

IBCC Colorado River Basin

1. July 31, 2023 CBRT Roundtable Minutes. Presentation by Colorado River Commissioner Becky Mitchell: The Seven Irrefutable Truths of the Colorado River; The Law of the River and Colorado's interpretation of it

1. Upcoming Meetings.

- a. August 28, 2023, CBRT Roundtable Next Steps meeting Colorado River District Office
- b. September 22, 2023, CBRT Roundtable meeting Colorado River District Office.

2. Recorder: These minutes were prepared by Ken Ransford, Esq., CPA, 970-927-1200, ken@kenransford.com.

3. Today's July 31, 2023, meeting was conducted by Zoom and not held in person at the Colorado River District Office.

4. **CBRT Roundtable Members Present:** Paul Bruchez, Stan Cazier, Carlyle Currier, Kirsten Kurath, Diane Johnson, Randi Kim, Kristen Kurath, Merrit Linke, April Long, Zach Margolis, Ed Moyer, Ken Ransford, Jason Turner, Greg Williams

5. **Guests:** Emily Adrid CWCB, Jeff Bandy Denver Water, T. Benton CSU, Josh Blanchard, Laura B. Bohannon Eagle County, Claire Carroll NWCCOIG QQ, Austin Corona, Andrea Datz Mesa Conservation, James Dilzell Eagle River Watershed Council, Mitch Dorsk HRS Water Grand Junction, Jackie Fisher, Ashley Garrison CWCB Water Plan Grants, Alyson Gould COAG, Kathy Kitzmann Aurora Water, B. Krause Colo Parks & Wildlife, Brendon Langenhuizen Colorado River District, Lain Leoniak, Heather Lewin Roaring Fork Conservancy, Drew Matushima WSR (Conscience Bay), Becky Mitchell Colorado River Commissioner, Shania McCain Garfield County Public Health, Luke Mecklenburg Colo Atty General's office, Shashi Neerukonda, Amy Ostdiek Colorado Atty General, Maria Pastore, Katie Randall, Jeff Rodriguez CWCB, Heather Sackett Aspen Journalism, Robert Sakata CWCB Board, Russ Sands Denver Water, Paula Stepp Middle Colorado Watershed Council, Lisa Tasker Pitkin County Healthy Rivers and Streams, Richard Vangytenbeek Colorado Trout Unlimited, Brett Walton, Emily Zmak CWCB Interstate & Federal Section

6. **River Forecast.** The Colorado River at Dotsero gage is at 650 cfs, below the 1,100 median cfs for this date.¹ The Colorado River is flowing **1,360 cfs at Cameo**, about **90% of the median flow** of 1,500 cfs on this date.²

7. July CWCB Update

¹ Dotsero forecast: https://waterdata.usgs.gov/usa/nwis/uv?site_no=09070500.

² Cameo forecast: https://waterdata.usgs.gov/co/nwis/uv/?site_no=09095500&PARAMeter_cd=00065,00060

- a. NRI Projects: August 1, 2023 deadline
- b. Annual WSRF allocations will be available to CBRT Roundtable on October 2, 2023, immediately following the September 30 CWCB Board Meeting.

Funding Reminders

- **August 1**
 - WSRF
 - NRI Projects
- **Annual WSRF Allocations**
 - Available October 2nd
- **Wildfire Ready Watersheds**
 - Accepting Applications
- **Technical Assistance & Local Capacity**
 - Accepting Applications
 - CWCB Contractor Update
- Both Programs (ARPA Funds)
 - Contracted by 12/31/24
- **Turf Program Cycle 2 Open**
 - Closes 8/31

Climate Change in Colorado

- Expected in late 2023
 - Update to 2014 Report
- Visit the webpage

Reminders

- C9 Summit
 - Nov. 14
- Drought Summit Recap

- c. NRI Projects:
- d. Technical Assistance and Local Capacity grants: Assist applicants in applying for federal grants. Federal Technical Assistance provides grants to applicants to present the funding need to the CWCB to tailor the grant application to the right grant program. Local Capacity grants are for applicants that have selected a grant-writer who can then confer with the CWCB to finalize the grant request.
- e. C-9 Summit Agenda November 14, 2023
 - i. Roundtable Handbook Discussion
 - ii. PEPO workshop on Regional Collaboration
 - iii. Highest priority items in poll:
 - 1) Colorado River Updates
 - 2) Drought Resilience
 - 3) Climate Change
 - 4) Funding Water Conservation
 - 5) Watershed health
 - 6) Water Quality
 - iv. April said that it would be helpful for Roundtable members to know what their role going forward in the CWP is.
 - v. Ken asked if Demand Management was on the agenda: This is in a holding pattern, so it will be a topic of discussion in the Colorado River Update.

