

Hot Topics Water Law & Federal Practice

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Hot Topics Water Law & Federal Practice

- **DISCLAIMER:** I am no longer a federal employee with the Department of the Interior and **NOTHING** I say should be construed as a federal position or federal policy. It was a **GREAT** job!
- Everything I say today is said in my own individual personal capacity and not on behalf of (as part of my duties for or at the expense of) a client or employer.

2

Hot Topics-What's Old is New

~~Whiskey is for Drinkin'
and Water is for Fightin'~~

3

Benefits of Collaborative Efforts

- Litigation can take years and sometimes decades. Whereas, motivated stakeholders can do a lot to help work-out their differences and reach consensus in a more reasonable amount of time - and at lower cost
- While no one gets everything they want in a compromise, it is often better for long-term stability for parties to compromise rather than letting a judge dictate the terms of an agreement.
- Having a "clear" winner and a "clear" loser does not engender lasting and positive relationships.
- If Congress is needed to authorize a piece of a compromise settlement, the lack of controversy amongst the stakeholders takes away a significant hurdle that can prevent Congress from acting.

4

Collaboration

- Limited Resources
- Long-Term Challenges
- Courts and Congress - still used with regularity...



5

Overview

Hot Topics

- Interstate Original Action Lawsuits
- Colorado River Update
- Animas - LaPlata Project
- WIIN Legislation

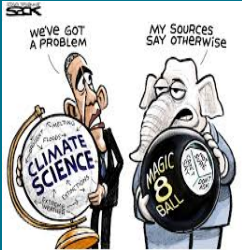


The Lower Rio Grande, near Mesillas, NM
Photo Credit: Laura Paskus, <http://nmpoliticalreport.com/19659/next-stop-for-texas-nm-water-dispute-supreme-court/>

6

Climate Change Challenges

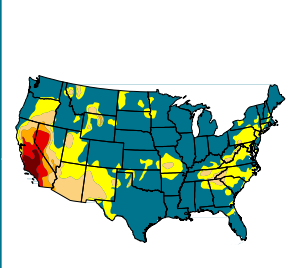
- Lower Steam Flows
- Higher Air and Water Temperatures
- Less Snowpack and Earlier Runoff
- More Extreme Weather Conditions
- Increased Pressure on Limited Resources
- Drought and More of it
- Impacts to Communities & Natural Species
- Need for Real Time Responses



7



U.S. Drought Monitor May 3, 2016



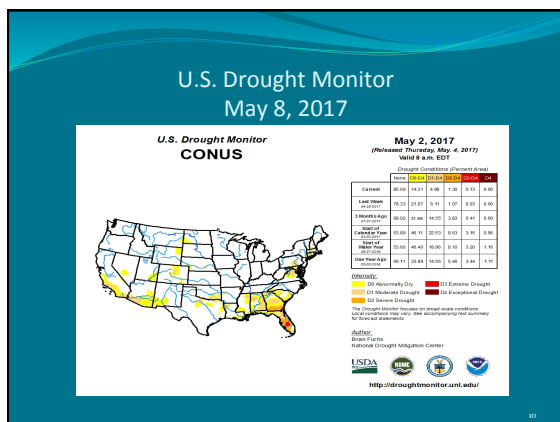
Drought Conditions (Percent Area)					
	None	0-4%	5-9%	10-14%	15-19%
Current	95.11	33.89	14.50	5.45	1.11
Last Week	95.30	32.84	15.30	5.30	1.10
5 Yearly Avg	71.00	28.00	11.00	6.00	2.00
Start of Calendar Year	95.00	33.01	18.74	11.00	2.70
Start of Water Year	44.51	32.09	11.30	10.00	3.00
Five Year Avg	44.24	30.76	10.70	7.00	3.00

Legend:
 Blue: No Drought
 Yellow: Moderate Drought
 Orange: Severe Drought
 Red: Extreme Drought
 Dark Red: Exceptional Drought

The Drought Monitor focuses on broad-scale conditions. Local conditions may vary. See accompanying text summary for forecast statements.

Author(s):
 Brian Fuchs
 National Drought Mitigation Center

9



Federal Interstate Cases

- **Interstate Original Action Lawsuits.** There are two cases that involve claims of groundwater withdrawals interfering with downstream deliveries under interstate compacts.
- **Texas vs. New Mexico & Colorado, Original Action No. 141.** On February 9, 2017, the Special Master issued his first Report and Recommendation to the Supreme Court (278 pages plus appendices) regarding New Mexico's Motion to Dismiss and intervention requests by two districts.
- **Kansas vs. Nebraska and Colorado, Original Action No. 126.** The debate over the Republican River also revolves around impacts of unregulated groundwater use in Nebraska and the impacts on Kansas deliveries. August 2016 long-term agreements between the three states attempt to align Colorado's and Nebraska's compliance activities with Kansas water user's needs.

