

Exclusive: Hedge funds eye water markets that could net billions, as levels drop in Lake Powell

Reservoir levels sit at just 40% of capacity. Will private equity attempt to rewrite Western water law?



Water managers in the Upper Colorado River Basin know the number by heart: 3,525.

It refers to an elevation, a topographic ring around the shores and walls of Lake Powell, and it signals a crisis.

At 3,525 feet above sea level, the federally owned reservoir could only spare another 40-foot drop before [reaching](#) [“dead pool”](#) — where power generation at the Glen Canyon Dam becomes impossible. Below that lies a worst-case scenario where hundreds of billions of gallons of water would be trapped with no easy way to release them into the Grand Canyon below.

The reservoir is currently 40% full and its elevation is 50 feet above 3,525, but that level could be exposed in just a couple of bad snow years in the river’s headwaters, given the continued demands of the 40 million people across seven states, two countries and 29 Native American nations who rely on the river.

“Dead pool” is a stage nearly everyone who pays attention to Colorado River flows wants to avoid — from environmentalists to farmers to river runners to water managers in and outside of the basin.

The question, and the point where consensus begins to fracture, is what to do.

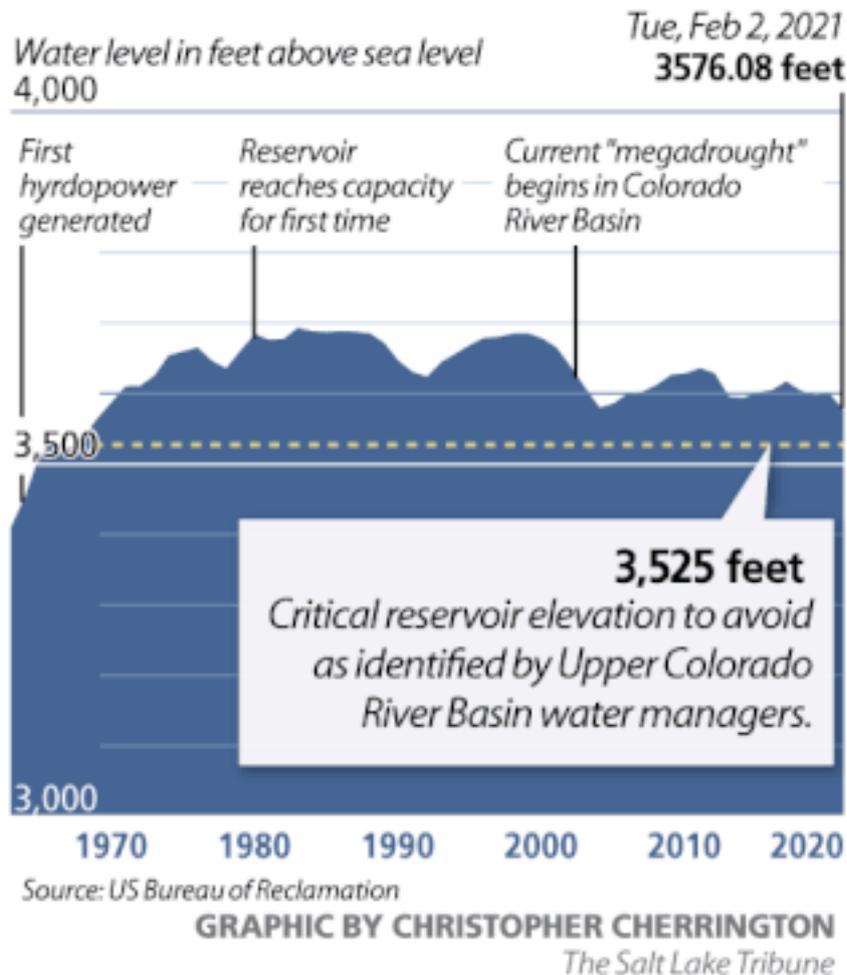
Many see a need to continue what’s always been done in the river basin: the hashing out of differences in board meetings

and conference halls, or, more likely for the near future, Zoom meetings. Others hear a death knell for Glen Canyon Dam.

But another controversial vision has roared back to life in recent months that would upend nearly a century and a half of precedent. Hedge funds and other Wall Street interests want to rewrite the “Law of the River” in the Colorado River Basin and use the free market to solve the problem of scarcity — while potentially raking in immense profits.

Lake Powell's uncertain future

With a changing climate and unabated growth in the Southwest, the water level in Lake Powell has been shrinking for decades.



(Christopher Cherrington | The Salt Lake Tribune)

Privatizing water resources has long been the dream of libertarian-leaning think tanks, and publications from the [Financial Times](#) to [Forbes](#) have referred to water as "the next oil." If geopolitical conflicts and vast swaths of the global economy in the 20th century were driven by fossil fuels, some analysts [predict a repeat](#) in this century with a different commodity.

