Water flows along the All-American Canal near Winterhaven, California. The canal conveys water from the Colorado River into the Imperial Valley. California released a plan Jan. 31, detailing how western states reliant on the Colorado River could save more water, a day after it was the only state that didn’t sign a proposal agreed to by six states in the basin.

Gregory Bull, Associated Press
After more than seven months of fruitless negotiating over how to slash Colorado River water use, the seven river basin states’ officials will now talk some more.

But while water officials for both Arizona and its fellow basin states and their adversary, California, express hopes of finding a negotiated settlement, many outside water experts are a lot less optimistic.

Representatives of the Lower River Basin states of Arizona, Nevada and California say they’ll keep talking to try to resolve the major differences between competing proposals submitted last week, one by California and the other by all six other basin states including the Upper Basin of Colorado, New Mexico, Utah and Wyoming.

The U.S. Bureau of Reclamation is likely to keep talking with state officials as the agency analyzes the proposals. The bureau plans to release a draft environmental statement by March or April and adopt a final plan by August.

The state officials say they still hope to avoid having the bureau impose a solution, or going to court.

“We finished the first quarter. We didn’t reach agreement after the first quarter, but most of the game is still left,” said Bill Hasencamp, Colorado River program manager for Southern California’s Metropolitan Water District, adding, “It’s Super Bowl season and the Super Bowl is in Arizona.”
For the last round of seven-state talks, “we went to Denver last week with the goal of reaching a seven-state consensus; it was a bitter pill to swallow that we didn’t do that,” he said.

State officials will continue “to try to close the gap as much as we can,” said Arizona Department of Water Resources Director Tom Buschatzke. “We may get all the way there. We may not. We should never be predisposed to a particular outcome. You never know what can be a catalyst for success.”

But only three of 10 outside experts interviewed by the Arizona Daily Star said they believe the states can settle their differences without litigation.

Four said said they think litigation is likely or will be difficult to avoid. Three others said they weren’t sure — “50-50, could go either way,” said one, University of New Mexico water researcher John Fleck.

“My hunch is litigation because there are such consequential interests at stake,” said James Salzman, an environmental law professor at UCLA and the University of California at Santa Barbara. “We are currently in a game of chicken, waiting on California and the federal government to make their next move. If that results in everyone being content, then litigation is unnecessary. I’m an optimist, but the path to that seems narrow indeed.”

While there’s always hope the two sides can reach a settlement, their heavily conflicting proposals don’t suggest they’re close, said Sarah Porter, director of Arizona State University’s Kyl Center for Water Policy. Even a seven-state agreement wouldn’t rule out litigation, because that doesn’t mean all the water users in the states would agree to it, Porter said.

An irrigation district operating along the river may not go along with an agreement if it cuts into its historic priority rights for water, she said.
“These folks know the consequences of not being able to work together. The collective power, value and long-term sustainability of the Colorado River Basin is more important than fighting. Will they push and shove and bluster and threaten? Absolutely,” Wegner said. “This is a chess game on at least three levels — that is where the power of talking and dialogue and yes, data and science, play important roles.”
Sharon Megdal, director of the University of Arizona Water Resources Research Center, said she thinks the odds of avoiding court are good.

“This is too big to fail. It’s like the banks. We can’t fail. We have to face up to reality and get into some equilibrium (between water use and supply) and it’s going to involve something different than what we’ve been doing,” Megdal said.

**Obstacles to settlement**

The problem is that California is poles apart from the six other basin states in how to achieve goals for the river.

They all want to keep Lakes Mead and Powell from falling below 1,000 feet and 3,500 feet, respectively.
The proposals aim to save almost an identical amount of water — nearly 2 million acre-feet beyond 1.375 million the states committed to saving in previous agreements. To put that figure in context, the Central Arizona Project delivers about a million acre-feet of river water a year.

All state officials agree the reservoirs could be virtually useless in a few years without quick action to stem the gap between water supply and demand. Both proposals seek computer modeling from Reclamation to analyze their impacts on the river and the general environment.

“That’s amazing progress from last summer, when none of those things were agreed to,” said John Entsminger, the Southern Nevada Water Authority’s general manager.

But the six states besides California want to achieve most water use curbs by determining how much each Lower Basin state and Mexico contributes to evaporation, seepage and other water losses. Such calculations have only been done for the Upper Basin states.

That proposal sticks California with the largest share of water cuts, since California controls the largest share of river water.

The six-state proposal “gives us room to keep talking to California, to try to come up with something. It also could end up that California could adopt the six-state proposal; it leaves several different paths forward,” Buschatzke said. “It’s going to be difficult to come up with an agreement with California. I’m committed to trying my best to make this happen.

“Perhaps when and if Reclamation shares its alternative, that can be a catalyst,” he added. “Their draft EIS (Environmental Impact Statement), when it’s published ... that could be a catalyst.”

