the Basin States. Before you act on Park Service concerns, we ask that you carefully consider the implications of disrupting key legal and institutional relationships on the Colorado River. We are committed to discussions with you designed to resolve these issues of concern.

We acknowledge and understand the importance of recreation at Lakes Powell and Mead, Grand Canyon National Park and Glen Canyon National Recreation Area, as well as the environmental and archeological heritage of the Colorado River basin. As such, we have been active in developing and supporting programs such as the Upper Colorado and San Juan River Recovery Programs in the upper basin and the Multi-Species Conservation Program in the lower basin. We were also instrumental in negotiating and supporting the Grand Canyon Protection Act, and have been active supporters of the Adaptive Management Work Group process for the operation of Glen Canyon Dam under that Act. It is important, however, to understand how these programs and operations fit within the operational framework of the many agreements and compacts developed for the Colorado River, and why that framework is critical to sustaining the water supply to the Southwest.

Over the last twenty or so years, the Basin States and Interior – particularly through Reclamation – have developed a relationship that has served as a model for basin wide

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water management literally throughout the world. This relationship has resulted in innovative, flexible and far-reaching agreements, guidelines and programs that not only provide important tools for meeting the challenges of an era of uncertainty, but also avoid divisive and costly controversy and litigation. As important, it is a relationship that has developed and evolved over the course of changes in administrations at both the federal and state levels. Secretaries Babbitt, Norton and Kempthorne all exercised steady leadership and personal involvement in furtherance of the important initiatives developed on the Colorado River.

Somewhat ironically, these initiatives are in large part a result of discussions among the Basin States and Interior stemming from a 1991 letter from Governor Romer of Colorado to Governor Wilson of California, which was authored by you, Secretary Salazar, when you were the Executive Director of the Colorado Department of Natural Resources. At the time, California was in a drought and requested the availability of additional surplus water from the Colorado River. The letter presented the concept that California could have access to surplus water for a defined period if it would develop programs to allow it to reduce its use of water in normal years to its basic apportionment of 4.4 million acre-feet.

After nearly ten years of discussion and negotiation, in January 2001 Secretary Babbitt signed the Record of Decision putting into place Interim Surplus Guidelines. The Guidelines provided that they would be suspended at the end of 2002 if California water agencies did not develop a plan which included the Quantification Settlement Agreement (QSA), to allow the Metropolitan Water District of Southern California to augment its entitlement through water transfers so that California could remain within its basic apportionment. After intense and complex negotiations, in early 2003 the California agencies delivered a QSA involving the investment of hundreds of millions of dollars to achieve that result.¹

No sooner was the ink dry on these documents when record drought caused the levels of Lakes Powell and Mead to drop precipitously. In 2005, the upper basin asked the Secretary to release less than the minimum objective of 8.23 million acre-feet from Lake Powell, so as to preserve Powell storage levels. The lower basin resisted this request. This situation resulted in a series of very difficult and contentious meetings between the states, with no agreement. Indeed, the states were on the verge of litigation. On May 2, 2005, Secretary Norton announced her intent to consult with the states on the "most appropriate processes and mechanisms" to develop 1) shortage guidelines in the lower basin and 2) "conjunctive management guidelines for Lake Powell and Lake Mead." Her stated goal was to have these guidelines in place by December 2007. The Secretary encouraged the states to reach agreement on proposed operations and make a proposal.

After forceful negotiations over an 18-month period, with technical assistance from Reclamation, the Basin States submitted proposed guidelines to the Secretary. In October 2007, Reclamation published the final environmental impact statement for

¹ For a fuller discussion of the history of these negotiations, please see James S. Lochhead, *An Upper Basin Perspective on California's Claims to Water from the Colorado River – Part II: The Development, Implementation and Collapse of California's Plan to Live Within its Basic Apportionment*, 6 U. DENV. WATER L. REV. 318 (2003).

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Colorado River Interim Guidelines. In addition to the states' proposal, the FEIS analyzed an alternative called "Conservation Before Shortage" developed by several environmental organizations and a "Reservoir Storage Alternative" developed in large part by the Park Service as a cooperating agency.

