



# Western States Water

## Addressing Water Needs and Strategies for a Sustainable Future

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### **ADMINISTRATION/WATER RESOURCES** **Bureau of Reclamation/Colorado River Basin**

On July 19, the Upper Division States of Colorado, New Mexico, Utah, and Wyoming, through the Upper Colorado River Commission (UCRC), delivered a letter to the Bureau of Reclamation Commissioner Camille Touton in response to her requested that the Colorado River Basin States develop plans by mid-August to find an additional 2-4 million acre-feet (Maf) of water to protect critical elevations at Lake Powell and Lake Mead. The request was made in testimony on June 14, before the Senate Natural Resources Committee to "Examine Short and Long-Term Solutions to Extreme Drought in the Western U.S."

The 5-Point Plan outlines additional actions and tools to help protect the Upper Basin's critical infrastructure. However, the tools are naturally limited due to the shrinking supply of the river, depleted reservoir storage, and also due to previous drought response actions taken in the Upper Basin. The letter read, "The Upper Basin is naturally limited to the shrinking supply of the river, and previous drought response actions are depleting upstream storage by 661,000 acre-feet. Our water users already suffer chronic shortages under current conditions resulting in uncompensated priority administration, which includes cuts to numerous present perfected rights in each of our states."

All Basin States and water users need to participate and collaborate on solutions that can bring the system into balance. The success of the 5-Point Plan hinges on additional actions implemented below Lake Powell. While there are significant investments in additional water conservation underway by some water users in the Lower Basin, Reclamation forecasts for 2022 show that overall water depletion in the Lower Basin plus Mexico is not significantly below 2021 levels. The Upper Division States note they stand ready to work with the United States, Basin States, Tribes, and water users to not only address the near-term risks in the Basin but also to develop longer-term solutions to improve the resiliency of the Colorado River.

The letter continued, "We intend to implement the 5 Point Plan to the extent it is effective, in conjunction with plans developed for the Lower Basin. The components of the 5 Point Plan: (1) Seek amendment and reauthorization of the System Conservation Pilot Project legislation originally enacted in 2014...and seek funding to support the program in the Upper Basin.... (2) Commence development of a 2023 Drought Response Operations Plan (2023 Plan)...consistent with the Drought Response Operations Plan Framework (Framework)... These requirements include, but are not limited to, determining the effectiveness of any potential releases from upstream...to protect critical elevations at Glen Canyon Dam, and ensuring that the benefits provided to Glen Canyon Dam facilities and operations are preserved. (3) Consider an Upper Basin Demand Management program as interstate and intrastate investigations are completed. (4) Implement, in cooperation with Reclamation, the Bipartisan Infrastructure Law for Upper Basin Drought Contingency Plan funding to accelerate enhanced measurement, monitoring, and reporting infrastructure to improve water management tools across the Upper Division States. (5) Continue strict water management and administration within the available annual water supply in the Upper Division States, including implementation and expansion of intrastate water conservation programs and regulation and enforcement under the doctrine of prior appropriation."

The letter concluded: "The challenges in the Colorado River Basin affect us all and require collaboration across the entire Basin.... Reclamation data shows that Lower Basin and Mexico depletions are more than double the depletions in the Upper Basin. Therefore, additional efforts to protect critical reservoir elevations must include significant actions focused downstream of Lake Powell. Otherwise, the effectiveness of our 5 Point Plan will be limited. We look forward to working with you on this critical effort while also developing sustainable long-term solutions to address the challenges we face in the Colorado River Basin." <http://www.ucrccommission.com/upper-division-states-and-ucrc-provide-5-point-plan-for-additional-protection-actions/>.

## Department of Energy/Hydropower

On June 30, under the Bipartisan Infrastructure Law, the U.S. Department of Energy (DOE) announced the launch of a nearly \$630 million investment to modernize the Nation's hydropower facilities with a Request for Information (RFI). The effort will invest in the "Maintaining and Enhancing Hydroelectricity Incentives" and "Hydroelectric Efficiency Improvement Incentives" programs to produce more clean, affordable power through capital improvements to make facilities more energy efficient and resilient. The former managed by DOE's Grid Deployment Office (GDO), includes \$553.6 million in incentive payments to enhance grid resiliency, dam safety, and environmental improvements.

