

**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.*”

Question for the Record

Question from Rep. Jim Costa, CA

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 by New Mexico Compact Commissioner John R. D’Antonio to Representative Costa’s question – Response submitted on November 10, 2021:

In the 1922 Colorado River Compact (1922 Compact), the seven Colorado River Basin States agreed to allocate the water in the Colorado River to provide more certainty and security that could help promote development. Both the Upper and Lower Basins were apportioned the exclusive beneficial consumptive use of 7.5 million acre-feet of water per year, and an amount of water was set aside in case a treaty was ever signed with Mexico regarding Colorado River water. Further, in 1948 the Upper Basin states entered into the 1948 Upper Colorado River Basin Compact (1948 Compact). New Mexico’s apportionment under the 1948 Compact is 11.25 percent of the Upper Basin’s share. All states have developed water in accordance with the respective Compacts and have plans for continued development. Reallocation of the Colorado River is not a recommendation New Mexico would support. It should continue to be up to each state to manage demand within its boundaries based on available supply within each state.

The 1922 and 1948 Compacts, and the body of laws, regulations, treaties, compacts and other documents that are collectively known as the Law of the River, have allowed the seven Colorado River Basin states, through cooperation and coordination, to manage the supply in the Colorado River up until now. The most recent addition to that body is the Colorado River Drought Contingency Plan. The Lower Division states (Arizona, California, Nevada) and Upper Division

states (Colorado, New Mexico, Utah and Wyoming) are actively coordinating on additional Upper and Lower Basin actions under the Drought Contingency Plans. At the same time, all seven states have begun coordination with the Department of the Interior to replace the 2007 “Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead” which expire at the end of 2025. The states are committed to working closely with the federal government and other partners in the Basin to negotiate a new agreement to replace the Guidelines.

New Mexico has entered into water rights settlements with its two Colorado River Basin tribes: the Navajo Nation and the Jicarilla Apache Nation; and consequently, does not have unresolved Indian water right claims in the Colorado River Basin. Those settled claims are part of New Mexico’s 11.25 percent share of Colorado River water. New Mexico is actively engaged with both tribes to implement projects to put their water to beneficial use within New Mexico. In fact, these tribal projects are the major remaining water development projects for New Mexico within its 1948 Compact allocation.

As was the case for New Mexico, it is up to the individual states to address the tribal claims in their respective states, and within their respective apportionments, as identified in the 1922 and 1948 Compacts

The existing precedents set by New Mexico for resolving Indian water rights claims could be used as a roadmap on how to address the tribal water and supply shortage issues in the entire Basin. In addition to fitting within an individual state’s compact share, the settlement agreements include shortage sharing provisions. That means, for New Mexico, that supply shortages will be shared in accordance with the shortage-sharing provisions included in its tribal settlements.

Moreover, the Upper Division states have been taking water shortages for at least the past two decades. In New Mexico, water shortages occur annually in the San Juan River Basin, including on the Animas and La Plata tributaries. In addition, the San Juan-Chama Project, New Mexico’s major trans-basin diversion project authorized by Congress in 1962, has experienced shortage in its water supply of between 10 and 15 percent, particularly during the past decade. The shortage experienced by this project in 2021 was approximately 40 percent of a full supply. New Mexico and its water users have learned how to manage through such water shortages according to the Law of the River and through Indian water rights settlements.

We all know more about the Colorado River system today than we did in 1922, and we are all concerned about additional aridification due to climate change. That knowledge, the collective operating experience of the federal government and the states, and the spirit of cooperation that is the hallmark of the Colorado River Basin will be useful tools to address the challenges we will face in the future.