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Alder: A new set of negotiations need for The Colorado River Compact

Robert W. Adler

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In its Aug. 24 editorial, "Law of the river: Don't dis the Colorado River Compact," *The Salt Lake Tribune* suggested that Sen. John McCain's proposal that the 1922 Colorado River Compact be revisited might generate costly and divisive conflict among the Colorado River Basin states.

Strategic amendments to the compact, however, could prevent rather than generate conflict, correct mistakes made when the compact was originally negotiated, and address issues that were beyond consideration in 1922.

The Tribune suggests that the compact is like the Constitution, and equally resistant to change. But we have amended the U.S. Constitution 17 times (not including the 10 in the Bill of Rights). The Colorado River Compact has never been amended in 85 years.

The Southwest is a very different place than it was in 1922. The region's population has grown dramatically, and shifted from rural to urban. Recreational and other instream water uses compete with traditional offstream uses such as farming and ranching. We know more about the river's hydrology. We better understand the environmental impacts of dams and water diversions, and the public places a higher value on environmental protection.

As *The Tribune* noted, compact negotiators relied on a 20-year hydrological record and assumed they could safely dole out at least 16.5 million acre-feet of water per year. Unfortunately, the rest of the 20th century was much drier. The average flow from 1896 to 2004 was less than 15 million acre-feet, but even that may understate the long-term picture. Based on tree-ring records, scientists have identified periods of longer and much more severe droughts in the basin than anything in the 20th century.

But other factors also support renegotiation of some aspects of the compact. First, recent scientific models show that global warming is likely to exacerbate water shortages in the basin. We may face as much as 25 percent declines in streamflow by 2030, 45 percent by 2060, and flows too low to meet even current water demands in as little as 20 years.

Second, neither Mexico nor Native American tribes had a seat at the compact negotiating table. Although the United States negotiated a treaty with Mexico two decades later, questions remain about the fairness of that allocation, especially during dry periods. Some tribal water rights have been quantified, but water rights for other tribes remain unsettled.

Third, environmental impacts of water development were not considered in 1922. The Colorado River once hosted the largest percentage of endemic fish - species found nowhere else on the planet - of any river system in the world. Some are now extinct, and many more species of fish, birds, amphibians, reptiles and mammals are threatened or endangered. The American public has supported new environmental laws that profoundly affect how and where Colorado River water can be used.

Fourth, growth patterns in the basin have shifted dramatically. In 1922 it was obvious that rapid growth would continue in Southern California, but no one anticipated the urban booms in Nevada, Arizona and along Utah's Wasatch Front.

Fifth, while the upper basin states (including Utah) have not used all of the water they are entitled to under the compact, that water may not be available when they are ready to do so. So what happens when we try to use those allocations, honor tribal rights and our treaty obligations to Mexico, try to restore the river's endangered ecosystems, and satisfy demand in growing urban areas, all with less water to go around?

All negotiations require parties to guess about the future and then live by their predictions. A deal is a deal.

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However, it is one thing to apply that principle to commercial transactions, but quite another to apply it to decisions made by one generation on behalf of another across an entire region.

Interstate agreements with profound implications for growth and development, ecological health and societal welfare across seven states should not be revisited lightly. But neither should reconsideration be off-limits.

A new set of negotiations will implicate a broader, more complex set of tradeoffs between offstream and instream uses, international and domestic factors, economic versus environmental needs, and private versus public uses and values.

If the federal government, the basin states, tribes, environmental groups, Mexico and other players wait for water conflicts to become more acute, the likely response will be litigation and/or political warfare. A fairer and more reasoned agreement would be more likely if we addressed the future of the Colorado River sooner rather than later.

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