

Glen Canyon Dam Adaptive Management Work Group
Agenda Item Form
May 25, 2016

Agenda Item

Law of the River Overview

Purpose

This overview of the various legal authorities that govern the Colorado River and operations of Glen Canyon Dam is designed to help facilitate discussion among AMWG members and assist them in making recommendations to the Secretary.

Action Requested

Information item only.

Presenter

Rod Smith, Attorney-Advisor, Office of the Solicitor, Division of Water Resources, U.S.
Department of the Interior

Previous Action Taken

By AMWG:

During the February 2016 AMWG meeting, a presentation was made regarding the recently-completed Assessment Report. One recommendation from the report was that an orientation be provided for AMWG members, to ensure a minimum level of understanding on the many issues that the group addresses. That recommendation was generally agreed to by the group, and this overview is part of that orientation.

Relevant Science

N/A

Summary of Presentation and Background Information

This presentation will provide an overview of the various legal authorities that govern both the overall use of the Colorado River and the specific aspects of Colorado River activities associated with Glen Canyon Dam. More general topics will include use of the Colorado River between the United States and Mexico and use between the Upper Basin and Lower Basin. Topics specific to Glen Canyon Dam operations will include the role of the Colorado River Storage Project Act of 1956, the Colorado River Basin Project Act of 1968, and the Grand Canyon Protection Act of 1992.

Law of the River Overview

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Rod Smith
Office of the Solicitor
Department of the Interior
Rodney.Smith@sol.doi.gov

Law of the River Overview

- Water use in the Upper Basin, the Lower Basin, & Mexico
- Moving water from the Upper Basin to the Lower Basin
- Law of the River provisions affecting Glen Canyon Dam Operations
- Ongoing Considerations for Glen Canyon Dam Operations

US & Mexico

1922 Colorado River Compact Art. III(c):

- Allows for a future treaty that may “recognize in the United States of Mexico any right to the use of any waters of the Colorado River System”
- Water for Mexico to be provided first from “surplus, over and above the aggregate” of Colorado River Water allocated in the Compact, and then, “if such surplus shall prove insufficient[,]” the “deficiency shall be equally borne by the Upper Basin and the Lower Basin”

1944 Treaty with Mexico

- **Art. 10(a):** “guaranteed annual quantity” of [1.5 maf]
- **Art. 10(b):**
 - option to receive an additional .2 maf/yr under certain conditions and with certain limitations
 - Provisions for reduced deliveries during “extraordinary drought or serious accident to the irrigation system in the United States.”

Upper Basin & Lower Basin

1922 Colorado River Compact

- Art. I: Colorado River “divided into two basins” at Lee Ferry
- Key Definitions
 - “Upper Division” States: Colorado, New Mexico, Utah, & Wyoming - Art. II(c)
 - “Lower Division” States: Arizona, California, & Nevada - Art. II(d)
 - “Upper Basin” – includes parts of Arizona - Art. II(f)
 - “Lower Basin” – includes parts of Utah and New Mexico - Art. II(g)
 - “Lee Ferry” – Compact dividing point - Art. II(e)

Upper Basin & Lower Basin (cont'd)

Overall Allocations

- Art. III(a): “[I]n perpetuity to the Upper Basin and to the Lower Basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum”
- Art III(b): “[t]he Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre-feet per annum.”
- Art. III(d): “The States of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of ten consecutive years”

Colorado River Compact & Tribes

Art. VIII.

“Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes.”

