

# Figure It Out...Or Else: Feds to Colorado River States

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**Ariana Brocious:** This is Climate One. I'm Ariana Brocious. It's been an unusually warm and dry winter across the west, and that's bad news for the seven states and 40 million people that rely on water from the Colorado River. Put simply, the Colorado River is in crisis and has been for a couple decades. The water flowing into the river from snowmelt and rain is dwindling, partly because of climate change. The basin's two major reservoirs are at historic lows, and without a sudden influx of snowstorms, streamflow forecasts for the coming year aren't looking good. That adds stress to an already drought-stricken region where discussions on future sharing of Colorado River water are tense and stalled out.

**Sarah Porter:** We're at a point where we have to make some serious long-term adjustment of expectations. In other words, people need to agree to take a lot less water than they've been counting on. And that is always really hard when water is scarce.

**Ariana Brocious:** The federal government has given states a deadline of Feb. 14th to reach an agreement, after which the Bureau of Reclamation could divvy up the water between states as it deems fit.

Sarah Porter is director of the Kyl Center for Water Policy at Arizona State University. In this special longform interview for our podcast listeners, we discuss what's led to this crisis, what is keeping states from reaching agreement, and how cities, farmers and industries can adapt to less water in an increasingly hotter and drier future.

**Sarah Porter:** The Colorado River and its tributaries are the biggest surface water supply in the Intermountain West. And people rely on that water for agriculture, for industry, for their domestic use, for all kinds of purposes outside of the basin. To begin with, there are a number of very, you

know, large cities that rely on imports of water from outside of the Colorado Basin. That would include Southern California cities, Denver, Albuquerque, other cities. We are talking about big cities, big economic centers of activity for the nation. We're talking about agricultural areas that particularly grow the fruit and fresh vegetables that people all across the nation rely on. And then important industries, everything from defense to semiconductor chips. And then on top of that, there are important environmental values of the Colorado River. It supports an incredibly diverse array of different habitats that different wildlife depends on. And on top of that, the river and its tributaries down to creeks and streams have important cultural, societal and spiritual significance, particularly for Native Americans. We have 29 federally recognized sovereign tribes in the Colorado basin, and the river and its tributaries are extremely important to those communities as well.

**Ariana Brocious:** Right. So to recap, it's a huge supply of water for people, for crops, for industry, for environment, for ecosystems. It's often called the lifeblood of the West, and so there's seven states that get some portion of this river water and that's divvied up according to a compact that was written in 1922, which is a long time ago. It divides the river in half, split between these upper basin states, which are Colorado, Utah, Wyoming, and New Mexico, lower basin states, Arizona, California, Nevada, Mexico also gets some water and there have been negotiations and changes, updates, you know, over that a hundred years, but in broad strokes, a lot of it remains similar to its original writing, and the latest round of water sharing guidelines that the states agreed to expires in September. So for the last several years, these states and tribes have been working on a plan to guide the next era of river sharing, and they have not gotten very far. So what's holding up the ability of states to reach an agreement?

**Sarah Porter:** I think what's really holding up the states and different parties from reaching an agreement is that we're at a point where we have to make some serious long-term adjustment of expectations. In other words, people need to agree to take a lot less water than they've been counting on. And that is always really hard when water is scarce. So fundamentally this is about agreeing to take less water, and that's just super difficult to accomplish. More technically at this point, the upper basin states and the lower basin states are at an impasse. The impasse fundamentally concerns the contention by the lower basin states that the upper basin states should agree to take some cuts and the upper basin state's response to that is, no. We feel we are already taking cuts in addition. We have no obligation under the compact to take cuts. And so that's got us to a kind of a standstill in the negotiations.

**Ariana Brocious:** Yeah, and it is really important to underscore that there have been numerous cutbacks made in the last 10, 20 years, by some states, particularly Arizona. So there have been concessions made, but not by all states equally. And that again, kind of goes back to the way that these states originally agreed to share the river a long time ago.

