

# Compact Compliance Infrastructure Protection Pool(CCIP)

Prepared by: Ed Millard

Water Policy Advisor to Colorado Rep. Larry Don Suckla

Date: March 13, 2026

Version 1.1

Living Document, Work in Progress, Don't Sue Me, Join Me

## **ARTICLE III**

*(a) There is hereby apportioned from the Colorado River System in perpetuity to the Upper Basin and to the Lower Basin, respectively, the **exclusive beneficial consumptive use** of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist*

## Table of Contents

Disclaimer.....	3
Compact Compliance Infrastructure Protection Pool (CCIP).....	4
Beneficial Consumptive Use.....	4
Article III(d) Concerns.....	5
Article III(e) Concerns.....	5
Sideboards.....	5
Monetization.....	6
Power Water Stranded and Potentially Stranded.....	7
Ute Animas-La Plata(ALP) Issues.....	8
Forbearance.....	8
Compliance with Applicable Laws and Contracts.....	8
Project Reserved and Nonproject Reserved Water Rights.....	9
Bureau of Reclamation Infrastructure Protection Authorities.....	11
References.....	13

## **Disclaimer**

**Disclaimer: I, Ed Millard, am a knowledgeable citizen but I do not speak for Colorado or the UCRC. I do not work for the State of Colorado. I am an informal water policy advisor to Colorado Representative Larry Don Suckla who represents counties in Southwestern Colorado and have been for more than a decade. I am not a lawyer. I am not a Professional Engineer. I am concerned the current doom loop in the Colorado River will not end well for anyone. There are many legal arguments in this paper, they should in no way be treated as actual legal threats or basis for actual litigation even if they sound that way. They are provided purely to spark conversation about and better understanding of these complex issues among people who are not lawyers.**

## Compact Compliance Infrastructure Protection Pool (CCIP)

Three circumstances require establishment of a new pool in Lake Powell immediately, with or without Seven States agreement. This is a kind of gap water but actually real. Its pronounced “c-sip”:

### Compact Compliance Pool Infrastructure Protection Pool

- It is imperative power head be protected at elevation 3510’ in light of the USBR LaFond 2024 memo. Bypass tubes can not safely run the river. A pool buffering this elevation is required. A safety margin is needed if extended Run of The River operations are required. USBR should really like this pool right now.
- The Upper Basin has significant established water rights that must be used “exclusively” in the Upper Basin as defined in Article III(a). These include Winters tribal water rights, in particular the two Ute Tribes in Colorado in Animas La Plata totaling 33,050 AF/year, and water rights for power plants that have been or will be retired. This water is going to the Lower Basin for free which is inappropriate under III(a) for an established Upper Basin water right.

### ARTICLE III

*(a) There is hereby apportioned from the Colorado River System in perpetuity to the Upper Basin and to the Lower Basin, respectively, the **exclusive beneficial consumptive use** of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist*

- Its imperative the Upper Basin have more control over the timing of releases of water under established Upper Basin water rights from Lake Powell to better balance infrastructure protection and compact compliance under Article III(d) and the 10 year 7.5 MAF moving average. Examples of problematic Arizona behavior in this area were litigation threats to increase releases from Lake Powell to 9 MAF, and documented manipulation of releases of Lake Powell by the Lower Basin under those terms which are pushing the Upper Basin toward compact noncompliance right now contrary to Section 603 in the [1968 Colorado River Basin Project Act](#).

## Beneficial Consumptive Use

To qualify under III(a) it needs to be verified placing this water in a Lake Powell pool is “beneficial consumptive use”. It is our understanding evaporation in an Upper Basin reservoir qualifies as such. Verification is required

Can infrastructure protection be considered a beneficial use, though not a consumptive one?

Can compact compliance be considered a beneficial use?

### Article III(d) Concerns

- Since this program is retiming water rather than conserving it, holding this water in Lake Powell instead of releasing it through Lees Ferry will alter the ten year moving average in Article III(d). In periods where the moving average is close to a trip wire it will accelerate tripping that wire.
- This program is better used when the moving average is “fat” as was the case in the 2010’s when there was a large balancing release in 2011 and multiple 9 MAF releases in the 2007 interim guidelines “Sweet Spot”. If this program had been in the 2007 guidelines it would’ve alleviated some of the negative consequences of the guidelines on Upper Basin III(d) compliance.

