



FAX Transmission

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To the Western Water Policy Review Advisory Commission:

I appreciate the opportunity to comment on the draft Colorado River Basin Study for the Western Water Policy Review Advisory Commission. I know you will be receiving comments from active water managers, water users, and environmental groups, therefore I will try to focus on issues that might not arise. As the author of a recently completed history (awaiting publication) about the conflict between the states and the Federal government concerning the Colorado River and one who has spent over twenty years documenting aspects of this conflict I feel I can provide a unique perspective to comments on this draft paper.

First, I am concerned about the references. Although this document was prepared in an extremely short time frame and covers a large number of issues, too often statements have no specific attribution. A search of the source materials must lead one to conclude that among the primary sources for this draft are two journalists--Philip Fradkin and Marc Reisner. While most scholars very much enjoy the work of these two, they also agree that the factual and analytical value does not meet commonly accepted scholarly standards and that the best use of these two books is as an inspiration for needed research. There are more appropriate works, starting with Norris Hundley's studies of both the Colorado River Compact and the Water Treaty with Mexico, that provide a historical context for what has occurred in the Colorado River Basin and what might be possible remedies. There also are numerous studies, books, and articles that provide, in my opinion, a more balanced and dispassionate examination of the Basin than many of the works cited. I will be happy to provide some suggestions for any revisions.

Second, the lack of listed interviews concerns me also. There are hundreds of appropriate and experienced water managers, state and federal managers, native Americans, and parties-at-interest who would be available for consultation. It surely is of interest to the Commission and to the public to know who is stating, alluding, estimating, or postulating various statements like the "estimated cost of Upper Basin reclamation projects." There are surely better sources concerning the experimental flood flows through the Grand Canyon than the New York Times.

These are the two elements that most concern me because it deprives the Commission a sense of historical context that is necessary to understand how today's arrangements were reached. The very eloquent introductory paragraphs could demonstrate the conflicts that have existed since the determination of the national government to settle the West through various Land Acts from 1841 through 1904 that first determined the size of grants and later required irrigation to perfect ownership. Those laws coupled with the failure of the

national government to retain ownership of water created the conflict that exists to this day. They are not conflicts amenable to remedy.

A review of Hundley's two works would show the reason for two instances of Colorado River Basin States cooperation. Without the Colorado River Compact the states could not get the Boulder Canyon Act and begin to develop the river. With the Water Treaty with Mexico the states' concern was to protect the hard-won development allowed by the Boulder Canyon project. During the negotiations for the Treaty the states' concern was justified since Texas obtained extra rights to Rio Grande water in exchange for more Colorado River water sent to Mexico than that country could then use. The states reactivated their cooperative tool, the Committee of 14, to deal with the salinity crisis in the 1960s until the Brownell negotiations concluded with the passage of the Salinity Control Act in 1974. It took every bit of political energy for the states to force the federal government to accept the idea that salinity control was a national obligation. The quid pro quo was the states' acceptance of the Yuma desalting plant wanted by Henry Kissinger rather than the state proposed alternatives.

The Upper Basin states cooperated in 1947-48 to agree on the Upper Colorado River Compact. The impetus for this cooperation was congressional reluctance to allocate funds to complete the Colorado-Big Thompson Project without an agreement apportioning the Upper Basin Compact share of river water. Congress was fearful that Wyoming would again successfully stop a transbasin diversion through litigation. Further, the Upper Basin Compact opened the door to future development of the river.

There were initially no outside forces behind the cooperative effort of the Interstate Conference on the Pollution of the Colorado River and Its Tributaries that ran from 1960 to 1972. However, the development of the Lower Basin-Mexico salinity problem in 1961, the subsequent joint studies, and the tenor of U.S.-Mexico negotiations during the latter part of the conference combined with the creation of EPA and its new authorities under Water Pollution Control Act Amendments in 1972 to force states' recognition of a potential threat to resource development. Since 1973 the states have acted together as the Colorado River Basin Salinity Control Forum to protect that right. The Forum has been involved in salinity efforts in both Upper and Lower Basins, in wildlife habitat and mitigation issues, in endangered species, in water conservation, in ways to treat Indian tribes as separate entities, in water reuse efforts, and in exploration of managerial and technology innovations for water management and water quality--in other words, the Forum work touches just about every issue mentioned in the document under review.