**Sarah Porter:** And if I can just add, I think one of the things that's very helpful for people when we're thinking about the Colorado River is to think of the upper basin states as the headwaters and the lower basin states receive water. So the snowpack that supplies around 85% of the flows of the Colorado River originates in the upper Rockies, in the upper basin, and much of the water that's used in the upper basin is diverted directly from the river or from tributaries of the Colorado River. It's very different in the lower basin. All of the water that is delivered to Colorado River Water users in the lower basin is delivered from Lake Mead, the biggest reservoir in the United States. And upstream of Lake Mead is Lake Powell, the second largest reservoir in the United States. And so these two massive reservoirs hold the water that's delivered to the lower basin. And so this headwater versus, downstream taking water from reservoir situation means that we can account for cuts pretty easily to water users who take their water from Lake Mead, we know because the water wasn't delivered from the reservoir. It's different in the upper basin when we're talking about tens of thousands of water users who take water directly from tributaries or the river, or from an upstream

reservoir that's not within the accounting system of the Bureau of Reclamation.

**Ariana Brocious:** Mm-hmm. That's really helpful. So in 2007, the states agreed to guidelines to help stabilize these major reservoirs that hold all this water and have been declining over decades. And then again, in 2019, the states signed another set of agreements called the Drought Contingency Plan. And in my understanding, these were seen as some more progressive and realistic operating guidelines recognizing there's less water and we have to do something about it. Given that the impasse we're at now, I'm wondering if these two past examples provide any guidance on how do you get all these states to agree to take less water?

**Sarah Porter:** Well, I think the guidelines and the 2019 drought contingency plan taught us a lot about what works, what, what's possible. Especially I would say about how to balance the two big reservoirs, Powell and Mead, to kind of sure that the least bad stuff happens. We've tried some other interesting experiments in those agreements, including allowing different entities to leave water in Lake Mead that they could withdraw at another time outside of the usual system for determining who can take how much water when, which is referred to as the priority system. My organization, the Kyl Center for Water Policy has provided a critique of some of that program of allowing that kind of stored water. But by the same token, we recognize that it can be a really important tool for keeping reservoirs up. But do those two events, 2007 to 2019, the agreements do they, is there something compelling about the fact that we reached agreement then that sort of compels us to come to an agreement this time? I don't think so. We really are at a much more difficult point in the Colorado River than we were then.

**Ariana Brocious:** Yeah. So the Bureau of Reclamation has told states they'll have until Valentine's Day, February 14th to reach an agreement. They've been working again, negotiating for the last several years. Um, and if they don't, the bureau has said it will step in. And the Secretary of Interior, via the Bureau of Reclamation will manage things. This threat has been used before, hasn't really ever been put into action. What do you think this deadline really means, if anything?

**Sarah Porter:** Um, yeah, I think that the states are not taking that February 14th deadline as seriously as you know, they might have in another time. I think what it technically means is the bureau is not going to, or is, let's say, less willing to take a proposal, a consensus-based proposal after that date. They're gonna proceed with their environmental impact analysis. They've already issued a draft EIS. They're gonna proceed to take public comments and then issue a final analysis and then act based on that analysis and reservoir conditions. The states, the leadership, the governors, the principals, the negotiators for the states have not yet said we're calling it quits, but they are not expressing much optimism and I would say they have sort of faced what's next if there's no agreement, which is very likely litigation in the United States Supreme Court, and they're getting ready for that to happen.

**Ariana Brocious:** Yeah, it's a really interesting moment because for the last several decades, it has been sort of handled by the states with the blessing of the Bureau of Reclamation. What would you like to see? What do you think we need to see from the federal government in this moment?

