

Hope for the Colorado River Basin – Recent Successful Agreements with the Republic of Mexico



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Thank you for the introduction and it is a pleasure to be here today to make this presentation in honor of Al Utton. Unfortunately, I did not have the pleasure of meeting him, but I read as much information as I could find about him and I spoke with many people about him. There is no doubt that he was much loved and admired and that he left an important legacy for anyone interested in water policy, and in particular transboundary issues. It is great to have the Utton Transboundary Resources Center at UNM and the *Natural Resources Journal* to carry on his great work.

One of the tributes to Al Utton that I came across was written by another renowned water law professor, David Getches, from Colorado. David Getches wrote: “His legacy is teaching us how to reach across political boundaries, to convene people around ideas, and how to use the synergy of their intellect and values to improve the way law and policy operates.”

I understand that he felt strongly about the importance of interdisciplinary solutions—and he thought that mixing law and technical expertise is good for policy decisions.

What I heard about most was Al Utton’s emphasis on an ability to maintain and foster relationships and to bring people together to avoid conflicts. He would always look for opportunities to socialize—he had a great sense of humor and was full of humility.

The best advice I received in preparing for this talk was from Rose Utton, the wife of John Utton, Al’s son, who advised me to emphasize Al Utton’s important quest for the best margarita. I am very pleased to know the Utton family and am honored to have been asked to make this presentation.

Today I am going to focus on the Colorado River, and in particular, issues relating to our relationship with Mexico. I will talk about how some of the themes that Al Utton focused on relate to the issues we are dealing with today. I came across Al Utton’s 1994 UNM Research Lecture titled, “Water in the Arid Southwest—An international region under stress” and thought that the same title would be appropriate for the Colorado River Basin 20 years later.

We have been dealing with extreme drought, divisive litigation associated with water development and environmental issues, and contentious political issues relating to water issues—and border issues. The additional pressures are on top of the “normal stresses” of trying to balance agricultural, urban, and environmental water uses in an arid land, which are issues that exist on both sides of the border.

To focus briefly on the Colorado River Basin drought, as was mentioned by some of the other speakers, from 2000-2013 we encountered a severe drought, and experienced the worst conditions over the past 100-year record. Our reservoir levels have dropped to 50 percent, and the last two years

have been particularly dry. Next year, 2014, will be historic due to its low level of release of water from Lake Powell. But, as was also mentioned this morning, we have a highly variable system, and in 2011 we had over 200 percent of the average snowpack. We are crossing our fingers for a good winter, but it will take time to recover.

Stresses in the basin include a potential imbalance between supply and demand as was mentioned in connection with the supply and demand analysis that the Basin States and Reclamation undertook. That imbalance could affect areas outside the basin like the Middle Rio Grande area that relies on San Juan-Chama project water coming over from the Colorado River Basin. To address these concerns, the Basin States and Reclamation are working on short-term drought plans and long-term strategies to be able to address what may be coming at us in the future.

The Colorado River Basin also involves Mexico. Part of the background that Al Utton would have taught us is that much of the Colorado River Basin used to be Mexico—until the Mexican/American war in the 1860s that resulted in the acquisition of California, Arizona, and New Mexico by the U.S. This history likely matters with respect to how we approach negotiations with Mexico and how we think about moving forward.

It wasn't until 1944, that a Treaty determined our water sharing arrangements with Mexico, which addressed the Colorado River and the Rio Grande, and I will spend a few minutes talking about that as well. On the Colorado River, the U.S. delivers 1.5 million acre-feet annually.

Jumping forward to 1973, 30 years later, the U.S. and Mexico entered into Minute 242. It is my understanding that Al Utton was responsible for bringing people together from the U.S. and Mexico for a symposium to address the problem of salinity in the river that eventually led to Minute 242. The Minute requires a set of detailed calculations about the quality of water to be delivered to Mexico that must be implemented on an annual basis, and also provided a water supply from the U.S. to a wetland area called the Cienega de Santa Clara that remains an important area for Mexico.

