

# Dean's Column

BY PROF. PATRICIA MULROY



## THE COLORADO RIVER: THE POWER OF PARTNERSHIP

It's 6 a.m. In Denver, Salt Lake City, Albuquerque, Phoenix, Las Vegas, Los Angeles, San Diego and Tijuana, people are stumbling into the kitchen to grab that first cup of coffee. In the wide-open spaces of Wyoming, Colorado, Utah, New Mexico, Arizona, California, Baja and Sonora, farmers are opening their head gates to water their fields and tend their herds. Somewhere in the Grand Canyon, a camper is emerging from his tent to marvel at the sight of an eagle winging across the chasm. Mechanics are adjusting enormous generators that send electrons to countless communities, and the birds of the Cienga de Santa Clara are heading out to find their morning meal. As distant and different as this awakening life is, it all shares one vital resource—water from the Colorado River.

The Colorado River, its critical importance to the region and the challenges of water resiliency throughout the world, is my focus of study as a Non-Resident Senior Fellow at the Brookings Institution and a Senior Fellow at the William S. Boyd School of Law. I work with students, colleagues around the University and at the Desert Research Institute, and policy-makers in both the U.S. and abroad to explore the complexities of climate, water security, national security and economic viability.

The Colorado River is steeped in legend and lore, and the mere mention of this river invokes images of competition and conflict. And, yes, for most of the 20th century, competing interests have been in constant collision over this river, each jockeying to advance their needs over those of their neighbors. We quickly forgot the underlying premise of the compact signed in 1922, stating that the river was to be developed and managed by seven equal-partner states, outside the framework of traditional western water law. Only in the last 25 years have we begun to realize that the framers of this river "constitution" were not as misguided as we thought, and that cooperation and joint management of the system would be the only thing that could make a modern 21st century existence on this river possible.

Our water supply is dwindling and the demand pressures are not subsiding. As science grew more sophisticated and informed, we realized that the available Colorado River water was not as abundant as we had once imagined. Lawsuits and decrees over

the last 10 years further cut into what was reasonably available. Finally the beginnings of a fundamental shift in the climate conditions affecting the Colorado River Basin are reducing the remaining resources even further. We have emerged from one of the wettest centuries the region has known, to the stark reality of a much drier future. At the same time food demand is on the rise globally, urban populations are booming and an ever-growing environmental ethic demands more resources be left untapped in order to protect the ecosystem.

This interconnected river community has been, and continues to be, in an intense period of transformation. The notion of a shared responsibility and recognized interdependence is starting to push aside the fiercely defended individual water right. Attitudes are slowly changing as water leaders engage their communities in difficult conversations about doing more with less. This transformation didn't take place overnight; the gradual recognition that previous confrontations in the courts of the land had produced no winners began to emerge in the 1990s. The agreements forged in that decade—the Interstate Banking Agreement and Interim-Surplus Agreement—were foundational to affording the U.S. a platform from which to tackle much more difficult challenges when an unimaginable drought hit the basin with the onset of the new century.

The 2007 Shortage Guidelines, which defined early cutbacks in uses in the lower basin while rebalancing the releases between Lake Powell and Lake

Mead to protect both upper and lower basin interests, set a high precedent of cooperation among Colorado River users and fostered a mindset of cooperation over litigation. It opened the door for the last remaining player to join the partnership: Mexico. Signed in 2012, Minute 319 to the Mexican Treaty represented a historic and unprecedented level of cooperation. Mexico agreed to take early shortages at the same time the lower basin cut its uses; the U.S. agreed to afford Mexico storage opportunities by building drought reserves they couldn't replicate on their soil; U.S. water users were allowed to invest in conservation savings in Mexico, and to be repaid for this investment with fixed blocks of water; and all the parties agreed to create environmental flows to the Mexican Delta.

Over the course of these two decades, two important shifts in how the river was managed took place. First and foremost, the players took a proactive approach to drought management. Rather than sitting back and awaiting the onset of drought and engaging in legal jockeying for position, the U.S. government and the individual states, in partnership with Mexico, chose to step in early and cooperatively to prevent the system from crashing. This approach stands in stark contrast to the ongoing confrontations in the Sacramento Bay Delta that prevented early mitigation and contributed to the unprecedented consequences last year's drought in the Sierras had on California.

Secondly, the strength and resilience this cooperation gave the partners far exceeded any benefit they might have enjoyed by holding a senior or superior water right. The reality is that, had all

parties not left water behind to protect Lake Mead's elevations, the reservoir would surely have dropped below 900 feet. When that occurs, no water can move downstream to Lake Havasu, from which both Arizona and the Metropolitan Water District of Southern California take their supply, or to Imperial Dam, behind which large agricultural users in California and Arizona take their supplies, nor to the reservoir behind Morales Dam, which feeds the large Mexican agricultural diverters. So, even with the most senior rights sitting at the southern end with those agricultural users, there would not be a drop of water to service those rights. However, with cooperation, Lake Mead's elevation rose by more than 10 feet, averting crisis in 2015. As the drought continues to deepen, the states continue to adjust their early response plans. The U.S. and the major urban water users in both the upper and lower basins pooled their resources and leased water from any willing user (both agricultural and urban), simply to leave that water behind in Lake Powell and Lake Mead. Not one contributor will ever be able to claim that water as theirs; this was done solely to preserve the system. This preventative approach differs dramatically from traditional western drought management that has always produced winners and losers.

As flawed, rigid and outdated as many have proclaimed the 1922 compact, it has actually disproven its critics. It has shown itself to be highly flexible and adaptable to conditions as they unfold. It allows seven states to carve a common path forward without upsetting the fragile balance it struck. Seven states recognized,

as far back as 1922, that the doctrine of prior appropriation would not work on this shared river, and wrote a "river constitution" that has withstood the test of time and circumstances.

Our water challenges will not diminish and, going forward, we will continue to need leaders willing to cooperate and collaborate in creatively addressing water needs worldwide. The Boyd School of Law, through programs such as its January 2016 conference, *Turbulent Waters: Brokering a Secure World*, sponsored by the Law School's Saltman Center for Conflict Resolution and the Desert Research Institute, is engaged, together with other partners across campus and across Nevada, in developing these leaders and bringing together experts and policy-makers from around the world to meet the challenges of our ever increasing water demands. **NL**

In addition to her work with Boyd Law School and the Brookings Institution, **PAT MULROY** is also the Maki Distinguished Faculty Associate at the Desert Research Institute and serves on the Wynn Resorts Ltd. Board of Directors. From 1989 to early 2014, Mulroy served as general manager of both the Las Vegas Valley Water District and the Southern Nevada Water Authority (SNWA). Mulroy was a principal architect of the SNWA, helping to guide Southern Nevada through an unprecedented period of growth and one of the worst droughts in the history of the Colorado River.

Lake Mead  
Photo by Scott G. Wasserman, Esq.