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WATER IN THE WEST

The Colorado River: The Seven-State Drought Contingency Plan and Pathway to Adoption

This policy brief is a follow-up to our October 2018 paper, *The Colorado River and Arizona's Role in Preserving it for Generations to Come*. That paper covered the governance, history and increasingly arid conditions leading up to the *Drought Contingency Plan (DCP)* for the seven Western States that rely on Colorado River water. In this policy brief, we summarize the agreements within the *DCP* and outline the various layers of approval required to activate the plan.





WATER

FROM THE FOUNDATION

Time is short for Arizona to complete its part of this seven-state process and to forge in-state agreements to manage individual water users' reductions.

Arizona is the only state not ready to sign and implement the *DCP*, a plan nearly four years in the making.

The U.S. Bureau of Reclamation in the Department of the Interior has given Arizona until January 31, 2019 to sign an agreement or it will step in to manage our Colorado River water affairs for us. This means policy makers will have to hit the ground running in the 2019 legislative session to render the necessary authorization to sign the *DCP* in less than two weeks.

It is our hope at the Arizona Chamber Foundation that this overview supports the work of legislators and informs all Arizonans about what led to these agreements, boiling down pages of complicated water legalese to the bottom line.

While periods of drought are normal in recorded Colorado River history, the drought that began in 1999 has caused severe impacts on the flow of the river and the level of its reservoirs.

Sophisticated modeling tells us that the impact the drought is having on the Colorado River water supply for the seven states it supports is unlikely to relent any time soon. This requires action to protect our reservoir, Lake Mead, and to keep as much water in the lake as possible to preserve the remaining supply. In examining the agreements presented here, *DCP* facilitates these goals.

A handwritten signature in black ink, reading "Emily Anne Gullickson".

Emily Anne Gullickson
Chief Executive Officer
Arizona Chamber Foundation
January 10, 2019

COLORADO RIVER BASIN DROUGHT CONTINGENCY PLANS (DCP)

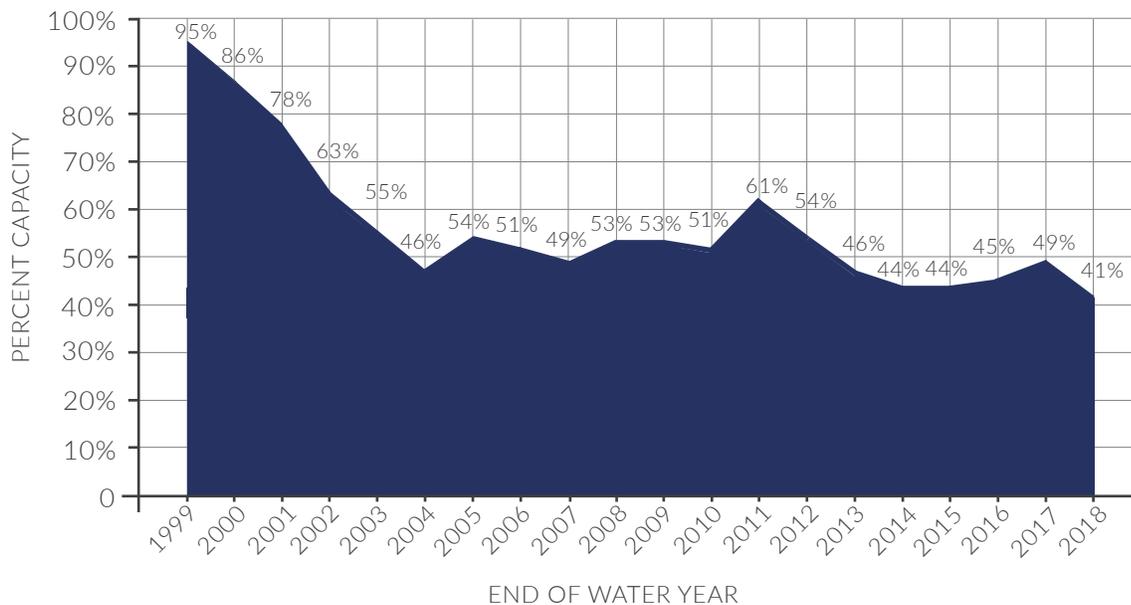
Water from the Colorado River is divided between upper basin states, lower basin states and Mexico, as outlined in the 1922 *Colorado River Compact* and the 1944 *Mexican Water Treaty*.