- f. **Climate Change in Colorado** is expected to be released in the fall, an update of the 2014 report. It focuses on **new climate models**, and focuses on interactive web-based tools.
 - g. **New CWCB Climate Impact Specialist** is Emily Adrid. She grew up in Denver Metro area, graduated with MS Science degree from Univ. of Michigan School for the Environment; at CWCB Emily is working on Climate Change Colorado Report, and also facilitating the water availability task force meetings. She invites queries from Roundtable members.
8. Unanimous approval was granted for a Letter of Support for a Water Plan grant application. Claire Carrol of NWCCOG’s QQ committee, representing 44 West slope counties, cities, water districts, and water providers, is applying for a grant to update its report, **Water and its Relationship to the Economies of Headwater Counties**.
9. **Update on Colorado River Supplies**, Emily Zmak, CWCB, Interstate, Federal, and Water Information Section
- a. Laine Leoniak, First Assistant Attorney General of the Colorado Attorney, Federal & Interstate Water Unit/Colorado River Subunit
 - i. The **1922 Colorado River Compact**, an agreement between 7 states, was ratified by Congress. The Colorado River Compact and Upper Colorado River Basin Compact were also ratified by Congress. Sovereign states relinquish their sovereign authority to other states in river compacts, a method of reaching agreement without going to war.
 - 1) The Colorado River Compact was the first interstate compact, driven by Delph Carpenter. He represented Colorado in *Colorado v. Wyoming*, a case Colorado lost as Wyoming was able to divert river in the Laramie River to Wyoming because they proved they put it to beneficial use first. The United States Supreme Court applied interstate prior appropriation to decide the case. **Delph Carpenter did not want the courts to adjudicate the river, preferring negotiated Compacts between the states.**
 - 2) The Colorado River Compact defines the Colorado River system, and divides the right to use it between Upper Basin and Lower Basin states in Article III(a). It apportions 7.5 maf to each of the Upper Basin and Lower Basin states; Art. III(a). Colorado has historically looked at this as an equal division **so the Upper Basin states can develop 7.5 maf at their own pace.**
 - 3) The 1922 Compact states that **any water required to be delivered to Mexico shall be equally borne by the Upper and Lower Divisions**; Art. III(c). The Mexico obligation, when and if

declared, is an annual delivery obligation (it was not formally recognized until the 1944 treaty with Mexico).

- 4) The 1922 Compact **requires Upper Division states to “not cause the flow at Lee Ferry to be depleted** below an aggregate of 75 maf over any ten consecutive years;” Art III(d). **This is not a delivery obligation, it is a *non-depletion* obligation.** This protects Upper Basin states from having to curtail during dry years. There needs to be an investigation of why there is less water in the system—**if due to drought, that is not the Upper Basin states’ problem.**
- 5) **What did Colorado receive** from the Colorado River Compact:
 - a) Reduced risk of interstate litigation.
 - b) **No inter-basin prior appropriation** doctrine. We are on an equal footing with other states regarding the dates of appropriation.
 - c) The Compact recognized that **drought could cause flows to decrease so that Colorado did not bear the risk** of low flows induced by drought.
 - d) Mexico obligation is to be met from surplus

ii. **Treaty with Mexico 1944**

- 1) **Guarantees 1.5 maf** to be met from surplus, with reductions permitted due to **“extraordinary drought,” which is not defined.** Establishes the International Boundary and Water Commission to implement the Treaty.
- 2) **Minutes** that define the treaty **are not part of treaty.**

