

# LIVING RIVERS<sup>SM</sup>

## CURRENTS

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## CO RIVER COMPACT In the Way of Delta Restoration

The Colorado River Compact of 1922 was negotiated by the seven basin states without input from Mexico or Indian tribes. When the river flows were parceled out, only about ten percent was allocated to Mexico, a quantity formalized by treaty 22 years later. Mexico currently uses its entire share for agricultural and urban needs. This has had a profound effect on the Colorado River delta. With so little water moving across the border, and Mexico's growing demand for it, the delta today receives no water.

"It should not be Mexico's sole responsibility to fix the delta when the US takes so much of the river's flow from them," said LIVING RIVERS' Lisa Force, who is leading efforts to get water users throughout the Colorado to donate one percent of their water to delta restoration. "The delta's native Cucupá communities, along with all Indian tribes were excluded from this allocation process; it's time to renegotiate."

The plight of the delta also illustrates another major flaw in the Compact: no allocation provisions were made for flows and river management strategies to protect the environment. The Compact pre-dated such concerns, but today, critical habitat—from the river's headwaters to its delta—suffers from lack of water.

While interest in delta restoration grows, and water agencies express interest in assisting, the Compact and other laws governing the Colorado River make such support difficult, if not impossible. Water conserved and left in the river by one agency may be freely diverted by another user downstream. Moreover, if it is proven that a user routinely leaves water in the river, that user's rights to the water may be lost altogether by not putting the water to "beneficial" use.

LIVING RIVERS has requested on behalf of the Delta Restoration Coalition—a group of 133 organizations representing more than 12 million people—that the Secretary of the Interior examine the Compact and other laws governing the Colorado to identify opportunities to deliver water to the delta. The Secretary, as the arbiter of water allocations in the lower basin, has great discretion to interpret the Law of the River.



Assistant Interior Secretary, Bennett Raley, tells Colorado River users that the delta is one of his top priorities—does he mean it?

part of a dedicated, basin-wide system of in-stream flows that would replenish the delta.

In his December 2001 address to the Colorado River Water Users' Association, Assistant Secretary of the Interior Bennett Raley stated that Colorado River delta issues are among his Department's "top priorities" for the coming year. The Interior Department must join with those seeking new and innovative ways to address today's pressing environmental and social needs of stakeholders, not continue perpetuating the mistakes of the past.

As an initial step, reforms should recognize in-stream flows as a beneficial use throughout the basin and across borders. Effective mechanisms are needed to offer water users assurances that conserved water will be protected from appropriation by other users, and allowed to become

## BISHOP'S LODGE Return to the Scene of the Crime

Water lawyers, politicians, representatives from Indian tribes and environmental interests will be gathering in Santa Fe, New Mexico early this month for the 2002 Colorado River Symposium at historic Bishop's Lodge—site of the 1922 negotiations for the Colorado River Compact. While various management challenges for the once-mighty Colorado will be on the agenda, LIVING RIVERS will be promoting fundamental changes in the Compact itself, to bring Colorado River laws up to date with present concerns.

From the exclusion of Indian nations, Mexico and the environment as equal stakeholders in the river's water, to apportioning more water to the states than actually exists in the river most years, the Compact's shortcomings are so significant that one wonders why it was not revisited sooner.



The negotiating team prepares to sign the Colorado River Compact, Santa Fe, NM, November 24, 1922

"The Compact was flawed from the beginning," said University of Kansas environmental historian and western water expert Dr. Donald Worster. "All kinds of laws dating to the 1920s have been reassessed—including Prohibition and civil rights—so why not western water laws?"

But to many, the Compact has acquired sacrosanct status. Added Worster, "An agreement like this is thought by some to have come from the hand of God; there is an enormous cultural resistance, particularly if someone is going to lose some money in the deal."

Despite such obstacles, attempts have been made over the years to find solutions, and the discussion seems to come back to Santa Fe and the Compact. In 1983 a group gathered at Bishop's Lodge to debate many of the same issues on the table at this year's meeting. "The underlying thrust was a revisionist effort," said University of California, Santa Barbara environmental ethicist Dr. Roderick Nash, a 1983 participant. "Coming together was evidence of dissatisfaction."

Yet despite a list of suggested improvements—including amending the Compact—little has been done to address the fundamental problems.

