

**Testimony of James Eklund  
Governor's Representative  
State of Colorado  
COMMITTEE ON NATURAL RESOURCES  
SUBCOMMITTEE ON WATER, OCEANS, AND WILDLIFE  
United States House of Representatives  
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**Chairman Huffman, Ranking Member McClintock and members of the Subcommittee:**

**I. Introduction**

My name is James Eklund and I am the Governor of Colorado's appointed Colorado River representative. I am honored to present testimony on behalf of the State of Colorado on the Colorado River Drought Contingency Plan, or DCP. The DCP is a plan negotiated by representatives of the seven Basin States of Colorado, Arizona, California, New Mexico, Nevada, Utah, and Wyoming and the federal Bureau of Reclamation to address the ongoing effects of water stress on the Colorado River Basin that have been exacerbated by climate change while our reliance on a healthy river system has increased. We began to see these effects nearly two decades ago and they have no end in sight notwithstanding an excellent snowpack so far this year.

The DCP is the latest example of the seven Basin States working together to achieve solutions to Colorado River challenges. Working together, we have developed a sound plan for protecting the storage in both Lake Powell and Lake Mead in the face of historic drought conditions and we have done so without infringing upon the water rights of those that rely on the Colorado River.

## **II. Water stress in the Colorado River Basin requires action now**

The urgency is real because our system is stressed. Last year's runoff into the Colorado River was the second lowest since 2000 but it is just one year in nearly two decades of reduced hydrology in the watershed. Lakes Powell and Mead, the two largest man-made reservoirs in the United States, could reach critically low levels as early as 2021 or 2022. A warming climate, exemplified by nearly twenty years of hot and dry conditions, has translated into reduced streamflows, earlier peak runoff, and more arid conditions in our critical watersheds. Meanwhile, our demand for water has hardened as the population continues to grow and as our valuable crops become thirstier longer due to hotter, drier conditions. When precious water resources are stressed in this manner, our environments and people in poverty often experience disproportionate pain.

The seven Basin States have drafted a series of agreements to implement the DCP. We purposefully structured the agreements to call for legislation directing the Secretary of the Interior to execute the agreements and to carry out their provisions after they have been executed by the non-federal parties to the agreements. In addition to providing you with an explanation of the DCP, I am here today to request your support in passing this critical legislation as quickly as possible.

The seven Basin States formally addressed the risk of shortage to the Colorado River in 2007 with the adoption of the 2007 Interim Shortage Guidelines. The operating experience gained from the adoption of the 2007 Guidelines and emerging scientific information regarding the increasing flow variability of the Colorado River have compelled the Basin States, the Bureau of Reclamation, and the Republic of Mexico to seek to adopt more stringent water management programs aimed at mitigating the impacts of shortages on our economies and the environment.

Federal legislation is now needed to facilitate the implementation of the DCP, which will reduce the probability that Lakes Powell and Mead will decline to critically low elevations. The Basin States have provided language to members of Congress that we believe is appropriate for the federal legislation. It is our hope that federal legislation can be finalized as soon as possible allowing the DCP agreements to be executed as written and implemented in 2019.

Given the urgent need for action, we are seeking your support for the legislation, so that the agreements can be executed and implemented as soon as the respective authorized officials and governing bodies in the Basin States have acted. Our goal is to have authorizing legislation in place such that the Basin States can execute the drought contingency plan agreements this year.

### **III. The DCP**

The DCP provides Colorado and the Upper Basin with two tools we believe necessary to successfully address a crisis: the Drought Response Operations Agreement and the Demand Management Storage Agreement. While neither of these agreements individually constitutes a panacea, modeling demonstrates that a combination of actions can positively influence Colorado River operations and outcomes.

When our environment, economies, and livelihoods are at risk, we can little afford delay. Were the Colorado River system to fail, our efforts to preserve and protect landscapes, critical species, water quality, and other environmental resources that each of the Colorado River Basin states depend on and value would be compromised. In short, failure is not an option.