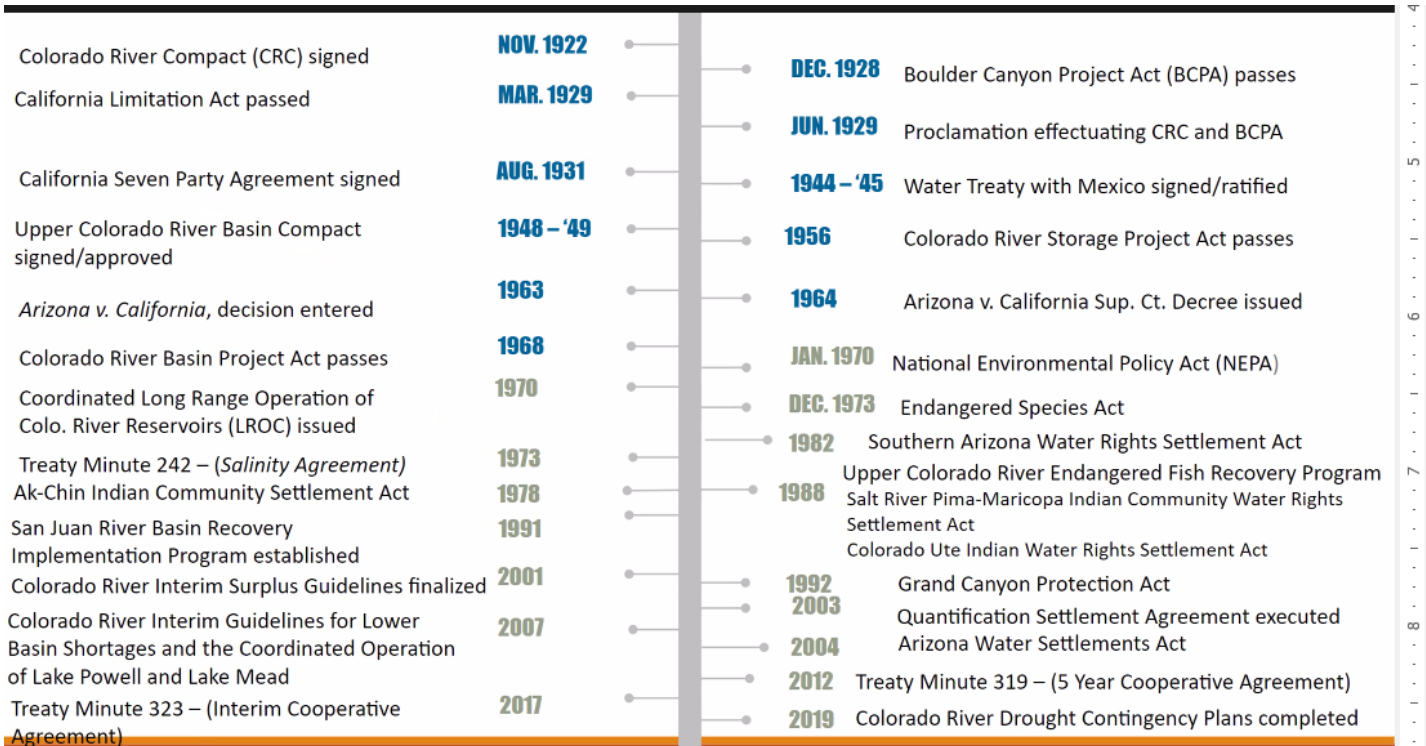
iii. **Upper Colorado River Basin Compact 1948.**

- 1) **Divides the Upper Basin allocation** between Arizona, Colorado, Utah, New Mexico, and Wyoming **based on percentages.** Makes provisions to possibly curtail use of Colorado River water.
- 2) **Colorado gets the second biggest allotment** of the 7 basin states (51.75% x 7.5 MAF = 3.8 maf) However, Colorado only uses about 2 maf, so **Arizona is the second biggest water user** among the 7 Compact states after California.
- 3) Establishes the Upper Colorado River Commission with members from 4 states plus the Fed government. Obligations are shared,

and the respective **State Engineers are responsible for intra-state** appropriation, The Colorado River Compact is **interstate** appropriation.

