

# Unprecedented drought conditions across Western US fuel wildfires and water disputes

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**16 June 2021**

The wildfire season has arrived in the Western United States and once again revealed the glaring increase in drought conditions throughout the region. Experts predict that temperatures and blazes this year will likely surpass all-time records set last year. The National Weather Service (NWS) has recorded skyrocketing temperatures in Phoenix, Arizona, and Las Vegas, Nevada, which have reached 116 degrees Fahrenheit and 111 degrees Fahrenheit, respectively.

Several other areas in the American West set new temperature records, with Salt Lake City hitting 107 degrees, a record that has only been reached twice before in 147 years of records, while Denver broke its seasonal record on June 15 of 97 degrees to reach 101 degrees. Direct exposure to such temperatures is unbearable to humans after just minutes.

According to the June 8, 2021, US Drought Monitor, a project run by the University of Nebraska-Lincoln, moderate to exceptional drought covers 37.8 percent of the US, an increase from last week's 36.5 percent. The worst drought categories (extreme to exceptional drought) increased from 17.5 percent last week to 17.8 percent. Abnormal dryness and drought are currently affecting over 143 million people across the continental US and Puerto Rico—about 45.9 percent of the population.

As shown by the long-term forecasts for temperature and precipitation produced by NWS and the National Oceanic and Atmospheric Administration (NOAA), drought conditions are likely to continue to become far worse, especially in the West and Southwest US. Record high temperatures and very low precipitation in the region create the conditions for wildfires to burst out of control during the entire year, well into the fall and winter of 2021. Sudden thunderstorms that move in after an area has been burned over by wildfire can create destructive mudslides and landslides that can destroy homes, farms and entire neighborhoods.

The National Interagency Fire Center (NIFC) reported Wednesday that “Currently, 33 large fires have burned more than 360,000 acres in 10 states. Eleven new large fires were reported yesterday. Wildland fire activity increased in the Northern Rockies and Rocky Mountain areas where seven new large fires were reported. More than half of the 33 uncontained large fires are in the Southwest and Great Basin areas.”

Current and predicted weather conditions will likely further fan new flames. According to the NIFC, the strong high pressure weather front that remains over Arizona, Colorado, New Mexico and Utah, the northern Rockies into Canada, and upper air moving into the Pacific Northwest and northern Rockies, combined with very hot, record-setting temperatures in the Southwest, southern California, and the northern Rockies, are creating an extremely dangerous situation that will exacerbate wildfires in the region.

Moreover, isolated dry thunderstorms are expected for the Southwest and southern Colorado. Lightning strikes during these extreme conditions can set off a massive wildfire that would be difficult to contain.

Wildfires this season have already been dangerous enough to force evacuations. On May 31, a wind-driven wildfire 20 miles north of the town of Beatty, Oregon, prompted a Level 2 evacuation order for residents of Sycan Forest Estates after growing to 650 acres. It was the second southern Oregon fire to prompt evacuation alerts during Memorial Day weekend.

The decades-long growth of drought conditions has also sparked numerous struggles over water shortages across the Western United States. The ongoing dispute over the Klamath Project, an irrigation project in the Klamath Basin of Oregon/California developed by the United States Bureau of Reclamation, which started in 1906, is one of many examples.

The most recent water conflict in the Klamath Basin stretches back to at least 2001. Two years ago, on November 14, 2019, the US Court of Appeals for the Federal Circuit affirmed the Court of Federal Claims decision in *Baley v. United States*, denying compensation to Klamath Project irrigators for a claim that the US government seized their water rights in 2001.

The decision hinged on recognition of the senior tribal water rights of the Klamath Tribes and other downriver Klamath Basin tribes. In western water law, the “first in time, first in right” principle applies. The 1908 Supreme Court decision in *Winters v. United States* affirmed this doctrine, ruling that since tribes were living in the region long before any other current water users and were using the water for fishing and other purposes, the tribes had “senior” water rights. All other rights, including agribusiness, are “junior” to those rights.

