Colorado River Conferences

Hello Sublette County, I am sure you have heard the phrase, “whiskey is for drinking and water is for fighting.” During the month of June, I attended two conferences dealing with water shortages in the Colorado River and its tributaries. One conference was held in Boulder at the University of Colorado’s Law School, and the other was held in Salt Lake City at Utah’s Department of Natural Resources. The Colorado River Basin has been experiencing persistently dry hydrology since the turn of the twenty-first century, while many of the metropolitan areas that utilize the Basin’s water have seen incredible growth. Denver, Salt Lake, Phoenix, and Las Vegas are some of the fastest growing cities in the nation. How we balance this exponential population growth with a shrinking water resource, the Colorado River, will be one of the great challenges of the next 50 years. Historically, agriculture has controlled the vast majority of water rights on the Colorado River. However, in many areas that are seeing increased demand for municipal and industrial uses of water, agricultural users of water are under increased pressure to either sell their water or curtail their use of water. This is not just a fight between agriculture, municipalities, and industrial water users, but is also a fight between the Upper Basin states (Wyoming, Colorado, Utah, New Mexico, and a small piece of Arizona) and the Lower Basin states (Nevada, the bulk of Arizona, and California). The Colorado River and its tributaries provide water for about 40 million people and more than 5.5 million acres of farmland from Wyoming to California.

The fight over Colorado River water has been going on for one hundred years. In fact, in 1919 the rapidly expanding use of Colorado River water in California was viewed with increasing alarm by officials in the four Upper Basin States. Their concerns led to the formation of the League of the Southwest in 1919, with the mission of promoting the orderly development and equitable division of the waters of the Colorado River. Congress approved the Kincaid Act in 1920, which directed the Secretary of the Interior to make a full and comprehensive study and to report on the possible diversion and use of Colorado River water. As a result of negotiations among the seven Basin States, it was agreed that an interstate compact would establish an

equitable apportionment of the waters and protect the Upper Basin States. Each of the seven Basin States adopted the authorizing legislation in 1921 and Congress consented to the negotiations by legislation enacted on August 19, 1921. The Colorado River Commission convened in January 1922. After 27 meetings, a final agreement on the Compact was signed in Santa Fe, New Mexico, on November 24, 1922. By 1944, the state legislatures of all seven Basin States had ratified the compact. This final agreement also included language that the Upper and Lower Basin states would equally share any water shortage resulting from treaty obligations to Old Mexico.

So, why are we still fighting one hundred years later? After all, we have a virtually water-tight agreement between all of the states and the federal government. The answer is that poor assumptions were made regarding projected flows of the Colorado River. These early studies occurred during a wet cycle, which we now understand better due to tree ring studies. For the two decades proceeding 1922, the Colorado River had produced an average flow that would have accommodated 16 million acre-feet per year in consumptive use of water annually for the two basins. However, the Upper Basin by virtue of the Compact assumed the burden of drier cycles. Hence the Lower Basin has received a guaranteed 10-year cumulative minimum flow of 75 million acre-feet at Lee's Ferry, which lies just below Lake Powell. The Upper Basin became a guarantor in the sense that its depletions may not reduce the 10-year aggregate flow below the 75 million acre-feet at the Lee Ferry compact point.

Modern tree ring studies have revealed that the three decades prior to 1922 were likely the wettest in the past 500 to 1,200 years, and that the natural long-term annual flow past Lee's Ferry would accommodate only 13.5 million acre-feet of consumptive use. The Lower Basin and Old Mexico are estimated to utilize between 1.2 to 1.5 million acre-feet of water per year more than the river flows on average in today's drier conditions. Hence, the Lower Basin states have a recognized structural deficit, and consequently, to meet demands, the basin's reservoirs have been drawn down by about 30 million acre-feet. If the drought conditions continue, Lake Powell could drop below the elevation necessary to produce power. So, the Lower Basin states

are utilizing more water than they are allocated, and drier conditions threaten the Upper Basin states' ability to provide the required amount of water below Lake Powell.

If Upper Basin states do not provide 75 million acre-feet of water in a given 10-year period, Compact requirements would require a curtailment of use in the Upper Basin. All post-1922 water rights could be subject to curtailment. Curtailment will have a greater impact on municipalities and industrial users than on agricultural users, because agriculture has most of the pre-1922 water rights. However, agriculture will be heavily impacted as well.

In May 2005, the Secretary of the Interior directed the Department of Reclamation to develop additional strategies for improving management of the reservoirs of the Colorado River system. In response, Reclamation initiated a public process to develop and adopt interim operational guidelines that can be used to address the operations of Lake Powell and Lake Mead during drought and low reservoir conditions. These interim guidelines are in effect until 2026. In about 2014, the major water suppliers in the Lower Basin entered into a Pilot Drought Response MOU with the Department of the Interior. Many of these same parties joined with Denver Water in the Upper Basin to implement a System Conservation Pilot Program designed to fund water conservation. Some ranchers in Sublette County have utilized this program, which paid them to turn off irrigation water after a set date, and then not put water back on their fields until the next spring. This program was somewhat contentious among irrigators in Sublette County, with supporters and detractors.

Beginning in 2014, the Upper and Lower Basin states began working on a Drought Contingency Plan to address shortages in the Basin. The seven Colorado River Basin States, in partnership with the Department of Interior, recently signed the Colorado River Drought Contingency Plan (DCP). Of particular importance to the Upper Basin states of Colorado, New Mexico, Utah and Wyoming is the Demand Management Storage Agreement (DMSA). The DMSA authorizes the Bureau of Reclamation to make available to the States unfilled storage capacity at the Initial Units of the Colorado River Storage Project Act (Powell, Navajo, the Aspinall Unit and Flaming

Gorge). The DMSA neither establishes nor mandates the development of a Demand Management (DM) program. Storage would become available only if the States were able to design and implement a DM program in the Upper Basin. If the States do establish a DM program, the DMSA allows for storage of up to 500,000 acre-feet of water conserved in the Upper Colorado River Basin, which will help assure compliance with the 1922 Colorado River Compact.

According to the Wyoming State Engineer's Office, "the States are working to identify priority issues that will need to be developed to inform a thorough evaluation regarding the feasibility of a Demand Management program. A critical component of that evaluation is engagement with water users and other interested parties of the Green and Little Snake River basins of Wyoming. Beginning later this summer, we will begin focused discussions on DM throughout the respective basins in Wyoming."

The conferences that I have attended are helping me become more educated on Colorado River issues, and it is imperative that all water users in the Green River Basin, which is everyone, become engaged in the discussions around a Demand Management Program. I remain unconvinced that Wyoming should participate in a Demand Management Program, since we are not utilizing the 14 percent share of water we were allocated in the 1948 Upper Colorado River Basin Compact. However, I am keeping an open mind, because I worry about the old adage that Dan Budd often repeated: "water flows to money." I worry about drying up agriculture to wet the whistles of Denver, Salt Lake City, Phoenix, and Las Vegas. Everyone who likes to fish, feed hay, or drink water in the Green River Valley had better pay attention.

Thanks
Albert Sommers