

# Use It Or Lose It!

## North Dakota's Opportunity to Stake its Claim for Missouri River Water

One year ago, the Colorado River reached nearly historic low flows, putting domestic, industrial and irrigation water supplies at peril throughout California, Wyoming, Nevada, Arizona, Utah, New Mexico, Colorado, tribal nations, and Mexico. The Colorado River provides a water supply to 40 million people, so the drought and low water levels in the Colorado River sounded the alarm to both state and federal leaders in those states.

Ironically, despite having a century of state-to-state legal agreements, water compacts and legislative acts addressing various rights to Colorado River water, the reality of who gets water in dire times has little to do with what was agreed to on paper over the past century. Political machines engage, leaving water security as a topic to be wrangled in the halls of Congress, the White House and frequently the court system.

While the Colorado River is thousands of miles from North Dakota, the lessons being learned in the

Southwest should not go unnoticed. North Dakota will inevitably find itself in a similar defensive posture, trying to optimize and protect its right to use the Missouri River. In fact, North Dakota has defended lawsuits from Missouri almost continuously since 2002 over its right to use Missouri River water for the Northwest Area Water Supply Project (NAWS) and the Red River Valley Water Supply Project (RRVWSP). While no one can predict the climatic conditions in the coming decades, the Federal RRVWSP Environmental Impact Statement predicted a 1930s-type drought in North Dakota by 2050, so we may find ourselves in a similar situation sooner than later.

Water leaders must strategically position the state in the best defensive posture for the inevitable water wars to come, since many water users on the Colorado River are eyeing the Missouri River as an option to solve their water crisis. It should come as no surprise, since the Missouri River is the longest river in the country, with a drainage basin comprising one-sixth of the continent, including 10 states, two Canadian provinces and 25 Native American reservations.

With six dams, the Missouri River contains the largest system of reservoirs in the country, making it a natural option for drought-stricken states seeking to supplement

their water supplies. Large water supply projects in eastern and western South Dakota are in the planning stages. The Bureau of Reclamation studied the feasibility of building a 90-inch diameter pipeline to bring Missouri River water to Denver, Colorado, communities and users on the Colorado River. The Kansas Aqueduct Project seeks to import Missouri River water to recharge the declining Ogallala Aquifer. California and Arizona have discussed partnering on a 1,000-mile pipeline to supplement their water needs with Missouri River water. Certainly, these infrastructure projects would be expensive, but given the Congressional voting power held by the southwestern states, federally subsidized studies seeking options are not out of the question.

North Dakota communities rely heavily on the Missouri River for water needs throughout the state. The Southwest Water Authority delivers Missouri River water to Dickinson and other southwest North Dakota communities. The Western Area Water Supply Authority pipes Missouri River water throughout the Bakken region in northwest North Dakota. After 17 years of litigation between 2002-2019, NAWS is moving forward, and will ultimately bring treated water to Minot and a wide network of cities and rural water systems in north-central North Dakota. From 2020 through summer 2023, Garrison Diversion successfully defended a lawsuit and appeal brought by Missouri to halt the Red River Valley Water Supply Project, which will bring Missouri River water to areas of central and eastern North Dakota that include almost 50 percent of the state's population. North Dakota water leaders, legislators and communities have invested heavily in water projects to put Missouri River water to beneficial use within the state. These types of critical investments in new infrastructure need to continue, building out the system to provide water to all North Dakota communities, as well as providing a readily available, reliable water source for new economic development initiatives crucial to the state's future.



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In order to position the state as a leader in oil and gas production, ag processing, manufacturing, hydrogen, etc., ample sources of water are needed to feed those industries. Once overt pressure begins on Missouri River states to conserve water, we may find we have hit a glass ceiling for the total water use North Dakota is allowed to take from the Missouri River. If the Missouri River becomes depleted or if southwestern states achieve a Missouri River diversion to supplement the Colorado River system, a few legal remedies exist that ultimately set limits on the volume of water each state can appropriate, as has been done with the Colorado River. Given the extended time it takes to plan and build projects, North Dakota leaders would be well advised to implement a strategy now to maximize its future water appropriation should the dire situation in the southwest be repeated in the Missouri River basin. At that point, North Dakota's attention may turn to what conservation measures or use restrictions can be put in place to make the most of the water we are entitled to take off the Missouri River. North Dakota leaders would be well advised to develop and expand water projects sooner rather than later to raise the ceiling for the amount water being put to beneficial use now. We may need to live with that amount of water withdrawals into the future once the Missouri River experiences pressure.

North Dakota water projects are funded by oil extraction taxes, which flow to the Resources Trust Fund. The Department of Water Resources administers these funds for the benefit of water projects across the state. The State Legacy Fund balance, also funded by oil taxes, should reach \$9 billion in 2024. The Legacy Fund balance escalated quickly as legislators expended funds conservatively, which should be applauded. That said, I can think of no better legacy to leave to future generations than to invest in efforts to put as much water to beneficial use as possible to optimize the amount of water North Dakotans are able to protect in future drought conditions.

Granted, this article contemplates doomsday scenarios that may never come to fruition. But what if they do? Given the time it takes to plan, approve and build projects, now is the time to invest in the expansion of water systems



to deliver municipal, rural and industrial water to rural communities in the state. Now is the time to invest in the Red River Valley Water Supply Project infrastructure in a way that will make it affordable, not just for the larger cities, but also for small systems and rural communities so they, too, can participate and reserve sufficient water capacity for future growth and economic development. Now is the time to invest in a water supply that will spark future development of oil, gas,

hydrogen, ag-related and other industries throughout the state. Now is the time to invest in the development and expansion of irrigation systems to prop up agricultural production. If not now, the ability to expand our use of Missouri River water may evaporate if drought conditions continue.

As a final note, consider the positions of Arizona, Colorado and California today, lobbying for billions of federal dollars to explore potential projects to meet their realistic concerns about future water security. If these states had the Missouri River flowing through them, coupled with a \$9 billion Legacy Fund for the benefit of future generations, I suspect there would be aggressive campaigns to put that surface water to beneficial use while preserving or recharging groundwater resources as much as possible to use as a backup water supply. With the current push from these arid states to tap the Missouri River to solve their water scarcity issues, North Dakota must do more than just wait to play defense when conflict arises. Frankly, the arid southwest states have a lot more votes in Congress than the Missouri River upper basin states, so any Congressional solutions discussed may not be negotiated in North Dakota's favor. As such, an aggressive strategic plan to put as much water as possible to beneficial use throughout the state would be the best way to optimize and protect a water supply for future generations. This is a clear case of "use it or lose it."

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