



COLORADO

Colorado Water Conservation Board

Department of Natural Resources

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TO: Colorado Water Conservation Board Members
FROM: Amy Ostdiek and Michelle Garrison
DATE: November 17, 2021
SUBJECT: Agenda Item 17: Colorado River Interstate Issues

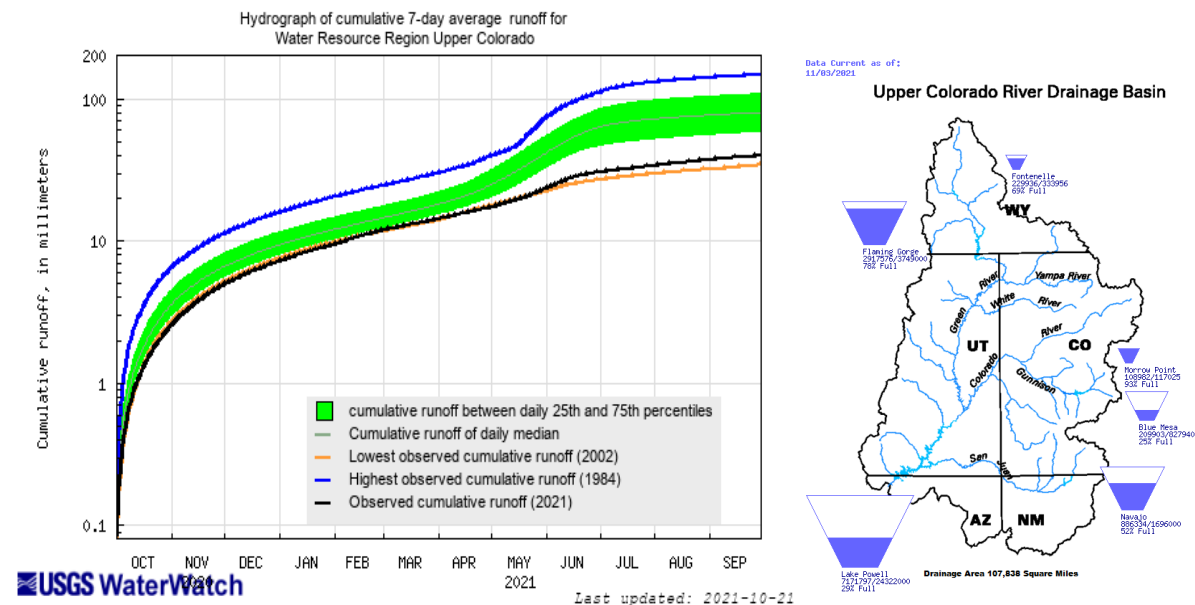
Staff recommendation:

Staff recommends that the Board adopt the attached resolution.

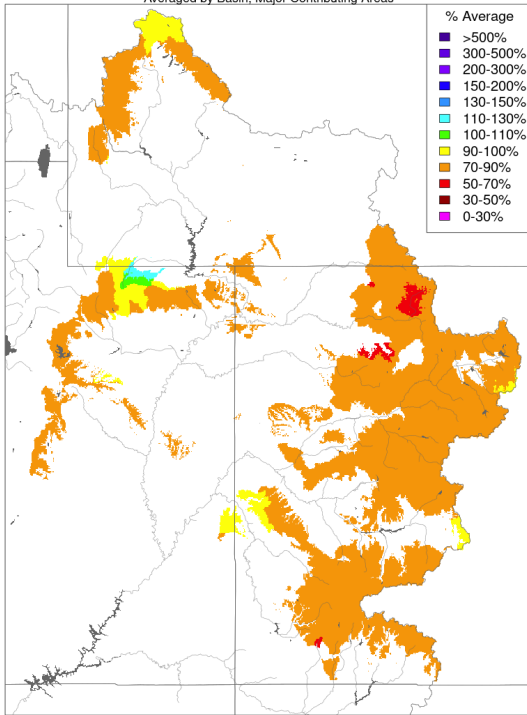
1. Hydrology and operations update

Inflow into Lake Powell in water year (WY) 2021 was the second lowest on record. Extremely dry soil moisture conditions combined with below average precipitation resulted in exceptionally low runoff throughout the Upper Colorado River basin.

For WY 2022, precipitation in October was higher than the previous year, and varied from well above average in portions of the basin to below average in some Colorado headwater regions.