### Article III(e) Concerns

It should be made clear we are not proposing to withhold this water from the Lower Basin so it is not an Article III(e) problem. As John Entsminger famously said at CRWUA, “[Gravity Works](#)”.

*[approx. 43:51] ... Right... just since we sat up here last year we've learned not to disincentivize the Upper Basin from putting water into Lake Powell. Right, We're like "The Law of the River says... you know blah, blah, blah..." who cares... **they want to put water into Lake Powell. Guess what, gravity works, eventually it's coming to us.***

Once this water is in Lake Powell its going to them, all we are asking is to control when because these are Upper Basin water rights and its our prerogative.

### Sideboards

Creation of this pool has many perils which must be prevented:

- **Under no circumstances can water from this pool be sold to the Lower Basin** or to USBR acting in its role as Lower Basin Water Master. This would be an Article III(a) violation and compromise The Wall. The Wall can not be compromised by this pool

- **Under no circumstances can this pool support or encourage speculation**, its a Foundational Principal.
- **Water rights which can participate in this pool must be carefully restricted** to undeveloped Tribal water and stranded power plant water. It cant become a destination for Ag water under buy and dry
- **Constraints must be developed on when this water is released from Lake Powell**. Presumably it would ONLY be when there is a legally recognized compact compliance call. UCRC would be first entity to proposed this, probably in consultation with the involved state and the water rights holder

## Monetization

Careful consideration has to be given to how this water right can be monetized by the rights holder:

**Sale of release of the water during a compact call to an entity seeking compact compliance protection**, like a city with junior water rights... BUT ONLY IN THE UPPER BASIN. The water would be released to offset their curtailment obligation. There are numerous complixities with such a program which must be resolved. Again this can not be allowed to be a buy and dry mechanism for Ag so the water rights eligible have to be closely controlled.

**USBR could buy the water for the purposes of protection of its infrastructure**. This would be functionally the same as paying for forbearance but since its being held in the Upper Basin and only released under a compact call it would not breach the wall in Article III(a). Forbearance is also just preserving the status quo which will be seen as poor investment in Congress. With this program the Bureau is, at least, gaining infrastructure protection which is part of its primary mission. It will also limit the damage associated with compact compliance when it is released.

## Power Water Stranded and Potentially Stranded

	Type	Shuttered	AFY		Owner
CO	Tribal		16,525	<b>Animas La Plata</b>	Ute Mountain Ute Tribe
CO	Tribal		16,525	<b>Animas La Plata</b>	Southern Ute Tribe
AZ	Power	2019	34,100	<b>Navajo Generating Station</b>	Navajo Nation/USBR et al
NM	Power	2022	8,000	<b>San Juan Generating Station</b>	Public Service Company N
CO	Power	2019	5,000	<b>Nucla Generating Station</b>	Tri-State G&T
			<u>80,150</u>	Total Current	
CO	Power	2026-2029	21,000	<b>Craig Generating Station</b>	Tri-State G&T
CO	Power	2027-2028	8,000	<b>Hayden Generating Station</b>	Xcel
NM	Power	2032	27,000	<b>Four Corners Generating</b>	Arizona Public Service et al
UT	Power	2030	7,600	<b>Bonanza Power Plant</b>	Deseret Power
			<u>63,600</u>	Total Pending	
			143,750	Total	

\*This table needs verification before use in decision making:

Key considerations:

- \*Pending date are changing, due to power demand and other factors
- Historical Upper Basin coal/thermal averages (~**162,000 AF/yr peak**) suggest broader retirements could yield more, but not all plants use Colorado River Basin sources, and some rights may persist.
- Post-closure, water often remains available for reallocation (e.g., discussions for Yampa River instream flows or green hydrogen), but no widespread permanent abandonment has occurred.
- Closure Schedules face uncertainty from demand growth (AI data centers), federal interventions, and economics. Volumes are estimates from operational data, not fixed decrees in all cases.
- These savings represent a potential “water dividend” for the basin upon full retirement, though actual reallocation depends on state water law (prior appropriation), utility retention of rights (e.g., for future uses like hydrogen production or to avoid abandonment), and any transfers, leases, or instream flow protections. Volumes reflect average annual consumptive use or decreed entitlements attributable to plant operations; diversion may be higher with return flows.

## Ute Animas-La Plata(ALP) Issues

### Forbearance

A common proposal for monetization of ALP water is forbearance. This would involve an entity such as the Department of Interior or Bureau of Reclamation entering into a contract of some specified duration in which the tribe would agree to forego development of the water right for payment.

