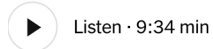


Tensions Are Rising Among States That Rely on the Colorado River

A prolonged drought means the nation's largest reservoirs are dwindling, and litigation over access to water could lie ahead.



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By Scott Dance

Reporting from Boulder, Colo.

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Water in the Colorado River is dwindling to levels that haven't been seen in decades, and the seven states whose residents and farmers depend on the river can't agree on a fair way to divide up what's left.

Negotiations are going nowhere despite more than six months of ongoing talks, plus cajoling by the Trump administration, which twice gathered governors in hopes of a breakthrough that never came. States are already sniping at aspects of a water-use plan the federal Bureau of Reclamation is set to unveil this summer and impose later this year, and they're threatening to sue each other over water deliveries, raising the prospects of prolonged legal battles just as Western states face demands to sharply reduce water use.

The river's system of reservoirs and canals was designed for the climate and population of a century ago. It has strained to adapt to a declining water supply and enormous growth in communities in the river basin, despite improvements in efficiency that mean even booming cities are using less water than in the past. Water rights that may date back to the arrival of European settlers also complicate matters. And a year of extreme drought is making it even harder to decide how much each state can draw from the Colorado.

It is not for lack of effort.

"We have invested time, effort and money in trying to facilitate a multistate agreement," Scott Cameron, the acting commissioner of the Bureau of Reclamation, said in an interview this month, moments after signing a deal that could one day augment the basin's supply using desalinated water from a plant in Carlsbad, Calif.

Scott Cameron, the acting commissioner of the Bureau of Reclamation, third from left, during the opening of the Carlsbad Desalination Plant in Southern California this month. Sandy Huffaker for The New York Times

But a day later, Mr. Cameron told a conference of water experts in Boulder, Colo., that states have repeatedly rejected proposals for compromise. He said he doesn't expect any state to be pleased with the measures the federal government is expected to take to delay or prevent reservoirs from dropping to critical lows in the short term.

"I think we've succeeded in making everyone unhappy, and maybe making everyone mad," he said.

About 40 million people and 5.5 million acres of cropland depend on the Colorado for drinking water and irrigation, but its flow has gradually diminished over the past two decades as the climate becomes warmer and more arid across the West. Now the arcane system of water rights governing the river entitles each state and Mexico to far more water than is actually available. The rules prioritize the longest-established uses of water, in many cases dating to the 1850s and 1860s.

But the states have been unable to agree upon water cuts that would reflect the new reality.

A Lifeline for the West

The Colorado River system stretches across seven states and Mexico. They rely on a century's worth of laws to determine who gets priority for increasingly limited water resources.



Sources: U.S. Bureau of Reclamation, Arizona Department of Water Resources, California Department of Water Resources • Mira Rojanasakul/The New York Times

In the river's lower basin — which includes growing urban areas in California, Arizona and Nevada, vast agricultural operations and the nation's largest reservoir, Lake Mead — communities have agreed to significant reductions in recent years. A new proposal that the states are asking the federal government to consider would curtail use even more, but the lower basin states and tribal nations have asked upstream communities in New Mexico, Utah, Colorado and Wyoming to cut back, too.

But any time winter snowpack in the river's headwaters is meager, the upper basin is forced to use less water, so those states have resisted committing to permanent annual water use cuts. While a 1922 compact divides the United States' share of the river's flow equally between the two basins, the less-populated upper basin consumes significantly less water each year than the lower basin.

The stalemate between the basins has deepened as the stakes rise. An existing water-use plan expired this winter, and the states missed key deadlines to agree on a new one, which must be in place by October to avoid chaos and confusion in water deliveries.

A mild winter and extreme spring heat left winter snowpack so depleted that Lake Powell, the nation's second-largest reservoir, which straddles the upper and lower basins, risked falling below levels critical for hydropower until federal officials began emergency actions to shift water around and keep dams generating electricity.

So far, Trump administration officials have resisted imposing any plan unilaterally, though Mr. Cameron said the bureau had "not been passive." It has offered \$454 million for water conservation projects across the basin, using money left over from the Inflation Reduction Act, which was passed under President Joseph R. Biden Jr. and included \$4 billion for drought response in the West. Mr. Cameron said less than \$100 million is left to help pay for more water savings.

