

Alert | Water Law



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The Federal Government’s Colorado River Rescue Efforts

The federal government recently has acted to address the effects of the “megadrought” in the western half of the United States. These steps include (1) allocation of historic funding amounts to the U.S. Bureau of Reclamation (“Reclamation”) for the rebuilding of critical water infrastructure and water conservation programs in the West; and, within the last week, (2) a proposal to intervene in the Colorado River Compact negotiations to break a deadlock by imposing across-the-board water delivery reductions to the “lower basin” states of California, Nevada, and Arizona.

The megadrought, changing climate conditions, and population growth have magnified the need for additional infrastructure and water supply solutions in the Colorado River Basin. Reduced water availability has impacted agricultural operations, municipal supply reliability, and power generation facilities, and contributed to wildfires across the western United States.

1. Reclamation Funding

The 2021 Infrastructure Investment and Jobs Act, also known as the Bipartisan Infrastructure Law (the “Infrastructure Law”), assigned \$8.3 billion to Reclamation to support **a range of infrastructure improvements** for fiscal years 2022 through 2026 under Title IX (Western Water Infrastructure). Under the 2021 Inflation Reduction Act, an additional \$4.6 billion was earmarked for investment in “climate resilience.”

Reclamation's funding allocations include repairing aging water infrastructure to assist in drought resilience across the West and elsewhere throughout the country. The 2023 appropriation of \$1.66 billion has been allocated across various programs, including those developed specifically to mitigate conditions in the Colorado River Basin. This funding comes as, even with this year's deep snowpack, drought conditions in the West remain severe.

a. Water Conservation

On January 24, 2023, \$80 million of funding authorized under the Infrastructure Law was made available for projects that conserve water and improve watershed health. On February 13, 2023, the Department of Interior announced that \$728 million under both the Infrastructure Law and the Inflation Reduction Act will be invested in critical infrastructure to enhance water supply reliability, provide reliable drinking water to rural and Tribal communities, and support water conservation efforts in the Upper Colorado River Basin.

b. Drought Planning and Mitigation

A large portion of the February funding to Reclamation is dedicated to implementing the **Colorado River Basin Drought Contingency Plan** (the "Lower Basin DCP"). The Lower Basin DCP is allocated a total of \$250 million for projects to establish or conserve renewable Colorado River water supplies that contribute to storage in Lake Mead and other reservoirs, or to improve the long-term efficiency of operations in the Lower Basin. Funding allocations to Reclamation for efforts relating to the Lower Basin DCP include \$50 million for FY 2022 and \$25 million for FY 2023. Additionally, proposed allocations to Reclamation for FY 2024 include \$49 million for the Lower Colorado River Operations Program, of which \$16.8 million will be used to implement the Lower Basin DCP.

The FY 2023 funds will be utilized to help mitigate the impacts of the ongoing drought and implement Lower Basin programs designed to create or conserve 100,000 acre-feet or more annually of Colorado River system water to contribute to conservation of water supplies in Lake Mead, which experienced historic lows in the summers of 2022 and 2023, and other Colorado River reservoirs in the Lower Basin.

Funding for the related Upper Basin Drought Contingency Plan totals \$50 million for projects that identify key infrastructure, and limited-duration data-gathering and analysis activities that support and further operationalize drought contingency planning. \$8.7 million was allocated to Reclamation in FY 2023 for such projects.

Additionally, on April 5, 2023, the Department of Interior **announced** \$585 million from the Infrastructure Act will be provided to 83 projects in 11 states to increase drought resilience and improve water delivery systems. Eight of these projects, totaling over \$42 million, are in the Upper Colorado River Basin states of Colorado and New Mexico.

2. Proposed Federal Intervention

In addition to the water projects and other funding efforts described above, the Department of Interior has taken further measures over the last several years in response to the dramatically low levels in Lakes Powell and Mead, two of the nation's most important water storage facilities. Most recently, on April 11, 2023, the Department of Interior issued a draft **Supplemental Environmental Impact Statement** ("SEIS"), which proposed revisions to the current interim operating guidelines for the Glen Canyon and Hoover

Dams.¹ Because the states have been unable to agree on a consensus approach among themselves, the federal government may intercede with its proposed alternative.

The draft SEIS considers three actions: do nothing; reduce allotments based on water use seniority;² or reduce allotments evenly. The third alternative would cut Colorado River allotments by equal percentages to the lower basin states of California, Arizona, and Nevada.³ If implemented, this proposal could result in reductions in total Colorado River allotments to California, Arizona, and Nevada by as much as 25%, including already agreed-upon reductions.⁴

The draft SEIS is open for public comment through May 30, 2023. A Record of Decision is anticipated for this summer, to inform the August 2023 decisions that affect the 2024 operations of the dams.

This is a critical period for the regional/national population centers, Tribes, local communities, and important environmental resources that rely on the Colorado River. Collaboration among stakeholders, more intensive water conservation efforts, continued government spending, and infrastructure improvements may all help to improve the situation.

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¹ The Glen Canyon Dam controls Lake Powell, and the Hoover Dam controls Lake Mead.

² Both the 2007 Interim Guidelines and the 2019 Drought Contingency Plan based reductions on the priority of water rights.

³ [Interior Department Announces Next Steps to Protect the Stability and Sustainability of Colorado River Basin | U.S. Department of the Interior \(doi.gov\)](https://www.doi.gov)

⁴ "The Colorado River drought crisis: 5 essential reads," The Conversation, April 13, 2023.