**Sarah Porter:** Yeah. I guess ideally, of course, it would be better to come to an agreement. The main reason is an agreement now in the next few months, gives water users what they need, most of all, which is certainty. Without certainty, you can just imagine, imagine you are a city and you're trying to plan water resources here in central Arizona, cities plan water resources out for a hundred years. Imagine if you don't know how much water you'll be getting from the Colorado River, which could be in some cases it's most of a city's portfolio. How is that city to plan, not knowing, not having any idea how much water they can expect? Likewise, farmers. Farmers tend to finance their crop plans for years ahead, and if they're facing huge uncertainty regarding their water supplies it is

much harder for them to make plans. And by the same token tribes, tribes who depend on water supplies as a source of revenue, as the water supply for agriculture. Again, you know, hamstrung to do planning around economic resilience, not knowing how much water to expect under what conditions. They might not have water, we just don't know now. So an agreement would take care of that. It would give us much more certainty than we currently have. Litigation, by contrast, would prolong uncertainty.

**Ariana Brocious:** Yeah, so I'm sort of wondering as a parallel, you know, maybe it's kind of like a divorcing couple that needs to go to court to settle and have someone step in and divvy things up. I mean, are we at that point, do you think? Where we just, maybe we need to.

**Sarah Porter:** I think we should be open to that idea. I was a litigator for almost 15 years before I changed my career kind of radically. And in that time I was always working on behalf of my clients to be prepared for trial. And yet in all those years, almost no cases ever went to trial because litigation provides a kind of clarity, kind of forces people to get off narratives and legal interpretations that aren't supported by the facts and the law, and kind of narrows the scope of what people can truly contend. And, and it clarifies their risks, you know, and their opportunities. We have lots of examples out there in the United States of States winding up in the US Supreme Court. That's where states go to have legal battles. And then settling their differences. So, I see litigation as the necessary next step so that we can either get to a settlement. Or get clarity on these issues that are right now. The reason why we're at an impasse.

**Ariana Brocious:** Mm-hmm. So I wanna step back for a second. Well really step in, maybe into the weeds, for the water nerds. The Bureau of Reclamation issued their draft environmental impact statement in early January, which lays out multiple alternatives that they could pursue in managing this watershed. Without getting too deep into the details, there's lots of different priorities being pursued depending on the option, including things like protecting critical infrastructure or conservation goals, you know, keeping water in the Grand Canyon, other things like that. And some are more based on the data, the hydrologic data of how much water is actually present. So I guess. Knowing what you do about how the river has been managed and these very critical and competing interests that it serves today, what do you think is most likely to end up in a final agreement for the next few years?

**Sarah Porter:** An agreement among the states?

**Ariana Brocious:** Well, what do you think will be prioritized? Let me put it that way, regardless of who's deciding, like where is the water going to remain and where might it get cut?

**Sarah Porter:** It's really, really difficult to predict right now. Different entities have different arguments about, for example, what is critical infrastructure that needs to be protected. So there's some upstream reservoirs that the Bureau of Reclamation manages that are part of the system that includes Lake Powell and Lake Mead, and a lot of people believe that the Bureau can and will release water from one of those upstream reservoirs, Flaming Gorge, at least as a short term step to help elevate the reservoir levels in Powell and make sure of a no-cut delivery from Lake Mead. So that could buy some time and that could forestall litigation for a year potentially.

**Ariana Brocious:** But it's a one time thing, right? I mean, until that reservoir refills.

**Sarah Porter:** Right, exactly. And, so some of the critical infrastructure that people worry about is the Central Arizona project, the aqueduct that moves water from Arizona's western border, halfway across the state, and then through Phoenix and down to Tucson. You cannot keep that system in operational order if you drain it dry of water. So does the Bureau think that keeping the CAP

operational, nobody knows, but that's an argument that people are making.

**Ariana Brocious:** Yeah, it is very complicated.

**Sarah Porter:** And, and I would say that in the draft environmental impact statement, the Bureau carefully worded the parts where it talked about what it might do to sort of leave open the possibility. And I'm sure they did this partly to encourage the states to keep negotiating, but also because they're not giving up any type of authority to do what, you know, they might be able to do.

