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### A Colorado River Basin Authority: Opportunity for Sharing River Basin Management and Resources

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#### Citation Information

Getches, David H., "A Colorado River Basin Authority: Opportunity for Sharing River Basin Management and Resources" (1989). *Boundaries and Water: Allocation and Use of a Shared Resource (Summer Conference, June 5-7)*.

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A COLORADO RIVER BASIN AUTHORITY: OPPORTUNITY FOR SHARING  
RIVER BASIN MANAGEMENT AND RESOURCES

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BOUNDARIES AND WATER:  
ALLOCATION AND USE OF A SHARED RESOURCE

Natural Resources Law Center  
University of Colorado  
School of Law  
Boulder, Colorado

June 5-7, 1989

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**A Colorado River Basin Authority:  
Opportunity for Sharing River Basin Management and Resources**

**David H. Getches**

**I. Introduction**

**A. Summary**

The history of the Colorado River Basin has been marked by competition and contentiousness among states and interest groups and by extraordinary assertions of federal power. Rights to quantities of water have been allocated through a mix of interstate compacts, an international treaty, legislation, contracts and judicial decisions.

Water is controlled by an extensive plumbing system constructed and operated by the United States Bureau of Reclamation. Several major dams are operated according to the Secretary of the Interior's judgment as to how much water should be stored and when water should be released. The goal is to serve an optimum mix of uses. In the past this has meant producing as much hydropower as possible consistent with storing water to meet future compact obligations. Today there are growing constituencies calling for operation of river facilities to meet diverse and often conflicting demands including flood control, water quality, Indian rights, fish and wildlife and recreation.

The original concept of federal investment in development of the Colorado River was to achieve certain national purposes through bestowing major regional benefits. Neither the interests of the federal treasury nor single, narrow interests of some of the potential beneficiaries were to be paramount. Yet there was no mechanism to consider and balance competing demands, resolve differences among them and anticipate future problems of river management.

Pressures to produce more benefits from a limited, probably declining resource put all present and potential users in increased competition with one another. The seven basin states, the Department of the Interior, Indian tribes, Mexico, power customers, conservationists, recreational users, municipal and agricultural users, and property owners all have a stake in how the river is operated in the future. It is insufficient to leave the resolution of these matters to ad hoc responses by the parties most interested in particular issues as they arise. Decisions tend to be made hastily, based on the volume and political weight of opinion. The court of first and last resort is the Secretary of the Interior, with occasional appeals to a typically reluctant Congress whose involvement is usually limited to appropriating money.

A Colorado River Basin Authority is needed to manage the river to achieve and distribute its bounties throughout the basin for broad public benefit. The Authority would be concerned with hydropower production, meeting compact and treaty demands, resolving compact disputes, spending and distributing revenues from the basin funds for water development, conservation, and habitat protection measures, deciding on operating criteria, considering interstate water marketing proposals, facilitating Indian water rights negotiations, drought planning and response, improving protection for fish and wildlife resources, including endangered species, and improving and carrying out salinity control efforts.

#### B. General References

1. Carlson and Boles, "Contrary Views of the Colorado River: An Examination of Rivalries Between the Upper and Lower Basins," 32 Rocky Mt. Min. L. Inst. 21-1 (1986).
2. Getches, "Competing Demands for the Colorado River," 56 Colo. L. Rev. 413 (1985).
3. Volkman and Lee, "Within the Hundredth Meridian: Western States and Their River Basins in a Time of Transition," 59 Colo. L. Rev. 551 (1988).
4. G. Weatherford and F. Brown, eds., New Courses for the Colorado River: Major Issues of the Next Century (1986).
5. K. Lee and J. Clark, The Western Hydro System (1985).

## II. Decision-making in the Colorado River Basin

### A. The Secretary of the Interior

1. Boulder Canyon Project Act (authorizing Hoover Dam) gives Secretary authority to contract for storage and delivery of water when and where he sees fit and to generate and contract for electric power. 43 U.S.C. § 617d.
  - a. Need not follow state water law in choosing water users or setting contract terms.