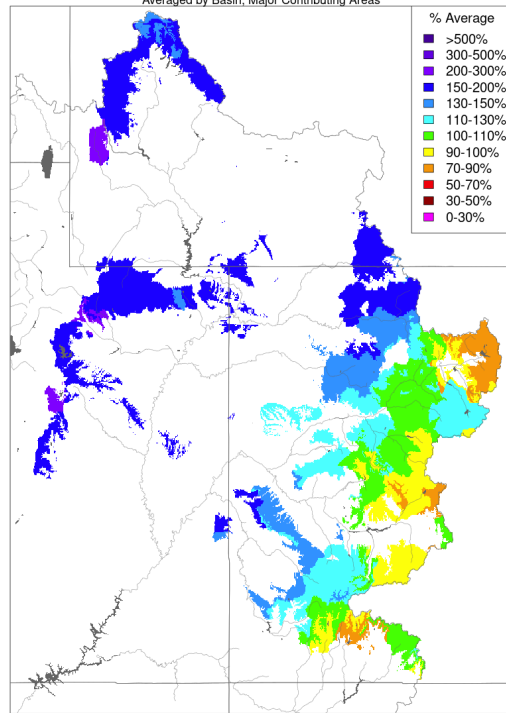


Water Year Precipitation, October 2020 - September 2021
Averaged by Basin, Major Contributing Areas



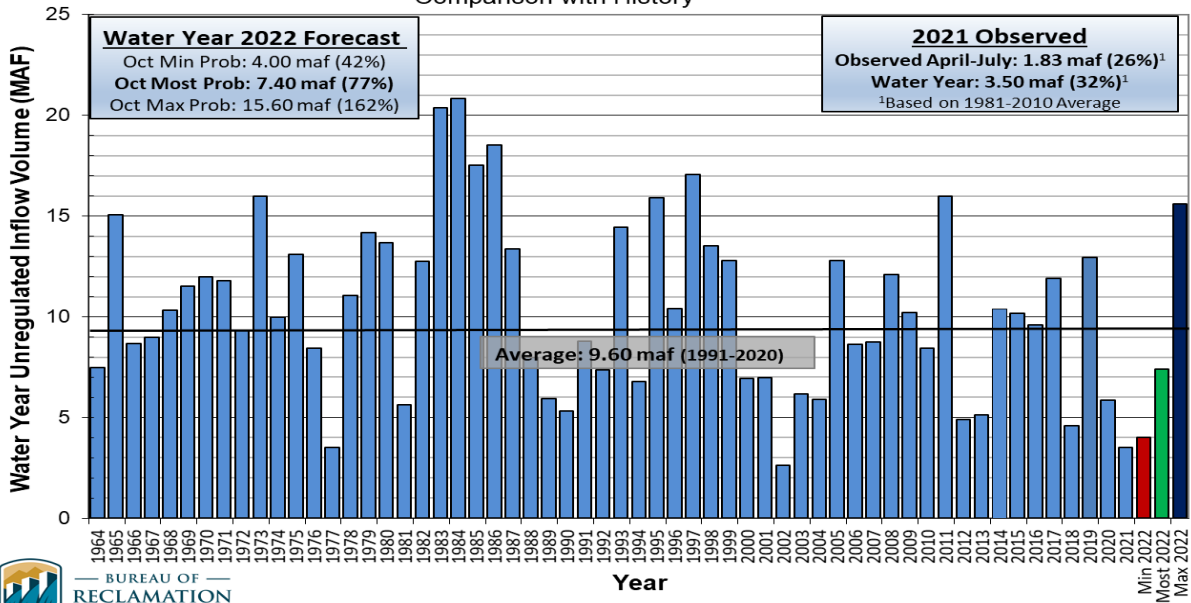
Prepared by NOAA, Colorado Basin River Forecast Center
Salt Lake City, Utah, www.cbrfc.noaa.gov

Water Year Precipitation, October 2021 - October 2021
Averaged by Basin, Major Contributing Areas



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Salt Lake City, Utah, www.cbrfc.noaa.gov

Lake Powell Unregulated Inflow
Water Year 2022 Forecast (issued October 4)
Comparison with History



Lake Powell released 8.23 MAF in WY 2021 and is releasing 7.48 MAF in WY 2022, as determined by Reclamation’s August 2021 24-Month Study. Projected Lake Powell elevations triggered planning activities pursuant to the Upper Basin Drought Contingency Plan (DCP).