"We have floated, three times, solutions that we thought represented something that the seven states could agree on," Mr. Cameron said. "Turns out we were wrong."

With the states unable to agree, the federal government is set to put new guidelines in place. Mr. Cameron said he expects Interior Secretary Doug Burgum, whose department includes the Reclamation Bureau, to release a plan in July to govern use of the river for the next decade. Before that plan becomes final, it would need approval from a White House that has so far not gotten very involved in Western water issues.

The Dillon Reservoir in Frisco, Colo., which will remain closed this year because of low water levels after a worryingly dry winter. Chet Strange for The New York Times

A draft plan released in January included a range of options, some of which would make significant cuts across the lower basin, where the federal government's control of reservoirs gives it more power to cut off flows. The alternatives would force water shortages, mostly in the lower basin, based upon reservoir conditions. They include varying levels of cutbacks that would leave some risks of unplanned emergency water shortages in the lower basin.

Arizona is especially vulnerable because of its heavy reliance on the reservoirs and its relatively junior water rights.

The federal plan would include room for tweaks and negotiations every two years, Mr. Cameron said. But state officials from across the region said that could make things worse.

The biggest problem is that reopening the whole plan every two years would undermine any certainty over water supplies, which is a key goal of the talks, said Becky Mitchell, Colorado's top water negotiator.

"The constant renegotiation every two years is difficult to fathom," Ms. Mitchell said, adding she believed it could create even more tension between the states. John Entsminger, Nevada's negotiator, agreed it was "not a good plan."

But Mr. Cameron said it was the best option given how difficult it has been to craft a longer-term deal.

As the talks stall, the threat of litigation is looming larger, even though negotiators have said they are hoping to avoid court battles that would undoubtedly be lengthy, expensive and unpredictable. Senator Mike Lee, Republican of Utah, warned Wednesday on Capitol Hill that he would seek to block federal drought relief funds from any states that sue over Colorado River water.

In Arizona and Colorado, state officials have been readying lawyers and setting aside public funds for a legal fight over water. Earlier this year, television ads paid for by a coalition of Arizona water users warned that the state is "being targeted" with crippling cuts. Officials in both states said litigation was a real possibility.

Lake Powell in 2025. Its water levels were so depleted this year that they risked falling below levels critical for hydropower until federal officials began emergency actions to keep dams generating electricity. *Rebecca Noble/Reuters*

In public comments submitted in response to the federal proposal, the states have hinted at contradictory legal interpretations of the 1922 compact, offering dueling arguments that both suggest that the Trump administration was at risk of violating that document. In dispute is whether the compact requires upper basin states to deliver a set amount of water downstream, regardless of conditions, or if the compact simply bars those upstream states from using more than they are officially allotted.

Arizona officials said the federal plan would "improperly prioritize maintaining Lake Powell elevations at the expense of required downstream releases," and thus reduce the flows the state says it's owed. Colorado said the plan "fails to impose adequate shortages in the Lower Basin to protect the system" and could unlawfully draw from upper basin reservoirs to stabilize Lake Powell and Lake Mead.

Focusing on legal arguments could keep the states from reaching a compromise, Ms. Mitchell said. But Arizona's top water official, Tom Buschatzke, said litigation was "still very much in play." State lawmakers tripled the size of a fund for river-related litigation when it included \$6 million for that purpose in a budget sent Thursday for approval by Gov. Katie Hobbs, a Democrat who has stressed Arizona's need to protect its water supply.

Because the 1922 agreement is only about 1,700 words long, Mr. Entsminger of Nevada suggested that the states might never agree on what exactly each of them is entitled to — and that was all the more reason for them to find common ground without resorting to litigation.

"The only way you're ever going to have any certainty on that is probably the Supreme Court action," Mr. Entsminger said. "The way you avoid that is a seven-state agreement."

Scott Dance is a Times reporter who covers how climate change and extreme weather are transforming society.

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