

REFERENCE TITLE: Colorado river drought contingency plan..

State of Arizona
House of Representatives
Fifty-fourth Legislature
First Regular Session
2019

HJR 2002

Introduced by
Representatives Bowers: Fernandez, Gabaldón, Griffin

A JOINT RESOLUTION

AUTHORIZING DROUGHT CONTINGENCY PLAN AGREEMENTS FOR THE COLORADO RIVER.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Section 1. Resolution

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

9 Whereas, the United States is enjoined from apportioning more than
10 4.4 million acre-feet of Colorado River water for use in California if
11 insufficient mainstream water is available for release to satisfy 7.5
12 million acre-feet of annual consumptive use in Arizona, California and
13 Nevada; and

14 Whereas, the secretary of the interior exercises authority with
15 respect to the management of the Colorado River dams and reservoirs
16 pursuant to the Boulder canyon project act of 1928, the Colorado River
17 project storage act of 1956 and the Colorado River basin project act of
18 1968 and other acts amendatory or supplementary thereto; and

19 Whereas, section 602(a) of the Colorado River basin project act of
20 1968 limits the discretion of the secretary of the interior regarding the
21 storage of water in and the release of water from Lake Powell; and

22 Whereas, the secretary of the interior exercises the authority to
23 declare surplus and shortage conditions in the lower Colorado River
24 mainstream, to reduce deliveries of water in the lower basin and to make
25 quantities of surplus water available to Colorado River water contractors
26 under the terms of the decree in Arizona v. California; and

27 Whereas, on December 13, 2007, the secretary of the interior signed
28 the Record of Decision; Colorado River Interim Guidelines for Lower Basin
29 Shortages and the Coordinated Operations for Lake Powell and Lake Mead,
30 effective for an interim period; and

31 Whereas, actual operating experience gained during the
32 implementation of the December 13, 2007 Record of Decision, and emerging
33 scientific information regarding the increasing variability and
34 anticipated decline in Colorado River flow volumes demonstrate that those
35 relying on water from the Colorado River system face increased individual
36 and collective risk of temporary or prolonged reductions of unknown
37 quantity to water supplies, with associated adverse impacts on the
38 society, environment and economy of the Colorado River basin; and

39 Whereas, additional actions beyond those contemplated in the
40 December 13, 2007 Record of Decision are necessary to reduce the
41 likelihood of reaching critical elevations in Lake Powell and Lake Mead;
42 and

43 Whereas, representatives of the seven Colorado River basin states
44 and water entitlement holders within those states have developed drought
45 contingency plans for the upper basin and the lower basin; and

1 Whereas, the lower basin drought contingency plan would require
2 additional water delivery reductions in the lower basin beyond those
3 provided for in the December 13, 2007 Record of Decision, including new
4 water delivery reductions applicable to California; and

5 Whereas, Mexico and the United States have agreed that on the
6 effectiveness of a drought contingency plan in the lower basin, Mexico
7 will implement a binational water scarcity contingency plan in parity and
8 alignment with the lower basin drought contingency plan; and

9 Whereas, the State of Arizona recognizes that the drought
10 contingency plans for the upper basin and lower basin, in combination with
11 the binational water scarcity contingency plan in Mexico, are likely to
12 have a beneficial effect on the Colorado River system; and

13 Whereas, the State of Arizona recognizes that the provisions of the
14 drought contingency plans for the upper basin and lower basin, in
15 combination with the provisions of the binational water scarcity
16 contingency plan in Mexico, are likely to improve the sustainability of
17 the Colorado River system and reduce the risks of temporary or prolonged
18 reductions to water supplies of unknown quantity to Arizona users of
19 Colorado River water pursuant to long-term entitlements or contracts; and

20 Whereas, the drought contingency plan for the lower basin will be
21 implemented through the Lower Basin Drought Contingency Plan Agreement;
22 and

23 Whereas, implementation of certain provisions of the drought
24 contingency plan for the lower basin will require modification of the 2007
25 Lower Colorado River Basin Intentionally Created Surplus Agreement, which
26 modification is provided for in the Lower Basin Drought Contingency Plan
27 Agreement; and

28 Whereas, the drought contingency plans for the lower basin and the
29 upper basin will be implemented through the Agreement Concerning Colorado
30 River Drought Contingency Management and Operations; and