Partners at Water Asset Management (WAM), a New York-

based hedge fund that invests in water around the world, have been involved with Western water since the 1990s. But as the situation in the basin grows more dire, WAM has grown increasingly vocal about the need to reform the system in the Colorado River Basin, where rising temperatures linked to the burning of fossil fuels are leading to reduced runoff. Average flows have [diminished by 18% over the past two decades compared to the previous century](#), a trend known as the Millennium Drought.

"I have seen time and again the wisdom of using incentives that attract private-sector investment and innovation," James Eklund, legal counsel for WAM, recently [told The New York Times](#). "Dealing with the threat of climate change to our water requires all sectors, public and private, working together."

Eklund formerly served as a top water negotiator for Colorado, and his comments in the article set off a flurry of rebuttals from [environmental groups](#), [water managers](#) and [farm advocates](#).

WAM [had invested \\$300 million in farmland](#) in Colorado, California, Arizona and Nevada as of last year, including [\\$16.6 million on 2,220 acres of farmland with senior water rights in Colorado's Grand Valley](#) just upstream from where the Colorado River crosses into Utah. So far, farming has continued on the hedge fund's plots in the Grand Valley, and investors have said their goal is to make the agricultural techniques more water efficient.

They also expect a hefty return on investment. The hedge fund's co-founder and president, [Matthew Diserio](#), has called water in the United States "a trillion-dollar market opportunity." WAM's New York office did not respond to The Salt Lake Tribune's request for comment.

[Disque Deane Jr.](#), another partner at WAM, [told ProPublica](#) in 2016 that he is interested in freeing up rules that regulate water trading.

Deane argued that commodifying water and making it a tradable asset on the market would encourage conservation, rewarding those who cut back on use and enabling them to sell it to others who would in turn be encouraged to conserve during droughts. The current system, which requires farmers to use their water right or risk losing it, can encourage waste of a limited resource.

Opening up that market cuts against deep-rooted tradition and legal precedent in Western states that guide how water is managed.

Several states in the Colorado River Basin define water as a public resource in their constitutions, and Western water law allows individuals, municipalities and companies to develop water by putting it to a "beneficial use," be it for irrigation, drinking water or industry. Those who have been using the water for longer have priority to it under a doctrine sometimes called "first in time, first in use."

The vast storage and transportation systems built in the Southwest to move water — from the two largest reservoirs in the United States, Lake Mead and Lake Powell, to numerous pipelines and tunnels that supply water to urban areas outside of the Colorado River Basin, like Salt Lake City and Denver — are also publicly owned.

The same report in The New York Times noted that lobbyists are pushing for the creation of private “accounts” in Lake Powell, a move that would partially privatize the federally owned reservoir. If that happened, investors could theoretically dry up farmlands, which use the vast majority of water in the basin, and store the savings in the reservoir to sell to cities during shortages. Eklund [has since denied that WAM's goal is the creation of a private account](#) in Lake Powell, though the hedge fund has used rotational fallowing on its farmland in Arizona to divert over 2 billion gallons to an account in Lake Mead, according to [a presentation](#) one of its partners gave last year.

Detaching water rights from legally defined beneficial uses and selling them to the highest bidder aren't easy under current laws in Utah or Colorado.

Gene Shawcroft, who was recently appointed by Utah Gov. Spencer Cox to represent the state on the Upper Colorado River Commission, wants to keep it that way. Shawcroft grew up on a small farm in southern Colorado and is the general

manager of the Central Utah Water Conservancy District, Utah's largest diverter of Colorado River water.

"I've been involved in water for a long, long time," said Shawcroft. "I don't see room for private speculation on Colorado River water — or water anywhere, for that matter."

Shawcroft said his primary goal on the commission is to maintain the "collaboration and comity" that has guided negotiations between the Upper Basin states of Utah, Wyoming, New Mexico and Colorado, which are bound under [the Colorado River Compact of 1922](#) to deliver a set amount of water downstream from Lake Powell. He views private water speculation as adding nothing but divisiveness.

"One of the things that is probably the most disturbing to me personally is when there are those who try to use a public resource, in this case water, for private gain in a speculative process," he said. "I realize that if someone uses water beneficially, there can be a personal or a private gain on the use of that water. But all that happens under law, under rules, under culture that has been established for many, many years."

Public vs. private water accounts

Many environmental groups agree that opening water markets to speculation would be more of a threat than a

solution.

“Giving management authority to a hedge fund in New York or San Francisco is not going to make this region ... more sustainable,” said Matt Rice, director of the Colorado River Basin program for the advocacy group [American Rivers](#).

“Hypothetically, if you were to have billions of dollars of private capital interest in the Colorado River, it shifts the collaborative nature of decision-making that the Colorado River Basin is maintaining right now.

“We need to figure out ways to do more with less water — to use less water,” Rice continued. “We’re trying to do that in a way that protects the future of productive agriculture, that protects the health of rivers and protects the communities that depend on them.”