- a) The Upper Basin Commission has rules and powers to forecast water supplies, and to make findings re. Lee Ferry flows

iv. Law of the River



v. The **functional four Acts**:

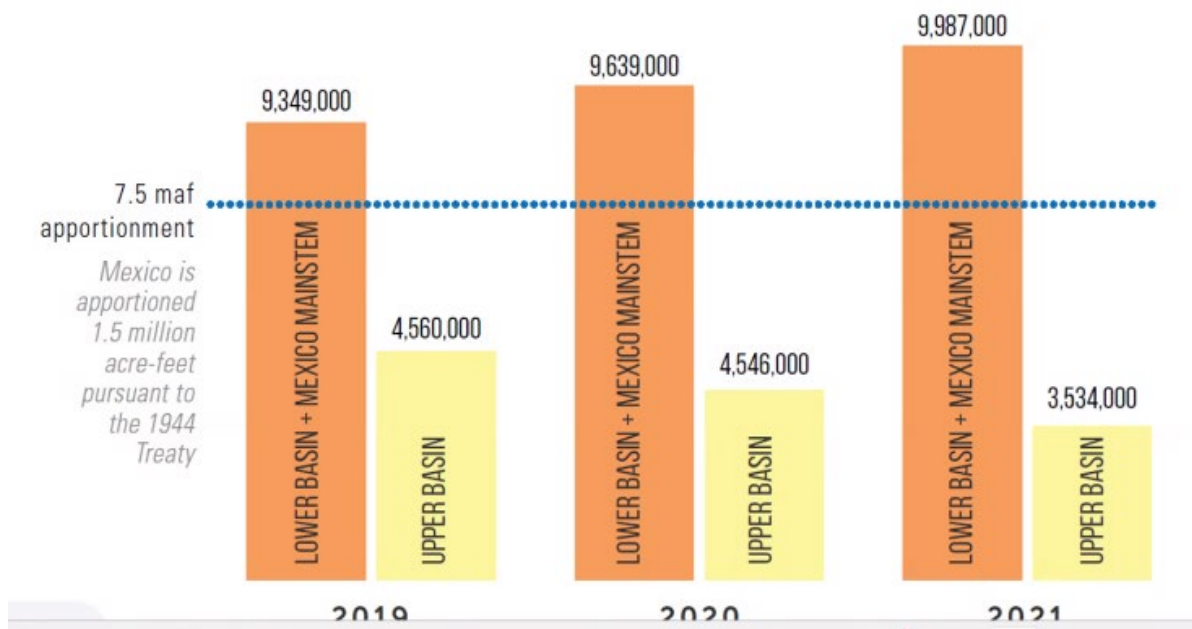
- 1) Boulder Canyon Project Act 1928
- 2) Colorado River Storage Project Act 1956
- 3) *Arizona v. California* decided by the US Supreme Court in 1963: **Any water below Lake Mead was controlled by the US Department of Interior.**
- 4) **Colorado River Basin Project Act 1968.** The United States' first obligation is meeting Mexico obligations, and then the Lower Basin States. **Carved out water that Upper Division states could rely upon** in dry periods.

- vi. Lake Powell is the savings account for both the Lower and Upper Basins. While Colorado does not receive any direct benefit from Lake Powell, the reservoir does allow Colorado to develop its Upper Basin Share.

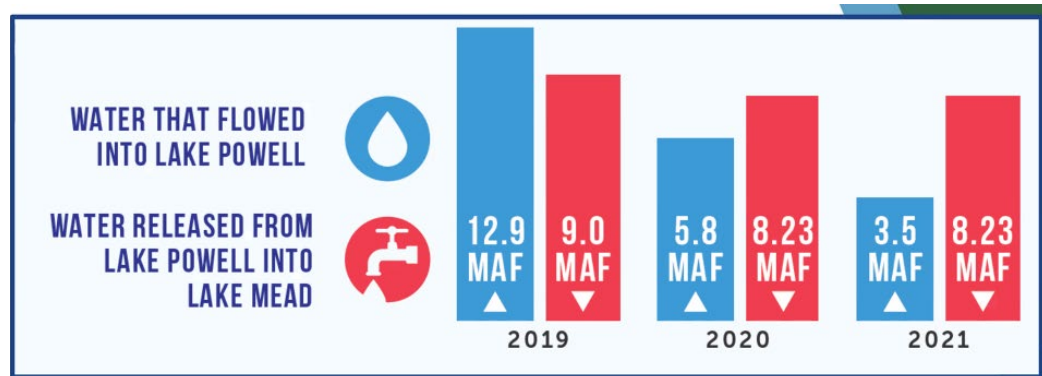
10. **Colorado River negotiations, Becky Mitchell**, formerly the CWCB Director, Mitchell is now **Colorado’s first full-time Colorado River Commissioner**. She reports to Department of Natural Resources Director Dan Gibbs and Governor Polis.