**Ariana Brocious:** So Arizona in particular has already voluntarily taken some steep cuts in water use and could face more. You mentioned one tool that's been used in the past is paying people essentially to leave their water in some of these big reservoirs. We also know there's been efforts to pay farmers to not take their water distributions, leave their fields fallow for a certain amount of time, as a way to also kind of conserve that water. I know that Phoenix is exploring an advanced wastewater treatment facility that's more on the sort of demand side, but what other options do you think we have? What other tools are there to make do with less?

**Sarah Porter:** Yeah, that's a really good question. So let me just clarify about priority, because I'm, I'm such a nerd, but –

**Ariana Brocious:** It's fine!

**Sarah Porter:** There are apportionments to each state and in, in the lower basin, 4.4 million acre feet are apportioned to California and 2.8 million acre feet are apportioned to Arizona. 1.6, roughly 1.5 to 1.6 of that 2.8 is water that's delivered to users from Phoenix to Tucson, you know, cities, tribes, even still some agriculture and industry via the Central Arizona Project Canal. It's the CAP water users that are junior. Arizona has users on the main stem who are not junior to users in California. So it means that there's an opportunity for higher priority users in Arizona should they choose to help out CAP users. If there could be an agreement where they would send some of their water, let's say, to Phoenix area users and Tucson and sort of come to the rescue. So that, just to, to make that clear.

**Ariana Brocious:** I wanna interject really quickly for people who aren't up to speed on their water terminology in the system we have here in the West, it's first in time, first in, right. So people who acquired the right to the water first, get it first. And then as you run out, the people who have the junior, youngest, rights lose it first.

**Sarah Porter:** Exactly. Junior users take cuts before senior users take a cut. So even that kind of reallocation, even if it's temporary, where a more senior priority user sends water to a junior user is a very real potentially near-term possibility. It's not without repercussions. Some of the most productive agriculture in the nation is in the Imperial Valley and Yuma, Arizona. These are places with fertile soil, they're warm, they have a long growing season, they're a very good place to grow stuff as long as the Colorado River keeps on running. And so to reduce the water available to those places inevitably will have an impact of some kind on production. You mentioned the advanced water purification plans for Phoenix area cities and Tucson is also working on that. Cities increasingly have looked at effluent, which is treated wastewater, it's treated, it's not wastewater as a very useful water supply in Southern California, in southern Nevada, in Arizona, cities are making the most of their effluent, and now cities in central Arizona are looking at taking effluent, sending it to basically a drinking water treatment plant, and treating it to potable. Doing this will enable these cities to reduce their reliance on Colorado River Water very significantly. For Phoenix, it may be able to reduce its reliance by about 50%. So generally in the big picture, somewhere around three-fourths of the water that's used by humans from the Colorado River is used for agriculture and it's used all

over the basin in the upper basin, in the lower basin, in all of the states. And reality is to get to the type of conservation that we need, the type of demand reductions that we need to stabilize the Colorado system, it's impossible simply to conserve from municipal demand. And I think thinking about what are different ways that agricultural demand can be permanently retired or reduced is critical at this point, to the extent that we can make it work financially for farmers to maximize their efficiency all the way to, you know, super efficient drip irrigation systems. I mean, that has to be on the table to the extent that there's an opportunity to voluntarily retire agricultural water demand. In other words, get easements for landowners to permanently follow their fields. These are options that absolutely have to be on the table.

**Ariana Brocious:** Yep. And we just need the funds to pay people to make it worth their while.

**Sarah Porter:** Yeah, we, not only we do, we need the funds. And the way I look at it is, you know, we're talking about Los Angeles and Phoenix and Tucson and Denver. We're talking about cities full of people who could collectively come up with a good amount of funding. But we don't have the agent for that collective action. And I would contend that the federal government is the appropriate agent for that collective action. Some kind of federal program. Maybe part of the funding would come from the federal government. Maybe part of the funding would come from water users and, and other, you know, forms of revenue from, from cities. The deal that we need collectively is, Hey, you farmer use a lot less water or no water, so that that water stays in the system and we have a collective benefit from that. It's really hard to make that happen without the help of the federal government.