In our opinion this would be contrary to Article III(a) on “exclusive beneficial consumptive use” clause and the terms of the 1988 settlement Section 5. In essence, the Bureau, who is the water master and contracted provider of water in the Lower Basin, would be purchasing water intended for exclusive use in the Upper Basin and putting it to use in the Lower Basin, the wrong basin.

### Compliance with Applicable Laws and Contracts

Verification is required that placement of ALP water in a Lake Powell pool complies with all applicable laws and contracts, in particular the 1988 settlement:

#### [Colorado Ute Indian Water Rights Settlement Act \(1988\)](#)

##### *SEC. 5. DISPOSAL OF WATER.*

*(a) INDIAN INTERCOURSE ACT.—The provisions of section 2116 of the Revised Statutes (25 U.S.C. 177) shall not apply to any water rights confirmed in the Agreement and the final consent decree: Provided, That nothing in this subsection shall be considered to amend, construe, supersede, or preempt any State law, Federal law, interstate compact, or international treaty that pertains to the Colorado River or its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quality of those waters.*

*(b) RESTRICTION ON DISPOSAL OF WATERS INTO LOWER COLORADO RIVER BASIN.—None of the waters from the Animas-La Plata or Dolores Projects may be sold, exchanged, leased, used, or otherwise disposed of into or in the Lower Colorado River Basin unless water within the Colorado River Basin held by non-Federal, non-Indian holders of that water pursuant to any water rights could be so sold, exchanged, leased, used, or otherwise disposed of under State law, Federal law, interstate compacts, or international treaty pursuant to a final, nonappealable order of a Federal court or pursuant to an agreement of the seven States signatory to the Colorado River Compact.*

(c) *USE OF WATER RIGHTS.*—

(1) *The use of the rights referred to in subsection (a) within the State of Colorado shall be governed solely as provided in the Agreement as modified pursuant to section 11 of this Act and this subsection. The Agreement is hereby modified to provide that a **Tribe may voluntarily elect to sell, exchange, lease, use, or otherwise dispose of any portion of a water right** confirmed in the Agreement and final consent decree off its reservation. If either the Southern Ute Indian Tribe or the Ute Mountain Ute Indian Tribe so elects, and as a condition precedent to such sale, exchange, lease, use, or other disposition, that portion of the Tribe's water right shall be changed to a Colorado State water right, but be such a State water right only during the use of that right off the reservation, and shall be fully subject to State laws, Federal laws, interstate compacts, and international treaties applicable to the Colorado River and its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quality of those waters.*

(2) *The characterizations in the Agreement of any water rights which may be used off the reservation of the respective Tribe as either "project reserved water right" or "nonproject reserved water right" are hereby expressly disapproved and any claim to water rights so characterized shall be extinguished when the final consent decree is entered.*

(d) *RULES OF CONSTRUCTION.*—*Nothing in this Act or in the Agreement shall—*

(1) *constitute authority for the sale, exchange, lease, use, or other disposal of any Federal reserved water right off the reservations;*

(2) *constitute authority for the sale, exchange, lease, use, or other disposal of any water held pursuant to a Colorado State water right, or of any Colorado State water right, outside the State of Colorado; or*

(3) *be deemed a congressional determination that any holders of water rights do or do not have authority under existing law to sell, exchange, lease, use, or otherwise dispose of such water or water rights outside the State of Colorado.*

### **Project Reserved and Nonproject Reserved Water Rights**

*In the Colorado Ute Indian Water Rights Settlement Act of 1988 (Pub. L. No. 100-585), the provision in Section 5(c)(2) reads:*

*"(2) The characterizations in the Agreement of any water rights which may be used off the reservation of the respective Tribe as either "project reserved water right" or "nonproject reserved water right" are hereby expressly disapproved and any claim to water rights so characterized shall be extinguished when the final consent decree is entered."*

What this means, in plain terms

This subsection is a deliberate rejection and extinguishment by Congress of specific labels/categories that the original 1986 Colorado Ute Indian Water Rights Final Settlement Agreement used to describe certain tribal water rights, particularly those that could potentially be used off the reservation (e.g., through sale, lease, exchange, or other disposition).