Arizona v. California, 373 U.S. 564, 586-590 (1963).

- b. Must follow certain preferences, limits on term, and requirements for cost recovery in entering power contracts. 43 U.S.C. §§ 617c and 617d.
2. Colorado River Storage Project (authorizing Glen Canyon Dam and other facilities) empowered Secretary to set long-range operating criteria for federal reservoirs on the river. 43 U.S.C. § 1552.
- a. Certain statutory limitations include giving preference to Mexican Treaty obligations, meeting upper basin requirements for deliveries to lower basin, non-impairment of upper basin annual consumptive uses, and equalizing storage in Lake Mead (Hoover) and Lake Powell (Glen Canyon).
  - b. Original operating criteria and subsequent modifications submitted to governors of seven basin states and others chosen by Secretary for "review and comment". 43 U.S.C. § 1552(b).
  - c. Purpose is to comply with Colorado River Compact, Upper Basin Compact and Mexican Treaty. Nevertheless, Secretary's discretion

in curtailing storage for domestic and agricultural uses so that he could make releases to satisfy power generation contracts was upheld notwithstanding.

preference for domestic and agricultural uses over power production in Compact (Article IV(b)) and in the Act (§ 1501). Yuma Mesa Irrigation & Drainage Dist. v. Udall, 253 F. Supp. 548 (D.D.C. 1964); Yuma County Water Users Ass'n v. Udall, 231 F. Supp. 548 (D.D.C. 1964).

d. Supreme Court has original jurisdiction over cases brought by a basin state to enforce requirement that federal officials and agencies comply with Law of the River. 43 U.S.C. § 1551(c).

3. The Salinity Control Act authorizes Secretary in cooperation with the Secretary of Agriculture and Administrator of the Environmental Protection Agency to proceed with an elaborate program of construction and other activities to enhance water quality in the river. A portion of the costs are paid out of basin fund from electric power sales and repayment of water project costs. 43 U.S.C. §§ 1571-1599.

**B. Upper Colorado River Commission**

1. Commission established under Article VIII of Upper Colorado River Basin Compact comprised of one representative of each of the four upper basin states and one designated by the President. 63 Stat. 31 (1949).
2. Powers are limited to doing studies, collecting data, estimating runoff, maintaining gaging stations, and to making findings as to quantities of water used in upper basin states, deliveries of water to lower basin, reservoir losses and drought-caused problems in meeting Mexican Treaty requirements.

**C. Administrator of Environmental Protection Agency**

1. Clean Water Act requires the Environmental Protection Agency to set standards for concentrations of pollutants in waters of the United States and (directly or by delegation to states) to carry out a permit program for point sources of pollution. 33 U.S.C. § 1251(b).
2. The Act also requires states to take sufficient action to protect overall water quality for existing and future uses. If a state fails to take sufficient action the Administrator may adopt and enforce his or her own standards. See 33 U.S.C. §§ 1313(c) and 1312.

3. To date, the Administrator has elected to defer to the states' collective decision to deal with salinity in the Colorado River through the Colorado River Basin Salinity Control Forum. The Administrator's discretion to do so was upheld in Environmental Defense Fund v. Costle, 657 F.2d 275 (D.C.Cir. 1981).

**D. Colorado River Basin Salinity Control Forum**

1. Congress passed Colorado River Salinity Control Act in 1974 to authorize several structural projects to remove or prevent sources of salt loading in the river that were causing conflicts with Mexico and making it difficult to get maximum use out of water delivered in the lower basin because of high salt concentrations. 43 U.S.C. § 1591.
2. Basin states voluntarily (without statutory direction or authority) created Forum to respond to requirements of Salinity Control Act and Clean Water Act:
  - a. Sets numeric salinity standards for three checkpoints along the river.
  - b. Makes recommendations to Secretary of Interior, Secretary of Agriculture and Congress on timing, design and construction of projects under Salinity Control Act.

