

Testimony of John R. D'Antonio, Jr.
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Subcommittee on Water, Oceans and Wildlife
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Good morning Chairman Huffman, Ranking Member McClintock and members of the Committee. My name is John R. D'Antonio, Jr. I am the New Mexico State Engineer and the Governor's Representative for the State of New Mexico on the Colorado River. Thank you for inviting me to testify before your subcommittee today. I am here today with my fellow Governors' Representatives to urge you to support the Seven States' request to pass federal legislation allowing the Secretary of the Interior to sign and implement the Seven States' Drought Contingency Plans or DCPs for the Colorado River.

Immediate action is necessary on the DCPs to more effectively combat the drought that has been upon us for the past nineteen years. The DCPs are needed and appropriate tools, developed by consensus between seven States, to reduce the negative impacts of this continuing drought on cities, farmers, Tribes, and the environment. It is justified because the DCPs will be exercised within the constraints of existing environmental laws and regulations.

The DCPs are the culmination of the multi-year efforts of a large group of parties. Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, the United States, and the Republic of Mexico have come together to ensure continued water supplies for over 40 million people. Each of those States, each of those countries is doing its part to keep water levels in Lake Powell and Lake Mead from dropping to dangerously low levels that would result in significant water shortages in the Lower Basin and the reduction/loss of hydropower electrical generation for millions of people in the Southwestern United States.

In 2017, representatives of the two countries completed negotiation of Minute 323 to the 1944 Mexican Water Treaty. Minute 323, in part, anticipated Mexico's participation in these drought efforts by holding water in Lake Mead, but Mexico's participation is entirely contingent upon the authorization of the Lower Basin DCP by U.S. federal law. If the federal legislation is enacted before April 22, 2019, Mexico could contribute water to Lake Mead storage in 2020. Should federal Legislation be enacted after April 22, 2019, Mexico would not contribute to Lake Mead storage until 2021. On the domestic side, representatives of the seven States have been meeting for several years to negotiate and finalize the implementation documents that are attached to the Seven Basin States' letter. Everyone compromised during the negotiations, but in the end, we feel those agreements are the best tools we can implement right now to help us all better manage the Colorado River system.

Specifically for New Mexico, the Upper Basin Drought Response Operations Agreement will help maintain the elevation of Lake Powell for hydropower generation and the Demand Management Storage Agreement will help maintain river flows at Lee's Ferry for compliance with the 1922 Compact. By doing so, we will reduce the risk of power shortage for our citizens who get electricity from the Western Area Power Administration and the risk of water shortages for our water users. New Mexico has been at the center of moderate to extreme drought for much of the last nineteen years and our surface water supplies, which, even when normal, are still the lowest of the Seven Basin States, have been stretched to the limit. We have learned the consequences of NOT being prepared for continued drought. The State and many of its water users have planned and implemented activities to temper the severity of the extended drought on our citizens, farms, and environment. Water from the San Juan Basin is a big part of those plans and the DCPs will reduce the likelihood of that water not being available in the future.

In the San Juan Basin, Navajo Reservoir is operated to provide water for two of our Indian Tribes, and a number of other water users, and to maintain endangered species flows in the river through New Mexico and Utah to Lake Powell. Its operations have reduced or eliminated the impacts of drought on the mainstem of the San Juan River. Navajo Reservoir operations provide endangered species compliance, through the San Juan Recovery Implementation Program, for

numerous water users including the Navajo Nation and the Jicarilla Apache Nation in the San Juan Basin, and the San Juan-Chama Project, a transmountain diversion to the Rio Grande Basin. Diversions of Colorado River Basin water to the Rio Grande Basin through the San Juan-Chama Project have significantly reduced the impacts of the extended drought on a portion of the Rio Grande. San Juan-Chama Project water is also a major component of both the *Aamodt* and *Abeyta* Indian Water Rights settlements. Finally, San Juan-Chama Project water is used by cities, farmers, and to benefit endangered species in the Rio Grande Basin. In 2018, the drought was so severe that, without San Juan-Chama water flowing in the Rio Grande, the river would have been dry for several hundred miles. There was just no natural surface water flowing.

The Upper Basin elements of the DCP will reduce the likelihood that those New Mexico “planned” uses will be reduced or even stopped. Tree ring reconstructions tell us that historic extended droughts on the Colorado have lasted significantly longer than twenty years. That was even without global warming. Given the dire situation the seven States could face in the very near future, it is imperative you authorize the federal legislation that will allow the Department of the Interior to implement the DCPs.

Those tools are necessary because, as climate change affects our planet more and more, the American Southwest is becoming hotter and drier. Twenty years ago, the Colorado Basin States negotiated guidelines for sharing *surplus* Colorado River water. Soon after, nature made it clear that they needed to worry about *shortages*. So, in the early 2000s, the States began negotiating a set of guidelines (2007 Interim Guidelines) to deal with drought on the system. Those guidelines were implemented in December 2007 and have guided operations of the Colorado River since that time. They have helped reduce the impacts of drought. But the dry conditions persisted and it became clear more was needed. So President Obama’s Interior Secretary, Sally Jewell, asked the Seven States to come up with a refined plan. The DCPs are that plan. They are the next step in adapting to this drier reality.

