COLORADO
Colorado Water Conservation Board
Department of Natural Resources
1313 Sherman Street, Room 718
Denver, CO 80203

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. Please find my response to Representative Costa's question enclosed with this letter.

Sincerely,

Rebecca Mitchell

Rebecca Mitchell
Director, Colorado Water Conservation Board
Colorado Commissioner, Upper Colorado River Commission

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 for Rebecca Mitchell, Director, Colorado Water Conservation Board

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:

For almost a century, the Colorado River Basin States have relied on the certainty provided by the Colorado River Compact to develop water supplies for 40 million people, 5.5 million acres of farmland, and water for our national public lands.

The 1922 Colorado River Compact is the first interstate water compact negotiated in the United States and it has served as the foundation for the management of the Colorado River for the last one hundred years. In 1922, the Upper Basin (Wyoming, Utah, Colorado, and New Mexico) became very concerned about the rapid growth in the Lower Basin (California, Nevada, Arizona) and mounting pressure from the federal government that was claiming all the undeveloped and excess waters in the Western States.

To balance these competing interests, the States negotiated the Compact to: (a) provide for greater certainty and security for all states who rely on the water; (b) eliminate pressures to race to develop uses; (c) allow Upper Basin States to develop supplies at their own pace and safeguard water for future uses; (d) allow the states to determine how the water would be divided and apportioned amongst themselves in perpetuity (e) maintain state autonomy as opposed to federal control; and (f) promote interstate comity and remove causes of present and future controversies.

The Colorado River Compact apportions the Colorado River with the Upper and Lower Basins each allocated the exclusive beneficial consumptive use of 7.5 million acre-feet per year. The Lower Basin also received the right to develop an additional one million acre-feet to account for its tributaries, for an aggregate of 16 million acre feet of water between the Upper and Lower Colorado River Basins. The Upper Basin States are obligated to not cause the flow of water at Lee Ferry to be depleted below an aggregate of 75 million-acre feet for any period of ten consecutive years. It also recognized an allocation to Mexico which, under the 1944 Treaty, was set at 1.5 million acre-feet per year to be satisfied first from waters that are surplus over and above the aggregate. The Colorado River Compact is the basis for a second compact, and the federal laws, court decrees and agreements authorized since, and the culture of collaboration it forged remains a unique and critical asset in the region.

The 1948 Upper Colorado River Basin Compact accommodates variable water supplies in the Upper Basin by apportioning water to each state by percentages of available water apportioned under the Colorado River Compact, instead of fixed amounts. *Arizona v. California* (376 U.S. 340), addressed expected shortages to the Lower Basin States' apportionments and for Tribal reserved water rights to be included in the apportionment of the states where reservations are located. Colorado has a settlement in place with the Southern Ute and Ute Mountain Ute Tribes and the Tribes' water uses are included as part of Colorado's allocation.

Our use of water in Colorado, and the other Upper Basin States, is naturally limited by hydrology. Our biggest reservoir is the snowpack. We cannot control its operation and on account of a changing climate, we have less natural snowpack today than twenty years ago. This year has been particularly difficult.

For example, over the course of this summer, conditions across western Colorado deteriorated significantly. The Ute Mountain Ute Farm and Ranch Enterprise, owned by the Ute Mountain Ute Tribe, one of the area's largest water users, wasn't able to produce crops without their water allotment and had to lay off 50 percent of their staff, who are mostly members of the Ute Mountain Ute Tribe. The farm used only 8 of their 110 fields.

Because of our increasingly limited supply over the last twenty years, the Upper Basin consumes much less water than it is apportioned under the Compact—notably, about 3 million acre-feet less every year. This does not mean that the Upper Basin does not need or cannot use more water. When it is available, it is diverted and used.

Lower Basin water users get their water supplies from releases of water from Lakes Powell and Mead. In contrast to the Upper Basin's variable supply from natural snowpack, these reservoirs provide a secure and reliable source of supply. Due to how the system operates, the Lower Basin

has benefited from above normal releases. This has directly contributed to the declining levels in Lakes Mead and Powell.

In considering how to best manage the Colorado River in the face of a warmer and drier future, our task now is not to reapportion the water, but to work together to find flexibilities within the existing framework to equitably share shortages between the Upper and Lower Basins.