In December 2007 Secretary Kempthorne executed a Record of Decision adopting Interim Guidelines for the operation of Lakes Powell and Mead through 2025 that cover four main areas:

- Circumstances under which the Secretary will declare shortages in the lower basin under the authority of the decree in *Arizona v. California*;
- Coordinated operation of Lakes Powell and Mead, and in particular the reservoir conditions that will dictate how much water is released from Lake Powell to Lake Mead;
- The institutional framework to allow the states of the lower basin to develop and store in Lake Mead intentionally created surplus (ICS) and non-system water; and
- Conditions under which the Secretary will declare surplus conditions in the lower basin under the authority of the decree in *Arizona v. California*.

In furtherance of the special relationship with the Basin States, the Secretary also joined in an agreement executed among the states. The Agreement contains provisions requiring consultations between the Secretary and the states over any disagreement concerning Colorado River legal matters, as a prerequisite to litigation, and which provisions are incorporated into the Record of Decision. The Record of Decision recognizes the significance of this Agreement:

Importantly for the long-term management of the Colorado River, adoption of this decision activates a legal agreement among the Basin States that contains a critically important provision: the Basin States have agreed to mandatory consultation provisions to address future controversies on the Colorado River through consultation and negotiation, as a requirement, before resorting to litigation. With respect to the various interests, positions and views of each of the seven Basin States, this provision adds an important new element to the modern evolution of the legal framework for prudent management of the Colorado River.

The security of the operational foundation established by the Interim Guidelines has allowed the states and various agencies to move forward with the creation of ICS, which is a critical tool to meet the challenges we will face with the advent of continued growth, drought and climate change. Through forbearance and delivery agreements, the states and Interior have already moved significantly forward in developing ICS and water banking mechanisms, including the Drop 2 Reservoir and a possible pilot run of the Yuma Desalting Plant. Moreover, recognizing the importance of integrating Mexico into Colorado River operations and providing for the maintenance and enhancement of the riparian environment in Mexico, the Basin States are engaged in discussions with Mexico, through the auspices of the Departments of Interior and State and the International Boundary and Water Commission.

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From the Basin States' perspective, one of the overriding principles in the development of the Interim Guidelines is to remove uncertainty and political considerations from management of the Colorado River system. The Interim Guidelines thus offer a secure foundation on which to build the important initiatives necessary to achieve greater flexibility in the development and management of the Colorado River's water supply.

The cooperation between the Basin States and the Federal Government has been the primary reason for the successful development of the many multi-agency programs. That partnership is why we are so concerned about the controversy developing within Interior. Through its actions, the Park Service has injected views and made statements that contravene the Interim Guidelines. For example, a National Park Superintendent recently pressed for releases of water from Lake Powell that are not allowed under the Interim Guidelines.

Additionally, recent language in the committee report on H.R. 3183, the FY 2010 Energy and Water Development Appropriations bill, states that Reclamation should obtain the "concurrence" of the Park Service regarding the Operating Criteria for Glen Canyon Dam under the Grand Canyon Protection Act and that Reclamation is ignoring its responsibilities under the Act. We assume that the Park Service was aware of and supportive of this language and feel that this language is a disservice to the Adaptive Management Work Group process established by Secretary Babbitt for the management of Interior's responsibilities under the Act. We also believe the Park Service should be mindful of two significant problems with its quest for greater authority in Glen Canyon Dam management.

First, § 1802(b) of the Grand Canyon Protection Act makes explicitly clear that operations under the Act must be "fully consistent with and subject to" the allocation, appropriation, development and exportation of water as established by the law of the River, and that operational plans under the Act be "separate from and in addition to" operating plans adopted pursuant to § 602(b) of the Colorado River Basin Project Act of 1968. Thus, Glen Canyon Dam operations must be limited by the constraints imposed under, among other things, the 2007 Interim Guidelines.

Second, Interior's actions to manage releases from Glen Canyon Dam under the Act are determined by the Secretary, not by Reclamation. For example, despite the Park Service's publicly expressed dissatisfaction with recent departmental decisions concerning the five-year experimental flow program, it is clear from the record that such decisions were made and documented by the leadership of Interior across agency lines.² Moreover, this process was upheld by Judge Campbell in his Order of May 26, 2009, in *Grand Canyon Trust v. U.S. Bureau of Reclamation, et.al.*, No. CV-07-8164-DGC (D. AZ). There, Judge Campbell held that "the [Grand Canyon] Trust has also failed to show that the 2008 Experimental Plan runs afoul of the complex balancing responsibility imposed on the Secretary of the Interior by the GCPA . . . these broadly-worded provisions [in the GCPA] impose on the Secretary of the Interior an obligation to balance many different interests in the operation of Glen Canyon Dam. Reclamation's Environmental Assessment noted that the 2008 Experimental Plan was designed to do just that . . ." Order at 29-30. Judge Campbell specifically found that adopting the flow

² Please see the letter from the Upper Colorado River Commission to Secretary Kempthorne dated March 26, 2008.

