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HOUSE MEMORIAL 18

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

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A MEMORIAL

SUPPORTING EFFORTS TO OBTAIN FOURTEEN THOUSAND ACRE-FEET OF NEW WATER FOR THE STATE OF NEW MEXICO.

WHEREAS, between 1952 and 1955, New Mexico, Nevada, Utah and the federal government, on behalf of a number of tribes, became parties in the longest running water rights litigation, *Arizona vs. California*, 376 U.S. 340 (1963); and

WHEREAS, a special master was tasked with awarding divisions of the lower Colorado river water rights between the parties in that litigation; and

WHEREAS, based on the "present uses" that could be documented at the time, the special master awarded Arizona users two million eight hundred thousand acre-feet of water annually. The upper Gila river users in New Mexico were awarded maximums of fifteen thousand eight hundred ninety-five

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1 acre-feet of water annually and the San Francisco river users
2 in New Mexico were awarded maximums of four thousand one
3 hundred twelve acre-feet of water annually; and

4 WHEREAS, New Mexico argued in that litigation that due to
5 the Great Depression, drought and World War II, many of the
6 agricultural lands previously in use in New Mexico were fallow
7 but should be considered in allocating water rights; and

8 WHEREAS, in the 1963 United States congressional hearings
9 for consideration of legislation for the central Arizona
10 project, the concept was introduced to allow increases of
11 present water uses in New Mexico through the use of downstream
12 exchanges of deliveries of Colorado river water to the senior
13 Indian water right holders; and

14 WHEREAS, on April 6, 1964, New Mexico Governor Jack
15 Campbell transmitted a letter to Senator Clinton P. Anderson
16 reinforcing an earlier interstate stream commission
17 recommendation that the senator "not support S. 1658 unless
18 certain amendments were made"; and

19 WHEREAS, New Mexico State Engineer Steve Reynolds
20 requested an additional forty-six thousand acre-feet of water
21 for New Mexico at the hearing for the central Arizona project
22 as a part of the federal Colorado River Basin Project Act; and

23 WHEREAS, on May 12, 1965, a memorandum was adopted
24 amending the federal Colorado River Basin Project Act allowing
25 for construction of Hooker dam and reservoir with an initial

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1 capacity of ninety-eight thousand acre-feet and an additional
2 eighteen thousand acre-feet of New Mexico consumptive water use
3 "only to the extent possible without economic injury or cost to
4 present downstream users"; and

5 WHEREAS, the federal Colorado River Basin Project Act is
6 the same act that authorized the Animas-La Plata project for
7 development of water in northwestern New Mexico and
8 southwestern Colorado; and

9 WHEREAS, as an outgrowth of the 1992 southwest regional
10 water planning process, the southwest New Mexico water study
11 group was formed; and

12 WHEREAS, the drafting of the successor Gila-San Francisco
13 water commission joint powers agreement was commenced early in
14 2005 and was finalized in 2007; and

15 WHEREAS, the Gila-San Francisco water commission initiated
16 planning for conservation of water projects and designs for a
17 New Mexico central Arizona project that resulted in
18 recommendations for water conservation projects that the
19 interstate stream commission eventually funded at nine million
20 one hundred thousand dollars (\$9,100,000); and

21 WHEREAS, the federal Arizona Water Settlements Act amended
22 the federal Colorado River Basin Project Act by striking
23 Paragraph (1) and inserting: "(1) In the operation of the
24 Central Arizona Project, the Secretary shall offer to contract
25 with water users in the State of New Mexico, with the approval

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1 of its Interstate Stream Commission, or with the State of New
2 Mexico, through its Interstate Stream Commission, for water
3 from the Gila River, its tributaries and underground water
4 sources in amounts that will permit consumptive use of water in
5 New Mexico of not to exceed an annual average in any period of
6 10 consecutive years of 14,000 acre-feet, including reservoir
7 evaporation, over and above the consumptive uses provided for
8 by article IV of the decree of the Supreme Court of the United
9 States in *Arizona vs. California* (376 U.S. 340)"; and

10 WHEREAS, the result of these changes reduced the amount of
11 water immediately available for New Mexico by four thousand
12 acre-feet and extinguished an additional thirty thousand acre-
13 feet that would have been made available to New Mexico if the
14 Colorado river were augmented from an outside source at some
15 future time; and

16 WHEREAS, what State Engineer Reynolds and Senator Anderson
17 fought so hard for, to make whole the loss of water rights
18 through the decree in the *Arizona vs. California* litigation,
19 was lost through the federal Arizona Water Settlements Act; and

20 WHEREAS, the consumptive use and forbearance agreement was
21 made a part of the federal Arizona Water Settlements Act to
22 ensure that no downstream Arizona water users are affected by
23 diversion in New Mexico and to eliminate environmental impacts
24 due to reduction of in-stream flows; and

25 WHEREAS, the goals of the consumptive use and forbearance

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1 agreement are accomplished through strict requirements that
2 water diverted and stored only occurs during high-flood flows;
3 and

4 WHEREAS, the fourteen thousand acre-feet of water made
5 available to New Mexico through the Arizona Water Settlements
6 Act is the only new water available for the state; and

7 WHEREAS, using the low current cost of an acre-foot of
8 water, the additional fourteen thousand acre-feet represent a
9 one-hundred-forty-million-dollar (\$140,000,000) asset; and

10 WHEREAS, depending on how water is used, the value of
11 water can differ significantly; and

12 WHEREAS, California farmers pay an average of seventy
13 dollars (\$70.00) per acre-foot for water to irrigate crops, but
14 the value of that acre-foot is two million four hundred
15 thousand dollars (\$2,400,000) if it were bottled; and

16 WHEREAS, according to the conclusion of a 2014 university
17 of Arizona study, "... if society is to respond appropriately
18 to water challenges, it is important to understand the
19 implications of limited current supplies and growing demands.
20 Action today is needed to forestall shocks, either in price
21 spikes resulting from the need for supplies that are expensive
22 to acquire, or the loss of reliability resulting from failure
23 to secure additional supplies. Better to appreciate the value
24 of water now than regret our lack of understanding in the
25 future."; and

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1 WHEREAS, based on the construction costs for comparable
2 diversion and storage projects around the nation, it is
3 estimated that the price per acre-foot for the additional
4 fourteen thousand acre-feet would be around two thousand five
5 hundred dollars (\$2,500) and approximately one hundred fifty-
6 seven dollars (\$157) per acre-foot for delivery of exchange
7 water to downstream Arizona users; and

8 WHEREAS, all proposed projects shall undergo a full
9 environmental impact analysis and threatened and endangered
10 species analysis; and

11 WHEREAS, the total amount received by New Mexico pursuant
12 to the federal Arizona Water Settlements Act and deposited into
13 the New Mexico unit fund since January 2012 is sixty-five
14 million eight hundred thousand dollars (\$65,800,000); as of
15 December 26, 2018, the cumulative total expenditures for fiscal
16 years 2012 through 2018 is fourteen million eight hundred
17 thirty thousand dollars (\$14,830,000); the current fund balance
18 is fifty-three million nine hundred sixty thousand dollars
19 (\$53,960,000); and there will be three more payments of nine
20 million forty thousand dollars (\$9,040,000); and

21 WHEREAS, an additional sixty-two million dollars
22 (\$62,000,000) for diversions and storage projects will be lost
23 if New Mexico does not go forward with construction of the New
24 Mexico unit of the central Arizona project by 2019 based on a
25 United States secretary of the interior record of decision; and

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