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HOUSE MEMORIAL 18

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

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A MEMORIAL

SUPPORTING EFFORTS TO RESTORE WATER RIGHTS TO THE STATE OF NEW MEXICO.

WHEREAS, in 1952, New Mexico, Nevada, Utah and the federal government, on behalf of a number of tribes, intervened 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 two hundred thousand acre-feet of water annually, the upper Gila river users in New Mexico were awarded fifteen thousand eight hundred ninety-five acre-feet of water

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

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

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

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

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

24 WHEREAS, on May 12, 1965, a memorandum was adopted
25 amending the federal Colorado River Basin Project Act allowing

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

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

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

13 WHEREAS, the drafting of the successor Gila-San Francisco
14 water commission joint powers agreement was commenced early in
15 2005 and was finalized in 2007; and

16 WHEREAS, the Gila-San Francisco water commission initiated
17 planning for conservation of water projects and designs for a
18 New Mexico central Arizona project that resulted in
19 recommendations for water conservation projects that the
20 interstate stream commission eventually funded at nine million
21 two hundred thousand dollars (\$9,200,000); and

22 WHEREAS, one of the primary purposes of the federal
23 Arizona Water Settlements Act was to put into effect the
24 settlement of the Gila river Indian community claims to
25 additional water in Arizona; and

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1 WHEREAS, the federal Arizona Water Settlements Act amended
2 the federal Colorado River Basin Project Act by striking
3 Paragraph (1) and inserting: "(1) In the operation of the
4 Central Arizona Project, the Secretary shall offer to contract
5 with water users in the State of New Mexico, with the approval
6 of its Interstate Stream Commission, or with the State of New
7 Mexico, through its Interstate Stream Commission, for water
8 from the Gila River, its tributaries and underground water
9 sources in amounts that will permit consumptive use of water in
10 New Mexico of not to exceed an annual average in any period of
11 10 consecutive years of 14,000 acre-feet, including reservoir
12 evaporation, over and above the consumptive uses provided for
13 by article IV of the decree of the Supreme Court of the United
14 States in *Arizona vs. California* (376 U.S. 340)"; and

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

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

25 WHEREAS, the consumptive use and forbearance agreement was

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1 made a part of the federal Arizona Water Settlements Act to
2 ensure that no downstream Arizona water users are affected by
3 diversion in New Mexico and to eliminate environmental impacts
4 due to reduction of in-stream flows; and

5 WHEREAS, the goals of the consumptive use and forbearance
6 agreement are accomplished through strict requirements that
7 water diverted and stored only occurs during high-flood flows;
8 and

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

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

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

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

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1 of water now then regret our lack of understanding in the
2 future."; and

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

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

13 WHEREAS, the total amount received by New Mexico pursuant
14 to the federal Arizona Water Settlements Act and deposited into
15 the New Mexico unit fund since January 2012 was fifty-four
16 million two hundred forty thousand dollars (\$54,240,000); the
17 cumulative total expenditures for fiscal years 2012 through
18 2017 was twelve million six hundred forty thousand dollars
19 (\$12,640,000); interest earned on the fund balance was two
20 million five hundred thousand dollars (\$2,500,000); and the
21 current fund balance is forty-four million one hundred thousand
22 dollars (\$44,100,000); and

23 WHEREAS, an additional sixty million dollars (\$60,000,000)
24 for diversions and storage projects will be lost if New Mexico
25 does not go forward with construction of the New Mexico unit of

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1 the central Arizona project by 2019 based on a United States
2 secretary of the interior record of decision; and

3 WHEREAS, every acre-foot of additional water would be
4 available for purchase or lease in the southwest New Mexico
5 four-county area and would allow for bonding to complete future
6 storage and distribution systems; and

7 WHEREAS, the New Mexico central Arizona project entity has
8 also explored the storage and marketing of water to provide
9 funding for the future phases of federal Arizona Water
10 Settlements Act projects;

11 NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF
12 REPRESENTATIVES OF THE STATE OF NEW MEXICO that New Mexico
13 support the efforts of the New Mexico central Arizona project
14 entity to provide for water conservation projects and
15 additional consumptive storage and use of fourteen thousand
16 acre-feet of water annually; and

17 BE IT FURTHER RESOLVED that copies of this memorial be
18 transmitted to the United States secretary of the interior and
19 New Mexico's congressional delegation, governor and state
20 engineer.