In addition to environmental problems, serious concerns about representation have been in the forefront of discussions about amending the Compact. Compact negotiators simply ignored the issue of reserved rights for Indian tribes, recognized by the U.S. Supreme Court in 1908. Only one reference to Indian rights appears in the document, stating that the agreement does not affect federal obligations to Indian tribes.

"Herbert Hoover called that clause the 'wild Indian article,'" said historian Dr. Norris Hundley of the University of California, Los Angeles, an expert on southwest water history and law. "They didn't pay any attention to Indian rights."

Indians today see water that rightfully belongs to their people being delivered to corporate farms and cities hundreds of miles away, while many on the reservation still must haul their drinking water in buckets. Some scholars believe the Navajo Nation alone has rights to several million acre-feet. While some Indian nations have pursued negotiated settlements to obtain water, the usual result has been that the tribes are forced to make significant concessions to obtain water deliveries.

Dr. Helen Ingram, of the University of California, Irvine, presented a paper at the 1983 conference calling for equitable re-allocation of Colorado River water. Today she expresses concern that the momentum for change is hampered by differing strategies within the environmental movement itself. "Some groups think that the best way to protect environmental values is by privatizing water rights and using markets but this won't work for Indian tribes," she said. "It's been an enormous disappointment that environmental groups have walked away from water battles. Before we change the Compact we have to change the environmental movement."

# DAM RE-OPERATIONS

## Avoiding the Inevitable

As citizens lament the failings of ongoing federal efforts to protect Grand Canyon from the impacts of Glen Canyon Dam, they should recognize that these problems won't readily go away.

Instead of addressing the inevitable need to decommission the dam to restore native habitat for endangered fish, the Department of the Interior is spending millions of dollars tinkering with minor changes in dam operations, while the riverine environments that these programs are designed to improve, only worsen.



Flaming Gorge Dam

The Glen Canyon Dam re-operation program is a flagship—for a fleet of dam re-operation programs that are sinking the possibility of habitat restoration for critical environments downstream. The Bureau of Reclamation is at least a year behind in releasing its draft plan for changing Flaming Gorge Dam operations, to mitigate impacts on endangered fish in the Green River through Dinosaur National Monument. The agency is perhaps even farther behind in

publishing its re-operation plan for Navajo Dam on the San Juan River. A plan for the Gunnison River dams, expected in 2001, has never yet materialized.

One reason for the failure of these efforts is the raft of antiquated laws and the overweening political interference from user groups that unnecessarily impair managers' best efforts to apply a full range of adaptive management techniques. If these newer programs were intended to benefit from what's being learned with Glen Canyon, there should be little wonder that they all seem to be faltering.

Dam re-operation will be one of the topics at the 2002 Colorado River Symposium in Santa Fe, however, the topic on the agenda should instead be dam decommissioning. Federal programs have yet to demonstrate any results in their hypothesis that these facilities can be operated in such a way to reverse, or even halt, the extensive habitat decline they've already caused.

This is why the movement toward decommissioning federal hydropower facilities is building rapidly. "The federal government requires private dam owners to evaluate decommissioning alternatives when their projects come under review," said Dr. Patrick Diehl with the Sierra Club's Glen Canyon Group. "Yet the politicians fight against decommissioning studies when their own sacred-cow projects like Glen Canyon and Flaming Gorge are put under the microscope."

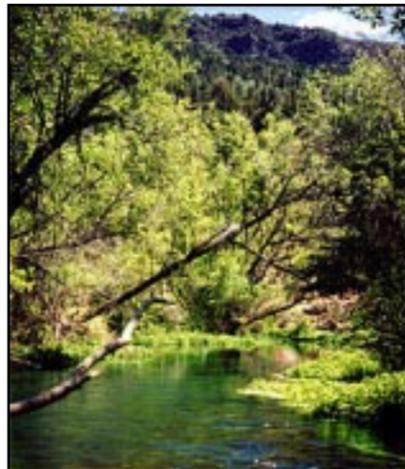
## ONE STEP CLOSER

### To Removing Two Dams on Fossil Creek

In a huge victory for decommissioning efforts everywhere, the Federal Energy Regulatory Commission (FERC) issued a Declaratory Order that supports movement toward the removal of two dams on Fossil Creek in central Arizona. LIVING RIVERS and other groups have been protesting efforts by Arizona Public Service (APS) to renege on an agreement to surrender its operating license for the dams—a critical step toward decommissioning.

