

Law of the River Overview

Adaptive Management Work Group Meeting
August 18, 2021

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Law of the River: *Overview*

- Within U.S.
 - Upper Basin
 - Lower Basin
 - Tribal Water Rights
- Moving Water from Upper Basin to Lower Basin
 - Role of Glen Canyon Dam Operations
- U.S.-Mexico
 - 1944 Treaty
 - Minutes

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” – 1922 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”

1922 Compact & Tribes

Article 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): Percentage-based use 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 [Boulder Canyon Project Act] 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 (1968). Narrative 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”

Moving Water from the Upper Basin to the Lower Basin (cont'd)

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

- Adoption of objective criteria to determine annual releases from the Upper Basin to the Lower Basin
- Based on projected elevations at Lake Powell & Lake Mead made each August

Moving Water from the Upper Basin to the Lower Basin (cont'd)

Drought Contingency Plans (2019)

- Colorado River Drought Contingency Plan Authorization Act, Pub. L. No. 114-16, 133 Stat. 850 (Apr. 16, 2019)
- Individual Upper Basin and Lower Basin Plans plus a Basin-wide “Companion Agreement”
- Goals include “reduc[ing] the likelihood of reaching critical elevation levels in Lake Powell and Lake Mead through [2026].” Companion Agreement Sec. A(6).

Moving Water from the Upper Basin to the Lower Basin (cont'd)

Drought Contingency Plans (2019) (cont'd)

- DCP and Glen Canyon Dam operations under Drought Response Operations Agreement (DROA)
 - “Operational adjustments in monthly volumes at Glen Canyon Dam will be considered first to minimize the risk of Lake Powell declining below the Target Elevation consistent with the Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs, which is currently implemented through the 2007 Interim Guidelines.” DROA Sec. II(A)(3)(c)(i).
 - “Any drought response operation, including drought response releases and recovery of storage operations, at a CRSPA Initial Unit will be managed with the maximum flexibility practicable consistent with: the Colorado River Compact; the Upper Colorado River Basin Compact; the Colorado River Storage Project Act; the Colorado River Basin Project Act; the San Juan-Chama Project Act (P.L. 87-483); the Northwestern New Mexico Rural Water Projects Act (P.L. 111-11); the project-specific criteria for each CRSPA Initial Unit, including the relevant Records of Decision, Biological Opinions and authorized purposes for each Unit (see Section I.C.2); legal obligations, including existing and future contracts related to water and/or hydropower; states’ water right administration requirements and decrees; and all applicable rules and regulations promulgated thereunder.” DROA Sec. II(A)(3)(b).

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.).”

2016 Long Term Experimental & Management Plan

- Hourly, daily, & monthly releases from Glen Canyon Dam.
- Experimental releases from Glen Canyon Dam
- **No effect on annual releases from Glen Canyon Dam**

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 million acre feet (af)
- **Art. 10(b):**
 - Option to receive up to 200,000 af/yr in **additional deliveries** under certain conditions and limitations
 - Provisions for **reduced deliveries** during “extraordinary drought or serious accident to the irrigation system in the United States.”

Minute 323 (2017-2026)

- Provides for additional deliveries (high reservoir levels) and reduced deliveries (low reservoir levels)
- “Binational Water Scarcity Contingency Plan” where, among other things, Mexico agrees to required water savings under conditions when Lake Mead is below elevation 1090’ on Jan 1.

Questions?