

The meeting was held at 10:00 a.m. on Tuesday, January 9, 2007, at the Clark County Commission Chambers, 500 South Grand Central Parkway, Las Vegas, Nevada.

COMMISSIONERS IN ATTENDANCE

Chairman	Richard W. Bunker
Vice Chairman	Jay D. Bingham
Commissioner	Ace I. Robison
Commissioner	Andrea Anderson
Commissioner	Marybel Batjer
Commissioner	Shari Buck

DEPUTY ATTORNEYS GENERAL

Senior Deputy Attorney General	Gerald A. López
Senior Deputy Attorney General	Jennifer Crandell

COMMISSION STAFF IN ATTENDANCE

Executive Director	George M. Caan
Energy Services Group Manager	Gail A. Bates
Division Chief, Finance and Administration	Douglas N. Beatty
Assistant Director for Engineering and Operations	Bob Reese
Hydropower Program Manager	Craig Pyper
Program Officer III	Jason Thiriot
Program Officer II	Lisa Ray
Natural Resource Specialist	Nicole Everett
Natural Resource Specialist	McClain Peterson
Senior Energy Accountant	Gail Benton
Office Manager	Judy Atwood
Administrative Assistant IV	Brenda Haymore
Administrative Assistant III	Janet Nuszbaum

OTHERS PRESENT; REPRESENTING

Boulder City, City of	Ned Shamo
Bunker & Associates	Melissa Trammell
Consultant	Sara Mason
James H. Davenport, LLC	James H. Davenport
Las Vegas Sun	Tony Cook
Lincoln County Power District No. 1	Mick Lloyd
Overton Power District No. 5	Delmar Latham
Overton Power District No. 5	Mendis Cooper
Piercy, Bowler, Taylor & Kern	Richard Bowler
Self	Myrna Williams
Southern Nevada Home Builders Association	Julene Haworth
Southern Nevada Water Authority	Sandra Reed Bottino

**COLORADO RIVER COMMISSION
OF NEVADA
MEETING OF JANUARY 9, 2007**

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The Colorado River Commission meeting was called to order by Chairman Bunker at 10:00 a.m. followed by the pledge of allegiance.

A. Conformance to Open Meeting Law.

Mr. Caan confirmed that the meeting was in compliance with the Open Meeting Law.

C. Selection of Vice Chairman.

NRS 538.111 provides that “at the first meeting of the commission in each calendar year, the commission shall select the vice chairman for the ensuing calendar year.”

Chairman Bunker nominated Jay Bingham as Vice Chairman. The motion was seconded by Commissioner Robison and approved by a unanimous vote. (Commissioner Bingham was not present for the vote)

D. Consideration of and possible action on Resolution 2007-1 commending Myrna Williams for her service to the Colorado River Commission.

Chairman Bunker said it is with sadness that this resolution is being introduced since it means Commissioner Williams is leaving.

Mr. Caan said Commissioner Williams has served on the Commission since 1999 and has served with distinction not only the Colorado River Commission, but the State of Nevada as a legislator and as a member of the Clark County Commission. He expressed his personal thanks to Commissioner Williams for all the experience she brought and shared with him that has been so beneficial in guiding the Commission. He also thanked her for her perseverance, positive attitude, energy, high morale and for her support in all the Commission does for the citizens of the State of Nevada.

Commissioner Bingham arrived at this time.

The Chairman and Commissioners each echoed Mr. Caan’s sentiments and wished Commissioner Williams well in her new endeavors.

Commissioner Williams thanked everyone for all that she had learned from them. She said her experience on the Commission has been terrific. Her favorite saying was, “from diversity comes solutions” and many solutions have been found. She warned the Commission it would be hearing from her on a big new project she is working on.

Commissioner Anderson moved to adopt Resolution 2007-1. The motion was approved unanimously.

A copy of Resolution 2007-1 is attached and made part of the minutes. (See Attachment A.)

B. Approval of minutes of the November 14, 2006, meeting.

Commissioner Bingham moved for approval of the minutes. The motion was approved by a unanimous vote.

