

## River Report

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### THE CONTINUING COLORADO RIVER DROUGHT: Political Tensions Rise as Reservoir Levels Drop

By [Sue McClurg](#)

As the Colorado River's drought stricken reservoirs continue to drop, political tensions among the seven states that share the river are on the rise.

With Lake Powell at only 38 percent of capacity – its lowest level since 1970 prior to the reservoir's first filling in 1980 – the Upper Basin is increasingly concerned about continuing to meet its delivery obligations to the Lower Basin.

In an Oct. 7 letter to the three Lower Basin states (Arizona, California and Nevada), representatives from Colorado, New Mexico, Utah and Wyoming requested a formal seven-state meeting to discuss "the unresolved legal and policy issues under the Law of the River" related to "declining reservoir levels [and] fundamental issues associated with allocations" established through earlier agreements and court decrees.

The request for a formal meeting among representatives of the governors of the seven states comes as the Colorado River Basin ends its fifth year of record drought, and on the heels of a series of seven-state meetings that focused on technical and hydrologic issues, analysis and drought management – not political or legal questions. The states were scheduled to meet Dec. 17.

Don Ostler, executive director of the Upper Colorado River Commission, acknowledged that the subjects to be discussed at this pending meeting are quite controversial, but said "these questions are being brought up as Lake Powell gets to a critical level; the questions didn't need to be raised before now."

The underlying question facing the states that share the Colorado River is how and when to reduce water deliveries should the drought continue. It seems like a straightforward question, but the Colorado River is unique among other rivers in the Southwest, and perhaps the nation, in that it has no operating criteria for drought.

In fact, the final 2005 Annual Operating Plan (AOP) for the river, developed by the U.S. Bureau of Reclamation (Reclamation), offers only two options for determining water deliveries – whether it is a normal or surplus year. The designation of a special surplus applies only to the Lower Basin under the Interim Surplus Guidelines approved in 2001. Designed to provide California a "soft landing" as the state cuts its annual river use to 4.4 million acre-feet, the guidelines are set to expire in 2016. Because Lake Mead's level is projected to drop below elevation 1,125 by year's end, the AOP for 2005 declared this a "normal" year rather than a surplus year. No criteria have been developed to guide declaration of a shortage year.

Until now, the Colorado River mainstem has not faced the potential of drought-related cutbacks, although there have been significant shortages on its tributaries. Lake Mead and Lake Powell

combined provide 55 million acre-feet of storage; storage designed to carry the region through a severe drought. And even today, many officials within the basin point to the fact that overall storage remains at 50 percent, *despite* five years of the most severe drought on record.

But this drought is different from the previous driest periods on record because the Lower Basin states are using their full apportionments, and growth in Las Vegas, Phoenix and southern California shows no sign of slowing. “The Colorado River Basin has changed,” said Robert Johnson, regional director of Reclamation’s Lower Colorado Region. “There is more urban development and Arizona is now taking its full share of the river – the Lower Basin’s full 7.5 million acre-feet was not used during previous droughts.”

Within the Lower Basin the possibility that drought could lead to a shortage declaration by Interior Secretary Gale Norton has sparked concern in Arizona. The 1964 Supreme Court decree in *Arizona v. California* solidified the state’s 2.8 million acre-feet share of the Lower Basin’s water while the Colorado River Basin Project Act of 1968 cleared the way for Arizona to build the Central Arizona Project (CAP). But the act also gave California entitlement priority over CAP in the event of a shortage.

On its web site, CAP officials posted a July 12, 2004, briefing document, contending now that these “junior rights unfairly put central Arizona” water users at risk. “In its starkest terms, CAP water supplies could be reduced to zero before California’s water supplies are reduced by a single drop,” the document reads. To protect the state, the officials say they “will urge Congress to repeal the provisions of the Colorado River Basin Project Act that impose a lower priority to Colorado River water on the CAP.”

Considering the history of dissent between the two states, any such effort to overturn the priority status established by the 1968 Act will likely be vigorously opposed by California. Indeed even as he says he favors cooperative and creative programs instead of shortages, Dennis Underwood, vice president of Colorado River resources for the Metropolitan Water District of Southern California (MWD), asserts that “Arizona needs to meet its needs and obligations consistent with the Law of the River in the same manner as the basin states demanded that California live within its basic apportionment absent surplus water. California has lived up to its obligation and Arizona needs to do the same.”

The Law of the River is the collection of compacts, agreements and contracts that apportion and regulate the use and management of Colorado River water among the seven basin states and Mexico. Major components also include an international treaty, state and federal legislation, U.S. Supreme Court decisions and federal administrative actions, illustrating why the Colorado is considered the most regulated and litigated river in the West. (See sidebar.)

The Law of the River guides nearly every action taken upon the river. How to address legal and policy issues related to the drought in the context of the Law of the River is the task at hand. Any unilateral action taken by one state or one basin likely would become the subject of litigation. And if the states take no action, it virtually ensures that the federal government will.

“The Secretary of the Interior has asked the seven states to develop a recommendation for drought management – including potential shortages – for the river,” Johnson said. “We need the seven states to step up – all seven states. We are hoping that they will come together and develop some recommendations based on consensus. If not, the Secretary is prepared to step in.”

Whether acrimony or agreement results from the seven-state meetings, one thing is clear – the Colorado River Basin has reached a pivotal turning point as policy questions of shortage provisions replace technical questions of system operation and historic hydrology.

“We don’t have forever to deal with these drought management issues,” Underwood said. “We need to deal with them now.”