- c. Develops programs for implementing plan to meet agreed standards.
- d. Is largely identical with the membership of the statutorily authorized Colorado River Salinity Control Advisory Council which serves as liaison among and makes recommendations to federal agencies and receives reports from the Secretary of the Interior. 43 U.S.C. § 1594.

### III. Proposed: A Colorado River Basin Authority

- A. There is an imbalance in decision-making concerning the river and its resources.
  - 1. Federal agencies have control disproportionate to their interests.
  - 2. States have only an incidental role but the massive river developments were intended primarily to benefit the regional and local interests they represent.
  - 3. Many important interests and values are not adequately represented (e.g., environmental, recreational).
- B. The system of reservoirs and hydroelectric facilities could be the basis for bringing together diverse interests.
  - 1. Virtually all interests -- governmental and

private -- have a stake in the operation of the facilities.

2. The facilities could be operated for broad public benefits in the region.
3. The existing facilities could be operated and perhaps owned by the Authority.
4. Sufficient revenues could be generated to finance activities of the Authority as well as to meet existing repayment obligations.
5. The Northwest Power Planning Council provides a useful, though not entirely transferable, model.

C. Basinwide issues are growing in number and importance.

#### IV. Major Basinwide Issues and the Potential Role of a Colorado River Basin Authority

##### A. Power generation (and revenues)

1. Power generation systems of the Colorado River Storage Project (Glen Canyon et al.) and the Boulder Canyon Project Act (Hoover et al.) are capable of producing over 30 billion kilowatt hours of power a year.
2. Charges imposed on power customers for such power reflect only "costs".
  - a. Statutorily designated obligations such as current operation, maintenance, repair and administrative expenses, repayment of certain project construction costs at low interest

rates, a portion of the costs of the salinity control program, specially assessed costs against Hoover for Central Arizona Project, and a few other costs.

- b. Power rates remain low -- 10-14 mills which is 10-15% the avoided (marginal) cost of power in western states and about 60% of Bonneville Power Administration rates.
3. Power marketing activities implicate interests ranging from existing customers, to potential customers in the region who are denied cheap power from the system under current policies, to water users, environmentalists, recreation interests and others who are concerned with the tradeoffs inherent in decisions to generate and market various levels of power at particular times.
4. Western Area Power Administration (WAPA) -- an agency of Department of Energy -- has handled transmission, marketing and other functions since 1978, see 42 U.S.C. §§ 7101-7152(a).
5. Whether WAPA is required by the National Environmental Policy Act (NEPA) to prepare an environmental impact statement for its marketing criteria is being litigated in Salt Lake City v. Western Area Power Administration and Grand Canyon Trust v. Western Area Power Administration.

6. Colorado River Basin Authority could assume some functions performed by WAPA.
  - a. Set marketing criteria.
  - b. Rate setting authority (now subject to Federal Energy Regulatory Commission control).
  - c. Projecting demands.
7. Authority could have broader functions.
  - a. Explore options and plan for satisfaction of demands.
  - b. Construction and expansion of hydropower system.
  - c. Seek other energy sources (including alternative energy).
  - d. Conservation programs.

**B. Salinity control**

1. Colorado River Basin Salinity Control Forum (see above) is the single example of successful, continuous interstate cooperation on a basinwide issues.
2. Forum (as well as Advisory Council subsumed by it) has virtually no power but wields considerable influence because it speaks for basin with single voice.
3. As cost effective federally financed structural measures are completed basin states will bear

greater burden of salinity prevention and clean up.

- a. Buy out of Wellton-Mohawk may be only reasonable way to meet Mexican delivery requirement; remains national obligation.
- b. Greater control of salt content for lower basin uses is likely to fall on states.
- c. Harder choices, including reduction of upper basin cultivation (with appropriate lower basin compensation), should be worked out cooperatively by states.