- "Project reserved water right" and "nonproject reserved water right" were terms defined or characterized in the 1986 Agreement to distinguish:
  1. **Project reserved:** Water rights tied directly to federal reclamation projects (like Animas-La Plata or Dolores), often with federal reserved (Winters) priority but potentially subject to project-specific conditions, repayment obligations, or reclamation law restrictions.
  2. **Nonproject reserved:** Water rights not tied to those specific projects (e.g., other reserved rights from tribal treaties/reservations), possibly with different priority dates or fewer project-related strings attached.

These characterizations created a potential distinction in how off-reservation use or transfer of the water might be treated (e.g., whether federal reclamation laws applied more strictly to "project" rights, or whether one category allowed greater flexibility for leasing/selling without full subordination to state law). Congress (in the 1988 Act) expressly disapproved these labels and said they no longer have legal effect. Any claim based on those specific characterizations is extinguished (permanently eliminated) once the final consent decree (the court-approved judgment enforcing the settlement) is entered. Why Congress did this The main goal was to simplify and standardize the treatment of off-reservation use under the modified settlement:

- The 1988 Act (in Section 5(c)(1)) modifies the 1986 Agreement to allow tribes to voluntarily move water off-reservation, but only by converting the right — during off-reservation use — into a Colorado state water right fully subject to state law, federal reclamation law (as applicable), interstate compacts (e.g., 1922 Colorado River Compact), and international treaties.
- By disapproving the "project"/"nonproject" split, Congress eliminated any argument that one category of tribal right might carry special privileges, exemptions, or different rules for off-reservation transfer (e.g., avoiding state jurisdiction or reclamation repayment obligations).

- This ensures uniform application of state/Federal/Compact rules to all off-reservation tribal water use, preventing future litigation over whether a right was "project" vs. "nonproject" and thus treated differently.

In short: Congress rejected the Agreement's attempt to create two classes of tribal water rights for off-reservation purposes and wiped out any legal claims based on those classes. All qualifying water rights for off-reservation use must now follow the same conversion-to-state-right process, with no lingering "project reserved" or "nonproject reserved" distinctions surviving the final decree. This was a key congressional modification to make the settlement workable and legally defensible under broader Colorado River and reclamation law.

### **Bureau of Reclamation Infrastructure Protection Authorities**

1. **Reclamation Act of 1902** (Pub. L. No. 57-161, 32 Stat. 388; codified as amended in 43 U.S.C. §§ 371 et seq.)

This is the foundational law creating the Reclamation Service (now Bureau of Reclamation) and authorizing construction, operation, and maintenance of irrigation and storage works in the arid West. It implicitly includes authority to protect and maintain infrastructure for public benefit, as Reclamation must ensure facilities remain functional for their authorized purposes (e.g., storage and delivery of water). While not explicitly about "safety," it underpins Reclamation's ongoing responsibility to safeguard dams and reservoirs from risks like structural failure or operational threats.

2. **Colorado River Storage Project Act of 1956** (Pub. L. No. 84-485, 70 Stat. 105; codified in part at 43 U.S.C. §§ 620 et seq.)

This act authorized the construction of Glen Canyon Dam as a key unit of the Colorado River Storage Project (CRSP). It directs Reclamation to operate and maintain the dam for multiple purposes, including regulating flow, flood control, storage, and power generation. Implicit authority to protect the dam's integrity stems from the requirement to operate facilities "in the interest of the United States" and ensure long-term viability.

3. **Colorado River Basin Project Act of 1968** (Pub. L. No. 90-537, 82 Stat. 885; codified at 43 U.S.C. §§ 1501 et seq.)

Yes, this is a key statute you mentioned. It authorizes additional projects (including refinements to CRSP facilities like Glen Canyon) and directs coordinated operations of Colorado River reservoirs (including

Lake Powell). Section 602(a) requires the Secretary of the Interior (through Reclamation) to adopt criteria for long-range operations, which include protecting reservoir elevations and infrastructure. The act reinforces Reclamation's role in managing the system to avoid conditions that could impair dam functionality or safety.

4. **Reclamation Safety of Dams Act of 1978** (Pub. L. No. 95-578, 92 Stat. 2471; codified at 43 U.S.C. §§ 506 et seq., as amended)

This is the most direct statutory authority for dam safety and infrastructure protection. It authorizes Reclamation to:

- Inspect, monitor, and modify its dams to reduce risks (e.g., seismic upgrades, spillway improvements).
- Fund safety modifications (with cost-sharing provisions).
- Take emergency actions to prevent failure. Reclamation's Dam Safety Program operates under this act, applying to Glen Canyon Dam/Lake Powell infrastructure.