31 Whereas, the effectiveness of the drought contingency plan
32 agreements requires waiver by the state under certain conditions of:

33 1. The state's rights and claims under the decree of the United
34 States Supreme Court in the matter of Arizona v. California as necessary
35 to allow additional flexibility for the creation, accrual and delivery of
36 intentionally created surplus, beyond those provided for in the
37 December 13, 2007 Record of Decision, including allowing the delivery of
38 more than 4.4 million acre-feet to California in a year and the delivery
39 of intentionally created surplus to contractors in Arizona, California and
40 Nevada during shortage conditions; and

41 2. The state's rights and claims under Section 602(a) of the
42 Colorado River basin project act of 1968, as necessary to implement the
43 upper basin drought contingency plan; and

44 Whereas, the drought contingency plans will be dependent on the
45 enactment of federal legislation directing and authorizing the secretary

1 of the interior to execute and implement the drought contingency plan
2 agreements; and

3 Whereas, the effectiveness of the drought contingency plan
4 agreements is dependent on approval by the Arizona legislature by
5 resolution 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 or claim accruing to the benefit of the state under
9 the 1944 Colorado River water contract and the decree in Arizona v.
10 California; and

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

15 Whereas, on June 28, 2018, the department of water resources and
16 central Arizona water conservation district jointly convened a steering
17 committee and public process to discuss and recommend how to adopt and
18 implement the lower basin drought contingency plan in a way that is
19 acceptable to Arizona water users. The steering committee included over
20 forty delegates representing Arizona Colorado River water users, central
21 Arizona project water users, cities, agriculture, developers, tribes,
22 legislative leaders and other stakeholders. On January 8, 2019, the
23 steering committee achieved general consensus on a plan to implement the
24 lower basin drought contingency plan in Arizona.

25 Whereas, it is in the best interest of the State of Arizona to
26 authorize the director of the department of water resources to forbear its
27 rights and claims as described above for the benefit of the implementation
28 of the drought contingency plans in the upper basin and the lower basin
29 and the binational water scarcity contingency plan in Mexico under the
30 conditions set forth in this joint resolution.

31 Therefore

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

33 1. That, notwithstanding any other law, the State of Arizona, by
34 and through the director of the department of water resources, may forbear
35 its rights and claims as described above by entering agreements in
36 substantial conformance with the draft Agreement Concerning Colorado River
37 Drought Contingency Management and Operations and the draft Lower Basin
38 Drought Contingency Plan Agreement if the director of water resources
39 makes both of the following findings:

40 (a) Federal legislation is enacted directing the secretary of the
41 interior to execute and implement agreements in substantial conformance
42 with the draft Agreement Concerning Colorado River Drought Contingency
43 Management and Operations and the draft Lower Basin Drought Contingency
44 Plan Agreement.

1 (b) All parties other than the United States and the State of
2 Arizona have authorized the execution of agreements in substantial
3 conformance with the draft Agreement Concerning Colorado River Drought
4 Contingency Management and Operations and the draft Lower Basin Drought
5 Contingency Plan Agreement.

6 2. That, notwithstanding any other law, the State of Arizona, by
7 and through the director of the department of water resources, may enter
8 into an agreement in substantial conformance with the draft Drought
9 Contingency Plan Contributions and Intentionally Created Surplus
10 Accumulation Limits Sharing Agreement. The authority granted to the
11 director of the department of water resources pursuant to this provision
12 does not extend to any future agreements for the sharing of Drought
13 Contingency Plan contributions and separate resolutions are required
14 pursuant to section 45-106, Arizona Revised Statutes.

15 3. That the director of the department of water resources shall
16 promptly notify the president of the senate, the speaker of the house of
17 representatives and the governor and provide a written report to the
18 senate committee on water and agriculture and the house of representatives
19 committee on natural resources, energy and water, or to their successor
20 committees, on any agreement entered into pursuant to the authority
21 granted by this joint resolution.

22 4. That the authority granted to the director of the department of
23 water resources to enter into any agreement pursuant to this joint
24 resolution expires on August 31, 2019.

25 5. That this action is being taken in response to unique and
26 extraordinary circumstances.

27 Sec. 2. Emergency

28 This act is an emergency measure that is necessary to preserve the
29 public peace, health or safety and is operative immediately as provided by
30 law.