Texas v. New Mexico & Colorado

- History of Dispute
- Initial Briefing and Hearing to Special Master
- February 2017 Special Master's Report
 - *Recommended to SCOTUS:*
 - Deny New Mexico's Motion to Dismiss Texas' claim
 - Deny in Part, Grant in Part, New Mexico's Motion to Dismiss US claim
 - Deny Motions for Intervention filed by EBID and EPCWID #1
- Exceptions to SM's Report due June 2017

Kansas v. Nebraska & Colorado

- Feb 24 2015: Exceptions to Special Master's Report overruled, and Master's recommendations adopted. Kansas wins. But...
- August 2016 Settlement Documents
- On-going efforts in cooperative management



13

Colorado River



14

Basin Studies

- Reclamation's WaterSMART Program and the SECURE Water Act (P.L. 111-11)

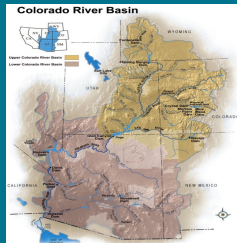
RECLAMATION
Managing Water in the West



15

Basin Studies

- The Colorado River Basin Study was one of the first Basin Studies to be completed.
- Ten Tribes Partnership Colorado River Basin Tribal Water Study

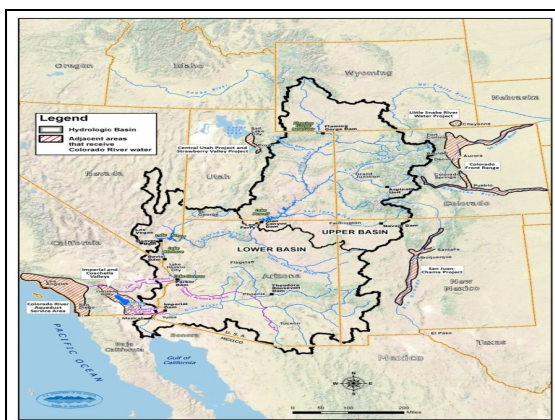


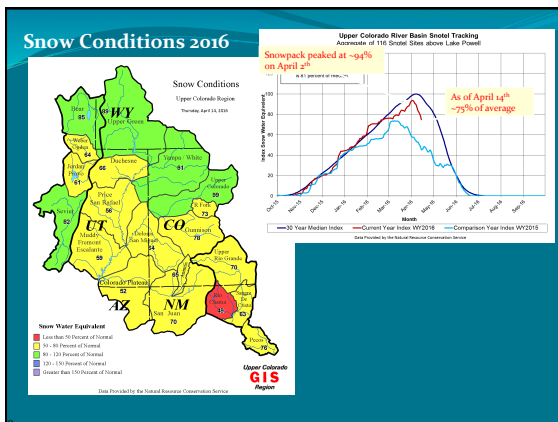
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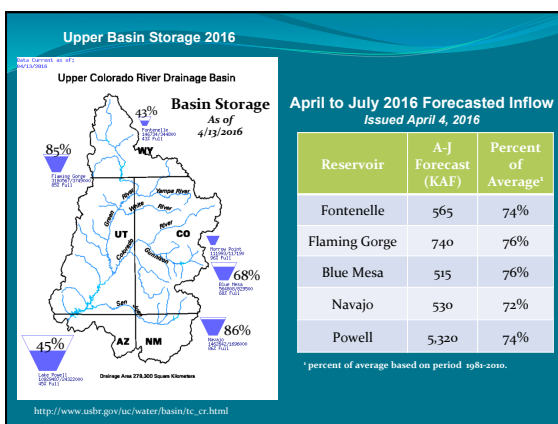
Colorado River System Conservation Programs

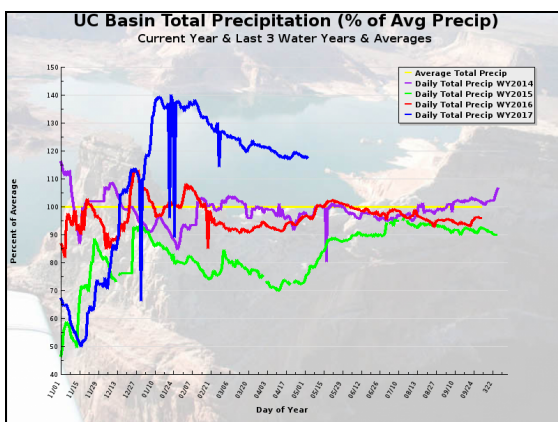
- As of 2016:
 - The worst 16-year drought in the 109 years of recorded history
 - The likelihood of triggering the first-ever Lower Basin shortages in the next few years is very high - Lake Mead at historic low levels
 - Long term imbalance between available supply and projected demands
- Spring 2017: What a difference a good water year can make

17

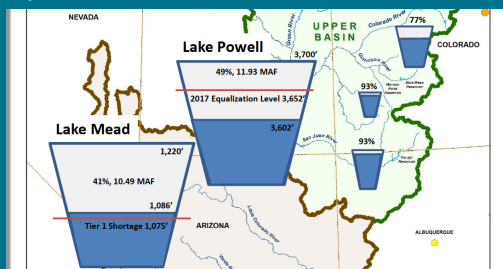








2017 Colorado River Supply Report April 2017



Colorado River System Conservation Programs

• Issues Going Forward:

- Drought Contingency Planning
- Salton Sea Concerns
- Arizona Deliveries
- Continued Cooperation with Mexico
- Minute 319 expires at end of 2017

Colorado River – Upper Basin

- Desire to keep Lake Powell levels above 3,575 feet
- Key concepts to reduce risk of lower levels
 - Extended operations of other facilities
 - Weather modification efforts
 - Demand Management Considerations/Concerns
 - System Conservation Pilot Program

Animas La Plata, Lake Nighthorse

- 2017 Recreation Agreement with City of Durango
- Tribal Concerns/Cultural Resources and being discussed
- Discussions regarding future pollution or exotic species matters being discussed

25

WIIN Legislation - Implementation

- Water Infrastructure Improvements for the Nation (WIIN) Act
- Includes Water Resources Development Act (WRDA) for 2016, and provisions to improve drinking water infrastructure nationally (Think FLINT, MI)
- Address water storage and dam maintenance
- Provided drought relief for California and the West
- Four Indian Water settlements

26

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Ramsey L. Kropf, 2017

27