Lake Mead elevations triggered water conservation measures under the Lower Basin DCP and the Binational Water Scarcity Plan for calendar year 2021. For calendar year 2022, projected Lake Mead elevations from Reclamation’s August 2021 24-Month Study will trigger Level 1 shortage conditions for the Lower Basin and reduced deliveries to Mexico pursuant to Minute 323 for the first time. Water conservation measures under the Lower Basin Drought Contingency Plan and Binational Water Scarcity Plan will also be required.

Staff will continue to actively monitor and provide updates regarding projections and discussions of potential impacts of continued dry conditions.

2. Drought Response Operations Agreement

Following the Bureau of Reclamation’s July 2021 decision to release up to 181,000 acre-feet of water from three Upper Basin reservoirs pursuant to its “imminent need” authority in the DROA, the Upper Basin States are now working with Reclamation to develop a plan for potential future reservoir releases, to be finalized by April 2022. This plan will include elements required by the DROA, including a plan for recovery of water released, an analysis of effectiveness and potential futility of releases, and other matters as required by the Drought Response Operations Agreement.

3. Demand Management

Following adoption of the decision-making roadmap at the September 2021 Board meeting, staff will provide an update on interstate and intrastate elements of the feasibility investigation and seek guidance on next steps.

At an interstate level, the three other Upper Division States are continuing their Demand Management feasibility investigations while also recognizing that implementation of the DROA has informed and will continue to inform the investigation. The work of the Upper Colorado River Commission will be ongoing through September 2022, and this will also inform the states’ investigations. Colorado has progressed further in its feasibility investigation than other Upper Basin States.

At their September meeting, the Interbasin Compact Committee discussed proportionality in a potential Demand Management program. There is a range of viewpoints about the definition of proportionality and potential mechanisms to achieve it. Input was captured in a summary document that is currently under review by IBCC members and will be conveyed to the board in the near future.

The decision-making roadmap is iterative and flexible in nature, and was designed to allow the Board to progress in an appropriate manner based on information received as the investigation is ongoing. Staff has provided a number of resources to support board decision-making, and at this time staff seeks guidance on how the Board wishes to proceed, including appropriate pace and timing, as well as any additional information that may help support the Board decision-making process.



4. Negotiations regarding post-2026 operations of Lake Powell and Lake Mead

The seven states will soon begin formal negotiations relating to the post-2026 operations of Lake Powell and Lake Mead. A primary focus of the Basin States has been to ensure the technical tools are in place to support the negotiations.

In her role as Colorado’s commissioner and principal negotiator on Colorado River matters, Becky Mitchell has been meeting with the Tribal Nations in Colorado on a sovereign-to-sovereign basis to discuss these and other Colorado River matters. She has also been seeking input from key advisors, water users, stakeholders, non-governmental organizations, and others to help inform Colorado’s strategy. Key goals in the negotiation process will be to: (1) provide additional water supply security and certainty for Colorado water users and all water users across the basin (2) avoid litigation among the basin states (3) avoid the risk of curtailment in the Upper Basin (4) improve operations of both Lake Powell and Lake Mead (5) address overuse in the Lower Basin (6) support coordination with Mexico while noting this will be a domestic agreement and (7) maintain compliance with established federal law.

A new section has recently been added to the CWCB website, entitled “Commissioner’s Corner.” Updates and communications from Commissioner Mitchell, as well as a calendar with upcoming events will be posted at this site.

As Commissioner Mitchell begins negotiations with the Basin States relating to the post-2026 operations, the attached resolution is meant to memorialize the support of the Board for these guiding principles and her efforts to protect Colorado and its water users.



Resolution of the Colorado Water Conservation Board Regarding Representation of State Interests During the Negotiation of the Post-2026 Interim Operating Guidelines for Lakes Powell and Mead

November 17, 2021

Regarding Negotiation of the Post-2026 Interim Operating Guidelines for Lake Powell and Lake Mead

WHEREAS the Colorado Water Conservation Board was created for the purpose of aiding in the protection and development of the waters of the state, for the benefit of present and future inhabitants;

