Insights: Alerts

Colorado River Developments and Potential Compact Litigation

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The Colorado River Basin is approaching a critical inflection point. The 2026 operating guidelines are set to expire in October this year and 2026 is shaping up to be the worst hydrologic year on record. In a matter of days, the Bureau of Reclamation will implement significant additional reductions in water deliveries to Lake Mead, a step which likely will ripen into a lawsuit over obligations arising under an interstate compact. This alert explains the 2026 reductions, explores the principal disputes (among many) brewing among the Colorado River Basin States, and discusses the resulting litigation risk.

I. Uncertainty on the Colorado River

The Colorado River Basin spans more than 246,000 square miles across the Seven Basin States (Arizona, California, Nevada, Colorado, New Mexico, Utah, and Wyoming) and Mexico. The United States, operating through the Bureau of Reclamation (Reclamation), has a prominent role in basin water management through numerous congressionally authorized projects. The law governing the Colorado River, called the "Law of the River," consists of a collection of interstate compacts, federal laws, court decisions, international treaties, and federal regulations. The current Colorado River operating guidelines governing shortages expire this year. Despite negotiations dating back to at least 2022, Upper and Lower Basin States were unable to agree on a consensus-based plan for post-2026 operations, leaving tremendous uncertainty for water users across the Basin.

To make matters worse, due to historically poor hydrology this year, Lake Powell is predicted to reach a condition called "dead pool" this summer, threatening Glen Canyon Dam's ability to produce power and deliver water to the Lower Basin States. In response, on April 15, 2026, Reclamation released its 2026 Drought Response Operations Plan (Plan) to support a proposed Drought Response Operation under the Drought Response Operating Agreement (DROA). In addition to this DROA Plan, Reclamation announced that it will be reducing releases from Lake Powell to Lake Mead from the originally planned 7.48 MAF to 6 MAF in Water Year 2026. This action is authorized by Section 6(E) of the 2024 Supplemental Environmental Impact Statement (SEIS) Record of Decision.

Although Reclamation typically implements a DROA Plan beginning May 1, this year's exceptionally poor spring runoff—driven by record-low snowpack and record-high March temperatures—has prompted Reclamation to begin implementation earlier than usual. This reduction in deliveries from the Upper Basin to the Lower Basin at

Lake Mead provides the Lower Basin States with an argument that the 1922 Compact has been violated, potentially triggering interstate litigation.

A. Expiring Guidelines and Disagreements Over Future Rules

The existing Colorado River operational guidelines, adopted in 2007, are set to expire at the end of 2026. These guidelines provided the foundational framework for river allocations, shortage sharing, and coordinated operations between the Basin States and Reclamation for nearly two decades. Absent a consensus among Upper and Lower Basin states, Reclamation issued a Draft Environmental Impact Statement (DEIS) regarding post-2026 operations on January 9, 2026, and accepted comments until March 2, 2026. The DEIS failed to identify a Preferred Alternative, however, meaning water users still do not know how shortages on the Colorado River will be allocated next year. The DEIS received broad criticism across the entire Basin and revealed several areas of disagreement among the Basin States regarding the Law of the River.

B. Disagreement regarding the 1922 Colorado River Compact

The foundation of the Law of River, the 1922 Colorado River Compact among the Basin States, divides an estimated 15 million acre-feet (MAF) of Colorado River water evenly between the Upper and Lower Basin States–7.5 MAF to the Upper Basin States of Wyoming, Utah, Colorado and New Mexico and 7.5 MAF to the Lower Basin States of California, Nevada and Arizona. *See* Article III(a). It further includes a provision to increase Lower Basin use up to an additional 1 MAF. *See* Article III(b). Article III(c) limits the Basins' use of water to meet the United States' obligation to Mexico, a burden which “shall be equally borne” by the Upper and Lower Basins. A subsequent 1944 treaty between the United States and Mexico made an additional 1.5 MAF in annual flows available to Mexico. The estimated annual 15 MAF flow of the river relied on for the Compact was three to four MAF more than the river actually holds, meaning that use of the river has been unsustainable for more than a century.

One of the hinderances to an agreement among the Basin States arises from competing interpretations of Article III(d) of the Compact, providing that the “States of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series….” It is generally accepted that the Lower Basin's position is that, at a minimum, this provision means that the deliveries at Lee Ferry must not fall below 75 MAF over a ten-year consecutive period, plus the Upper Basin's share of deliveries to Mexico. In other words, the Lower Basin interprets this provision as imposing as a firm delivery requirement of 82.5 MAF, over ten consecutive years, regardless of natural conditions. The Upper Basin asserts that its only obligation is to not deplete the river's flow to fall below that threshold—meaning that natural shortages do not trigger a breach. The Upper Basin argues that because reduced flows to the Lower Basin are due to climate change and not the Upper Basin States' depletion of the river, there is no affirmative Upper Basin delivery obligation.