APS claimed that, should it surrender its operating license, FERC might then choose to grant the license to a competitor. However, in late December FERC wrote, "We conclude that there is no compelling reason for allowing another round of relicensing competition. We do not believe it would be in the public interest to initiate a new relicensing procedure when the existing licensee has attempted to resolve matters by seeking a settlement, even if that settlement might lead to surrender of the license and removal of project works, including any associated dams."

FERC followed up its Declaratory Order with a letter to APS in January stating that, since FERC has resolved the procedural issues, FERC now needs to know APS' plan and schedule for filing its application to surrender the license to operate the hydro plants. Once surrendered, and approved by FERC, decommissioning can commence.



Fossil Creek, tributary of Arizona's Verde River

# GRAND CANYON

## Challenging Adaptive Management

Last month, while bureaucrats and scientists convened in Phoenix's premier downtown office tower to discuss the disintegrating health of the Grand Canyon, activists led by LIVING RIVERS gathered outside to demand results.

The Glen Canyon Dam Adaptive Management Work Group (AMWG) gathered January 17-18, five years and \$40 million dollars into a process that so far has not yet put in place a plan for pulling the Grand Canyon ecosystem back from the brink of collapse, where it teeters today.

Although AMWG is mandated to provide a mechanism for public input, it rejected such input when offered by LIVING RIVERS, Sierra Club and other groups who collectively submitted a ten-page letter demanding immediate action. The organizations pointed out that in spite of Grand Canyon Protection Act requirements, the impacts of Glen Canyon Dam on Grand Canyon are not being adequately addressed.

The dam holds back nutrient-rich river sediments vital to many Grand Canyon native species, keeps water temperature unnaturally cold in the canyon and eliminates the river's life-giving flooding regimes. The result: a Grand Canyon that is slowly becoming sterilized of its native life forms.

More than forty Phoenix-area activists responded to LIVING RIVERS' call for support for action on behalf of the Grand Canyon.

Michelle Harrington with the Center for Biological Diversity spoke of the plight of native fish in the Grand Canyon. "Three of the canyon's native fish species have disappeared, a fourth is in serious trouble, and a fifth should probably be listed," she said. "Worse, the only population of endangered humpback chub in Grand Canyon is now experiencing a sharp decline."

Dr. Robert Witzman of Maricopa Audubon Society and dean of Arizona's conservation community, spoke of the complex web of life in the Grand Canyon ecosystem and the evidence that it is becoming unraveled, beginning with the very base of the food chain. He ended his speech with advice for forcing action from the powers-that-be: "Constant pressure, constantly applied."

When the AMWG convenes again this summer, LIVING RIVERS will be there again, with an even larger coalition.



Marching for the Grand Canyon through downtown Phoenix

## TEN REASONS

### For Renegotiating the Colorado River Compact

LIVING RIVERS is calling for renegotiating the Colorado River Compact. This would make possible a number of needed changes and innovations, including the following:

1. Indian tribes participating as sovereign nations, protecting and defending their own rights and interests in the river;
2. Making protection of the environment and the river's ecosystem top priorities in management decisions;
3. Equitably apportioning among all the basin's stakeholders, including the environment, the *actual* amount of water in the river—to ensure that even in drought years stakeholders receive a proportional allocation;
4. Applying the public trust doctrine in apportionment and river management decisions, in recognition that the waters of the Colorado River and its tributaries are to be held in trust for the enjoyment, benefit and welfare of all the basin's inhabitants;
5. Creating a basin-wide water trust fund to accept and protect from appropriation donations of voluntarily conserved water to benefit the environment;
6. Establishing and enforcing mandatory water conservation measures, and providing incentives for implementation and penalties for wasteful use;
7. Harmonizing state water laws basin-wide, and removing legal barriers to ecologically sound river management;
8. Encouraging appropriate (sustainable) agricultural practices by imposing reasonable restrictions on irrigation technologies and cropping patterns;
9. Establishing strict limits on interbasin transfers including prohibition of new out-of-basin diversions; and
10. Providing mechanisms for ongoing dialogue and negotiation among the interested parties to address new information and changing circumstances.

LIVING RIVERS *Currents* is published monthly by LIVING RIVERS. For information on our full range of river advocacy programs, or becoming a member, please give us a call or visit our website.

**LIVING RIVERS**

www.livingrivers.net  
email: info@livingrivers.net

PO Box 466  
Moab, UT 84532  
Tel: 435.259.1063  
Fax: 435.259.7612

PO Box 1589  
Scottsdale, AZ 85252  
Tel: 480.990.7839  
Fax: 480.990.2662