



TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy
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One more war for the Dealmaker-in-Chief to end?

In 1920, Phoenix, AZ, had about 33,000 people. Las Vegas, NV had 2,300. Los Angeles County had 576,000. And the Colorado River was a gusher, running freely with [10 to 20 million acre-feet](#) of water making it to its delta at the head of the Gulf of California every year. A couple of years later, the seven states in the river's basin (Colorado, New Mexico, Wyoming, and Utah comprising the Upper Basin and California, Nevada, and Arizona in the Lower Basin) and the Federal Government entered into [the Colorado River Compact](#), the guiding document for the river's management and the water's partitioning. In the ensuing 103 years, the population, industry, and intensive agriculture have exploded. And the water that is available in the system has [decreased by 19% this century alone](#), reducing the river to [a trickle that never reaches the sea](#). Well, [almost never](#). It's an untenable situation.

Attempts to resolve the situation require an agreement among the states that signed the Compact to, if not amend the Compact itself, agree to revise its execution and management. Also part of the negotiations are the 30 tribes who live in the basin (they had better be there, since [the Supreme Court has made it clear](#) that the Feds don't have to do much to forward their interests, despite the trust relationship there). Throw in the fact that some of the waters are also affected by the 1944 Treaty with Mexico, but we won't throw that in here. Parties have been negotiating for years, and it's one of the [most difficult negotiations](#) possible (besides [negotiating with a toddler](#)).

Why is it so tough? Partially because of Western states' water law doctrine. It's called prior appropriation, and it prioritizes the oldest uses and users over newer users. It's often summarized as "first in time, first in right," which is a nicer way of saying, "[Gimme that, it's mine!](#)" And if there's not enough water to go around, which there certainly isn't (see above), then, under prior appropriation, there's no sharing, no equity, none of that hippie stuff. First in time, first in right! So, the first users get all their rights, and the newest users get nothing. And this system was baked into the Compact amongst the states, too. Additionally, that negotiation ignored the existence of those 30 tribes, or at least ignored the fact that they needed water. It should be surprising, since less than two decades previously, [the Supreme Court held](#) that those tribes did indeed need water and their rights were senior to the most senior rights the settlers in the Basin had established. Finally, to make negotiations yet again more complicated, ever since the Compact was signed, the states, the tribes, and the Feds have tried a wide variety of ways to make up for the gaps and failures of the original Compact. That's included new water infrastructure projects, [states paying users for their rights](#), big ol' dams, quantifying (some of) those tribal rights, tribal-state water compacts, and so on and so forth.

The negotiations have proven so tough that [the deadline for those negotiations has been missed](#). Negotiators are [still working on it](#). [Steady progress](#) is certainly not guaranteed, and the person who was supposed to be representing the Federal government, well, [isn't](#). Despite the continued, blown-deadline negotiating, [some are ready](#) for the Federal government to [step in and make a decision for the states](#). That would mean the Trump Administration's Department of the Interior telling the states what the deal is going to be. What a war that would be to end! There's also the (very good) chance that this impasse ends in litigation, with the Supreme Court allocating the water, but previous litigation over the

Compact kept California and Arizona in front of the highest court in the land for almost half a century (and nearly led to a war between those two states). So, there's a good chance [the Grand River](#) will gift us at *TUWaterWays* material for a good long time to come.

Coming Up:

[Environmental Law & Policy Summit](#)

Tulane University Law School; New Orleans, LA; March 5–7, 2026

Water jobs:

[Water Law Fellow](#), Getches-Wilkinson Center at Colorado Law, Boulder, CO

[Staff Attorney](#), Surfrider Foundation; San Clemente, CA (remote/hybrid)

[Great Lakes Legal Fellow](#), National Wildlife Federation; Ann Arbor, MI (hybrid)



The [Tulane Institute on Water Resources Law and Policy](#) is a program of the Tulane University Law School. The Institute is dedicated to fostering a greater appreciation and understanding of the vital role that water plays in our society and of the importance of the legal and policy framework that shapes the uses and legal stewardship of water.

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