In each of these instances the seven Colorado River Basin States cooperated and worked hard together to achieve some desired outcome. That is a historical lesson important to any discussion of future needs and management changes. Changing social and cultural values have been the impetus to cooperation only in that threats to state determination of

resource use and development have required it. Acceptance of changing values has occurred and continues to occur, albeit at a slower pace than some would like.

The omission of historical context extends throughout most of the document. For example, the Law of the River is constantly mentioned but without any full and clear explanation. In this case the omission of Figures and Appendices is a severe handicap to any reviewer, although one should not assume that all or even many readers to examine either closely.

It also would be useful to note some of the inherent contradictions in national policy-making concerning the Colorado River. The present Secretary of the Interior, when Governor of Arizona enthusiastically supported construction of the Central Arizona Project and its administrative conditions. He also zealously sought continued funding for construction of the Yuma desalting plant based on national obligation and commitment to Mexico. Others currently involved in Colorado River matters have vastly different roles and positions than they once advocated. This shows not just changing times but the very continuing complexity of the issues and the unreliability of imposed solutions. Governments change at all levels and commitments made by one administration or congress can be undone by another.

This brief historical context should explain why the statement "The basin states and Secretary of the Interior should agree on and formalize a cooperative management structure for the basin to address and resolve major water management issues affecting the public interest" is overly sanguine. River basin organizing has not been successful except in addressing discrete and well-defined problems. The fate of the Missouri River Basin Commission comes to mind.

Water reuse and conservation are two other areas that I feel competent to discuss. First let me mention the discussion of Tucson's referendum *not* to use CAP water (p. 71). The damage in Tucson was to those sections of the city with plumbing system well more than 50 years old. A mitigation program would have been completed by this time had emotions not been inflamed. This is one instance when science (p. 65) was overwhelmed by emotion. This bears directly on the issue of water reuse. Tucson has a well-established nonpotable reuse program for golf course, median, and other landscape irrigation. This element applies in Southern California where reuse has been constrained more by overly-conservative state health department rules than by any cost or public acceptance factors. Most of the reuse cited in the document tallies small successes. The acceptance of reuse is a problem of both funding and professional attitudes now complicated by an increasingly litigious society. It is naturally expensive to institute large scale nonpotable water reuse programs because such efforts generally require construction of another distribution system. Once the health regulators establish workable rules and the water managers accept the idea of reuse there remains the problem of funding. Part of the answer awaits the answer to the question of who benefits and who pays. Reuse is not an

easy palliative to water supply problems because of cost and regulation and, if anywhere but at the "end of the pipeline," with the water supply of downstream users.

Conservation as an ethic is, I believe, a worthy goal. However it often conflicts with state water law and with the water supplies of other users. Water conserved by agriculture currently brings no benefit to the conservator. Achieving that conservation is expensive and not likely to be undertaken without some reward. It is not the low price of agricultural water that is the barrier (p.55). It is the high cost of conservation measures and the low return on farm production. Domestic conservation does have rewards. It expands potable water supplies and reduces water bills. Again, it may require intensive investment by the water supplier that will only be worthwhile if potable water supplies are expanded or extended. Otherwise a situation might occur where water conservation reduces water sales to the extent that the supplying utility might have financial difficulty and be forced to increase rates, thus removing the reward for conserving.

Small points:

- ◆ The statement that "NAFTA has raised the promise of environmental action on this part of the border" (p. 64) strikes me as naive at best.
- ◆ The Ak-Chin Indians not only were early beneficiaries in water rights settlement (p. 79), they were beneficiaries of a substantial Small Project Loan from Reclamation to develop irrigated agriculture. The loan was, by policy, forgiven and the Ak-Chin have mostly sold or leased their water. Such double arrangements probably go beyond the moral commitment to honor past promises.
- ◆ The statement (p. 85) that the states oppose interstate leasing of Indian water rights "for the simple reason that non-Indian interests can now use this water without paying for it" is simplistic. Many states prohibit the interstate marketing of water, which is why Colorado did not accept the "Galloway" proposal, which was not Indian water. One of the points of controversy within and among the Upper Basin states is the feeling that the Lower Basin has been getting free water because there are insufficient storage facilities in the Upper Basin. This is an equity question that will need addressing in any "re-managing" of the river.
- ◆ The Salton Sea (p. 5) was *not* created when the Colorado River broke its channel in 1905 and flowed into the Imperial Valley. Rather it is a natural sink that was filled by the river flow and remains filled by irrigation return flow.