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International Water Law: The United States and Mexico

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International Water Law: The United States and Mexico

op new sources of supply in the Lower Basin as soon as possible, including developing new desalination capabilities and supplies of imported water.

The third speaker, Ted Kowalski of the Colorado Water Conservation Board, represented the State of Colorado's perspective. According to Kowalski, because most of the big trans-mountain diversions to the Front Range are post-Colorado River Compact water rights, the Front Range must begin looking for ways to avoid curtailment of these rights in the case of a Lee Ferry Deficit. From this perspective, water banking in the Upper Basin is vital to avoiding or surviving a Compact curtailment. Dave Kanzer, providing a Western Slope perspective of the Colorado River Water Conservation District, likewise emphasized water banking as a key tool for avoiding a deficit at Lee's Ferry in the next fifty years.

Marc Waage from Denver Water then presented Denver Water's perspective. Placing heavy emphasis on the uncertainty of the science behind the Basin Study, Waage pointed to Lower Basin shortage problems as the most pressing problem facing the Colorado Basin as a whole, as well as the need for all of the Basin stakeholders to work together to solve common problems. Waage made it clear, however, that Lower Basin shortages should not keep the Upper Basin from developing its own allocation of Colorado River water.

The final speaker on the panel, Taylor Hawes of the Nature Conservancy, provided an environmental perspective on the Study. Though she generally had praise for the Study, Hawes criticized it for not considering the current health of the river ecosystem and its associated species. This failure, she contended, will inevitably lead to further degradation and, importantly, further endangered species listings within the Basin. This will in turn generate greater conflict among Colorado Basin stakeholders while decreasing flexibility to cope with future imbalances. These criticisms aside, Hawes echoed the general sentiment among the panelists that the Study represents an important first step in confronting the challenges facing the Colorado River Basin over the next fifty years.

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INTERNATIONAL WATER LAW: THE UNITED STATES AND MEXICO

The Symposium's second panel discussion focused on the international legal regime governing the allocation of Colorado River water between the United States and Mexico. Specifically, the panelists focused on the 1944 Mexican-American Treaty ("1944 Treaty") and the recent amendment to the 1944 Treaty, Minute 319.

The first panelist was Edward Drusina, the US Commissioner of the International Boundary and Water Commission (IBWC). The IBWC is the intergovernmental agency charged with implementing all the boundary and water treaties between the United States and Mexico. The IBWC also settles differences in the application of those treaties. Most importantly, the 1944 Treaty charged the IBWC with administering the rights and obligations of the United States and Mexico regarding the waters of the Colorado River and the Rio Grande River.

The Commissioner began by giving a brief overview of the 1944 Treaty, the IBWC, its mission, and its history. He then gave a narrative overview of the joint cooperative process that culminated in the historic Minute 319, beginning with the 2007 joint statement by the US Secretary of the Interior and the Mexican Ambassador. This joint statement required the IBWC to begin working toward solutions to the growing tensions between Mexico and the United States regarding the boundary waters of the Colorado River Basin.

Minute 317 to the 1944 Treaty, signed in 2010, was the first major cooperative agreement following the 2007 joint statement. Minute 317 set the framework for the subsequent bilateral talks on the Colorado River Basin by formalizing international workgroups and noting topics for further study. Unfortunately, the 2010 earthquake in the Mexicali Valley in Mexico destroyed large sections of the water diversion infrastructure in the Valley and the surrounding area. Without emergency action on both sides, large amounts of Mexico's Colorado River allotment would have been lost. The parties reached an innovative and unprecedented solution allowing Mexico to store almost 230,000 acre-feet of its total 1.5 million acre-foot annual allotment in the United States' reservoir system. This allowed Mexico to postpone its Colorado River water deliveries until the completion of repairs to its delivery system was completed.

In order to give Mexico sufficient time to complete repairs, the United States and Mexico entered two years of negotiations to solidify the arrangement set out in Minute 318 and to begin dealing with other general issues facing the Colorado River Basin. Because of the nature of the water storage arrangement, however, Commissioner Drusina and his Mexican counterpart opted for only a five-year extension to Minute 318 as a way to ensure the arrangement would work in the parties' best interests.