4. Forum could provide nexus for creation of Basin Authority which could then take over all Forum functions.

**C. Carryover storage**

1. Legal obligations for releases are few:
  - a. Compact and treaty require 75 million acre-feet reach Lee Ferry every consecutive ten year period and 1.5 million acre-feet be passed to Mexico every year (except in extraordinary drought).
  - b. Basin Project Act requires equalization of storage between Glen Canyon and Hoover Dams.
2. Bureau of Reclamation has adopted certain operating policies.
  - a. Storage targets for Glen Canyon are 22.6

- million acre-feet by January 1; full (25 million acre-feet) by July 1.
- b. Minimum releases of 3000 cfs in boating season and 1000 cfs rest of year for environmental and recreational needs.
  - c. As far as possible, all releases are through power plants, and at hours of highest power demand.
3. Basin states have a stake in maximizing water storage to for future consumptive uses pursuant to compact allocations.
  4. States, special interests, the region, and the nation have competing interests in releasing water from reservoirs at times and in manners that do not maximize storage (e.g., flood control, power generation, fish and wildlife, recreation).
  5. There is no mechanism or forum for considering all the objectives and consequences of the Bureau's reservoir operating policies.
  6. Recreation interests unsuccessfully challenged Bureau operations that created extreme fluctuations in flow to detriment of boating and ecosystems. Grand Canyon Dories, Inc. v. Walker, 500 F.2d 588 (10th Cir. 1974).
    - a. Court found Bureau has no legal obligation to recreation interests.

- b. Question of whether environmental impact statement must be prepared under NEPA was left open.
- 7. Tension between Bureau of Reclamation proposals to release water in high water years 1983-84 and state insistence on retaining as much as possible led to Reclamation proposals in 1985 to revise operating criteria.
  - a. Reclamation proposed a more even release pattern to produce more power and, incidentally, enhance channel maintenance; also slight benefit for flood control in high flow years.
  - b. State water managers (delegated by governors) were given an opportunity to influence Bureau; other interests, especially power customers were heard from; no broad consideration or public debate on multiple objectives.
  - c. Reclamation and seven basin states reached agreement in September, 1987 on modified technical operating plan for successive year.
- 8. Basin Authority could be delegated responsibility for considering multiple values and objectives potentially served through operation of reservoir system.

- a. Goal would be to optimize benefits to basin states.
- b. Only limitations would be compliance with legal obligations for deliveries and any overriding national concerns (e.g., flood control, endangered species protection).

**D. Flood control**

1. A major justification for federal investment was the impact of destructive floods early in century.
2. Flood protection became a major issue in the high water years 1983-1984 -- the first time since completion of the mainstem reservoirs.
  - a. First spill from Glen Canyon Dam occurred as the result of operating system with minimal flood pool.
  - b. Large property losses downstream of Hoover Dam led to congressional hearings on operating policies and on location of structures and activities in floodway.
  - c. Large losses of vegetation and bird and animal habitat (much of it non-native to the area) occurred.
  - d. In spite of near-full condition of reservoirs, system controlled reasonably well the highest two years of virgin flows since records or estimates of flows have been made.

3. Basin Authority could serve to coalesce and express state and regional interests in flood control.
4. United States will continue to have an interest in how projects are operated for flood protection; may require some overriding veto if Basin Authority acts contrary to national flood control needs.

**E. Water development and management**

1. United States is committed to completing several major water projects in the basin.
  - a. Central Arizona Project is nearing completion and provision had been made for most of the construction costs; most expensive project on river and in Reclamation system.
  - b. Dolores Project in Colorado is nearing completion of construction.
  - c. Dallas Creek Project in Colorado was dedicated in 1988, with recreation facilities still being built.
  - d. Animas-La Plata Project in Colorado to begin construction under 1988 Act of Congress (Pub. L. No. 100-585) approving Colorado-Ute Indian Water Rights Settlement; large non-federal share of costs is committed; Congress proceeding slowly with federal share.