California says the evaporation-counting method would overturn a century’s worth of river water rights that have been treated as precedent-setting. Its proposal bases many of its water use cuts on those historic priorities, determined by laws,
regulations, court actions and other legal tools that comprise the Law of the River. This method clearly favors California, whose farmers along the river have water rights dating back a century or more. By contrast, the 336-mile-long Central Arizona Project canal was authorized barely 50 years ago — with a provision giving California first priority to river water during shortages.

“For over 20 years, Metropolitan (Water District) has met the challenge of reducing our use of Colorado River water, and we are committed to doing more now,” said its general manager Adel Hagekhalil. “But we must do it in a way that does not harm half of the people who rely on the river — the 19 million people of Southern California.”

Having the bureau do computer modeling of the impacts can give the states space to negotiate an acceptable solution, Hasencamp said.

When a draft environmental report comes out, “The hope is the seven states can come together, use maybe parts of the six-state proposal, parts of the California proposal and parts of the Reclamation proposal to build a preferred alternative,” he said.

**Opportunities for compromise**

Elizabeth Koebele, a University of Nevada-Reno political science professor, sees a lot of possibility for compromise despite the distance separating the states.

“I think having numbers on the table is more helpful than having to guess what the other side may propose in the future,” Koebele said. “We actually have something concrete to negotiate from ... Everyone seems to realize that there’s a lot of room for discussions, changes in position. Those aspects make me feel optimistic.”

A possible step on the road to compromise is deciding how far the reservoirs must fall before some of the steepest cuts in water deliveries occur, Fleck said.

The six-state proposal starts with a 1.5 million acre-foot annual cut when Lake Mead drops below 1,090 feet, a level it reached more than a decade ago. California’s proposal doesn’t cut any water use at Mead beyond the first million acre-feet a year
until it falls to 1,025 feet. The cuts don’t reach 1.5 million acre-feet until Mead falls below 1,015 feet.

“There’s a middle ground between these two positions,” Fleck said.

**Evaporation tougher to solve**

The matter of counting evaporation losses is much stickier.

The Southern Nevada Water Authority used computer modeling to estimate the Lower Basin, below Glen Canyon Dam, loses about 10% of its historical water supply to evaporation, seepage and other causes.

The authority did this analysis so it would science-based, tied to the amount of water actually leaving the system, Entsminger said. “This is physical reality. Whatever solution we come up with should be reality based.”

The Bureau of Reclamation has avoided dealing with this issue since 1956 when it built Glen Canyon Dam, Wegner noted.

“If the (Reclamation) commissioner wanted to get hardball about it, she should just do it and apportion the losses. Would California be pissed? Yeah,” Wegner said of Commissioner Camille Touton. “Of all the states, the one with the biggest room to give up water, it’s California.

“It’s just we’re in a new paradigm now in how they manage a diminishing supply. The 1.5 million is a scientific wild ass guess Nevada came up with. The first thing Interior should do is ask the question, ‘Is that a reliable number?’” Wegner said. “It may be less — it may be more. They should do this through a technical review ... by Interior, or parcel it out to some other group, use the National Academy of Sciences, to give themselves scientific cover.”

But author-researcher Eric Kuhn said he’s not sure compromise can be found on this issue. One outcome of the prolonged Arizona v. California legal dispute over river rights in the 1960s — a dispute that otherwise was won by Arizona — was that a
special master in the case classified evaporation as a limitation on the water supply, not on water use — an approach Kuhn said legally favors California and predominantly hurts users with lesser priorities such as Arizona.

“After losing Arizona v. California, it’s going to take a lot of give on California’s part” to come to compromise on evaporation, said Kuhn, a former Colorado water district general manager.

Fleck agreed that evaporation losses must be accounted for, but added you can cut the same amount of water “without calling it an evaporation cut. The bottom line is we’ve gotta release less from Lake Mead.

“In the past we’ve avoided these conflicts by letting everyone take more water. We can’t do that anymore. We’ve gotta confront the reality that the allocations are out of whack and fix them.”

**Litigation might spur action, some say**

Typically, many observers say litigation must be avoided because it’s more divisive than having opposing parties settle issues through collaboration. There’s also a concern litigation could seriously delay action on the river as reservoir levels keep falling.

But law professor Rhett Larson and water researcher Kathryn Sorensen, both of Arizona State University, say that in this case, litigation could prove helpful in reaching an ultimate settlement.

“I’m optimistic that litigation will catalyze a settlement mainly because litigation does two things,” Larson said. “It creates a structure for us to talk to each other and share information. Second, if you don’t come up with an agreement, you’ll have to sit there and pay lawyers. The nice thing about litigation, it actually makes it costly to hold out.”
“The reality is that what we doing now isn’t working. We have two proposals, fairly far apart. We can’t keep doing the same thing over and over again, having deadlines go by without consequences.”

Litigation doesn’t mean the parties have all failed, added Sorensen, a senior research fellow at the Kyl Center.

“It’s another chapter; another opportunity for continued dialogue. Sometimes when you enter into litigation, the stakes get higher,” she said. “That can really help people focus on the points that are most worth fighting for, and the ones they can let fall by the wayside.”

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