C. Upper Initial Units

Another point of contention concerns the Upper Initial Units (UIUs). In 1956, the Colorado River Storage Project Act (CRSP) authorized the construction of four initial storage units: the Wayne N. Aspinall Unit in Colorado (Blue

Mesa, Crystal, and Morrow Point Dams), Flaming Gorge Unit in Utah, Navajo Unit in New Mexico, and Glen Canyon Unit in Arizona. According to Reclamation, the CRSP was intended to provide water storage in the Upper Basin to allow the Upper Basin to develop its apportionments of the Colorado River while assuring the required water delivery to the Lower Basin. The Lower Basin, likewise, generally maintains that the UIU's primary purpose is to ensure that the Upper Basin fulfills its delivery obligations to the Lower Basin. The Upper Basin contends that Reclamation is authorized to release water from the UIUs only to support Upper Basin infrastructure, not to bolster deliveries to the Lower Basin. They further emphasize that any reliance on CRSP releases is temporary and not a sustainable response to worsening Basin hydrology.

II. Historically Bad Hydrology for this Year

The disagreements among the Basin States are no longer merely academic as the Colorado River Basin experiences some of the worst hydrological conditions on record, with record-low snowpack and runoff, and continued record-high temperatures. The Glen Canyon Dam infrastructure requires a minimum elevation of 3,490 feet in Lake Powell to generate hydropower. Below this threshold, the dam can no longer safely generate electricity, nor can it reliably fulfill water delivery obligations. Extremely dry years, like this one, require a balance between delivering essential water to Lower Basin users and retaining enough water in Lake Powell to protect the dam's infrastructure and keep the entire water delivery system operational.

As of April 15, 2026, Lake Powell stands at an elevation of 3,526 ft., which is a mere 24% of its full capacity, and barely above the critical 3,490 ft. threshold. This is surprising and unwelcome news, as this time of year typically sees an increase in Powell due to spring runoff. Instead, 2026 is trending toward the lowest runoff year on record. In mid-March, Lake Powell was projected to receive inflow of 4.40 MAF (46% of average) for the water year due to runoff. By April, Reclamation had lowered this projection to 3.88 MAF for the water year, and a mere 1.4 MAF for the months of April through July (compared to 2.6 MAF for the same period last year). Some experts suggest that even these projections may be too optimistic.

Rather than seeing Lake Powell elevations peak during spring runoff, levels are expected to remain steady during this period and may even decline. Under the Most Probable scenario, Lake Powell is projected to fall below the minimum elevation of 3,500 feet by August of this year. Maintaining Lake Powell's elevation will require immediate releases from Upper Basin reservoirs and significant reductions in deliveries to the Lower Basin.

In response to the dire hydrology, Reclamation announced it will release 660,000 to 1 MAF from the Flaming Gorge Reservoir later this month. And because the DROA alone is insufficient to protect Lake Powell, Reclamation also is reducing releases from Lake Powell to Lake Mead from 7.48 MAF to 6 MAF, under the 2024 SEIS Record of Decision. This reduction will be fully implemented by September of this year.

III. How Reclamation's Plan Triggers the Compact and Potential Responses

The anticipated reductions in releases from Lake Powell are projected to result in flows at Lee Ferry that likely will fall below the 82.5 MAF/ten-year threshold the Lower Basin maintains is required by the Compact, as soon as this year. This reduction in deliveries therefore triggers the possibility of a formal Compact call in which the Lower Basin States would attempt to force deliveries of Colorado River water by Upper Basin States under the Compact. Arizona publicly stated its readiness to initiate litigation to enforce the Compact and protect its interests. The Governor's office has indicated that a lawsuit could be filed as soon as the Compact is breached, which could occur in the coming months depending on river conditions and operational decisions.

Lawsuits involving the Colorado River could take many forms. A lawsuit among the Basin States and the United States to enforce or interpret the Compact would fall under the original jurisdiction of the United States Supreme Court. The Supreme Court has long served as the forum for adjudicating interstate water disputes, including landmark cases such as *Arizona v. California*, 373 U.S. 546 (1963). Alternatively, other types of actions by other parties could be brought in federal district court under the Administrative Procedure Act challenging federal agency action that is anticipated to be taken under the new operating guidelines which Reclamation is expected to announce this month.

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