

# 'We needed a deal yesterday': Deadline passes without deal to save Colorado River. What now?

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Trillions of gallons of water must be saved from the drying Colorado River to avoid the worst-case scenario brought on by drought, climate change and overuse, federal officials announced earlier this summer, setting a deadline for Aug. 15.

Past that deadline, U.S. Bureau of Reclamation officials threatened to take control from the seven Western states depending on the river and make the cuts themselves. But the states didn't come up with a plan by Monday and the [federal government](#) didn't take over.

And upstream states like Colorado are unwilling to pitch in further unless the biggest [water](#) users downstream—Arizona and California—go first and cut deep.

"It's absurd to think we're going to get our farmers and ranchers and cities to take economic hits if all it means is it continues to fill swimming pools in Phoenix," Andy Mueller, general manager of the Colorado River District, told The Denver Post.

Legal experts and water managers say that despite Reclamation's posturing earlier this summer, federal officials likely don't want to take control of the complicated situation any more than the states want to abdicate their own position.

Informal negotiations on how to save more water are underway but Becky Mitchell, who is negotiating on Colorado's behalf as director of the state's Water Conservation Board, said there's no time to waste in starting a more formal process. She expects the states to officially convene before the end of the year.

The sooner the better, experts agree, because the current impasse comes at a time when the path forward is narrowing quickly.

One wrong step and the system collapses or devolves into a mess of lawsuits that would cost gobs of money and years of water use the West doesn't have to waste.

Still, the upper-basin states of Colorado, New Mexico, Utah and Wyoming appear to be holding fast to their message: They've learned to live within their means and so too must the lower basin states of Arizona, California and Nevada.

There's truth and shortsightedness to that stance, Mark Squillace, a water law professor at the University of Colorado, said. Yes, Arizona and California are using far too much water but Colorado and the other upstream states must pitch in more in order to save the river and thus their way of life.

"Everybody's pointing the finger at everybody else and nobody's willing to stand up and say 'We'll go first,'" Squillace said. "It doesn't look very good for the Colorado River right now."

## **Dividing the drying Colorado River**

With each new decade, the Colorado River flows with less water and its reservoirs dwindle further. Water managers have known about the impending shortage for years, perhaps generations.

The river is divided into three parts and measured in acre-feet, enough water by volume to last two average families of four a year, approximately 326,000 gallons.

The upper basin—Colorado, New Mexico, Utah and Wyoming—get 7.5 million acre-feet a year. The lower basin—Arizona, California and Nevada—get 8.5 million. And Mexico gets 1.5 million acre-feet a year.

On paper that amounts to a total of 17.5 million acre-feet a year. But there isn't that much water available. The drying river flowed with an average of 9.6 million acre-feet annually between 2011 and 2020, according to the Colorado River Commission's 2020 annual water report.

Facing the ever-worsening shortage, the lower-basin states and Mexico agreed in 2007 to cut their water use if levels in lakes Mead and Powell sank below certain points, which is now expected to happen at the start of next year.

## **'Failure of leadership'**

The Colorado River dried faster than most expected and in June officials from the U.S. Bureau of Reclamation gave the states 60 days to find a way to save an additional 2 million to 4 million more acre-feet, threatening to take over and make the cuts themselves if the deadline wasn't met.

Nobody stepped forward with concrete cuts.

Mitchell said she didn't perceive Reclamation's 60-day deadline as a threat so much as a call to action. And one to which the upper-basin states responded with a five-point plan. Already upper-basin states have sacrificed water from their own reservoirs to the benefit of those downstream. And the plan includes possibly sending even more water downstream, even if it doesn't offer a specific amount.

For Squillace, however, that five-point plan amounted to "business as usual" from the upper basin.

But the lower-basin states didn't agree to any plan.

Reclamation's 60-day deadline passed Monday and its officials didn't

take over as feared. Nor did they set a new deadline. Instead on Tuesday they expressed hope that the states would still come up with a plan.

The federal officials did, however, explain that the projections for Lake Mead early next year were low enough to trigger relatively minor water cutbacks for Arizona, Mexico and Nevada but not low enough to trigger cuts for California.

Mueller called Reclamation's actions "extremely frustrating" and said they amount to a "failure of leadership."

States in the Colorado River Basin effectively called the federal government's bluff, Jennifer Gimbel, senior water policy scholar at Colorado State University's Water Center, said.

Reclamation likely doesn't want to take over the situation and force cuts any more than the states want to lose control of their own water, she said. If [federal officials](#) did step in and move too strongly in forcing water cuts, they'd risk a lawsuit.

The bureau might not even have solid legal footing to take over in the first place, according to Rhett Larson, a water law professor at Arizona State University. If it takes too strong of action too soon, the federal government risks a lawsuit from one—or even all—of the states, which could lock negotiations down, benefiting nobody.

Rob Manning, a spokesman for Reclamation, said its senior officials were not available for comment but reiterated that they remain optimistic the states can still come to a voluntary agreement to save water.

The small and expected cuts announced Tuesday might buy the basin some time, Gimbel said, but ultimately the states must move to save far

more water.

## 'Hissy fit'

So far nobody appears willing to stand up and voluntarily slash their water use, Gimbel said. Although most of the fingers are pointing at the lower basin, specifically Arizona and California.

For Colorado Attorney General Phil Weiser the math is clear. Upper-basin states combined drew around 3.5 million acre-feet from the river last year, well below their allotment. Lower-basin states drew nearly 10 million acre-feet, well above their fair share.

Thus, Weiser and many other upstream [water managers](#) argue, the lower-basin states must cut their water use. Until then there's no reason Colorado and the rest of the upstream states should make another move.

Upper-basin states, where the Colorado River originates, can't predict the weather or how much water they'll see in a given year, Gene Shawcroft, chair of the Colorado River Authority of Utah, said. So they can't say with any certainty how much water they can afford to cut.

At the same time, lower-basin states have the opposite argument in hand, Larson said. Without understanding how much water upstream states will allow to flow down to them, they also can't say how much they can cut.

Plus, Arizona already agreed to substantial cuts—about 800,000 acre-feet worth—far more than any other state, Larson said. They've put forward a good-faith effort.

The argument between upstream and downstream states turns in circles quickly, yields few results and wastes precious time, Larson said.

"We should have been having this hissy fit of a conversation three years ago and gotten it out of our system," Larson said. "Rather than now, which is when we should be wrapping up a collaborative deal."

Federal officials don't appear to be the likely leader here, Larson said. If they wanted that spot they would have stepped up Tuesday.

Instead California is in the best position to step up, he said. It has the most leverage, the most money and the oldest—and therefore most important—water rights.

Negotiations between the states are still going on, mostly behind closed doors, Larson said. They need to reach a deal before Lake Mead sinks too low (1,025 feet above sea level, which worst-case projections show could happen next spring) or before the basin's emergency drought plan expires in 2026.

If either of those deadlines hit without a deal, Larson describes a "Thunderdome" in which the states "sue each other into oblivion."

"We needed a deal yesterday," Larson said. "Every day that passes the problem gets worse and it gets harder to solve."

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