- e. Central Utah Project is under construction; accounts for 83% of current expenditures for projects in Colorado River Storage Project; recent legislative efforts seek to accelerate construction and lift cost ceiling along with increased commitments for fish and wildlife mitigation and enhancement.
  - f. Navajo Indian Irrigation Project in New Mexico is nearing completion but still accounts for a major share of total Reclamation spending in basin.
2. It is unlikely that any of the other authorized federal projects in the basin will ever be built.
  3. Though construction of Reclamation projects is generally thought to be winding down, appropriations for project construction in the basin is are at an all time high; the federal policy is to complete those projects that are being built but to start no new ones.
  4. The basin states have many unmet needs for water development and management.
    - a. Projects to maximize use and flexibility of Reclamation projects.
    - b. Projects and programs to make existing water delivery systems more efficient (repair and rehabilitation of facilities, ditch lining,

- etc.).
- c. Dam safety (many publicly and privately constructed facilities are unsafe; safety restrictions limit present storage capacity).
  - d. On farm improvements would improve efficiency and increase water available for all beneficial uses through out basin; not affordable by farmers.
  - e. Water conservation programs for states, water districts and municipalities.
5. A Basin Authority could allocate funds equitably for development and management of water by the basin states through a program of loans and grants.
- a. A proposal for increasing power rates slightly to provide water development funds for upper basin states was offered by former Colorado Governor Richard D. Lamm but defeated largely because of objections by public power customer organizations; Basin Authority would offer broader benefits.
  - b. Would consider extent to which state was deprived of historical promise of federal assistance relative to other states.
  - c. Benefits to entire region and nation of particular proposals would be a factor in

funding projects (e.g., maximizing efficiency, effects on salinity, power generation, environmental values and recreation).

- d. Cost-sharing by state and local beneficiaries could be required where economically feasible.
- e. Careful use of funds is probable because total available would be limited.

**F. Ecosystems impacts -- management and mitigation**

- 1. Cumulative effects of project development and operations have not been considered in decision-making.
- 2. National Environmental Policy Act (NEPA) will apply to Secretary's adoption of new reservoir operating criteria.
- 3. Glen Canyon Environmental Studies conducted by Department of the Interior between 1982-1987.
  - a. Studies were the result of environmental assessment on uprating of generators that attracted extensive public interest and comment on reservoir operations and of Grand Canyon Dories litigation, supra.
  - b. Purpose was to determine impacts on natural and recreational resources downstream and options for reducing negative impacts.

- c. Consistent with recommendations by the National Research Council, National Science Foundation, the Secretary initiated a Phase II of the Glen Canyon Environmental Studies that will undertake additional technical studies examining, among other things, the economic effects of operational changes, especially with respect to power generation; Phase III will study the Department of the Interior decision-making process.
4. A Basin Authority would integrate environmental factors into all basin policy and decisions, with participation from affected agencies and interest groups.

**G. Endangered species**

1. Development and operation of basin facilities must be consistent with Endangered Species Act (ESA), 16 U.S.C. §§ 1531-1543.
2. Several indigenous fish species (squawfish, humpback chub, bonytail chub) are threatened by continued development of water in the upper basin and portions of the lower basin; also problems with eagle habitat in lower basin.
3. Upper basin states and federal agencies have adopted a Recovery Implementation Plan providing for reservoir operation changes including releases

for the benefit of endangered fish, habitat improvement, propagation efforts, passage facilities and establishment of a fund for recovery efforts; funding comes from Fish and Wildlife Service appropriations, power revenues, state contributions and assessments on new private water developments; water development can proceed consistent with the Plan.

4. A Basin Authority could administer the Plan and resolve disputes under it.
5. Similar arrangements accomodating development needs with ESA compliance could be facilitated by the Authority elsewhere in the basin.

#### H. Compact enforcement and interpretation

1. Several uncertainties exist under Law of the River.
  - a. Mexican Treaty issues:
    - (1) When there is a no "surplus", burden of Mexican delivery is shared equally between basins, but "surplus" not defined.
    - (2) Are annual deliveries from upper basin required specifically for Mexico or is there a credit allowed for deliveries in excess of compact that are stored or consumed in lower basin?