In addition to salinity concerns regarding the deliveries of water from the U.S. to Mexico, certain projects undertaken within the U.S. have had an effect on Mexico, and the lining of the All

American Canal is a good example. The project was seen as a positive step in the U.S. to help California reduce its reliance on unused water that was available from Arizona and Nevada. But the project was seen as a negative project from a Mexican perspective because lining the canal would result in reduced groundwater seepage that had been utilized by Mexican farms. That tension resulted in litigation, and was ultimately resolved through Congressional action, but it also led to diplomacy, and a commitment from both countries to look for innovative water management tools to benefit both countries. That commitment became the foundation for some of the recent agreements.

Focusing on the events since 2010, there have been four important agreements with Mexico. All of these Minutes have built off each other:

- In 2010, the U.S. and Mexico entered into Minute 316. Minute 316 was an agreement regarding the operation of the Yuma desalting plant, which was authorized by Congress in 1974 but was not actively utilized. Water users and Reclamation undertook a pilot project to test the plant's ability to help more efficiently use water in the U.S. Because the project may have had effects in Mexico, we worked with the Mexicans to provide for alternate means to get water to the Cienega de Santa Clara.
- Also in 2010, we signed Minute 317, which developed a framework for additional cooperative measures. It is a process document, establishing work groups and methods of moving things forward.
- Finally in 2010, Minute 318 was adopted to respond to the Easter earthquake that severely damaged Mexico's water delivery infrastructure. Minute 318 allowed Mexico to defer delivery of some of its water so that Mexico could repair its infrastructure and would not waste water because it could not use it. This also resulted in a benefit to the U.S. because the water stays in Lake Mead and helps keep the reservoir levels higher.
- In 2012, we finalized Minute 319. The anniversary of the signing of Minute 319 was yesterday, November 20, 2012 and Figure 1 shows a picture of the signing. Minute 319 involved many long hours of negotiations and includes several

components. Each of the components was a necessary element of the agreement. I would like to describe the elements of Minute 319 and some of the important steps that are underway to implement Minute 319.



Figure 1. November 20, 2012 signing Minute 319

Minute 319 extends Minute 318 and allows Mexico to continue to defer deliveries in order to continue to make repairs to its infrastructure. Minute 319 extends the shortage and surplus provisions of the agreements that have been implemented within the U.S. to Mexico, such that Mexico will share in shortages if shortages are imposed in the U.S. and similarly, if the hydrology turns around, Mexico will be able to take additional water. Mexico will also be able to create an "Intentionally Created Mexican Allocation," which allows Mexico to bank water it has saved as a result of conservation projects. Specific rules were developed for this program that are similar to the program developed among the Lower Basin states for intentionally created surplus. Mexico is allowed to create up to 250,000 acre-feet per year and can ask for a release of up to 200,000 acre-feet per year as determined through the normal water ordering and allocation process.

Minute 319 also addresses salinity issues and we agreed that the salinity requirements from Minute 242 would still be in effect. I will go into a little more detail about the "water for the environment" provisions and the "international projects" sections of Minute 319.

The water for the environment provisions of Minute 319 build off decades of work by entities on both sides of the border. The Minute allows

Mexico to utilize some of its water allocation for environmental flows. Implementation of these provisions has been an example of great collaboration among representatives of the Basin States, the federal government, and NGOs in both countries to develop a plan for a pulse-flow release. The pulse flow will consist of approximately 105,000 acre-feet of water that is anticipated to be released this spring that will be supported by water in future years that will create base flows. The restoration efforts consist of plans for active and passive restoration efforts in seven reaches of the river corridor south of Yuma. We are also in the process of developing monitoring plans for the project so that we will be able to measure the effects of the pulse flow and evaluate the level of habitat benefits that were created. The project is experimental in nature so it is important to develop a monitoring plan to measure the effects and progress of the restoration efforts.

