

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 Pat Tyrrell, Wyoming Commissioner to the Upper Colorado River Commission

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?**

Pat Tyrrell Response:

The 1922 Colorado River Compact apportions 16 million acre-feet of beneficial use of water between the Upper and Lower Colorado River Basins. At the time, Compact negotiators believed there was much more available, up to 20 million acre-feet in the entire Colorado River system, and over 17 million acre-feet in the river’s main stream. Even so, they recognized that the highly variable river would not provide a reliable supply in every year. Even before 1922 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. They also provided for the Basins to share in any deficiency to Mexico should such a deficiency ever be recognized. The 1922 Compact provided the certainty needed to construct Hoover Dam which has provided both flood control protection to California and Arizona as well as water supply security to the Lower Basin for over 85 years. That water security has enabled the Lower Basin development and economic prosperity envisioned by the Compact negotiators a century ago.

Since the 1922 Compact, the Law of the River affecting the interstate and international use, management, and allocation of Colorado River system water reflects an understanding that the Colorado River provides less water than the negotiators believed was 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. We further know that the water rights of Native American tribes, whether currently quantified or not, must be satisfied from the individual state apportionments in which

the tribal reservations are located. Additions to the Law of the River made in this century also reflect a keen understanding that the river's available supply cannot meet existing and growing demand without collaboration and flexibility to implement unprecedented, innovative, and proactive measures.

Although the 1922 Compact negotiators anticipated drought, and those who followed recognized a smaller supply, they hardly could have anticipated what we are experiencing now. Nevertheless, the original equitable division made in 1922 provides the foundation for all that has followed and must remain. We must take into account that original equitable division as well as every resulting right, obligation, and benefit which finds its source in that bargain.

Our challenge now is not reallocating water. Our challenge is to collaborate to address the increasing hydrologic risks. We do that by developing additional innovative and proactive solutions that fit 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. 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 Law of the River framework as it exists today.