- (3) Where must the upper basin's portion of the Mexican water be delivered (i.e., is upper basin charged for evaporation and channel losses)?
  - b. Meaning of "beneficial consumptive use" -- the basis for allocating quantities of water between the basins:
    - (1) net depletion (amount by which natural flow is depleted by human activity), or
    - (2) all diversions less all returns (would not allow for salvage and reuse).
  - c. Whether Gila River is apportioned by compact.
    - (1) Left open in Arizona v. California.
    - (2) Two million acre-feet at stake.
2. Issues have not arisen because upper basin has not had to utilize its full share of water, lower basin has only recently reached limits of its allocation and demands have been accommodated by above average flows and storage facilities.
3. A Basin Authority could be a forum for negotiating practical resolutions to ambiguities in the Law of the River.

## I. Indian reserved rights issues

- 1 Much of the law of Indian reserved water rights has been settled.
  - a. Quantification on most reservations is to be based on "practicably irrigable acreage", Arizona v. California, 373 U.S. 546 (1963).
  - b. Tribal rights may be decided in state court general stream adjudications, Colorado River Water Conservation Dist., 424 U.S. 800 (1976).
2. Some tribes and states in the basin have elected to negotiate quantity, priority and method of fulfilling Indian reserved rights (e.g., Colorado, Southern Ute and Ute Mountain Ute Tribes; Arizona, Papago, Ak-Chin, Gila River Pima-Maricopa).
  - a. Can provide "wet water" to tribes if coupled with measures for acquiring supplemental water.
  - b. Non-Indian uses can be protected and their equities respected.
  - c. Federal government can fulfill trust relation by participating financially.
  - d. Provision can be made for sharing benefits of Indian water by both Indians and non-Indians through market transactions.
3. A Basin Authority can facilitate future

settlements and help resolve inevitable disputes that will arise under both litigated and negotiated determinations of reserved rights.

- a. Quantifications can be tailored to individual circumstances yet made and administered with a consistent set of principles in mind.
- b. By collaborating, the states and tribes in the basin can be more influential in gaining political acceptance in Congress when it is considering legislation approving and seeking federal funding. (Compare the destructive efforts of some basin interests whose misapprehensions caused them to oppose the Colorado Ute Settlement.)
- c. Authority could serve as a vehicle for funding Indian settlements and determine appropriate levels of investment of power revenues in grants and loans for that purpose.

**J. Interstate water marketing**

1. Proposals for allowing use in one basin state of water allocated to another have been discussed in recent years.
  - a. Galloway Group scheme to sell water from Yampa River in Colorado for use in San Diego.
  - b. Provision in Colorado Ute Indian Settlement

Agreement allowing marketing on same terms as other water rights holders.

- c. New Mexico's proposal to participate as a state in marketing groundwater out of state and Montana's statute involving the state in all major exports out of major river basins.
2. As faster developing states want the assurance of a supply and slower developing states seek an economic return for water to which they are entitled, mutually beneficial deals become attractive.
3. The Law of the River neither contemplates nor forbids interstate water marketing, but consent of all states is needed to ensure success of any such proposal.
  - a. An objecting state whose rights are arguably affected can bring litigation.
  - b. The Secretary of the Interior, as operator of storage and delivery facilities, needs assurance that the states are in accord before he administers releases to carry out a market transaction.
4. A Basin Authority can help negotiate and administer arrangements under which one or more states allows its share of river water to be used by another for a time; the consensus of all basin

states is necessary and thus the Authority would attempt to ensure that each can perceive some benefit.

