

Managing Arizona's Water Supplies



25th Anniversary
Arizona Water Law
CLE International

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Lower Basin Drought Contingency Plan

The Need:

Risks of Lake Mead falling below 1025' doubled between development of 2007 Interim Guidelines and 2013

The Goal:

Reduce the probability of reaching critical elevations that would cause draconian reductions in water deliveries

The Strategy:

- Avoid and protect against the potential for Lake Mead to decline to elevations below 1,020 feet by collectively taking additional actions
- Includes a commitment by the U.S. to work to create or conserve Colorado River system water
- Recovery of additional reduction volumes would be allowed under certain conditions
- Incentivize ICS creation/storage
 - *Agree that ICS may be withdrawn at lower Lake Mead elevations, similar to ICMA arrangements under Minute 319*
 - *Modification of the evaporative losses currently applied to ICS*
- Agreement between Arizona, California, Nevada & Reclamation
- ADWR Director needs Arizona Legislature authority to sign (Pursuant to A.R.S. 45-106)
- Will seek Congressional authorization of Lower Basin DCP

Drought Contingency Plan Plus

The Need:

To partially mitigate the impact on Arizona water users from the additional reductions resulting from the inter-state DCP

The Goal:

Reduce Probability of First Tier Lake Mead Shortage

The Strategy:

- Targets a buffer at elevation 1,080 feet
- Makes projections of Lake Mead's end of year elevations using 24-Month study data
- Determines required conservation (based on August 24-Month Study)
- Achieves conservation through Arizona system conservation & ICS
- Continues to monitor hydrologic conditions & adjust as necessary

WATER SECURITY MEANS BOUNDLESS OPPORTUNITY FOR AZ



Arizona circa 2017

- ✓ Economically Arizona is getting stronger
- ✓ Our water supply is an integral part of Arizona's growing economy
- ✓ Arizona has the most far-sighted set of water-management laws in the country
- ✓ Most of those laws are over three decades old
- ✓ If Arizona is to remain a national leader at water resources management it must continually review and update its water-management programs and policies



Water Solutions Conversation

In the Spring of 2017, the Governor's Office held a series of meetings with business and water leaders across the State.

- They were asked what water issues need attention
- Most of the responses focused on two areas:
 - 1. Colorado River**
 - *Important that the State speak with “one voice” on water issues to fulfill the ADWR Director’s statutory role representing the State on Colorado River Issues*
 - 2. Groundwater**



Governor's Water Discussions

- Governor Ducey is leading the conversation
- Governor instructed Chief of Staff Kirk Adams & Policy Advisor Hunter Moore to work with ADWR
- The process is examining the current status of Arizona's laws, policies and practices to determine where improvements should be made
- Timeframe is generational
- The emphasis: reforms that benefit the State as a whole
- Launched on June 15, 2017

Process

- **Plenary (Governor serves as chairman)**
 - 21 Members
 - Broad representation across entire state (business, agriculture, industry, cities, counties, irrigation districts, water providers, NGOs and legislative leaders)
- **Work Groups (Chief of Staff serves as chairman)**
 - Colorado River (28 members + support staff)
 - Groundwater (31 members + support staff)
- **Targeted completion - Fall 2017**
- **Membership and attendance is by invitation only**



Groundwater Work Group

- Extend mandatory metering and reporting of water use statewide
- Seek flexibility within the Assured Water Supply Program
- Expand existing water management tools e.g., Irrigation Non-Expansion Areas, drought pumping exemption, flexible IGFRs
- Post 2025 AMA management plans

Colorado River Work Group

- **Addressing the health of Lake Mead**
 - Tools: DCP, DCP Plus, System Conservation Program, and Tribal ICS
- **Strengthening the State of Arizona as the “One Voice” on Colorado River matters**
 - Clarifying the role of the State vis a vis CAWCD
 - ADWR Director represents the State of Arizona on Colorado River matters, A.R.S. §§ 45-105(A)(9), 45-106 & 45-107
 - A.R.S. § 48-3717(B): “Nothing contained in this chapter shall be construed as authorizing the district [CAWCD] to determine how the central Arizona project water is to be allocated among water users of this state”
- **Updating the role of the Arizona Water Banking Authority**

