

State of Arizona  
Senate  
Fifty-fourth Legislature  
First Regular Session  
2019

## **SENATE JOINT RESOLUTION 1001**

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.

APPROVED BY THE GOVERNOR JANUARY 31, 2019.

PASSED BY THE HOUSE JANUARY 31, 2019.

PASSED BY THE SENATE JANUARY 31, 2019.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JANUARY 31, 2019.