E. Presentation of Colorado River Commission Annual Financial Report for Year ended June 30, 2006.

Richard Bowler, the Commission's external auditor, reported that the audit of the financial statements of the Colorado River Commission for the year ended June 30, 2006, was complete. There were no comments or findings that need to be reported to the Commission. He said he would be happy to answer any questions. There were none.

Commissioner Bingham moved to accept the audit report. The motion was approved by a unanimous vote.

Chairman Bunker expressed the thanks of the Commission to Mr. Bowler for his efforts on behalf of the Commission.

F. Consideration of and possible action to authorize the Chairman of the Colorado River Commission to execute an agreement between Arizona and Nevada parties regarding distribution of Colorado River water during shortage declared by the Secretary of the Interior.

Mr. Davenport, special counsel to the Commission, reminded the Commission that on June 15, 2005, the Secretary of the Interior noticed her intention to engage in a decision-making process pursuant to the National Environmental Policy Act, 42 U.S.C. §§ 4321 through 47, 70 Fed. Reg. 34794. The process was intended to develop Lower Basin shortage guidelines and explore management options for the coordinated operation of Lakes Powell and Mead. The process would culminate in a Record of Decision, to be published in December 2007, 70 Fed. Reg. 57322 (September 30, 2005). In response to this notice, the Governors' Representatives of the seven Colorado River Basin states began discussion of a common proposal to be made to the Secretary regarding shortage guidelines and reservoir management.

The existing practice of the seven Colorado River Basin states, although not specifically defined by federal or state statutes, is conducted in accordance with Section 602(b) of the 1968 Colorado River Basin Project Act, 43 U.S.C. § 1552(b), and the Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act. Those federal enactments contemplate that the Secretary of the Interior will consult with the "Governors' Representatives" of the seven states in the operation of Lakes Powell and Mead. Nevada's Governors' Representatives are the Chairman of the Colorado River Commission and the General Manager of the Southern Nevada Water Authority. Through this practice, the Governors' Representatives have in the past reached agreements among themselves and with the Secretary on various aspects of Colorado River reservoir operation.

Representatives of the seven states negotiated in earnest in the fall of 2005, and by February 3, 2006, forwarded a Proposal to the Secretary of the Interior recommending, among other things, the Lake

Mead elevation levels at which various reductions in water delivery should be accomplished in order to extend the probability of shortage and reduce the risk to the Upper Basin states that Lower Basin states would seek to compel delivery of Colorado River water at Lee Ferry based on Compact requirements. The Proposal recommended that, in years when the water level at Lake Mead is projected to be at or below elevation 1,075 ft. but at or above 1,050 ft. on January 1, a quantity of 400,000 acre-feet would not be delivered to the Lower Basin states and Mexico. In years when Lake Mead content is projected to be below elevation 1,050 ft. but at or above 1,025 ft., a quantity of 500,000 acre-feet would not be delivered to the Lower Basin states and Mexico. In years when Lake Mead content is projected to be below 1,025 ft., a quantity of 600,000 acre-feet would not be delivered to the Lower Basin states and Mexico. The United States would implement a shortage pursuant to Article 10 of the 1944 Treaty with Mexico in any year in which the Secretary had declared that a shortage condition exists pursuant to Art. II(B)(3) of the Decree in *Arizona v. California*. The total quantity of water that would not be delivered to Mexico would be based on Lower Basin water deliveries during normal water supply conditions. The states' recommendation proposes that Mexico bear 17 percent of any declared shortage. The Proposal provides that Arizona and Nevada would share shortages based on a shortage sharing agreement. Mr. Davenport provided a chart outlining the lake elevations and proposed shortage amounts. A copy of the chart is attached and made part of the minutes. (See Attachment B.)

Mr. Davenport reported that Arizona and Nevada parties have now reached an accord on that shortage sharing agreement, which is the first in a number of instruments that will be brought before the Commission over the coming months that relate to the process the Secretary initiated. The agreement is not intended to be an interstate compact, entered pursuant to the Compact Clause of the U.S. Constitution, Art I, Section 10, Cl. 3.

