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November 10, 2021

Via electronic mail to:

Heather Pacheco, Subcommittee Policy Aide  
Heather.Pacheco@mail.house.gov

Dear Ms. Pacheco,

Thank you, and the members of the Subcommittee on Water, Oceans, and Wildlife, for the opportunity to testify before the Subcommittee, as well as the Subcommittee's efforts to explore solutions to the continuing hydrologic decline on the Colorado River. It is only through sharing information and collaborating on innovative ideas that we can develop long-term certainty for this crucial water supply in the West. Please find my response to Representative Costa's question enclosed with this letter.

Sincerely

A handwritten signature in black ink, appearing to read "T. Buschatzke", with a long horizontal flourish extending to the right.

Thomas Buschatzke  
Director

Enclosure: as listed

**COMMITTEE ON NATURAL RESOURCES  
SUBCOMMITTEE ON WATER, OCEANS, AND WILDLIFE  
REMOTE OVERSIGHT HEARING**

October 15, 2021  
2:00 p.m. ET

Oversight Hearing on “*Colorado River Drought Conditions and Response Measures – Day One.*”

Thomas Buschatzke’s Response to Question for the Record

**Question from Rep. Jim Costa, CA**

1. The “Law of the River” and the quantification of the Upper and Lower Basin states amounted to around 17 million acre-feet of water, which was determined was the annual flow at the time. However, we know in the previous two decades it has been more like 12.4 million acre-feet. And this does not even account for other Native American tribes with water right claims that have yet to be resolved. There is a tremendous amount of demand, and with climate change we know the yield is only going to decline. Let’s say the annual yield over the next 30 years is 10 million acre-feet, maybe with climate change it’s more or less. **How do we take into account how we got to the original allocation, with the Upper and Lower Basin States and the Native American tribes, and then reallocate that on a lot less water?**

**Response of Thomas Buschatzke, Director, Arizona Department of Water Resources:**

We remain committed to resolving the outstanding claims to water of Native American tribes. However, reaching settlement of Tribal reserved water rights is a complex, years-long process that involves numerous parties and may include settlement of both Colorado River and non-Colorado River water supplies. While any settlement or other resolution of claims to Colorado River water must take into account the River’s operating rules and available supply, those claims should be

resolved in a process separate from the development of the overall River operations.

The 1922 Colorado River Compact apportions 16 million acre-feet per year of water between the Upper and Lower Colorado River Basins. At the time, Compact negotiators believed as much as 20 million acre-feet could be available throughout the entire Colorado River System each year, and over 17 million acre-feet per year in the River's mainstream. Even so, they recognized that the highly variable river would not yield a reliable supply every year. At the time annual river flows sometimes fell below 10 million acre-feet. As such, the negotiators anticipated and provided for years of drought and low river flows. The Compact gave the certainty needed to construct Hoover Dam and other storage reservoirs, providing both flood control protection and water supply security for over 85 years. That water security has enabled the economic prosperity envisioned by the Compact negotiators a century ago.

The Law of the River (court decisions and decrees, a Treaty, compacts, regulations, federal statutes, and numerous agreements that govern Colorado River operations) following the 1922 Compact reflects an understanding that the Colorado River provides less water than was thought to be available in 1922. Apportionments to individual Upper Basin States made in 1948 are by percentages of available water, not set volumes. In the U.S. Supreme Court's 1964 decree in *Arizona v. California* (376 U.S. 340), the Court anticipated shortages to the Lower Basin States' mainstream apportionments. Additions to the Law of the River made in this century also reflect a keen understanding that collaboration and flexibility are crucial to ensure that the Colorado River can continue to serve the existing and growing demands on this critical water supply.

Although the 1922 Compact negotiators anticipated drought, and those who followed recognized a smaller supply, they could hardly anticipate what we are experiencing now. Even so, the Compact provides the foundation for all that has followed and must remain. We must also take into account every resulting right, obligation, and benefit which finds its source in that bargain. Ultimately, we must develop tools to use less water within that framework, either through voluntary or mandatory conservation.

Our challenge now is not reallocating water. Our challenge is to collaborate to address the increasing hydrologic risks by developing additional innovative, and proactive measures, including either voluntary or mandatory conservation, that fit

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within the existing structure to address the challenges we face today and going forward, including when there is insufficient water to fully satisfy the existing apportionments of the Colorado River System.

In the past two decades, the United States, Mexico, the seven Colorado River Basin States, Native American tribes, water users, non-governmental organizations and other stakeholders have demonstrated the ability to collaborate to create and implement such innovative and proactive solutions, incorporating the ability to adapt to changing conditions, and to do so within the framework of the Law of the River as it exists today.