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alternative favored by the plaintiff – and the Park Service – would have “disruptive consequences for the many interests that rely on Dam operations,” and could be harmful to the endangered humpback chub. Order at 39.

The direction of the Secretary in the management of Colorado River system reservoirs has been carefully set and implemented over the last two decades. Simply stated, we see no reason to change that course. The initiatives and programs described in this letter illustrate the highly complex, innovative and far-reaching results of the working relationships that exist on the River.

We stand willing to discuss these issues and to accommodate the legitimate needs of the Park Service within the operational constraints of the legal framework of Colorado River, in the same manner as we have productively engaged with Interior on numerous other issues over the years.

Sincerely,



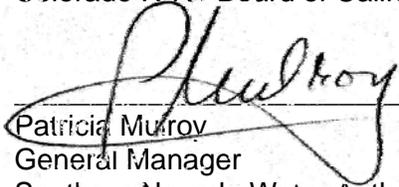
Herbert R. Guenther
Director
Arizona Department of Water Resources



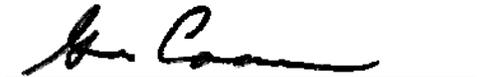
Dana B. Fisher, Jr.
Chairman
Colorado River Board of California



Jennifer Gimbel
Director
Colorado Water Conservation Board



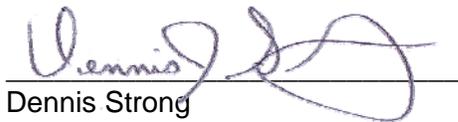
Patricia Mulroy
General Manager
Southern Nevada Water Authority



George Caan
Executive Director
Colorado River Commission of Nevada



John D'Antonio
Secretary
New Mexico Interstate Stream
Commission



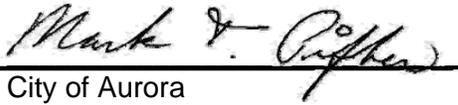
Dennis Strong
Director
Utah Division of Water Resources
Utah Interstate Stream Commissioner

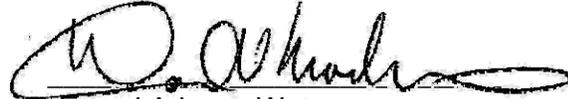


Patrick Tyrrell
State Engineer
State of Wyoming

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The undersigned Colorado River contractors and utilities endorse the position of the Governor's Representatives on Colorado River Operations stated in this letter.

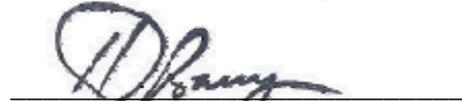

City of Aurora


Central Arizona Water
Conservation District


Coachella Valley Water District

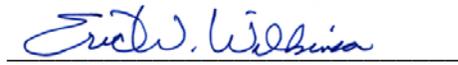

Colorado River Water
Conservation District


Colorado Springs Utilities

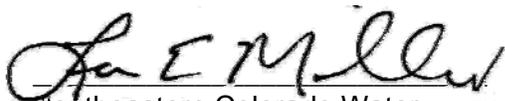

Denver Water


City of Grand Junction


Metropolitan Water District
of Southern California


Northern Colorado Water
Conservancy District


Board of Water Works of Pueblo CO


Southeastern Colorado Water
Conservancy District


Southwestern Water
Conservation District


Don Ostler
Executive Director
Upper Colorado River Commission

cc: Tom Strickland, Assistant Secretary, Fish, Wildlife and Parks, U.S. Department of Interior
Anne Castle, Assistant Secretary, Water and Science, U.S. Department of Interior
Michael L. Connor, Commissioner, U.S. Bureau of Reclamation
Daniel N. Wenk, Acting Director, National Park Service