#### **A. Drought Response Operations Agreement**

The Drought Response Operations Agreement establishes a process to make operational adjustments or releases at the CRSPA

Initial Units, within the framework of existing authorities, in order to help protect Lake Powell from reaching critical elevations. This tool allows us to move water stored to where it is needed.

The Drought Response Operations Agreement applies to the CRSPA Initial Units. The CRSPA Initial Units are Glen Canyon (Lake Powell), Flaming Gorge, Aspinall, and Navajo. This Agreement relies on available water supplies as needed to reduce the risk of Lake Powell dropping below the critical elevation of 3,525'. This elevation is essential to the health of the Colorado River system, its environment, its infrastructure, and compact rights and obligations.

This Agreement establishes a process to develop a drought response operations plan. That process begins when forecasts project Lake Powell elevations will reach elevation 3,525' or below. The process includes outreach to American Indian Nations, other stakeholders, as well as consultation with the Lower Division States (Arizona, California, and Nevada). The Agreement ensures all CRSPA Initial Units are considered given water availability, hydrology, resource conditions, and operational limitations. Any plan will contain sufficient flexibility to begin, end, or adjust operations as needed based on actual hydrologic conditions. The Agreement further provides for emergency actions if actual hydrology or actual operating experience demonstrate an imminent need to protect the target elevation at Lake Powell. Any final drought response operations plan will be submitted to the Secretary of the Interior for approval. Drought response operations will continue until the critical elevation is no longer at risk, and end only after each CRSPA Initial Unit has recovered any storage released under such operations.

Importantly, our drought response operations process fits within the framework of and complies with existing authorities. Project-specific criteria govern the operation of each CRSPA Initial Unit, including applicable Records of Decision and Biological Opinions to

satisfy the requirements of the National Environmental Policy Act and the Endangered Species Act, the authorized purposes for each facility, as well as state water right systems and decrees. The Agreement explicitly commits to operating the CRSPA Initial Units with the maximum flexibility practicable consistent with those existing authorities in both the release of water and the later recovery of storage. Moreover, the Agreement expressly recognizes that it will operate within the framework set forth under existing records of decision and biological opinions for each facility.

## **B. Demand Management Storage Agreement**

The Demand Management Storage Agreement allows the Secretary to make unfilled storage capacity at the CRSPA Initial Units available for use by the Upper Division States, through the Upper Colorado River Commission (UCRC), at no charge. Such storage capacity is available provided that the UCRC requests use of the storage capacity for the purpose of storing water conserved as part of an Upper Basin demand management program. The storage authorization does not expire.

By securing this storage authorization, the Upper Division States and the UCRC can effectively consider the feasibility of a demand management program. The storage authorization does not guarantee the development and implementation of a demand management program. Nor does it predetermine the type of any program that may be adopted in the future. However, implementing or even exploring such a demand management program would be pointless without this authorization to use unfilled storage capacity because any conserved water would otherwise be required to be released from Lake Powell under current operating rules.

The purpose of an Upper Basin demand management program will be to temporarily reduce consumptive uses in the Upper Basin or

augment supplies with imported water, if needed in times of drought, to help assure continued compliance with Article III of the 1922 Compact without impairing the right to exercise existing water rights in the future. Any demand management program will be at the discretion and under the control of the respective states, implemented under state law. Moreover, the storage, release, or delivery of water pursuant to such a program is not a discretionary action of the Secretary of the Interior.

The Upper Basin has learned through investigating aspects of demand management that no demand management program is likely to conserve enough water in any single year to completely ensure continued compliance with the 1922 Compact during extended dry conditions. Therefore, an Upper Basin demand management program will require the ability to store conserved water over multiple years.

We must navigate and answer many outstanding questions in order to establish an Upper Basin demand management program. These questions go to the core of how much water such a program could yield and store and at what cost.