The agreements allocate 7.5 million acre-feet (maf) per year to the Lower Basin states (Arizona, California, Nevada) and 7.5 maf per year to the Upper Basin states (Colorado, New Mexico, Utah, Wyoming). Mexico is allocated 1.5 maf per year. Lake Mead is the primary reservoir for the Lower Basin water and Lake Powell for the Upper Basin supply. Because Lake Powell delivers water to Lake Mead, the basin states' futures are interdependent.

Detailed management plans to address shortages in supply and operation of reservoirs during periods of extreme drought were adopted in 2007 and are in effect until 2026. This package of agreements is known as the 2007 *Interim Guidelines*.

However, recent projections for Colorado River flows indicate that additional measures are required to address historic drought conditions expected to be worse than accounted for in 2007, which will further erode Colorado River flows to the reservoirs that deliver the states' supply.

LAKE POWELL AND LAKE MEAD PERCENT CAPACITY



Source: Arizona Lower Basin Drought Contingency Plan Steering Committee Meeting #6, October 10, 2018

A critical goal of the *DCP* is to keep Lake Mead from dipping below elevation 1020. In 2007, there was a 10 percent chance of this occurring. That risk is now at 40 percent. Below elevation 1020, the Lake will only be at 22 percent capacity and no longer have enough water to meet its minimum commitments to the Lower Basin states.

Representatives from the federal government and the seven Colorado River Basin states have collaborated since 2015 to

develop these additional measures—collectively referred to as the Drought Contingency Plan or *DCP*. The five *DCP* agreements and related agreements with Mexico are an overlay to the existing *2007 Interim Guidelines*.

While some provisions of the *2007 Guidelines* are modified, the *DCP* primarily adds to the storage and reduction provisions. Allowing states to store water in Lake Mead they have a right to, and would put to beneficial use, is a fundamental component of these agreements that protects rights to water and creates opportunities to leave water in the lake to keep it from dipping below elevation 1020.

Two of the five agreements that make up the *DCP* are specific to the Lower Basin states, two agreements are specific to the Upper Basin states and a Companion Agreement ties the other agreements together.*

The federal government and each state's designee(s) must sign the relevant *DCP* documents.

COMPANION AGREEMENT

The *Agreement Concerning Colorado River Drought Contingency Management and Operations*, also known as the *Companion Agreement*, serves as an umbrella agreement for the *DCP*. It establishes a commitment by the seven basin states (the Parties) to support the *Upper Basin* and the *Lower Basin Drought Contingency Plans* and the steps necessary to implement those plans.

The Parties also agree to seek federal legislation to implement the *DCP* and the provisions of related agreements that include Mexico. In addition, the Parties agree to follow a consultative approach to resolve, by mutual agreement, any concerns or claims prior to pursuing judicial or administrative claims against another Party and to confer if reservoir levels continue to fall outside of the stated triggers.

LOWER BASIN DCP AGREEMENTS

The *Lower Basin Drought Contingency Plan Agreement (LBDCP)* requires the Secretary of the Interior to implement *Lower Basin Drought Contingency Operations (LBOPS)*, take steps to develop 100,000 acre-feet (af) of Colorado River system water, and to seek funding mechanisms for Lower Basin drought response actions.

The *LBOPS* agreement does the following:

- Governs the operation of Lake Mead.
- Prescribes triggers for annual contributions to Lake Mead or reductions in deliveries for Arizona, California and Nevada.
- Outlines creation and use of *Intentionally Created Surplus (ICS)* in Lake Mead. *ICS* allows states to store water in Lake Mead that they have a right to and would otherwise use. Under certain circumstances, this water may be recaptured for later use.
- Commits the Parties to take additional measures if needed to prevent the elevation of Lake Mead from going below elevation 1020.

PROPOSED CONTRIBUTIONS AND REDUCTIONS

| PROJECTED LAKE MEAD ELEVATION (Feet msl) | ARIZONA | NEVADA (Thousand Acre-Feet) | CALIFORNIA | TOTAL |
|---|---------|--------------------------------|------------|-------|
| At or below 1,090 and above 1,075* | 192 | 8 | 0 | 200 |
| At or below 1,075 and at or above 1,050 | 512 | 21 | 0 | 533 |
| Below 1,050 and above 1,045 | 592 | 25 | 0 | 617 |
| At or below 1,045 and above 1,040 | 640 | 27 | 200 | 867 |
| At or below 1,040 and above 1,035 | 640 | 27 | 250 | 917 |
| At or below 1,035 and above 1,030 | 640 | 27 | 300 | 967 |
| At or below 1,030 and at or above 1,025 | 640 | 27 | 350 | 1,017 |
| Below 1,025 | 720 | 30 | 350 | 1,100 |

Source: Agreement Concerning Colorado River Drought Contingency Management and Operations, Final Review Draft. October 5, 2018.
 *Estimated Lake Mead water level on Jan 1, 2020.

