

**The States of Arizona, California, Colorado, Nevada,
New Mexico, Utah, and Wyoming
Governors' Representatives on Colorado River Operations**

Honorable Jeff Bingaman
United States Senator
Committee Chairman, Energy and Natural Resources Committee
703 Hart Senate Office Building
Washington, D.C. 20510

Honorable Pete Domenici
United States Senator
Ranking Member, Energy and Natural Resources Committee
328 Hart Office Building
Washington, D.C. 20510

Dear Senator Bingaman and Senator Domenici:

In recent years, the seven Colorado River Basin States, ("Basin States"), have, through extensive interstate consultation, taken steps and forged agreements designed to ensure that use and management of the Colorado River System continues to meet existing and future demands in a manner that respects and protects the interests, rights, claims and privileges of each of the seven states. Along those lines, enclosed are the Basin States' recommended modifications to S. 1171, the Northwestern New Mexico Rural Water Project Act, as reported by the Senate Energy and Natural Resources Committee on June 25, 2008, and consolidated into S. 3213, the Omnibus Public Land Management Act as Title X, Subtitle B. The undersigned Governors' Representatives on Colorado River Operations request that Congress adopt proposed modifications to S. 1171/S. 3213 in a form substantially consistent with the attached language, and that the Congressional legislative history of S. 1171/S. 3213 specifically reflect and reference the joint consideration, input and consensus from the Basin States as provided herein.

S. 1171/S. 3213 provides Congressional approval of a settlement of the Navajo Nation's claims to water rights in the San Juan River Basin in New Mexico that will authorize diversion and distribution of San Juan River water through the Navajo-Gallup Water Supply Project to Navajo and non-Navajo communities in the Upper Colorado River Basin, the Lower Colorado River Basin and the Rio Grande Basin within New Mexico. Contingent upon enactment of federal legislation approving a water rights settlement between the State of Arizona and the Navajo Nation, S. 1171/S. 3213 also authorizes the diversion of up to 6,411 acre-feet of water by the Project from the San Juan River in New Mexico in the Upper Colorado River Basin for delivery to the Navajo reservation in Arizona in the Lower Colorado River Basin. S. 1171/S. 3213 directs that Project diversions for use within New Mexico will be accounted as part of the State of New

Honorable Jeff Bingaman
Honorable Pete Domenici
Page 2

Mexico's Upper Basin allocation of Colorado River water. Pursuant to the attached, recommended modifications, S. 1171/S. 3213 would also direct that Project diversions for use in Arizona be accounted as either part of the State of Arizona's Upper Basin or Lower Basin allocation of Colorado River water, provided that any Lower Basin accounting of such water would occur only under specific conditions as set forth in the recommended modifications.

The undersigned Governors' Representatives consider S. 1171/ S. 3213, as modified by the attached, recommended modifications, which are non-precedential in nature, to address unique, critical water supply needs in the context of Indian water rights settlements that involve the diversion of water from the Upper Colorado River Basin for use in the Lower Colorado River Basin, and support such diversions as reflected in our recommended modifications to the legislation.



Herbert R. Guenther
Director
Arizona Department of Water Resources



Patricia Mulroy
General Manager
Southern Nevada Water Authority



Dana B. Fisher, Jr.
Chairman
Colorado River Board of California

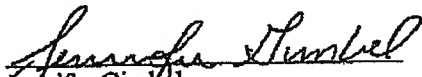


George Caan, P.E.
Executive Director
Colorado River Commission of Nevada

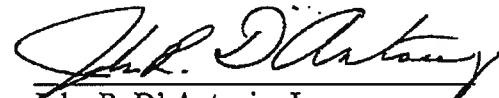
Honorable Jeff Bingaman
Honorable Pete Domenici
Page 3



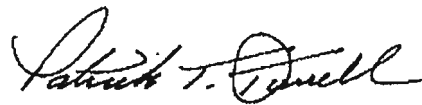
Gerald R. Zimmerman
Executive Director
Colorado River Board of California