- a. The Colorado River is integral to every part of Colorado plus 2 tribes, providing for agricultural and municipal use on both sides of the divide.
- b. Why not just let agriculture take place in Lower Basin where it is more productive? That is short-sighted, since water supports agriculture, recreation, and the population in Colorado.
- c. People who developed water before 1922 The Colorado River Compact often have to go without. Colorado River issues are a priority for Governor Polis.
- d. We need sustainable reservoir operations. Post-1926 obligations are Colorado’s chance to do this. The status quo has not and will not work. **Colorado will not accept an extension of the 2007 Interim Agreement which expires in 2026.** Colorado has been using significantly less—in 2021 Colorado used less than **50%** of what it was granted in the 1922 The Colorado River Compact. We must rebuild storage and reduce demands downstream. To preserve the system, the **changes that happen in the Lower Basin must be permanent.**

11. Amy Ostdiek, Colorado Attorney General’s office



- a. This shows that the Upper Basin has received far less than 7.5 MAF, and the Lower Basin states have used significantly more than 7.5 maf. **Lower Basin overuse is causing the current crisis, which relates to the 2007 guidelines.**



- b. The problem is excess releases from Lake Mead. **In 2020 and 2021 much more water flowed out than was going into Lake Powell.**
- c. **In June 2022 BuRec called for 2-4 maf savings** from conservation (almost all from curtailing irrigation).
- d. The **Upper Basin has developed a 5-point plan** in response:
- i. System Conservation Pilot Program
 - ii. Demand Management feasibility investigation
 - iii. Drought Response Operations Agreement
 - iv. BIL funding for measurement and monitoring infrastructure
 - v. Continue strict administration according to priority.
- e. **The Upper Basin alone cannot solve this problem.** Upper Basin states responded with the above **5-point plan**, showing the federal government that the **Upper Basin is committed to reaching a solution.**
- i. SCPP: temporary voluntary reductions in use becomes part of the system. This has only conserved 2,700 af in 22 projects. **Since so little water was conserved, it's not clear whether this program will be renewed.**
 - ii. Demand management. Conserved water is stored in Lake Powell. Since each Upper Basin state must agree, this negotiation is still ongoing. The **CWCB Board agreed to share all information it has compiled** to the task force. Colorado and the other Upper Basin states have never been out of compliance with the Colorado River Compact so **there is no imminent threat of Compact administration. Every Upper Basin state must agree that demand management is feasible before it can be implemented.**
 - iii. **Becky Mitchell's irrefutable truths**

- 1) Acknowledge that climate change is real. **We can expect a drier, more variable future.**
- 2) Recognizing that water users in the Lower Basin are not more important than water users in the Upper Basin.
- 3) **Preventing overuse in the Lower Basin.**
- 4) Defending against attempts at Compact curtailment in the Upper Basin states.
- 5) **Operating Lake Powell and Lake Mead according to hydrology**—we cannot release more than is going into the reservoir.
- 6) Preserving federal reserved water rights for Tribal Nations.
- 7) Complying with federal environmental law
- 8) Advancing coordination between US and Mexico.

f. Emily Zmak, Basin Roundtable Involvement—how to support Becky Mitchell

- i. **Showing how Roundtable members have adapted to shortage**—how Colorado is living within its means. Zmak recommended publishing OP ed articles, making social media posts, and doing radio interviews—and then forwarding them to Becky Mitchell.
- ii. PEPO and water education. **Many Americans do not know Colorado is an arid state** and in an arid climate. The more awareness of this, the more pressure to bring change.
- iii. Encouraging Basins to provide input. **Decision makers hear the loudest 10% either opposed or in favor of a bill. CWCB Wants to hear from users in the middle range.** What should Becky take a position on.
- iv. Send comments for Commissioner Mitchell to the **Colorado River Commissioner’s Corner** website.
- v. Advocating for thoughtful action where it is most needed. The **Yampa Roundtable is advocating for its basin**; Emily recommends against us v. them approaches. **The strongest state negotiators have a cohesive state behind them.**
- vi. Advocating for thoughtful action where it’s most needed. Actions to support the state’s diverse interests. **Action is most needed in the Lower Basin.** s could be critical in seeing that we are taking the right actions.

