

Mandatory curtailment of water rights in CO raised as possibility

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A state-imposed mandatory curtailment of water in the Colorado River Basin within Colorado was discussed as a looming possibility during a meeting of the Colorado Water Conservation Board on Wednesday in Steamboat Springs.

Representatives from the Western Slope told the statewide water-planning board that while they favor creating a new legally protected pool of water in Lake Powell and other upstream federal reservoirs to help prevent a compact call on the river, they have significant concerns about the pool being filled outside of a program that is "voluntary, temporary and compensated."

However, Front Range water users told the board that a voluntary program may not get the job done and that a mandatory curtailment program, based on either the prior appropriation doctrine or some method yet to be articulated, may be necessary to keep Lake Powell and Glen Canyon Dam functioning so Colorado, Utah and Wyoming can deliver enough water to California, Arizona and Nevada to meet the terms of the 1922 Colorado River Compact.

"With the repeat of historic hydrology beginning in the year 2000, Lake Powell will be dry, and when I say dry I mean empty, within about three years," Jim Lochhead, CEO and manager of Denver Water told the CWCB board.



Lochhead said that while a voluntary demand management program might help bolster water levels in Lake Powell, "it doesn't necessarily solve the problem."

"So we may need — I know we don't want to implement — but we may need other mechanisms to accelerate the creation of water into Lake Powell in the event of an emergency," Lochhead said. "This is not something that Denver Water wants, or is asking for. What we are asking for is that the contingency plans be put into place. We need to have those plans in place before the system collapses."

On Wednesday, staff at the CWCB said that neither they, nor the state attorney general's office, is at this point "assessing, pursuing or recommending to the CWCB board any type of involuntary or 'anticipatory' curtailment scenario."

And yet, it's on a lot of people's minds.

Lochhead said Denver Water wants to see a voluntary, temporary and compensated program created as a "first priority," but also said "I also don't think that by not talking about mandatory curtailment we can pretend the problem will go away. We need to be thinking about it, and we need to be thinking about it proactively."

However, Western Slope water interests as represented by the Colorado River Water Conservation District and the Southwestern Water Conservation District are concerned that if a new storage pool is created in Lake Powell, and a mandatory curtailment program is used to fill it, it could have dire consequences for agriculture on the Western Slope.

"This is our livelihood," Kathleen Curry, a rancher in Gunnison who serves on the Gunnison River Basin Roundtable, told the CWCB. "This water is what we depend on. If we move in the direction of mandatory curtailment, and it isn't equitable, you are going to have significant impacts to the water users in the state of Colorado, especially on the Western Slope."

The two regional Western Slope water conservation districts had drafted a resolution they wanted the CWCB to adopt Wednesday, which did not happen, as the CWCB declined to vote on it.

The resolution stated that any mandatory curtailment program would be developed on a "consensus basis" with the two districts at the table, and not just be a directive of the state.

However, Bennett Raley, the general counsel for the Northern Water Conservancy District, which provides water to nearly a million people in northeastern Colorado, said the state, as a sovereign entity, should not be constrained by consensus.

He also said that mandatory curtailment may well be necessary in Colorado.

"If the drought continues, there are two paths," he told the CWCB board. "If there is an infinite source of money, then voluntary works. Great, we're all happy. If the drought continues and there is not an infinite source of money, then the state will go to mandatory. The Supreme Court will ensure that, sooner or later, it's not a question."

Part of the fear of such a mandatory program is that hardly anyone, outside of perhaps the state engineer, knows what it would look like.

"Ultimately it's a state decision, it's a decision of the state engineer as to how water rights would be curtailed to meet the state's obligations under the Colorado River Compact," said Lochhead, when asked after the meeting how mandatory curtailment would work. "The short answer is, I don't know. There are a lot of questions and viewpoints."

Lochhead did say Denver Water is willing to "work with the state and with the West Slope to ensure that any curtailment doesn't disproportionately impact any region of the state, whether it's on the West Slope or the Front Range, and that essentially the same rules apply to everybody."

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