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Challenges of the Future in Colorado River Basin

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IMBALANCES IN THE COLORADO RIVER BASIN

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CHALLENGES OF THE FUTURE IN THE COLORADO RIVER BASIN

Anne Castle, Assistant Secretary for Water and Science at the US Department of the Interior, opened the WATER LAW REVIEW'S Annual Spring Symposium with a keynote address. Castle's comments focused on future challenges in the severely endangered Colorado River Basin ("Basin") and the importance of operational flexibility in managing the Basin. She emphasized that strategic collaboration between governments, people, and nations can achieve the flexibility required to ensure the future viability of the Basin. In her keynote address, Castle discussed four projects involving the management and conservation of the Basin: (i) the Colorado River Supply and Demand Study ("Study"); (ii) Minute 319 interpreting the 1944 US-Mexico Treaty for the Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande ("Water Treaty"); (iii) Navajo Generating Station; and (iv) Glen Canyon Dam.

The Study evaluated existing infrastructure and supply and demand imbalances in the Basin as part of a broader Basin-wide study program. Additionally, the Study attempted to develop strategies for projecting future imbalances. The cooperation and partnership of the federal government, seven Basin States, ten Basin Native American tribes, and multiple governmental and non-governmental organizations was essential for the completion of this three-year-long comprehensive Study (completed in January 2013). The Study confirmed that, with rapidly increasing water demands, environmental needs, and continuous droughts, the Basin's water supply remains at least static, and is possibly declining.

Having established a common technical foundation model, the Study offered an opportunity for thoughtful discussion through an open comment process, resulting in approximately 150 suggestions from the general public on ways to address the supply and demand imbalance in the Basin. Wrapping up her discussion of the Study, Castle suggested that, although the Study still needs to refine some areas and reduce uncertainties, the Study is "smart," very detailed, should serve as a model for the future, and should serve as a tool for educating the public about the Basin. She added that only broad support and collaborative efforts support concrete methods advancing the common goal: providing a healthy river to future generations.

The second Basin management development Castle discussed was Minute 319, which interprets the Water Treaty. The Water Treaty regulates the US and Mexico's utilization of waters of the Colorado River across international boundaries. Pursuant to Minute 319, Mexico and the US must share water shortages as well as water surpluses. Prior to Minute 319, the two countries

shared water shortages only. Sharing surpluses allows for more reliability and predictability of the Colorado River's water supply in both the US and Mexico.

Minute 319 also extended Minute 318 by allowing Mexico to defer its water rights and store its Colorado River allotment in Lake Mead without losing its rights to the allotment. Such deferred delivery benefits both countries. On the one hand, it enhances Mexico's water security and storage capacity. On the other hand, it increases the water levels of Lake Mead, ensuring predictable water storage levels for Lower Basin States. Another important provision of Minute 319 authorized establishment of an Intentionally Created Mexican Allocation, which enabled Mexico to adjust its water delivery schedule to allow for later use.

Minute 319 further created a pilot program to provide water for planned environmental flows and a one-time high-volume pulse flow for the Colorado River Delta. The goal of this pilot program is to create new wetland habitat in the Delta and establish a foundation for future restoration projects. Castle emphasized that such productive collaboration between Mexico and the US is especially remarkable in light of the fact that US states often fail to cooperate with each other, not to mention another country, when it comes to water allocation. Castle called Minute 319 a "breakthrough" and a historical example of cooperation between the governments of the US and Mexico, seven US states, the International Boundary and Water Commission, and many non-governmental organizations.

Moving on to her third topic, Castle discussed the Navajo Generating Station ("NGS"). The need for additional energy generation in the Southwest became apparent in the 1960s. However, the initial suggestion to build two hydroelectric dams did not survive vigorous opposition from the National Park Service and environmental groups. Taking the dams' place is NGS, a 2250-megawatt coal-fired power plant on land on the Navajo Indian Reservation in Arizona. NGS has become an important energy, income, and employment source for the region and the Navajo Tribe.

NGS-generated energy serves many purposes, including pumping Colorado River water for Arizona, Nevada, and California. Revenues from selling energy surplus and mining coal on Reservation lands belong to the member Native American Tribes with NGS also serving as a significant source of employment. However, the power plant also contributes to the notorious haze in the area. NO_x emissions have become increasingly concerning in light of NGS's proximity to three wilderness parks, a national park, and several Native American Tribes. There is concern that high levels of NO_x emissions will negatively affect the tourism industry, which has historically generated substantial revenue for the area as well.

Castle discussed the Glen Canyon Dam ("Dam") as her final keynote address topic. The Dam is a physical dividing point between Upper and Lower Basin water supplies on the Colorado River. Basin restoration efforts involving the Dam include releasing water from the Dam and stimulating historically natural seasonal floods. In the past, for each such release, the Bureau of Reclamation was required to complete an individual environmental impact statement ("EIS"). The process often resulted in irreversible delays, where water releases would not occur during optimal natural conditions. Recently, the Bu-

reau of Reclamation received approval of a programmatic EIS, which lists conditions when water releases are permissible. This change allows for flexibility and an ability to operate the Basin restoration program seamlessly.

Following the programmatic EIS, the Department of the Interior initiated the first high-volume release in November 2012, with more similar releases on the way. The goal of these releases is to study whether repeated high-volume water releases can stimulate natural conditions, retain sediment, and stop extensive erosion in the Basin. In addition, the Department of the Interior and approximately twenty cooperating agencies are currently working on the Long-Term Experimental and Management Plan for operation of the Dam. Castle noted that she expects the release of the initial draft in early 2014.

In closing, Castle reiterated the scale of the problems the Basin is facing as a result of climate change, population growth, unquantified water rights for Native American Reservations, interests of competing industries, and environmental dilemmas. She praised the recognition that submitting Basin problems to the judiciary alone does not help to solve these problems—only mutual efforts and cooperation can lead the way to water sustainability and preserve the Basin for generations to come.

Natasha Schissler

BASIN STUDY OVERVIEW WITH REACTION PANEL AND Q&A

The 2013 University of Denver Water Law Review Annual Symposium welcomed a panel that provided an overview of the comprehensive new Colorado River Basin Supply and Demand Study (“Study”). The Study, which was jointly funded by the US Bureau of Reclamation and seven Colorado River Basin states, projected supply and demand imbalances throughout the Upper and Lower Colorado River Basins over the next fifty years. The discussion panel was comprised of several of the water law and policy experts who helped prepare the Study and gave a broad spectrum of perspectives on the Study’s findings and implications.

Carly Jerla of the US Bureau of Reclamation, representing the Federal perspective, began by giving a general synopsis of the Study and assessed changes in water supply and demand within the basin over the next fifty-years. The Study’s authors compiled these projections to see how the entire Colorado River Basin is likely to perform under a wide range of projected future conditions, with scenarios ranging from the current *status quo* to one based on a worst-case projection of the effects of climate change. The final phase of the Study identified several portfolios of strategies for dealing with projected supply and demand imbalances. While many of the potential solutions are likely to be partially effective, Jerla stressed that no one single option will completely eliminate the risks associated with increased demand and dwindling supply in the Basin.

The next speaker, Kay Brothers of the Southern Nevada Water Authority, gave a Lower Basin perspective on the Study. From Brothers’ perspective, the Study highlighted the fact that Lower Basin municipalities will be unable to cope with projected supply and demand imbalances by relying solely on strategies designed to reduce demand. Brothers instead stressed the need to devel-