**K. Planning for drought and climate change**

1. Tree ring studies show that the basin has for many years been spared from historically cyclical severe, sustained drought, but that it is eventually inevitable.
2. Mounting evidence shows that the earth is in a warming trend that will reduce precipitation and increase evaporation and consumption, causing Colorado River flows to diminish by as much as forty percent.
3. Severe drought, exacerbated by global warming, will put stresses on the Colorado River system greater than any in the past.
  - a. Lower basin will not have use of surplus from upper basin and other sources will be curtailed as well, causing dislocations and hampering growth.
  - b. Upper basin will have only what is left in river after meeting compact delivery requirements.
  - c. Power generation (and thus western power supplies) will be limited as river facilities are operated primarily to satisfy water

demands.

d. Serious environmental consequences are possible as habitats dependent on the river are sacrificed to meet pressing needs of those (mostly located outside the basin) who have a call on the river's water.

4. A Basin Authority can plan ahead to meet vitally important needs of the basin in drought scenarios of various length and severity.

a. Operations to date, and the rather detailed allocations under the Law of the River, have been satisfactory because there has been plenty of water and less than full demands.

b. An agreement is needed to deal with contingencies before they arise; it will be more difficult to make decisions in a time of crisis.

c. Plans for temporary responses that depart from the strict allocations of the Law of the River do not require an abandonment of that body of law; if left to politics during or after a major drought, the Law of the River may undergo serious revision or modification.

**L. Allocation and use of basin funds**

1. Separate lower basin and upper basin "funds" have been created for bookkeeping purposes to account

for funds received by the U.S. Treasury in repayment of certain "reimbursable" project construction costs.

a. Most (about 98%) of the repayment comes from power revenues.

b. Small amounts also come from sales of municipal and industrial water and user fees for irrigation water.

c. Power revenues have paid for all power generating facilities in the upper basin projects and municipal and industrial revenues have paid for costs allocable to such water development; all future revenues from power and M & I sales over costs of operation, maintenance and repair will be applied to repayment of irrigation investments.

2. The repayments to the funds are generally on or ahead of schedule.

a. When all past construction costs are paid off funds are to continue accruing for further project construction in the particular basin.

b. Net revenues ostensibly available for future projects will begin accruing to the accounts of the upper basin states in about 2015.

3. A Basin Authority should be required to repay the federal government all reimbursable project costss using the same formula now in effect, but only to the extent of actual federal outlays; surplus funds would be available to the Authority.
4. Revenues that would accrue to basin funds above those needed to repay the government plus other revenues from increased power rates and other sources would be subject to expenditure by Basin Authority.
  - a. Authority would be obliged to make repayments as stated above.
  - b. All operation, maintenance and repair costs would be paid from revenues (either directly if Authority owned facilities or by contract if a federal agency, state, water district or private entity owned the facility).
  - c. Funds would be spent for all the purposes outlined above.
  - d. Authority should have bonding capacity to be able to maintain and expand power system.

**V. Structure of Colorado River Basin Authority**

**A. Federal legislation would be required**

1. Congress must consent to delegation of certain responsibilities that now are assigned to states (All are assignable to states since they are not

constitutionally enumerated powers of one of the three branches of the federal government).

2. The Authority will receive certain federal property of which only Congress may dispose.
- B. Unanimous consent of seven basin states is essential**
- C. An interstate compact (used to establish the Northwest Power Planning Council) would be highly desirable**
1. Would head off constitutional challenges.
  2. Would strengthen state commitment and ensure permanency.
- D. All significant basin governments and interests should be represented in governance of the Authority**
1. State and tribal governments should determine majority of members.
  2. Interests to be represented include:
    - a. Water users.
    - b. Power customers.
    - c. Fish and wildlife.
    - d. Recreational users.
  3. Federal agencies should designate certain members based on their special interests in carrying out national policies (e.g., flood control, fish and wildlife, recovery of federal investments, Indian trusteeship, Mexican treaty obligation).
- E. The public should have ample opportunities to be informed and participate**

1. Planning and decision-making processes should be open to public input.
  2. Decisions should be made in public meetings with advance notice.
- F. A set of strongly worded principles should direct the Authority to optimize the multiple objectives that the Colorado River, its resources and facilities are capable of achieving.