WHEREAS the Colorado Water Conservation Board has a responsibility to evaluate and implement mechanisms for the effective management and wise administration of the Colorado River within Colorado. Specifically, it is the express responsibility and within the purview of the Board to “cooperate with the United States and agencies thereof, and with other states for the purpose of bringing about the greater utilization of the waters of the state of Colorado,” to “confer with and appear before...other states or...the federal government for the purpose of protecting and asserting the authority, interests, and rights of the state of Colorado and its citizens with respect to the waters of the interstate streams in the state,” to “investigate and assist in formulating a response to the plans, purposes, procedures, requirements, laws, proposed laws, or other activities of the federal government and other states which affect and might affect the use or development of the water resources of this state,” and to “foster the conservation of the water of the state of Colorado by the promotion and implementation of sound measures to enhance water use efficiency in order to serve all the water needs of the state, to assure the availability of adequate supplies for future uses, and to assure that necessary water services are provided at a reasonable cost” see § 37-60-106(1)(e),(i), (h) & (r), C.R.S.;

WHEREAS the Governor, with the approval of the Colorado Water Conservation Board, shall appoint a commissioner, who shall represent the state of Colorado upon joint commissions to be composed of commissioners representing the State of Colorado and another state or states for the purpose of negotiating and entering into compacts or agreements between the states as to interests and rights to interstate waters. (C.R.S. 37-60-109(1) (2021);

WHEREAS the Governor’s representative appointed to protect Colorado’s rights and interests to interstate waters of the Colorado River, with the approval of the Colorado Water Conservation Board, is Rebecca Mitchell;

WHEREAS the 2007 Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead were adopted by the Seven Basin States of the Colorado River (Colorado, Arizona, California, Nevada, New Mexico, Utah, and Wyoming) and are set to expire December 31, 2025 and the negotiations between the seven Basin States to develop post-2026 interim reservoir operations guidelines will soon begin;

WHEREAS the Colorado River Basin is experiencing its 21st year of an unprecedented period of low stream flows and increased temperatures in its recorded history, that has contributed to significantly decreased storage at Lake Powell and Lake Mead and increased uncertainty in water availability to sustain existing uses throughout the Basin;

WHEREAS the Upper Division States (Colorado, New Mexico, Utah and Wyoming) consume approximately 3 million acre-feet less than their apportionment each year;

WHEREAS diversions and consumptive use in Colorado are naturally limited by hydrology and the prior appropriation doctrine. As such, Colorado's water users frequently do not receive the full amount of water to which they are legally entitled and have taken shortages nearly every year over the last twenty-one years. These shortages are greater in dry years and will only increase in a warming and drying climate;

WHEREAS the Agreement Concerning Colorado River Drought Contingency Management and Operations ("DCP"), agreed to by the Basin States and the Bureau of Reclamation, was adopted in 2019 and intended to reduce the probability that Lake Powell and Lake Mead would decline to critically low elevations, to offer additional protection to the Colorado River system, and the Upper Basin, and to provide an additional level of security to Colorado's water users and major reservoirs. The DCP expires December 31, 2025;

WHEREAS despite implementation of the DCP, projections for the Colorado River System demonstrate the increased risks for water elevations at Lake Powell and Lake Mead to reach critically low levels.

BE IT THEREFORE NOW RESOLVED by the Colorado Water Conservation Board, on November 17, 2021, that considering the conditions outlined above and consistent with its purpose to aid in the protection and development of the waters of the State of Colorado, for the benefit of present and future inhabitants and its statutory duties to bring about the greater utilization of the waters of the state of Colorado, assist in formulating proposed laws which might affect the use or development of Colorado's water resources, foster conservation of water, and assure availability of adequate water supplies for future uses, the Colorado Water Conservation Board recognizes Commissioner Mitchell as Colorado's representative protecting Colorado's rights and interests to interstate waters of the Colorado River including her work to highlight the significant impact to local communities as a result of emergency releases from Blue Mesa Dam, a component of the Aspinall Unit, by the Bureau of Reclamation as part of the Drought Response Operations Agreement of the Upper Basin Drought Contingency Plan;

BE IT FURTHER RESOLVED by the Colorado Water Conservation Board that it recognizes Commissioner Mitchell as Colorado's representative in the interstate and federal negotiations related to the post-2026 operations of Lake Powell and Lake Mead to aid in the protection and development of the waters of the State of Colorado, for the benefit of present and future inhabitants including her leadership in securing a commitment from the Bureau of Reclamation to ensure the best technical tools are being used to support the negotiations; and

BE IT FURTHER RESOLVED by the Colorado Water Conservation Board that it commits to provide the legal, engineering, clerical, and other support necessary for Commissioner Mitchell to represent Colorado's interests in the exercise of her duties, provided that all legal assistants employed are with the consent of the Attorney General and anticipates Commissioner Mitchell and her staff will provide regular updates on Colorado River matters and opportunities to receive input from the Colorado Water Conservation Board.