

Attachment C to the Agreement Concerning Colorado River Drought Contingency Management and Operations (“Companion Agreement”)

PROPOSED LEGISLATION

SEC. ___ COLORADO RIVER BASIN DROUGHT CONTINGENCY PLANS

(a) Notwithstanding any other provision of law directly related to operation of the applicable Colorado River System reservoirs, upon execution of the March 19, 2019 versions of the Agreement Concerning Colorado River Drought Contingency Management and Operations and the agreements attached thereto as Attachments A1, A2 and B, by all of the non-federal parties thereto, the Secretary of the Interior shall, without delay, execute such agreements, and is directed and authorized to carry out the provisions of such agreements and operate applicable Colorado River System reservoirs accordingly; provided, that nothing in this section shall be construed or interpreted as precedent for the litigation of, or as altering, affecting, or being deemed as a congressional determination regarding, the water rights of the United States, any Indian tribe, band, or community, any state or political subdivision or district thereof, or any person.

Rationale for Proposed Legislation

This proposed legislation was developed by the seven Basin States, and water contractors within those states, working on a consensus-basis. Much like the Drought Contingency Plans (DCPs) themselves, it is the product of collaboration and compromise. The DCPs, when authorized by this proposed legislation, will enhance existing water management tools in order to address a looming water crisis in the Colorado River Basin. The seven-year term of the DCPs will also provide the opportunity for the Basin States, federal government and other key stakeholders to collaborate on a longer-term set of sustainable solutions for managing the Colorado River.

The proposed legislation is tailored to authorize and require the Secretary of the Interior to carry out the provisions of the DCPs, and to limit the Secretary’s authority to that which is necessary to carry out the flexible operational tools the states have developed. This legislation would grant no additional authority to the Secretary beyond congressional direction to implement the DCPs upon their execution by the parties. Furthermore, the proposed legislation and the DCP agreements themselves reserve and recognize each party’s existing rights and do not impact the rights of other water users or stakeholders with interests in the Colorado River.

To achieve compromise with regard to the proposed legislation, the Basin States, and water contractors within those states, had to assure that the DCPs respect the existing Law of the River, while providing for the flexibility found within the DCPs. For example, certain provisions of the Lower Basin DCP are inconsistent with some Parties’

interpretations of the Law of the River. Additionally, the Upper Basin DCP authorizes the ability to store water under an Upper Basin Demand Management Program should one be developed. To allow for full implementation of the DCPs, the proposed legislation requires their implementation notwithstanding any other provision of law directly related to operation of the applicable Colorado River System reservoirs. Accordingly, through that provision, existing laws will not preclude DCP implementation.

The Parties developed the DCPs with a clear recognition of the environmental considerations associated with operating the applicable Colorado River System reservoirs. For example, the impacts of additional reduced deliveries of water consistent with what will occur under the Lower Basin DCP were previously evaluated as part of the Environmental Impact Statement associated with the 2007 Record of Decision on "Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead," prepared pursuant to the National Environmental Policy Act (NEPA). Furthermore, the Upper Basin's Drought Response Operations Agreement expressly provides that the action contemplated to protect target elevations at Lake Powell will operate within the framework of existing NEPA and Endangered Species Act (ESA) compliance, and other listed federal and state laws and regulations, for each of the Initial Units of the Colorado River Storage Project (CRSP) Act. Additionally, the Authorization for Demand Management Storage and the creation of a process to potentially use such storage as an element of the Upper Basin DCP do not affect existing NEPA or ESA compliance for the CRSP Act Initial Units.

The DCPs must also be implemented without delay. Immediate implementation of the Lower Basin DCP would benefit the Lower Basin. The new operational flexibility created by the Lower Basin DCP will enable Lower Basin water contractors to put Intentionally Created Surplus into storage this year, rather than needing to draw it down, helping preserve the level of Lake Mead. Determinations regarding reservoir operations for water year 2020 will be made in August 2019. Timely implementation is important with regards to contributions by the Republic of Mexico. Those contributions are conditioned upon the effectiveness of the Lower Basin DCP and will require several months to effectuate, potentially precluding Mexico's participation in water year 2020 if the DCPs are not implemented by April 22, 2019. Moreover, implementation cannot begin until the agreements have been executed by all parties, which is predicated upon securing congressional legislation. It is the position of the Basin States, and water contractors within those states, that immediately enacting the proposed federal legislation and implementing the DCPs reduces the probability that Lakes Powell and Mead will decline to critically low elevations – which could occur as early as 2021 – and promotes both domestic and binational participation in drought contingency planning.