The later, also managed by GDO, includes \$75 million in incentive payments to owners or operators of existing hydroelectric facilities to increase efficiency by at least 3%.

"Water is one of humankind's oldest methods of generating energy, and with technological advancements, we can harness this renewable power as a core driver for the nation's clean energy transition," said U.S. Secretary of Energy Jennifer M. Granholm. "The investments from President Biden's Bipartisan Infrastructure Law recognize that hydroelectricity is essential to strengthening the power grid and providing reliable, clean, and affordable energy for our communities as we transition to a net-zero economy."

Hydropower facilities currently supply 6% of all electricity in the United States and account for 32% of renewable-electricity generation. Hydropower also provides critical energy storage, accounting for 93% of all utility-scale energy storage, helping to ensure that power is available when consumers need it. Many hydropower facilities, however, require upgrades to become more efficient or better integrated with other renewable energy sources. The RFI solicits feedback from a wide range of stakeholders, including industry, clean-energy advocates, and officials in areas that generate hydroelectricity. Comments must be received by 11:59 p.m. EDT on September 6, and can be submitted to [WPTORFI@ee.doe.gov](mailto:WPTORFI@ee.doe.gov).

### **WATER RESOURCES**

#### **Washington/Drought**

The second-wettest May through June in Washington since 1895 and unanticipated cool weather preserved snowpack, causing it to last longer into the summer, which will support late-summer water supply needs, prompting the Washington Department of Ecology (DOE) to cancel the drought declaration for Central and Eastern Washington. "Conditions have

improved. All areas of the state, including the five watersheds specified in the drought declaration, have received significantly above-normal precipitation," according to Jeff Marti, Ecology's statewide drought coordinator. "The outlook is much better than forecast back in May."

Washington DOE issued an emergency drought declaration in July 2021 covering 96% of the state. Only Seattle, Everett and Tacoma – cities with ample water storage – escaped the drought designation. By May 2022, wetter temperatures brought relief to much of the state, but some portions of eastern Washington had yet to fully recover, with DOE retaining the drought declaration for some watersheds until now.

### **WATER RIGHTS**

#### **Utah/Water Judges**

On May 31, Chief Justice Matthew B. Durrant promulgated Rule 6-104 Water Law Judges, effective November 1, 2022, designating certain district court judges as water judges and establishing procedures for handling cases involving water rights. The intent is to help eliminate inconsistencies in water rulings (See WSW #2505). The Utah Water Task Force supported the rule, as well as broadening it to include "cases involving water law, including the adjudication of water rights." Another comment addressed the need for more than 3 district court water judges to sufficiently addressing caseloads.

Norman Johnson, Gordon Rowe, and Sarah Shechter, Assistant Attorney Generals, Council to Utah State Engineer, submitted comments on the Rule with concerns of Publishing Opinions. "Section (5) of the proposed rule requires certain water law opinions to be published. This rule should be revised to clarify what types of 'opinions' are to be published. The terminology in this rule is somewhat confusing as district court rulings are typically described as decisions, orders, or decrees. Additionally, the proposed rule should be modified to clarify what precedential value, if any, these decisions carry. The rule contemplates the ability of a district court judge to 'create new law,' which seems to imply that their decisions could carry precedential value. The State Engineer requests that the rule be modified to establish that a decision of a district court is not binding on any other court and only carries persuasive value." Additionally, the State Engineer has initiated general adjudications in Utah's fifteen river drainage systems. Twelve of those adjudications are still pending, and comments addressed concerns that water judges should sit in the judicial districts where the adjudications have been initiated. This will help judges apply the law consistently throughout the drainage basin and develop familiarity with basin-specific hydrology.

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