Apportionments in the Upper Basin

1948 Upper Colorado River Basin Compact

- Art. III(a)(1): Arizona Upper Basin - 50 kaf/yr

- Art. III(a)(2): After Arizona Upper Basin :
 - Colorado - 51.75 %
 - New Mexico - 11.25%
 - Utah - 23.00%
 - Wyoming – 14.00%

Apportionments in the Lower Basin

As described in the 2007 Guidelines (emphasis added):

“Lower Division state apportionments were established by Congress in the BCPA and by the Secretary’s water delivery contracts under the BCPA. These apportionments are: Arizona, 2.8 maf; California, 4.4 maf; and Nevada, 0.3 maf; totaling 7.5 maf, subject to annual increases or reductions pursuant to Secretarial determinations of a Surplus or a Shortage condition. Under Article II(B)(2) of the Consolidated Decree, when the Secretary determines that there is a Surplus Condition, 46 percent of the available water supply in excess of 7.5 maf may be apportioned for use in Arizona; 50 percent for use in California; and four percent for use in Nevada.”

Moving Water from the Upper Basin to the Lower Basin

Long Range Operating Criteria (“LROC”)

- 43 U.S.C. § 1552. Criteria for long-range operation of reservoirs
- “[T]he Secretary shall propose criteria for the coordinated long-range operation of the reservoirs constructed and operated under the authority of the Colorado River Storage Project Act . . . , the Boulder Canyon Project Act . . . , and the Boulder Canyon Project Adjustment Act”

Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead (Dec. 2007)

Glen Canyon Dam

Colorado River Storage Project Act of 1956 (emphasis added)

- Sec. 1: “In order to initiate the comprehensive development of the water resources of the Upper Colorado River Basin, for the purposes, among others, of regulating the flow of the Colorado River, storing water for beneficial consumptive use, making it possible for the States of the Upper Basin to utilize, consistently with the provisions of the Colorado River Compact, the apportionments made to and among them in the Colorado River Compact and the Upper Colorado River Basin Compact, respectively, providing for the reclamation of arid and semiarid land, for the control of floods, and for the generation of hydroelectric power, as an incident of the foregoing purposes, the Secretary of the Interior is hereby authorized (1) to construct, operate, and maintain the following initial units of the Colorado River storage project, consisting of dams, reservoirs, powerplants, transmission facilities and appurtenant works: Curecanti, Flaming Gorge, Navajo (dam and reservoir only), and Glen Canyon:”

Glen Canyon Dam (cont'd)

Colorado River Storage Project Act of 1956 (emphasis added)

- Sec. 7: “The hydroelectric powerplants and transmission lines authorized by this Act to be constructed, operated, and maintained by the Secretary shall be operated in conjunction with other Federal powerplants, present and potential, so as to produce the greatest practicable amount of power and energy that can be sold at firm power and energy rates, but in the exercise of the authority hereby granted he shall not affect or interfere with the operation of the provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act and any contract lawfully entered into under said Compacts and Acts. . . .”

Glen Canyon Dam (cont'd)

Grand Canyon Protection Act of 1992

Sec. 1802 (emphasis added)

“(a) In General. The Secretary shall operate Glen Canyon Dam in accordance with the additional criteria and operating plans specified in section 1804 [Glen Canyon Dam EIS and Glen Canyon Dam Operating Criteria] and exercise other authorities under existing law in such a manner as to project, mitigate adverse impacts to, and improve the values for which Grand Canyon National Park and Glen Canyon National Recreation Area were established including, but not limited to natural and cultural resources and visitor use.

(b) Compliance with Existing Law. The Secretary shall implement this section in a manner fully consistent with and subject to the Colorado River Compact, the Upper Colorado River Basin Compact, the Water Treaty of 1944 with Mexico, the decree of the Supreme Court in Arizona v. California, and the provisions of the Colorado River Storage Project Act of 1956 and the Colorado River Basin Project Act of 1968 that govern allocation, appropriation, development, and exportation of the waters of the Colorado River Basin.”

Sec. 1806.

“Nothing in this title is intended to affect in any way -- (1) the allocations of water secured to the Colorado Basin States by any compact, law, or decree; or (2) any Federal environmental law, including the Endangered Species Act (16 U.S.C. 1531 et seq.).”

Considerations for Glen Canyon Dam Operations

- Experiments vs. management
- Role of Hydropower
- Effect of Operations that move water from the UB to the LB vs. effect on the Grand Canyon.

Questions?