When the 2007 Interim Guidelines were negotiated, the Department of Interior performed an analysis pursuant to the National Environmental Policy Act (NEPA) and published a Record of Decision. This analysis and Record of Decision

included specific review of each of the Initial Units created pursuant to the Colorado River Storage Project Act of 1956 (CRSP) (Powell, Navajo, the Aspinall Unit and Flaming Gorge). Individual Biological Opinions were prepared for each of those reservoirs. A number of scenarios were considered during the NEPA evaluation regarding water levels and releases for each of those reservoirs and potential environmental effects of those operations. The DCP agreements are written to operate within the constraints of these Records of Decision, Biological Opinions, and endangered species flow recommendations, where applicable. There are no unforeseen impacts of the DCPs because various reservoir levels and their environmental consequences have already been analyzed.

In addition, as you may know, until last year the environmental programs on the Colorado River were financed in part by revenues from hydropower out of Lake Powell. In fact, representatives from the four Upper Division States, water users, Tribes, and NGOs were in Washington D.C. two weeks ago to meet with your individual staffers and Department of the Interior personnel to discuss program successes and the new need for funding through the appropriations process. Efforts to protect four endangered fish species in the Colorado River system have resulted in two of those species becoming candidates for downlisting from endangered to threatened: The Fish & Wildlife Service plans to publish a proposed downlisting for the humpback chub in May and one for the razorback sucker in late 2019. Navajo Reservoir, which is in New Mexico, is managed, in part, to maintain sufficient flow in the San Juan River to help the fish all the way to Lake Powell, on the Utah-Arizona border. Those efforts have been going on for several decades and will continue as the DCPs are implemented. More specifically, if Navajo Reservoir water is determined to be available for release under either of the two Upper Basin DCP agreements, releases of the water will be coordinated with the San Juan Recovery Implementation Program (San Juan RIP) in compliance with the applicable ROD and flow recommendations.

Between 2015 and 2018, the Upper Division States, through the Upper Colorado River Commission, ran a System Conservation Pilot Program to determine the feasibility of voluntary compensated conversation in the Upper Basin. That program was a precursor to the Demand Management Storage Program that is proposed as part of the Upper Basin DCP. The Navajo Nation, through the

Navajo Agricultural Products Industry (NAPI) participated in the Upper Basin's System Conservation Pilot Program in 2017 and 2018 and was the single largest contributor to water savings in the Upper Basin during those two years.

New Mexico has also engaged with the Jicarilla Apache Nation regarding the DCPs and Jicarilla Apache Nation staff has expressed interest in talking more about opportunities. In addition, state representatives engaged with several San Juan Chama contractors, the San Juan Water Commission, power generation companies, The Nature Conservancy (TNC), and all participants of the San Juan RIP as part of our outreach DCP efforts. TNC was a partner to the Upper Division States in the System Conservation Pilot Program. New Mexico is confident that the Jicarilla Apache Nation, the Navajo Nation, TNC and others will continue to be important partners as the DCPs move forward.

The 2007 Interim Guidelines expire at the end of 2025 (after preparation of Reclamation's Annual Operations Plan for 2026). The seven Basin States are set to begin renegotiation of those Guidelines by the end of 2020. Implementing the DCPs now will allow us to begin testing the new tools we have crafted as we begin renegotiation of the Guidelines. Thus, we can learn what works on the ground and what needs to be adjusted. Armed with this experience, we will be in a better position to improve the system going forward, while continuing to protect water rights owners, Native American Tribes, endangered species, power generation and recreation.

The States are urging Congress to have legislation in place by April 22, 2019. Time is of the essence because, on August 1st of each year, the Bureau of Reclamation publishes its 24-month study for the Colorado River Basin, which includes projected elevations of Lake Powell and Lake Mead on January 1 of the following calendar year. River operations are based on that study. Under the Interim Guidelines, these projections determine the water release amounts from Lake Powell and Lake Mead in the coming year. Pursuant to existing laws and regulations, the Bureau has no flexibility in terms of when its study and determination occur and are published. While those projections can be amended later based on revisions to the hydrology, operations on a river system as complex as the Colorado cannot be turned around on a dime. Some will object that the hydrology for 2019 appears to be positive, with snowpack exceeding 100% of

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basin average in the Upper Basin. However, we have been in this situation before. 2011 was a remarkably wet year, and many thought that the drought on the Colorado might have subsided. It was followed by two exceptionally dry years in 2012 and 2013. One good year of hydrology does not reverse the dangerous course we are on. Now more than ever, it is vital that we give ourselves the tools to face the drier future.

I thank you for the opportunity to testify before you today and I urge you to introduce and pass legislation to authorize the Secretary to sign and implement the DCPs without delay.