Minute 319, signed in 2012, codified this extension to the Minute 318 storage arrangement and included several other provisions dealing with shortage sharing, surplus sharing, salinity concerns, water allocations for environmental programs, and a call for a \$21 million investment in Mexico over the five-year cycle of Minute 319.

Following Commissioner Drusina was Karen Kwon, an Assistant Attorney General for the State of Colorado. Kwon gave an overview of the states' roles in the international management of the Colorado River Basin and ways individual states have an impact on the diplomatic process. Most importantly, the Colorado River Basin States ("Basin States") have responsibilities under the 1944 Treaty to help keep the United States in compliance with its obligations to Mexico. The Basin States have also played a major role in furthering coordinated management of the Basin. For example, during the negotiations over Minute 319, the Basin State representatives made sure that the Lower Basin States did not benefit at the expense of the Upper Basin States, and vice versa.

The final panelist, Peter Culp of international firm Squire Sanders, first gave a brief description of how holders of Mexican water rights utilize Colorado River water. The vast majority of Mexico's allotment of Colorado River water goes to agricultural uses, with the rest diverted mainly for use by municipalities. According to Culp, nearly three million people rely on this water supply. Because the Mexicali region lies downstream from every American farm

and municipality in the Basin, salinity and other chemical imbalances are a major problem for water users in northern Mexico. Minute 319 begins to address this problem.

Culp then laid out the environmental implications of Minute 319 for the Colorado River Delta ecosystem. Since the turn of the last century, the Delta shrank dramatically to the point where the Delta ecosystem had been declared effectively dead by the 1970s. A large flood in the early 1980s actually reversed some of the degradation, which in turn spurred efforts to restore the Delta. Culp, however, was quick to point out that the proponents of these efforts are not attempting to restore the Delta to its historic maximum. Instead, these efforts, which Minute 319 funds in part, will restore only a relatively small, perennial riparian ecosystem within the limits of the historic Delta. In addition to funding restoration efforts, Minute 319 storage arrangements between the United States and Mexico will allow Mexico to store and release water in a manner that will best facilitate restoration of the Delta.

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CLIMATE CHANGE'S EFFECT ON SUPPLY AND DEMAND IN THE UPPER BASIN

The afternoon keynote speaker, Brad Udall, Director of the newly named Getches-Wilkinson Center for Natural Resources, Energy, and the Environment at the University of Colorado, spoke on the role of climate change in water policy and its effects on supply and demand in the Colorado River Basin. Udall was also the lead author of the Water Sector chapter on Global Climate Change Impacts in the United States Report and the Western Water Assessment of Climate Change in the Colorado Report.

Udall began his keynote address by outlining the basics of the water cycle and the role climate change plays in the water cycle. Udall explained the water cycle is the mechanism the earth uses to move heat from hot areas to cooler areas. A warmer climate leads to more water vapor in the atmosphere and therefore a warmer climate generally translates to more evaporation and precipitation on a global basis (but he also noted regional imbalances will also occur). Udall explained that, as the climate warms, wet places will become wetter, and dry places will become drier.

Next, Udall spoke on the impact of Hadley cells. Hadley cells develop when evaporation at the equator rises into the atmosphere and moves toward the poles. In the subtropics, evaporated water cools and sinks, creating a return flow back towards the equator. Hadley cells fuel the growth of the world's major deserts around the subtropical latitudes at thirty degrees north and south of the equator. Udall believes Hadley cells will proliferate because of climate change, and, as a result, the world's major deserts will continue to grow in size.

Udall then explored climate change's impact on the water supply of the Colorado River. Udall focused on the recently completed Colorado River Basin Supply and Demand Study, which projected various potential scenarios for future flows at Lee's Ferry. The models in the Basin Study took several aspects of climate change into consideration. In seventy-five percent of the