Another interesting aspect of Minute 319 is the development of "International Projects." The Minute contemplates "joint" projects that would be developed by both countries and would provide benefits to both countries. For the initial pilot project, U.S. entities have committed to provide funding for efficiency projects in Mexico or to develop jointly new sources of water. In exchange, Mexico has committed to reduce its water orders by 124,000 acre-feet and that amount of water will be converted from water saved by Mexico into water that can be used by the U.S. entities in the U.S. The efficiency projects will continue to provide long-term water savings to Mexico.

Thinking again about Al Utton's legacy, and thinking about what makes Minute 319 work, there are a few things we have learned and things we can continue working on. This agreement has been a fragile effort and we have to be very careful about respecting the understandings that went into the agreement.

Having strong leadership in both countries has been an essential element. We have had support from the ambassadors, the Secretary of the Interior, and all levels of government. Having the political will and support to get things done made a big difference, especially during some of the tough negotiations.

The Basin States also played an essential role and provided political will to bring the agreements

together. The Basin States were completely aligned for Minute 319 and continue to be involved in all aspects of the implementation.

NGOs and the media have played an important role as well, again recognizing that the components of the Minute have been under development for a long time.

Perhaps the most important elements have been the qualities of patience and trust, and maybe even good luck. The negotiations took a lot of time and effort and the process is tedious and time consuming in part because of the need to work through translations. It takes time to develop relationships and to learn how to understand each other. One example of working at developing the relationships involved a tour provided for the Mexican delegation of some of the facilities in the Upper Basin, because that was an area that was not as familiar as the Lower Basin for some of the negotiators. That tour was helpful in showing our Mexican counterparts what some of our challenges are and how our system works.

The next question is “What’s next?” How do we build off the foundation we have established? Minute 319 is a five-year pilot agreement, but it includes a commitment from both countries to work on a longer term agreement. The next few years will include continued work among technical, legal, and operational experts, working together and demonstrating lots of patience. We know that our relationships count and we will continue to work with our counterparts in Mexico on trying to make this a success.

We know there are several interconnected challenges that we face together in this “International Region Under Stress.” We have large population growth in our border cities and elsewhere throughout the basin. That is coupled by a desire to maintain our valuable agricultural production and to continue to use Colorado River water to support economic growth and industry. Additional interconnected challenges include addressing the drought, which has an effect on the entire system.

We have common environmental issues and common goals of restoring or maintaining habitat along the river. The Lower Basin’s Multi-Species Conservation Program will spend hundreds of millions of dollars on projects within the U.S.

that are complemented by the restoration work in Mexico under Minute 319. We are working to benefit the same species and there may be some way of connecting the projects.

Politics is also a potential challenge. Political will is a necessary component and because of the strong benefits to both countries, there has been a will to continue to work on creative solutions. But politics can change from administration to administration and can be affected by conditions within each country or within any of the States. We were fortunate that the new administration in Mexico has continued to support the provisions of Minute 319 and we have continued to move forward, but we always have to be prepared to address what may come up. Border issues are very political and although the border is something that separates us, the river may be something that brings us together.

I wanted to touch briefly on the Rio Grande issues because the conditions present on the Colorado are not the same as the conditions on the Rio Grande. On the Rio Grande, Mexico has a delivery obligation to the U.S., and Texas has had long standing concerns about Mexico’s practice of meeting the delivery obligations to the U.S. Some members of the Texas congressional delegation have sought to limit the ability to go forward with Minute 319 unless the Texans get the relief they want on the Rio Grande. This linkage has not been supported by the entities working on the Colorado River and is not in the spirit of the win-win agreements that have been reached on the Colorado River. We’ll see how things continue to develop, but the Rio Grande issues sound like they would have been a perfect project for Al Utton to have been working on.

Thinking about final advice from Al Utton, I think he would urge us to continue to bring people together across boundaries, to continue to learn from each other, to continue to get to know each other, and to always remember to reserve some time for margaritas.