

State of Arizona
House of Representatives
Fifty-third Legislature
First Regular Session
2017

HOUSE JOINT RESOLUTION 2002

A JOINT RESOLUTION

APPROVING FORBEARANCE BY THE STATE OF ARIZONA, ACTING THROUGH THE DIRECTOR OF WATER RESOURCES FOR CERTAIN INTENTIONALLY CREATED SURPLUS ON THE COLORADO RIVER ARISING OUT OF COOPERATIVE PROJECTS IN MEXICO.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Whereas, the State of Arizona maintains a sovereign interest in the
2 water of the Colorado river, represented by the contract between the
3 United States of America and the State of Arizona that was executed
4 February 24, 1944 and ratified by the legislature in Laws 1944, chapter 4;
5 and

6 Whereas, the State of Arizona's rights in the Colorado river were
7 further confirmed by the decree of the United States Supreme Court in the
8 matter of Arizona v. California, including the right to divert 2.8 million
9 acre-feet of Colorado river water for consumptive use in the State of
10 Arizona in normal years, plus forty-six percent of any surplus water made
11 available by the secretary of the interior under the terms of the decree;
12 and

13 Whereas, the secretary of the interior exercises authority with
14 respect to the management of the Colorado river dams and reservoirs
15 pursuant to the Boulder canyon project act of 1928, the Colorado river
16 project storage act of 1956 and the Colorado river basin project act of
17 1968 and other acts amendatory or supplementary thereto; and

18 Whereas, the secretary of the interior exercises the authority to
19 declare surplus conditions in the lower Colorado river mainstream and to
20 make quantities of surplus water available to Colorado river water
21 contractors under the terms of the decree in Arizona v. California; and

22 Whereas, on December 13, 2007, the secretary of the interior signed
23 the Record of Decision; Colorado River Interim Guidelines for Lower Basin
24 Shortages and the Coordinated Operations for Lake Powell and Lake Mead,
25 which provides for a concept known as intentionally created surplus, in
26 which a state can supplement the lower Colorado river mainstream and then
27 divert additional lower Colorado river water as surplus; and

28 Whereas, the international boundary and water commission is
29 considering adopting a minute entry that, among other things, would allow
30 Colorado river entitlement holders in Arizona, California and Nevada to
31 form partnerships with Mexico for the purpose of supplementing the lower
32 Colorado river mainstream to create intentionally created surplus; and

33 Whereas, the secretary of the interior must adopt supplemental
34 guidelines to allow Colorado river entitlement holders in Arizona,
35 California and Nevada to create intentionally created surplus through
36 projects located in Mexico; and

37 Whereas, diversion of the intentionally created surplus must be
38 consistent with the decree in Arizona v. California, necessitating a
39 forbearance of rights to intentionally created surplus water among lower
40 division states; and

41 Whereas, the State of Arizona recognizes that benefits to the
42 Colorado river mainstream accrue to Arizona water users from the
43 supplementing of river supplies through intentionally created surplus, and
44 no Arizona water user will be adversely affected by Arizona's forbearance

1 of a portion of the intentionally created surplus added to the Colorado
2 river mainstream; and

3 Whereas, the effectiveness of such forbearance agreements is
4 dependent on approval by the Arizona legislature by concurrent resolution
5 under section 45-106, Arizona Revised Statutes; and

6 Whereas, the State of Arizona must act both through the Arizona
7 legislature and the governor by this joint resolution to forbear the
8 exercise of a right accruing to the benefit of the state under the 1944
9 Colorado river water contract and the decree in Arizona v. California; and

10 Whereas, it is of critical importance to the State of Arizona to
11 protect its interests in the water of the Colorado river because of the
12 importance of the water supply to the agricultural, industrial, municipal
13 and tribal water use sectors in this state; and

14 Whereas, it is in the best interest of the State of Arizona to
15 authorize the director of the department of water resources to forbear its
16 rights to use a portion of intentionally created surplus water arising out
17 of projects in Mexico that further protect Arizona's interests in the
18 water of the Colorado river under the conditions set forth in this joint
19 resolution.

20 Therefore

21 Be it resolved by the legislature of the State of Arizona:

22 1. That, notwithstanding any other provision of law, the State of
23 Arizona, by and through the director of the department of water resources,
24 may forbear its rights to the use of certain quantities of intentionally
25 created surplus from the Colorado river that are created through
26 partnerships between Colorado river entitlement holders in Arizona,
27 California or Nevada and Mexico and that would otherwise be available for
28 use within the State of Arizona under the 1944 Colorado river water
29 contract and the decree in Arizona v. California, if the commissioners of
30 the international boundary and water commission execute a minute to the
31 1944 Treaty between the United States of America and Mexico, in which
32 Mexico agrees to reduce its deliveries of Colorado river water in the same
33 years that deliveries of Colorado river water to Arizona are reduced due
34 to shortage and which allows Colorado river entitlement holders in
35 Arizona, California and Nevada to form partnerships with Mexico for the
36 purpose of supplementing the lower Colorado river mainstream to create
37 intentionally created surplus.

38 2. That, notwithstanding any other provision of law, the director
39 of the department of water resources, on behalf of the State of Arizona,
40 is authorized to enter into an agreement in substantially the same form as
41 the 2017 lower Colorado river basin forbearance agreement for binational
42 intentionally created surplus to forbear the State of Arizona's rights to
43 certain quantities of intentionally created surplus from the Colorado
44 river that would otherwise be available for use in the State of Arizona

1 under the 1944 Colorado river water contract and the decree in Arizona v.
2 California.

3 3. That if the director of the department of water resources finds
4 that Arizona water users will not be adversely affected by the forbearance
5 by Arizona of its right to additional intentionally created surplus, the
6 director of the department of water resources, on behalf of the State of
7 Arizona, is authorized to enter into additional agreements with lower
8 Colorado river contractors to forbear additional intentionally created
9 surplus, in substantially the same form and with substantially the same
10 conditions as in the agreement authorized in the foregoing paragraph.

11 4. That the director of the department of water resources promptly
12 notify the president of the senate, the speaker of the house of
13 representatives and the governor and provide a written report to the
14 senate committee on natural resources, energy and water and to the house
15 of representatives committee on land, agriculture and rural affairs, or
16 the successor committees, on any agreement entered into pursuant to the
17 authority granted by this joint resolution.

18 5. That the authority granted to the director of the department of
19 water resources to enter into an agreement pursuant to this joint
20 resolution expires on December 31, 2017.

21 6. That this action is being taken in response to unique and
22 extraordinary circumstances.

APPROVED BY THE GOVERNOR MARCH 1, 2017.

PASSED BY THE HOUSE FEBRUARY 21, 2017.

PASSED BY THE SENATE FEBRUARY 28, 2017.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 2, 2017.