Strengthening the State of Arizona as the “One Voice” on Colorado River matters

Increase transparency and accountability of CAWCD (the operator of the CAP) through periodic performance audits by the State Auditor General

- Audits conducted by the Auditor General could evaluate whether CAWCD is exceeding its statutory authorities and serving its legislative purpose, as well as whether CAWCD is properly addressing its stakeholders' concerns
- The Auditor General's Office can seek the input of stakeholders and relevant experts to determine areas of major concern and tailor the audit accordingly.
- Current law requires an audit of CAWCD to be completed by December 31, 2017 (special audit)

Strengthening the State of Arizona as the “One Voice” on Colorado River matters

Ensuring water purposely conserved to benefit Lake Mead stays in Lake Mead

- Establish a **voluntary** Colorado River Conservation Program, which includes intra-state forbearance
- Several Arizona Contractors have contracts for Fifth Priority (unused Arizona entitlement) and Sixth Priority (surplus) Colorado River water and can request delivery of water conserved
- Existing Arizona contracts with the Secretary for Colorado River water are subject to the terms of the 1944 Arizona Contract with the Secretary *and* subject to Arizona water law
- The Legislature would authorize the Director of ADWR to forbear on behalf of the State pursuant to the State’s 1944 Contract with the Secretary of the Interior for Colorado River water

Strengthening the State of Arizona as the “One Voice” on Colorado River matters (Cont.)

Confirm by State legislation that CAWCD does not have sovereign immunity under the United States Constitution

- CAWCD claimed 11th Amendment sovereign immunity as “an arm of the State” relying on *Alaska Cargo Transport, Inc. v. Alaska Railroad Corp.*, 5 F.3d 378 (9th Cir. 1993)
- *Gressett v. CAWCD*, 9th Circuit Ct. Appeals, No. 15-15892
- *Ak-Chin Indian Community v. CAWCD*, US District Court for Arizona, No. CV-17-00918-PHX-DGC
- Sovereign immunity could have serious and sweeping implications for contractors and sub-contractors

Strengthening the State of Arizona as the “One Voice” on Colorado River matters (Cont.)

“I am not at all sure that one ever avoids the obvious reality that Arizona is, to a greater or lesser degree, selling water to California.”

- CAWCD outside legal counsel, in a memo dated May 12, 2015

Require ADWR Director approval regarding interstate agreements contemplated by CAWCD

- ✓ CAWCD has entered into agreements that have implications beyond the CAP service area
- ✓ The “poster child” is CAWCD’s attempted sale of water to California
- ✓ AWBA is the sole entity authorized to engage in interstate water banking, subject to strict conditions, A.R.S. § 45-2471

Agencies at odds over deal to send AZ water to California during drought



Posted by: *Rachel Leingang* on 2017-08-18

The Central Arizona Project tried to strike a deal to sell water to California for \$18 million during the 2015 drought, which the state claims underscores the need for reforms to the water delivery system’s

Role of the Arizona Water Banking Authority

- Use of the 4-Cent Tax for AWBA Purposes
 - Clarify AWBA access to the tax levied by the CAWCD in A.R.S. § 48-3715.03
- Expand the authorities of AWBA to accomplish recovery and firming
 - Current construct relies heavily on CAWCD as a recovery agent
 - Because AWBA credits are non-project water, expanding the AWBA recovery authority creates opportunities for more flexibility and cost savings

Goals of Governor's Water Conversations

- ✓ Improve water management in the State
- ✓ Clarify role of the State vis a vis CAWCD
 - *Speak with one voice strengthening Arizona's interaction with Reclamation & other states*
 - *Actions with statewide implications are within the purview of the State*



“
If there's one thing Arizona is the best in
the nation at - it's water.

~ Governor Doug Ducey

Questions?

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**PROTECTING
ARIZONA'S WATER SUPPLIES
for ITS NEXT CENTURY**