

# Colorado River Basin States' Role in Bi-national Negotiations

## 2014 Upper Colorado River Basin Water Forum



Karen M. Kwon. First Assistant Attorney General<sup>1</sup>

<sup>1</sup>The views expressed in this presentation are solely those of the author, not the official position of the Colorado Department of Law or the State of Colorado.

# Int'l. Management of Colorado River

## ➤ 1944 Water Treaty



- Allots Mexico a “guaranteed annual quantity” of **1.5 MAF/year** of Colorado River water.
- Mexico diverts water at **Morelos Dam**
- When there are **surplus** waters, U.S. to deliver up to **1.7 MAF**.
- In an **extraordinary drought**, Mexico deliveries reduced in proportion to deliveries in the U.S.

## ➤ Int'l Boundary & Water Commission



- Regulates and exercises rights and obligations and settles differences that may arise in application of the treaty. (**Art. 2**)
- Decisions recorded in the form of Minutes that serve as binding agreements once approved by both governments. (**Art. 25**)

# Linkages between States and Mexico

## ➤ **Treaty Compliance**

- In absence of surplus, half of Mexico's 1.5 MAF/year treaty entitlement supplied by Lower Basin, and half supplied by Upper Basin. (CR Compact, Art. III(c))

## ➤ **Upstream Operations**

- Cancelled water orders in Lower Basin
- Lining of All American Canal
- Re-diverted saline water to Cienega de Santa Clara

## ➤ **Furthering Coordinated Management**

- Minute 316 – Yuma Desalter Plant – Pilot Project

# Impetus for State Interest in Bi-national Negotiations

## ➤ Drought Conditions

- 2001- present, the CR basin experiencing unprecedented drought, substantially reducing Colorado River storage and leaving reservoir levels in the U.S. at historic lows.

## ➤ 2007 Interim Guidelines

- Collaborative work to develop a more secure foundation upon which to achieve greater flexibility in use and development of the CR resource.



Lake Powell Operational Tiers		Lake Powell Equilization Elevation Table	
Lake Powell Elevation (feet)	Lake Powell Operational Tier	Water Year	Elevation (feet)
3,500	Equalization Tier	2009	3,608
	Equalize, avoid spills or release 8.23 mcf	2009	3,609
3,420 - 3,600		2010	3,642
	Upper Operational Balancing Tier	2011	3,683
	release 8.23 mcf	2012	3,645
	if Lake Mead < 3,075 feet	2013	3,648
	balance consists with a minimum release of 1.0 and 8.23 mcf	2014	3,648
3,345		2015	3,648
	MMA Elevation Release Tier	2016	3,601
	release 7.48 mcf	2017	3,652
	if Lake Mead < 3,028 feet	2018	3,654
	release 8.23 mcf	2019	3,655
3,285		2020	3,657
	Lower Operational Balancing Tier	2021	3,658
	balance consists with a minimum release of 1.0 and 8.23 mcf	2022	3,660
3,220		2023	3,662
		2024	3,663
		2025	3,664
		2026	3,666

# Drought

- By April 2005, drought reduced storage in Lake Powell to only 33%, jeopardizing the Upper Basin's ability to release water according to existing criteria and maintain power generation.



# Drought (cont'd.)

- Such conditions raised the possibility for divisive conflict between the basin states over water allocation.



# 7 State Agreement

- Agreement among the 7 Basin States on alternative to be included in the NEPA process for the 2007 Interim Guidelines.
- Agreement recognized need for reduction in the annual water delivery to Mexico when storage at Lake Mead was substantially reduced.
  - \* Key to keeping Arizona and Nevada at the negotiating table.
- Triggered questions of when the US may legally and equitably reduce deliveries to Mexico.
- The Guidelines do not include express provisions for reducing deliveries to Mexico. It merely recognizes the need to initiate a process for negotiating such reductions with Mexico through the IBWC and consistent with the 1944 Water Treaty.

# States' Role in Recent Bi-National Cooperation

## ➤ Impetus to Process

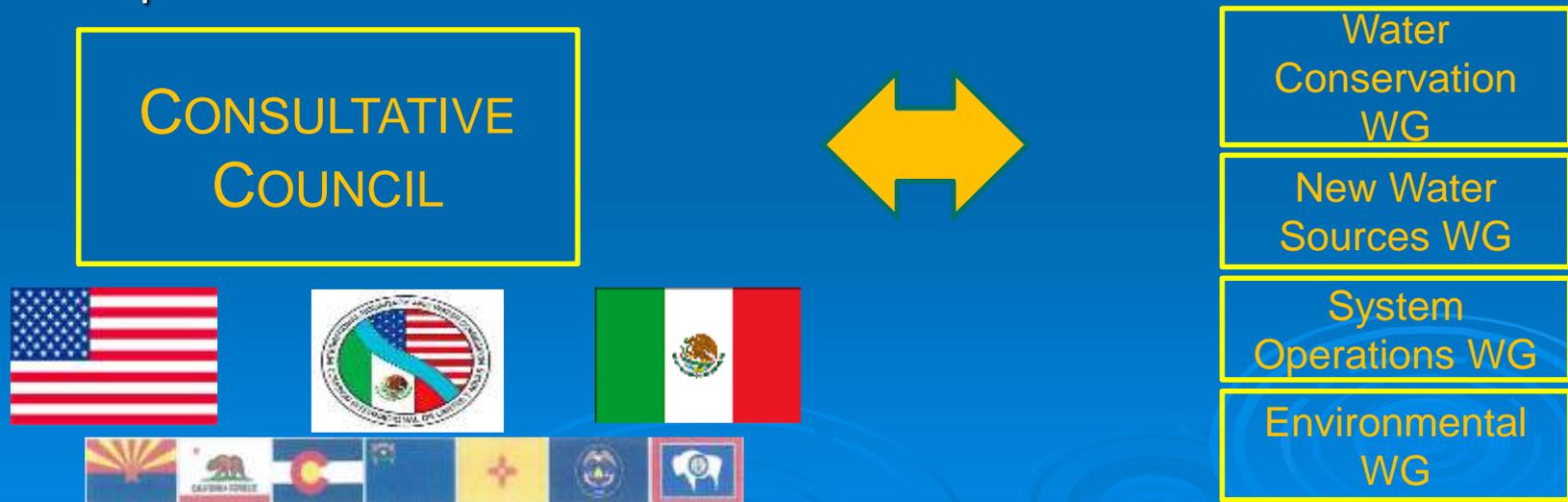
- Basin States urged U.S. to approach Mexico
- 2007 Statement by DOI and Mexican Ambassador
- IBWC should be utilized to expedite discussions on Colorado River cooperation on:
  - ✓ Needs
  - ✓ Environmental priorities
  - ✓ Opportunities