Jennifer Gimkel
Director
Colorado Water Conservation Board



John R. D'Antonio, Jr.
New Mexico State Engineer
Governor's Representative



Dennis J. Strong
Director
Utah Division of Water Resources
Utah Interstate Stream Commissioner

Patrick T. Tyrrell
Wyoming State Engineer
Governor's Representative

The Colorado River Basin States' Proposed Modifications to S. 1171, the Northwestern New Mexico Rural Water Projects Act

1. Proposed new definition of Colorado River Compact in Section 2 – () *COLORADO RIVER COMPACT.— The term “Colorado River Compact” means the Colorado River Compact of 1922 as approved by Congress in the Act of December 21, 1928 (45 Stat. 1057) and by the Presidential Proclamation of June 25, 1929 (46 Stat. 3000).*
2. Proposed new definition of Colorado River System in Section 2 – () *COLORADO RIVER SYSTEM.— The term “Colorado River System” has the same meaning given the term in Article II(a) of the Colorado River Compact.*
3. Proposed new definition of Lower Basin in Section 2 -- () *THE LOWER BASIN.—The term “Lower Basin” has the same meaning given the term in Article II(g) of the Colorado River Compact.*
4. Proposed new definition of Upper Basin in Section 2 – () *THE UPPER BASIN.—The term “Upper Basin” has the same meaning given the term in Article II(f) of the Colorado River Compact.*
5. See below for proposed modifications to Section 303.

303(c) Conditions for Use in Arizona.—

(1) REQUIREMENTS.—Project water shall not be delivered for use by any community of the Nation located in the State of Arizona under subsection (b)(2)(D) until—

- (A) the Nation and the State of Arizona have entered into a water rights settlement agreement approved by an Act of Congress *that settles and waives the Nation's claims to water in the Lower Basin and the Little Colorado River Basin in the State of Arizona, including those of the United States on its behalf; and*
- (B) *the Secretary and the Navajo Nation have entered into a Navajo Reservoir water supply delivery contract for the physical delivery and diversion of water via the Project from the San Juan River system to supply uses in the State of Arizona.*

(2) ACCOUNTING OF USES IN ARIZONA.—Pursuant to *paragraph (1) and notwithstanding any other provision of law, water may be diverted by the Project from the San Juan River in the State of New Mexico in accordance with an appropriate permit issued under New Mexico law for use in the State of Arizona within the Navajo Reservation in the Lower Basin; provided that any depletion of water that results from the diversion of water by the Project from the San Juan River in the State of New Mexico for uses within the State of Arizona (including depletion incidental to the diversion, impounding, or conveyance of water in the State of New Mexico for uses in the State of Arizona) shall be administered and accounted for as either—*

(A) a part of, and charged against, the available consumptive use apportionment made to the State of Arizona by Article III(a) of the Compact and to the Upper Basin by Article III(a) of the Colorado River Compact, in which case any water so diverted by the Project into the Lower Basin for use within the State of Arizona shall not be credited as water reaching Lee Ferry pursuant to Article III(c) and III(d) of the Colorado River Compact;

or

(B) a part of, and charged against, the consumptive use apportionment made to the Lower Basin by Article III(a) of the Colorado River Compact, in which case it shall—

(i) be a part of the Colorado River water that is apportioned to the State of Arizona in Article II(B) of the Consolidated Decree of the Supreme Court of the United States in Arizona v. California (547 U.S. 150 as may be amended or supplemented);

(ii) be credited as water reaching Lee Ferry pursuant to Article III(c) and III(d) of the Colorado River Compact; and

(iii) be accounted as the water identified in Section 104(a)(1)(B)(ii) of the Arizona Water Settlements Act, (118 Stat. 3478);

(C) However, no water diverted by the Project shall be accounted for pursuant to subparagraph (B) until such time that:

(i) the Secretary has developed and, as necessary and appropriate, modified, in consultation with the Upper Colorado River Commission and the Governors' Representatives on Colorado River Operations from each State signatory to the Colorado River Compact, all operational and decisional criteria, policies, contracts, guidelines or other documents that control the operations of the Colorado River System reservoirs and diversion works, so as to adjust, account for, and offset the diversion of water apportioned to the State of Arizona, pursuant to the Boulder Canyon Project Act (43 U.S.C. 617 et seq.), from a point of diversion on the San Juan River in New Mexico; provided that all such modifications shall be consistent with the provisions of this Section, and the modifications made pursuant to this clause shall be applicable only for the duration of any such diversions pursuant to Section 303(c)(2)(B); and

(ii) Article II(B) of the Decree of the Supreme Court of the United States in Arizona v. California (547 U.S. 150 as may be amended or supplemented) is administered so that diversions from the main stream for the Central Arizona Project, as served under existing contracts with the United States by diversion works heretofore constructed, shall

be limited and reduced to offset any diversions made pursuant to Section 303(c)(2)(B) of this Act. This clause shall not affect, in any manner, the amount of water apportioned to Arizona pursuant to the Boulder Canyon Project Act (43 U.S.C. 617 et seq.), or amend any provisions of said decree or the Colorado River Basin Project Act (43 U.S.C. 1501 et. seq.).

(3) UPPER BASIN PROTECTIONS.

(A) – Consultations. -- Henceforth, in any consultation pursuant to 16 U.S.C. 1536(a) with respect to water development in the San Juan River Basin, the Secretary shall, consistent with the provisions of Section 5 of the “Principles for Conducting Endangered Species Act Section 7 Consultations on Water Development and Water Management Activities Affecting Endangered Fish Species in the San Juan River Basin” as adopted by the Coordination Committee, San Juan River Basin Recovery Implementation Program, on June 19, 2001, and as may be amended or modified, confer with the States of Colorado and New Mexico.

(B) – Preservation of Existing Rights -- Rights to the consumptive use of water available to the Upper Basin from the Colorado River System under the Colorado River Compact and the Compact shall not be reduced or prejudiced by any use of water pursuant to Subsection 303(c). Nothing in this Act shall be construed so as to impair, conflict with, or otherwise change the duties and powers of the Upper Colorado River Commission.

303(h) NO PRECEDENT.— Nothing in this Act shall be construed as authorizing or establishing a precedent for any type of transfer of Colorado River System water between the Upper Basin and Lower Basin. Nor shall anything in this Act be construed as expanding the Secretary’s authority in the Upper Basin.

303(i) UNIQUE SITUATION.— Diversions by the Project consistent with this Section address critical tribal and non-Indian water supply needs under unique circumstances, which include, among other things:

(A) the intent to benefit an American Indian tribe;

(B) the Navajo Nation’s location in both the Upper and Lower Basin;

(C) the intent to address critical Indian water needs in the State of Arizona and Indian and non-Indian water needs in the State of New Mexico,

(D) the location of the Navajo Nation’s capital city of Window Rock in the State of Arizona in close proximity to the border of the State of New Mexico and the pipeline route for the Project;

(E) the lack of other reasonable options available for developing a firm, sustainable supply of municipal water for the Navajo Nation at Window Rock in the State of Arizona; and

(F) the limited volume of water to be diverted by the Project to supply municipal uses in the Window Rock area in the State of Arizona.

303(j) CONSENSUS. – Congress notes the consensus of the Governors' Representatives on Colorado River Operations of the States that are signatory to the Colorado River Compact regarding the diversions authorized for the Project under this Section.

303(k) EFFICIENT USE.-- The diversions and uses authorized for the Project under this Section represent unique and efficient uses of Colorado River apportionments in a manner that Congress has determined would be consistent with the obligations of the United States to the Navajo Nation.