In addition to providing for storage, the Demand Management Storage Agreement sets forth the minimum framework under which the Upper Division States can access the authorized storage prior to 2026. If, after study and consultation, the UCRC determines that a demand management program is feasible, then it may develop and implement a program. A program can only be implemented if approved independently by each of the Upper Division States.

If a program is developed prior to 2026, upon verification of the conserved water in storage, the water will not be subject to release from Lake Powell through 2057 except upon the request of the UCRC for compact compliance purposes. The stored water cannot cause a different release than would otherwise occur under current operational

rules. Any water stored must be water that would have been otherwise consumptively used but for conservation as part of a demand management program. The Agreement requires further consultation with the Lower Division States if more than 500,000 acre-feet of water will be stored and subjects the stored water to its proportionate share of evaporation losses. The stored water will be reduced in the event of a physical spill from Glen Canyon Dam and will be subject to annual verification and reporting. After 2026, any demand management program will be informed by and considered as part of the renegotiation of the 2007 operating rules.

#### **IV. Term of the DCP**

The DCP will be ready for signature by the parties upon the passage of the federal legislation and would remain in effect until the 2007 Guidelines are terminated or expire at the end of 2025. The seven Basin States recognize that the DCP is neither a “silver bullet” nor a long-term solution to the ongoing drought in the Colorado River Basin. But these agreements provide a bridge to the plan that must be developed by the States to take effect after the 2007 Guidelines end. The State of Colorado is committed to begin working on that plan soon after the DCP becomes effective. I can assure you that the other Basin States share this commitment, as do I and my colleagues who serve as the designated representatives for each of the seven Basin States.

#### **V. The State of Colorado & the Colorado River**

The State of Colorado and the Colorado River are inextricably linked. The Colorado River and approximately seventy percent (70%) of its flow originate in our state. While eighty percent (80%) of our precipitation falls in the Colorado River Basin, ninety percent (90%) of our population is located outside of the Basin. This has led to approximately 500,000 acre-feet of water moving from western Colorado to the eastern part of our state. As highlighted in Colorado’s

Water Plan, our environment is a critical aspect of Colorado's brand. It is difficult to overstate the importance of this water supply to the state's environment and economy as well as those of the Ute Mountain Ute and Southern Ute tribes. East or west of the Continental Divide, whether located within the physical basin or outside it, the Colorado River ties Coloradans together. And that is saying something in a state that produces water that reaches 18 downstream states, two oceans, and the Republic of Mexico.

The basins in the Colorado River system constitute more than one-third the size of Colorado's total geographic area. Originating in our north central mountains, the main stem of the Colorado River flows southwesterly and is met at Grand Junction by the Gunnison River before flowing west into Utah. The Yampa River and the White River move westward across the northwest quadrant of the state to the Utah border where they join the Green River, another tributary of the Colorado. The San Miguel River and the Dolores River begin near the southwestern corner of Colorado and travel north along the western border into Utah. The San Juan River and its tributaries collect the water in the southernmost regions west of the Continental Divide and flow into New Mexico and Utah. Importantly, the Upper San Juan River and its tributaries flow through two American Indian reservations in the southern portion of the basin—the Ute Mountain Ute Reservation and the Southern Ute Indian Reservation—both of which require a healthy Colorado River system.

## **VI. Conclusion**

The DCP agreements are the product of a collaborative effort by the seven Colorado River Basin States to address the ongoing drought in the Colorado River Basin. In the Upper Basin, the drought has created a very real risk of Lake Powell dropping to critical elevations that would result in significant negative consequences. The DCP will help reduce

this risk through the two tools of reservoir operations and demand management.

We structured the DCP to require the passage of federal legislation in order to be effective. We request your support in adopting the legislation as soon as possible so that the DCP can be implemented this year for the health of the Colorado River system, its environment, and its people.

Thank you. I stand ready for any questions, comments, or observations you might have.