- vii. Make this a **standing 5-10 minute agenda item to discuss this.**
- viii. [Department of Natural Resources_ColoradoRiver@state.co.us](mailto:ColoradoRiver@state.co.us),
Amy.Ostdiek@state.co.us.
- g. Ken Ransford asked what changed from 2007 to 2026 that is informing the current Interim Guideline negotiations.
 - i. The 2007 Guidelines were interim on purpose, it was always anticipated that they would expire. **They did not anticipate the hydrology from 2007 to 2023—everything is much drier** than they anticipated. The key change we need to adopt is to **operate Powell and Mead differently. They should respond to hydrology**, not to the 2007 Interim Guidelines or 1922 The Colorado River Compact. **We now know where the guidelines were deficient.**
 - h. April long asked, “**What is the Colorado River Compact currently studying and analyzing?**” Lain Leoniak: There are annual consumptive use and losses reports to BUREC; these are ongoing. They look at inflow and outflow statistics, and the Colorado River Compact has standardized the methodology used here. The Colorado River Compact analyzed **where additional streamflow gages are needed to measure water use in Upper Basin states.** BuRec issued a grant for a feasibility study—Michelle Garrison can speak to this.
 - i. See The Colorado River Compact Website
 - ii. April would like a report from Becky Mitchel from her recent The Colorado River Compact and The Colorado River Compact meetings and Colorado’s position on it. This would make it easier for Basin Roundtables to funnel information to her.
 - iii. **The divide between East and West slopes seem to be growing.** Mitchell was not available to address this.
- 12. Internal Colorado Basin Roundtable matters
 - a. Election of Basin Roundtable officers—this is scheduled for the September meeting. **Jason is stepping down** from the chairperson’s role.
 - b. Vice Chairs
 - c. **Jason’s observations of the Roundtable**
 - i. **Formalize a grants committee** and identify a person **that grant applicants can contact.** This is time consuming for Jason.
 - ii. Anna is very helpful for PEPO

- d. Kristen Kurath asked if other roundtables meet every month. Jeff Rodriguez said it is mixed: **Four roundtables meet monthly: South Platte, Metro Denver, Rio Grande, Arkansas;** 3 meet every 2 months, and the others meet quarterly. **Several roundtables have a grant committee and only accept WSRF grant applications twice a year** or a few times a year to give the Roundtable time to process the applications;. This makes it more competitive.
- e. Jason thinks it would be **more competitive if we look at grants twice a year.**
- f. Critique website—what info could be updated
- g. Roundtable is a local public body, not a state agency. **No roundtables compensate their chairs; the CWCB talks about this a lot.** What is involved with being a chair, and how much time does it take. **The Roundtable is a powerful local body,** and it takes a lot of time.
- h. **We cannot use any funds received from the CWCB to pay for a Roundtable chair.**
- i. **Two grant cycles per year** is favored.
- j. Most grant questions deal with WSRF grant applications. Justin fields grant questions like, **“does my project fit”** and it takes at least 20 minutes to learn about project, here are the guidelines, CWCB procedure. Walks thru the process. Jason estimates 60% of his roundtable time is spent doing this.
- k. Other basin WSRF Applicants also call Jason.
- l. **Roundtable can provide its own guidelines that could answer a lot of questions.** The CWCB also has guidelines.
- m. **Merrit Linke asked Jason to stay on** if someone else handled the grant inquiries. He demurred; Jeff Rodriguez of the CWCB said Jason could refer grant applicants to him. Jeff is going to forward grant guidelines that the CWCB is preparing, and that other roundtables have adopted.
- n. The Next Steps committee will continue this discussion.