5. **Grand Canyon Protection Act of 1992** (Pub. L. No. 102-575, Title XVIII; codified at 43 U.S.C. §§ 1801 et seq.)

While primarily focused on downstream Grand Canyon resources, it requires Reclamation to operate Glen Canyon Dam in a manner that protects downstream ecosystems and resources, which indirectly supports infrastructure protection by mandating adaptive management and monitoring to avoid operational risks.

Key Records of Decision (RODs) and Operational Authorities Reclamation's authority to take protective actions (e.g., reducing releases to avoid low-elevation risks at Lake Powell) is often exercised through NEPA RODs and operational guidelines:

1. **2007 Interim Guidelines ROD** (and extensions via 2019 Drought Contingency Plans): These guide coordinated operations of Lake Powell and Lake Mead, including provisions for low-reservoir protections.
2. **2024 Near-Term Operations SEIS/ROD** (signed May 2024): Explicitly allows Reclamation to use "all tools available" to protect critical elevations at Lake Powell (e.g., below ~3,500–3,525 ft, risking power loss or outlet works issues). This includes Section 6(E) adjustments to reduce releases as low as 6 MAF/year if needed, and potential releases from upstream CRSP reservoirs.
3. **Post-2026 Draft EIS** (January 2026): Discusses ongoing authority for infrastructure protection releases (e.g., from CRSP Upper Initial Units

like Flaming Gorge or Blue Mesa) within existing RODs, to prevent Lake Powell from dropping below critical levels (e.g., 3,490 ft infrastructure limit).

4. **Glen Canyon Dam LTEMP SEIS/ROD** (various updates, e.g., 2016 and 2024): Focuses on experimental flows but reinforces safe operations to protect dam infrastructure.

## References

1. **Colorado River Compact**, signed Nov. 24, 1922, by representatives of the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming (ratified by Congress in the Boulder Canyon Project Act, Pub. L. No. 70-642, 45 Stat. 1057 (1928)), <https://www.varuna.io/LOTR/1922/crcompct.pdf>.
2. **Colorado Ute Indian Water Rights Settlement Act of 1988**, Pub. L. No. 100-585, 102 Stat. 2973 (1988), [https://www.varuna.io/LOTR/1988/Colorado\\_Ute\\_Indian\\_Water\\_Rights\\_Settlement\\_1988.pdf](https://www.varuna.io/LOTR/1988/Colorado_Ute_Indian_Water_Rights_Settlement_1988.pdf),
3. Shannon Mullane, “**How ‘conservation pool’ water management could provide a way forward for Colorado River users**” The Colorado Sun, March 4, 2026, <https://coloradosun.com/2026/03/04/conservation-pool-path-forward-colorado-river>.
4. John Entsminger (General Manager, Southern Nevada Water Authority), “**Gravity Works**”, panel discussion on “DCP: A Lower Basin Perspective,” Colorado River Water Users Association Annual Conference, Las Vegas, NV, December 2018, video timestamp 43:51, YouTube, accessed March 13, 2026, <https://www.youtube.com/watch?v=rC16W3DT0Y4&list=PL8q1QDrFH67WLAJ7pUZlzDeewYZssidPd&index=3&t=2631s>.
5. **Colorado Ute Indian Water Rights Settlement Agreement**, Dec. 10, 1986, [https://www.varuna.io/LOTR/1986/Colorado\\_Ute\\_Water\\_Rights\\_Settlement\\_1986.pdf](https://www.varuna.io/LOTR/1986/Colorado_Ute_Water_Rights_Settlement_1986.pdf).
6. **Colorado Ute Indian Water Rights Settlement Act Amendments of 2000**, Pub. L. No. 106-554, § 1(a)(4) [title II], 114 Stat. 2763, 2763A-250 (Dec. 21, 2000), [https://www.varuna.io/LOTR/2000/Colorado\\_Ute\\_Indian\\_Water\\_RightsSettlement\\_Amendment\\_2000.pdf](https://www.varuna.io/LOTR/2000/Colorado_Ute_Indian_Water_RightsSettlement_Amendment_2000.pdf).

7. **Colorado River Basin Project Act**, Pub. L. No. 90-537, 82 Stat. 885 (Sept. 30, 1968), <https://www.varuna.io/LOTR/1968/crbproj.pdf>.