## ➤ Success unlikely without States' consent and participation

- Right to use CR within US belongs to the States.
- Law of the River governing rights, obligations and management of the CR system very intricate.

# Joint Cooperative Process – Minute 317

- Interest grew in establishing a comprehensive framework for joint cooperative actions
- Establishes a framework for future opportunities to be explored, including Work Groups and Core Groups informing Commissioners.
- Also establishes the Bi-national Consultative Council of state and federal government officials to inform legal and policy matters to be considered in comprehensive framework.



# Joint Cooperative Process – Comprehensive Framework

## ➤ Points of discussion:

- Mexico use of U.S. infrastructure
- Shortage / “Surplus” management
- Water exchanges
- Investment in infrastructure such as desalination facilities to generate new water sources
- Water conservation projects
- Consistent with Treaty



# Minute 318

- April 4, 2010, “Easter Earthquakes” devastated Mexico’s irrigation infrastructure.
- U.S. partners in Joint Cooperative Process expressed support for IBWC to assist Mexico in addressing earthquake impacts.



# Minute 318 (cont'd.)

- Benefited from framework established in previous collaborative efforts.
- Signed on December 20, 2010, provides:
  - Mexico may temporarily defer delivery of its share of Colorado River water to allow for repair of the irrigation systems.
  - The Mexican allotment can remain within the U.S. infrastructure through December 31, 2013.
- Negotiated in consultation with, and after obtaining unanimous support of, the seven Basin States.

# Minute 319

## ➤ Key Discussion Points

- “Surplus” and Shortage Sharing
- Creation and Delivery of Intentionally Created Mexican Allocation (ICMA), using U.S. Infrastructure
- Water Exchanges
- Water for the Environment
- Salinity Management
- International Projects



# Minute 319 (cont'd.)

## ➤ Mexico Key Considerations

- Protecting treaty entitlements
- Consultation and equity in sharing the burdens and benefits of the system (shortage / surplus)
- Salinity mitigation
- Water for the environment
- Assistance with infrastructure

## ➤ U.S. States' Key Considerations

- Respecting authorities of entities involved.
- Identifying flexibilities in the system to gain experience under variable water supplies without compromising legal rights and obligations.
- Striking an agreement that does not put any particular party at greater risk than another.
- Importance of open dialogue and respect for different cultures.



# Minute 319 (cont'd.)

## ➤ International Agreement

- Signed November 20, 2012 by U.S. and Mexico Commissioners
- 5 Year Interim Term thru December 31, 2017
- Comprised of 7 Sections:
  - Extension of Minute 318
  - High Reservoir Conditions
  - Low Reservoir Conditions
  - Intentionally Created Mexican Allocation
  - Salinity Management
  - Water for the Environment and ICMA/ICS Exchange Pilot Program
  - International Projects



**Minute No. 319 Signing  
Ceremony – November 20,  
2012**

# Minute 319 (cont'd.)

## ➤ Domestic Agreements

- Finalized and signed by Reclamation, Basin States, and, in some instances, IBWC
- Memorandum of Agreement
- Forbearance Agreement
- Contributing Funds Agreement
- Interim Operating Agreement

# Minute 319 Implementation

- Participate in Kickoff, Workgroups, and Consultative Council, Council Meetings
- Coordinate with IBWC and Bureau of Reclamation concerning interpretation and application of the Minute
- Maintain and cultivate existing relationships with representatives from NGOs and both countries
- Stay actively involved in program activities and monitoring to inform future processes

# Takeaways from Process

- Basin is undoubtedly interconnected – what happens in one part of the basin has the potential to impact all parts.
- Each level of government (and NGOs) have significant role to protect rights and obligations on the River and promote the River's future sustainability.
- This role is not only in the form of money and legal entitlements, but also the creativity, time and dedication to problem solve current matters and plan for the longevity of the region.



**Karen Kwon**  
First Assistant Attorney General  
720-508-6269  
[Karen.kwon@state.co.us](mailto:Karen.kwon@state.co.us)