In the long-running Klamath Basin case, Klamath Project

irrigators sought nearly \$30 million in compensation from the US government for the Bureau of Reclamation's curtailment of water deliveries during a severe drought in 2001. The water restrictions were made to meet Endangered Species Act requirements and fulfill tribal trust responsibilities. Among other things, the irrigators claimed that tribal water rights were not relevant to the Bureau of Reclamation's water management decisions. In late 2017, the US Court of Claims confirmed that the Klamath Tribes and downriver Klamath Basin tribes have senior water rights over other water interests in the Klamath Basin. Thus, the Project irrigators were not entitled to receive any Project water in 2001.

In appealing the case, the irrigators disputed whether the tribal water rights included all of the water withheld from delivery in 2001. But with this ruling, the US Court of Appeals declared, once again, that the Klamath Tribes' water rights are the most senior in the region, with a priority date of time immemorial, and that the senior tribal water rights entitle the tribes, at the least, to the amount of water needed to meet Endangered Species Act requirements. The court also affirmed that the Klamath Tribes' water rights include waters in Upper Klamath Lake that secure the Tribes' treaty fishing rights.

The Tribes have lived in the Klamath Basin for millennia. In an 1864 treaty, they relinquished millions of acres of their homeland to the US federal government in exchange for guarantees, including protections for the tribal right to harvest fish in their streams and lakes. There is no expiration date on those treaty promises, and they cement the Tribes' top water rights in the region.

On April 12, the *Seattle Times* reported that "For the first time in 20 years, it's possible that the 1,400 irrigators who have farmed for generations on 225,000 acres (91,000 hectares) of reclaimed farmland will get no water at all—or so little that farming wouldn't be worth it. Several tribes in Oregon and California are equally desperate for water to sustain threatened and endangered species of fish central to their heritage."

The report added, "The competing demands over a vanishing natural resource foreshadow a difficult and tense summer in a region where farmers, conservationists and tribes have engaged in years of legal battles over who has greater rights to an ever-dwindling water supply. Two of the tribes, the Klamath and Yurok, hold treaties guaranteeing the protection of their fisheries."

The Bureau of Reclamation announced on April 14 that farmers who rely on the massive irrigation project spanning the Oregon-California border will get 8 percent of the deliveries they need amid a severe drought. The Yurok Tribe, one of the tribes affected by the water decision, said in a press statement that even with the slashes to farmers' water, they were facing a "catastrophic loss" of salmon this year.

"The Yurok Tribe is suffering significant economic damage on top of the extreme cultural and social impacts of failing fish runs," said tribal Vice Chairman Frankie Myers.

Jay Weiner, an attorney for the Klamath Tribes, said the tribe was pursuing legal action over water releases that will impact fish and accused the federal government of precipitating the crisis by mismanaging water in the basin for decades. He said, "What we're seeing with climate change increasingly—year after year after year—is that there is not enough water to go around. This crisis should not come as a surprise to anyone."

The Klamath Tribes sued the Bureau of Reclamation on Tuesday, April 13 to ensure minimum water levels in Upper Klamath Lake for the sucker fish and asked for a temporary restraining order from the court. That order, if granted, would mean less water flowing down the Klamath River for the coho salmon that are critical to the Yurok Tribe. The tribe is already documenting a proliferation of worms that carry a bacteria fatal to salmon in the lower river because of historically low water levels.

The Klamath Tribes said in a statement after filing their lawsuit that it was "beyond repugnant" that the mismanagement of the ecosystem in the basin forced them to court, potentially jeopardizing a fish key to another tribe's heritage.

Other water shortage problems are occurring with surface and groundwater that have been building for decades and are exacerbated by legal constraints in addition to long-term drought and excessive withdrawals. The Ogallala Aquifer, which spans eight states under the high plains from South Dakota to New Mexico, is being depleted far faster than it is recharged by rain and snow.

In a bizarre case, Texas recently sued the state of New Mexico for monetary payment for the loss of water from evaporation of water stored in a New Mexico reservoir before it was delivered to Texas through the Rio Grande. The US Supreme Court denied Texas' demand.

The solution, however, to a lack of needed water, is not competition between small farmers and native tribes, which the capitalist profit system creates and expands. By treating natural resources as property, the capitalist system divorces those resources from human needs and cuts off those resources in times of natural scarcity. What is needed is a rational, scientifically planned approach to water usage across the continent and globally to fight off the immense dangers of drought, wildfire, water shortages, and human displacement.



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