Mr. Davenport reviewed the following elements of the Arizona-Nevada Shortage-Sharing Agreement:

- A. Parties
 - 1. Arizona: Arizona Department of Water Resources, Arizona Water Banking Authority.
 - 2. Nevada: the Colorado River Commission of Nevada, Southern Nevada Water Authority.
- B. Term

Beginning when the Secretary issues a Record of Decision and ending on December 31, 2025 (through preparation of the 2026 Annual Operating Plan).
- C. Presumptions
 - 1. Secretary adopts States' recommended action.
 - 2. Mexico accepts shortage apportionment as proposed in the Seven States' Proposal.

D. Arizona-Nevada Shortage Apportionments

1. January 1 Lake Mead elevation at or below 1,075 ft. and at or above 1,050 ft.: Nevada's share of the shortage within the United States equals 13,000 acre-feet; Arizona's share of the shortage within the United States equals 320,000 acre-feet.
2. January 1 Lake Mead elevation below 1,050 ft. and at or above 1,025 ft.: Nevada's share of the shortage within the United States equals 17,000 acre-feet; Arizona's share of the shortage within the United States equals 400,000 acre-feet.
3. January 1 Lake Mead elevation below 1,025 ft.: Nevada's share of the shortage within the United States equals 20,000 acre-feet; Arizona's share of the shortage within the United States equals 480,000 acre-feet.
4. If Lower Basin total shortage volume exceeds 500,000 acre-feet within the United States, then the Parties will consult with the Secretary concerning shortage sharing beyond 500,000 acre-feet within the United States.
5. SNWA agrees to provide the sum of \$8,000,000 to the Arizona Water Banking Authority for the purpose of assisting Arizona in offsetting impacts from shortages that may occur during the term of the agreement. The Arizona Water Banking Authority will use the funds to purchase and/or store water supplies.

E. Nevada's Use of Tributary Conservation Water and Nevada State Groundwater During a Declared Shortage

Following the issuance of the Record of Decision, intra-Nevada delivered groundwater and water from the Virgin and Muddy Rivers may be delivered to the Southern Nevada Water Authority by the Secretary, during normal and surplus operating conditions, as though it had been stored in Lake Mead. During declared shortage operating conditions, Arizona will not object if the Secretary delivers to the Southern Nevada Water Authority any water that would otherwise have qualified for delivery as stored water during normal or surplus operating conditions, provided that the Secretary does not deliver more than 7.5 MAF of water to lower basin contractors when that operating condition is in effect.

Mr. Davenport explained that the Arizona-Nevada Shortage Sharing Agreement is part of an evolving and complex negotiation—one in which Nevada parties are expected to receive benefits under other agreements. For example, under the freestanding multiparty agreement involving state agencies and political subdivisions, including the Commission and the Southern Nevada Water Authority, from the several states addressing future commitments to the Secretary's action and agreement to consult before litigation, parties representing the seven states agree to diligently pursue interim water supplies, system augmentation, system efficiency and water enhancement projects within the Colorado River system and cooperatively pursue an interim water supply of at least a cumulative amount of 280,000 acre-feet for use in Nevada while long-term augmentation projects are being pursued. It is anticipated that this interim water supply will be made available in return for Nevada's funding of the Drop 2 Reservoir currently

proposed for construction by the Bureau of Reclamation. Annual recovery of this interim water supply by Nevada will not exceed 40,000 acre-feet.

Commissioner Bingham asked why California was exempt from shortage sharing.

Mr. Davenport explained that it has to do with the historic rights of the agricultural users in California—prior perfected rights which were in place before the Boulder Canyon Project Act was adopted and language in the 1968 Colorado River Basin Project Act which created the Central Arizona Project and made the CAP subordinate to California users and protected those uses.

Commissioner Batjer asked if there was any appetite at the federal level to re-evaluate the historic priorities in California.

Mr. Davenport said that everyone has agreed that if the circumstances become dire, the municipal use of water (to provide water to people) will have to take precedence.

Chairman Bunker assured the Commission that if circumstances become dire he would advocate changes. However, these negotiations are very delicate and can be easily upset by trying to cover all “worse case” scenarios. It is better to deal with the situation if or when it arises.

Mr. Davenport explained the relationship between this agreement and upcoming agreements and the benefits derived from each. On December 15, 2006, the Seven Basin States’ representatives completed negotiations on an agreement that assures that consultation will take place before one party sues another with respect to Colorado River issues. Also included in that agreement are system improvements such as SNWA’s financing of the federal project in the Drop 2 Reservoir. The agreement is on hold until the draft Environmental Impact Statement for the shortage guidelines and management options for the Lower Basin is issued in February 2007.