**Ariana Brocious:** So returning to the federal government and its role here on January 30th, governors from six of the seven Colorado Basin states. Met with interior secretary Doug Bergham. To try to find some agreement here. From what I can tell, there hasn't been a lot reported out on that meeting. But it's worth noting that normally the governors are not the ones making these negotiations, and so it just kind of highlights the, the real moment we're at, right?

**Sarah Porter:** Yeah, I think the fact that the governors got together and the one who, who didn't, was unable to come and sent an empowered delegate, it does show the gravity of the situation. Not only are we at this point where the guidelines are going to expire and we don't know how the system's going to be operated. But the reservoirs are hovering around 30% full. You know, they're in terrible shape. We're only a year or two away from not having enough wet water in the reservoirs to deliver water to the, you know, the full amount of water to the lower basin. And, we risk greatly decreasing hydropower production in both Lake Mead and Lake Powell. And we also risk hitting deadpool, the level where water is too low to be delivered out of the reservoir. So we're looking at real hydrologic risk as well as. This sort of guidelines deadline, um, that was created by humans. Having the governors go, I think, probably helped everybody see how committed each state is to its current position. To have governors look each other in the eye and understand that their state is going to hold firm to the position they're currently taking. Who knows what kind of impact that has, that could really galvanize some states resolve. Maybe move others, hard to say. But anyway, it changes things. So the governor of Arizona, governor Katie Hobbs, said she felt cautiously optimistic, which I think is the, you know, that's, it's hard to say anything else, but I took that to mean there really isn't any progress toward an agreement.

**Ariana Brocious:** Yeah. Hmm. Okay. So stepping back from the Colorado, we know weather patterns are shifting worldwide and the Colorado River is far from the only one that is being fought over. Do you see any lessons for other regions on how negotiations of shared water should be managed?

**Sarah Porter:** Well, I think a lot of people look at the Colorado River and the situation that the

states are in right now and see it as a failure. And I don't. I see the 2007 guidelines and the drought contingency plan in 2019, and there were a couple subsequent agreements after that. I see those as evidence that up to now, the system of managing and governing the Colorado has been adaptable, sufficiently adaptable. The real lesson here is that we're at a point where we're asking for too much from everyone. And you know, if we could turn the clock back, I would love to go back to the original signers of the Colorado Compact and really ask them why were you willing to not look at the real data on how much water we can expect this river to produce. You know, why were you willing to, they did, and they, they wanted to because they were, they were hoping for federal financing to build infrastructure and, but, I think the big historic lesson is. What we see in many other contexts, which is, you know, kick that can down the road, it's a problem for future generations. They'll solve it. So here we are more than a century later, saddled with this problem, and in the meantime while demand, total demand hasn't really changed, the amount of water that we're taking out of the river collectively over the seven states has really been pretty consistent, who's using it has changed and we've developed reliance by a greater number of people, much larger economies. You're talking about 40 million people and important pillars of the United States economy. So you know that kicking the can down the road strategy works in the moment, but nobody's keeping an eye on what the pain will be down the road when things come to a head.

**Ariana Brocious:** Sarah Porter is director of the Kyle Center for Water Policy at Arizona State University. Thank you so much for joining us on Climate One.

**Sarah Porter:** It's been nice to talk with you. Thanks.

**Ariana Brocious:** Climate One is a production of the Commonwealth Club. Our team includes Greg Dalton, Brad Marshland, Jenny Park, Austin Colón, Megan Bisciegli, Kousha Navidar and Rachael Lacey. Our theme music is by George Young. I'm Ariana Brocious.