

# Thinking the Unthinkable

Lawrence J. MacDonnell

University of Wyoming College of  
Law

# Assumptions

- The basin's reliable water supply is already fully used
- Every basin state, as well as Mexico, would like to use more water; there are concrete plans for increased consumptive uses
- Global warming means less reliable (and likely reduced) water supplies
- Litigation between the basins highly likely

# Possible Elements for Negotiation

1. No new net depletions of basin water
2. Lee Ferry flow obligation relaxed
3. Consumptive uses in Lower Basin and Mexico no more than 9 maf in normal year
4. Program to voluntarily reduce some existing consumptive uses
5. States commit to facilitate voluntary reallocation of basin water within state

# No net depletion

- No new water uses that would increase the depletion of basin water
- At least, expressly condition new uses with presumption of curtailment as necessary
- Imposes almost entirely on Upper Basin so would need be accompanied by significant offsets

# Lee Ferry flow

- The 10 year/ 75 maf Compact flow obligation plus 750 K/yr for Mexico should be relaxed
- Instead, commitment to manage basin water supply as necessary to ensure availability of enough water to enable consumptive uses of 9 maf of mainstream water in LB states and Mexico in normal year

# LB Consumptive Uses

- Compact allocates 7.5 maf of consumptive use of system water to Lower Basin; consider the additional 1.0 maf as the Gila
- Lower Division states agree to bring all depletions (outside the Gila) down to 7.5 maf/yr
- Forego any expectations of surplus conditions
- Redirect hydroelectric power revenues towards retirement of consumptive uses

# Facilitate Reallocation

- Essential that basin water potentially be available to meet new needs
- States need to commit to establish necessary mechanisms (such as water banks) to enable such transactions