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No gambling in Las Vegas – at least when it comes to the future of Colorado River Water rights

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January 16 2015

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Every December, the members of the Colorado River Water Users Association – including water users, federal, tribal, state and local regulators, irrigation districts, engineers, conservationists, and others from all over the southwestern United States — gather at Caesar’s Palace in Las Vegas, Nevada to get wild and talk about Colorado River water policy for a few days. 2014 was no exception, and as tends to happen, a significant announcement was made: the major water users of the Colorado River in the Lower Colorado River Basin (Lower Basin) entered a [Memorandum of Understanding](#) (MOU) to take new, additional actions designed to help avoid serious impacts resulting from sustained drought in the Lower Basin.



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Although the Lower Basin States of California, Arizona, and Nevada have not always been able to work together, the growing cooperation among the Lower Basin states and their water users in the management of Colorado River resources sets an important example for other multi-jurisdictional natural resource management challenges. This cooperation is all the more important now in the face of the first-ever potential Lower Basin shortages on the Colorado River, which provides drinking water for millions of people and irrigates huge areas of farmland in the Lower Basin.

In 1964, the US Supreme Court issued a [decree](#) in *Arizona v. California*, confirming the amount of water that each of the Lower Basin states is allowed to take from the Colorado River pursuant to the Boulder Canyon Project Act (BCPA). The BCPA allocated to the Lower Basin states 7.5 million acre-feet (maf) of Colorado River water (4.4 maf to California, 2.8 maf to Arizona, and 0.3 maf to Nevada). Later, as part of a political compromise in exchange for congressional approval to build the Central

Arizona Project (CAP) canal (which transports part of Arizona's allocation into the population centers of central Arizona), Arizona agreed to subordinate the priority of CAP's water and other more recent uses (post-1968) of Colorado River water to California. Thus, in times of drought, Arizona's CAP allocation, together with certain other on-River users in Arizona and Nevada, will be the first water reduced if there is a Lower Basin shortage.

Pursuant to a 2007 Record of Decision signed by the Secretary of Interior (the "[Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead](#)" (Interim Guidelines)), shortages are tied to reservoir levels in Lake Mead. If Lake Mead levels fall past defined "shortage triggers" at 1,075, 1,050, or 1,025 feet, water allocations are significantly reduced for both Arizona and Nevada, with the amount of shortage reduction increasing progressively at each trigger. Fifteen years of sustained drought on the Colorado River has caused water levels to drop significantly, and the [current projection](#) is for Lake Mead to drop to 1,074.60 by June 2015. This could trigger a shortage as early as 2016, or potentially in 2017, depending on precipitation and runoff levels over the following months.

The December 4, 2014 MOU is the latest product of ongoing, intense discussions among the Lower Basin states and the Department of Interior's Bureau of Reclamation (Reclamation) with regard to how to avoid and manage shortages. The "Pilot Drought Response Actions" MOU was entered into by Reclamation; the Central Arizona Water Conservation District (CAWCD), the entity responsible for managing the CAP canal; the Metropolitan Water District of Southern California (Met), Southern Nevada Water Authority (SNWA), the Arizona Department of Water Resources (ADWR), the Colorado River Board of California (CRBC), and the Colorado River Commission of Nevada (CRCN).

The purpose of the MOU is to generate additional water in Lake Mead between 2014 and 2017 "to reduce risk of reaching critical reservoir elevations in a manner consistent with the Law of the River[.]" with an overall goal of developing between 1.5 and 3.0 maf of "Protection Volumes" (additional water in Lake Mead) between 2014 and 2019. The first step toward that goal is a series of "best efforts" by the individual parties to create Protection Volumes:

- ▶ SNWA: 45,000 acre-feet (af);
- ▶ CAWCD: 345,000 af;
- ▶ Met: 300,000 af; and
- ▶ Reclamation: 50,000 af

The sum of these amounts, 740,000 af, is approximately equivalent to 10 feet of elevation in Lake Mead.

Also in the MOU are provisions to create additional Protection Volumes in the future, initiating additional consultation by August 2016 and implementation of additional actions by 2020. If in any year Lake Mead is projected in Reclamation's "April 24-Month Study" (a projection of future Colorado River reservoir conditions) to be at or below 1,060 feet on December 31 of that year, Reclamation will seek to reinstate consultation to identify additional measures for reducing the risk of reaching 1,020 feet and to take action on those measures by December 31 of that year. If Lake Mead refills and is projected to go above 1,105 feet by December 31 in any year's April 24-Month Study, the parties will reexamine whether the drought response actions are necessary. The MOU is effective until December 31, 2019.

The latest MOU is a model of cooperation and collaboration among water users that should be considered by parties facing similar challenges in other water and natural resource contexts. The substantial litigation expenses that are being incurred in other intrastate water disputes, such as the [fight between Florida and Georgia](#) over the waters of the Apalachicola-Chattahoochee-Flint River Basin, or [Texas v. New Mexico, et al.](#), demonstrate the costs associated with failing to come to the table to seek out collaborative, cooperative solutions in the face of scarcity. Continued population growth and the uncertainties associated with drought and climate change on our common water resources will make this type of cooperation and collaboration even more critical in the future.

Tags USA, Energy & Natural Resources, Environment & Climate Change, Litigation, Squire Patton Boggs

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