UPPER BASIN DCP AGREEMENTS

The Upper Basin agreement addresses drought response operations to prevent Lake Powell from falling below target elevations and outlines criteria for four dams: Flaming Gorge, Aspinall, Navajo and Glen Canyon. It also allows the Parties to explore the feasibility of establishing an Upper Basin Demand Management Program to allow conservation and storage of water at Upper Basin reservoirs that have unfilled storage capacity.

RELATED AGREEMENTS

Minute 323 to the 1944 Mexican Water Treaty, approved September 2017, provides for Mexico to share in shortages and surpluses, using the same triggers identified for the United States in the 2007 Interim Guidelines. Minute 323 is effective through 2026.

Binational Water Scarcity Contingency Plan found in Section IV of Minute 323, outlines additional measures in the form of specific water savings from Mexico to protect Lake Mead elevations. The Binational Water Scarcity Contingency Plan becomes effective when the DCP is finalized.

THE ARIZONA FRAMEWORK: AN INTRASTATE AGREEMENT

Arizona interests have been working to develop a plan to manage how Arizona's reductions will be implemented. This collaboration of in-state partners has occurred primarily through the Lower Basin DCP Steering Committee, organized in June 2018. The goal is to develop a consensus agreement in order to finalize the *DCP* by January 31, 2019. The broad outlines of this agreement are being referred to as *The Arizona Framework*.

The Steering Committee has explored a number of options to mitigate, or ease the transition off Colorado River water, particularly for agricultural interests and others with existing rights to water who will be first to lose all or most of their Colorado River water as early as January 2020. Conservation, and funding for conservation and mitigation, are components of *The Arizona Framework* and the resulting in-state contracts and agreements that will have to be forged to implement *DCP*.

FINALIZING AGREEMENTS WITH A LOOMING DEADLINE

Arizona law requires the Arizona Department of Resources Director to receive approval from the legislature before signing any agreement involving the state's sovereign rights to water. This includes the *DCP*. Based on comments in public meetings regarding the *DCP*, support for a resolution is at least in part tied to legislators' assessment of *The Arizona Framework* and its treatment of impacted water users.

The Secretary of the Interior has given Arizona a deadline of January 31, 2019 to finalize the agreements and sign the *DCP*. If the deadline passes without agreements, the Secretary will take over management of Arizona's *DCP* process. Though they will ask all seven basin states for specific recommendations for the plan, control over the final product will transfer from Arizona to the federal government if the Legislature, water users and the State cannot come to final terms before January 31.

Should Arizona make the deadline and, as a result, the seven state *DCP* agreements are signed, one hurdle remains: federal legislation is required to implement the *DCP* and the related agreements with Mexico. However, with all seven states on board, congressional approval of a plan that has broad agreement and can avoid protracted litigation is expected to get the votes and signature necessary to finally make *DCP* a reality.

“ SHOULD ARIZONA MAKE
THE DEADLINE... ONE HURDLE
REMAINS: FEDERAL LEGISLATION
IS REQUIRED TO IMPLEMENT
THE DCP AND THE RELATED
AGREEMENTS WITH MEXICO. ”

RECOMMENDATION

While the changing state of Colorado River flows are unfortunate, controlling Arizona's response to these conditions in collaboration with our Western State neighbors ultimately makes more sense for our growing state than leaving it in the hands of the courts or federal agencies. Without the DCP, our claims to Colorado River water during times of shortage could be caught up in the courts for decades or managed from Washington D.C. Such uncertainty could be a drag on Arizona's historic economic resurgence.

Our one recommendation: Arizona must sign the Drought Contingency Plan.

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*This review references the draft DCP agreements of the U.S. Bureau of Reclamation *Upper and Lower Basin Drought Contingency Plans - Final Review Draft*. October 5, 2018.

ACKNOWLEDGMENTS

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Prepared by Arizona Chamber Foundation staff



The Arizona Chamber Foundation is a non-profit, objective educational and research foundation. We are committed to a non-partisan, research-driven approach that analyzes the issues impacting Arizona's economy.

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