One of the proposed responses tentatively supported by American Rivers and water managers in the Upper Basin states does involve creating a form of publicly managed water markets, however.

A drought contingency plan developed by Upper Basin states to prevent Lake Powell from falling below 3,525 feet, includes a proposed program that would fill an account in Lake Powell for the benefit of the Upper Basin states as they work to meet their obligations to Arizona, Nevada, California and Mexico. The water would come from farmers who

voluntarily accept payment to stop irrigating in dry years.



(Francisco Kjolseth | The Salt Lake Tribune) The Hite Marina boat ramp comes to an end hundreds of yards from the edge of the Colorado River as it flows into Lake Powell on Thursday, Feb. 4, 2021. The reservoir is only 40% full and there's no end in sight to the drought that has seen the water body shrinking for two decades.

An account in Lake Mead created by the U.S. and Mexican governments, along with a coalition of environmental groups, was used to briefly return flows to the Colorado River's delta in 2014 for the first time in decades.

Shawcroft said Utah and the other three Upper Basin states are still exploring the idea to see if it's feasible and whether it makes economic sense, and all four states would have to

participate if it were to be implemented as part of the drought contingency plan.

But these markets would function differently than a private, speculative market, according to Andy Mueller, general manager of the Colorado River District that advocates for water on Colorado's Western Slope, including for agricultural interests.

"The whole demand management concept is that it's supposed to be temporary, compensated and voluntary," Mueller said. "In Colorado, we're looking at how it would impact different communities. How do you make sure it doesn't target certain industries or regions of the state that would be knocked out of business in a permanent way?"

The collaborative approach that has been the norm is slow, and that could make it vulnerable to disruption. As the crisis deepens in the basin, investors might be poised to take advantage of stalled negotiations, divisive litigation and drying rivers to advance their agenda.

"Increasing drought and risk and crisis, potentially, from the [hedge funds'] perspective, may open up some enabling conditions to [push for the creation of private accounts in Lake Powell]," Rice said, "but this is something that is going to be absolutely unacceptable to the basin states."

Mueller's predecessor as district manager, Eric Kuhn, contributed to [a report released this month from Utah State University's Center for Colorado River Studies](#) that predicts the Millennium Drought will continue.

"We've known for many, many years that if climate change continues to drop flows ... the Upper Basin quickly gets into trouble at the demand levels we've had," Kuhn said. "We've been at this level of development for 20 years, and what's happened to Lake Powell? It's gone from full to 40% full over those 20 years."

Kuhn believes many stakeholders in the basin have yet to grapple with that reality because on paper — under the Colorado River Compact — the Upper Basin states are entitled to use more water.

Cox, Utah's governor, identified construction of the controversial Lake Powell pipeline in southwest Utah as one of his priorities over his first 500 days in office [despite strong opposition from surrounding states](#), and the Legislature is considering a [bill that would plow more resources into the project](#). Colorado's Front Range cities also are exploring proposals to develop more long-range diversions.

"There's always been this perception that there is more water to be had and we're going to go get it from the

Colorado River Basin," Kuhn said.

"The water is just not there," he said, but the notion that there is more water to develop "is going to be a very difficult concept to put to bed."

'Balance the water budget'

Demand management could help, Kuhn said, but what's needed is a concerted effort among cities like Denver and Salt Lake City that divert water out of the Colorado River Basin for municipal use to establish conservation programs like those adopted in Phoenix and Las Vegas.

Annual water use in Las Vegas was reduced from 144 gallons to 124 gallons per person, per day between 2008 and 2018, [according to the Las Vegas Sun](#). The average Utahn, by contrast, [used 242 gallons per day in 2018](#).

"We can survive with existing uses and people can conserve," he said. "There's a lot of room for conservation, but I think what speculation opens up — what the WAMs open up — is ... support for building new [diversion] projects."

For John Weisheit, conservation director of the Moab-based nonprofit [Living Rivers](#), initiatives to cut back on water are too often used for more growth, despite declining runoff.

"What really has to happen is you have to balance the water budget," he said. "All they're doing is moving water from this place to the other. They call it savings, but it's not; it's just transferring uses. You take out a lawn in Las Vegas and then they build 10 more houses. Where are the savings?"

Weisheit, who has also advocated for the decommissioning of Glen Canyon Dam, doesn't think drought contingency plans will fundamentally alter the trend.

"We knew the Colorado River was going to run out of water 30 years ago," he said, adding if hedge funds step into the vacuum and offer a new approach, it is only a "consequence of [water managers'] inaction."

"This system is on its way to crash," Weisheit continued.

"The train is one mile away from going over the cliff."

Weisheit doesn't believe creating private markets will help the problem, but he thinks the question water managers should be asking themselves isn't whether private water markets will be a fix, but why they're being considered at all as a response to the crisis.

"The question isn't, should this happen? It's, why did this happen?" he said. "And, what are you going to do?"

Zak Podmore is a [Report for America](#) corps member and writes about conflict and change in San Juan County for The

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