Commissioner Anderson asked if California was part of the negotiations on these other agreements.

Mr. Davenport said California was part of other negotiations—just not the shortage sharing agreement.

Mr. Davenport reported that another area of negotiation involved the strategy of storing water in Lake Mead developed under the concept of intentionally-created surplus. That is a device that creates extra water in the system which can be left in Lake Mead. Because it is arguably a surplus, it raises claims by parties other than the one that created the surplus. A forbearance agreement is being developed where parties that could have a claim to the water agree not to claim it. Progress on the negotiations is going well and an agreement is expected within a couple of weeks. The forbearance agreement will require some incidental agreements as well. Mr. Caan suggested developing a “road map” to show how all these agreements are inter-related. Mr. Davenport assured the Commission that he would develop that road map as soon as he was sure of where all the roads lead.

Commissioner Robison asked for a tutorial on the forbearance agreement. He said he was amazed at the progress in the negotiations between the seven Colorado River Basin states. When he first was appointed to the Commission, he felt he would not see any agreement in his lifetime. He is encouraged that all parties are now willing to negotiate.

Staff recommended that the Commission authorize the Chairman of the Commission to execute an agreement between Arizona and Nevada parties regarding distribution of Colorado River water during shortage.

Commissioner Bingham moved to approve staff's recommendation. The motion was approved unanimously.

G. Update on Nevada's Colorado River water consumption, the status of discussions regarding shortages criteria and other developments on the Colorado River.

McClain Peterson, Natural Resources Analyst for the Commission, provided a report on storage conditions on the Colorado River, water use in Nevada, drought conditions in the west and forecasted water use in the lower basin states. A copy of the report is attached and made part of the minutes. (See Attachment C.)

Mr. Caan said that with reference to other developments on the Colorado River, he would provide an update on hydropower issues. Mr. Caan reported on the Commission's federal hydropower resources, its customers, the hydropower unit's accomplishments for 2006, savings for CRC's customers, and statistics regarding SNWA and LVVWD supplemental power. A copy of the report is attached and made part of the minutes. (See Attachment D.)

Commissioner Bingham asked what percentage of SNWA's and LVVWD's loads are being supplied by the Commission.

Mrs. Bates said the Commission is supplying two-thirds of LVVWD's load and all but five percent of SNWA's load.

H. Comments and questions from the public and discussion. (No action may be taken on a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action will be taken.)

Chairman Bunker asked if there were any comments or questions from the public. There were none.

I. Comments and questions from the Commission members.

Commissioner Robison commented on a situation that relates to low water levels at Lake Mead. He said the National Park Service, responding to low lake levels, has arbitrarily, without any public comment process, made a decision to close the Overton Beach and Marina. It has given a 90-day notice to all residents and concessionaires. For years the Park Service has violated its own rules and has allowed people to live at Overton Beach by means of 30-day leases. Many of these residents, who have lived there for years, have spent significant amounts of money

improving their homes. They have now been given 90-days to leave with whatever they can take with them.

Commissioner Robison said he has received numerous calls asking for help. He said this matter impacts his community and the north end of Lake Mead. Even though the Colorado River Commission has no jurisdiction in this matter, he asked that staff research historical information to determine whether lake levels have been this low before, how long the low level events lasted and what actions, if any, were taken by the Park Service or agency with jurisdiction to deal with these low level events. He asked that the research be done in a timely manner so the information can be forwarded to Nevada's congressional delegation well before the March 31, 2007, deadline set by the Park Service.

Mr. Davenport cautioned that low lake levels affecting recreation are at times in conflict with water supply issues, so the Commission needs to be careful to follow its statutory directive.

Mr. Caan said he understood the request has to do with researching facts. Staff will do all it can to research those facts.

J. Selection of next possible meeting date.

The next meeting was tentatively scheduled for 10:00 a.m. on February 13, 2007, at the Clark County Commission Chambers.

K. Adjournment.

The meeting adjourned at 11:07 a.m.

George M. Caan, Executive Director

APPROVED:

Richard Bunker, Chairman