

The meeting was held at 1:00 p.m. on Tuesday, February 9, 2010, at the Clark County Commission Chambers, 500 South Grand Central Parkway, Las Vegas, Nevada.

**COMMISSIONERS IN ATTENDANCE**

Chairman  
Vice Chairman  
Commissioner  
Commissioner  
Commissioner  
Commissioner  
Commissioner

George F. Ogilvie III  
Ace I. Robison  
Marybel Batjer  
Tom Collins  
Duncan R. McCoy  
Berlyn D. Miller  
Lois Tarkanian

**DEPUTY ATTORNEYS GENERAL**

Senior Deputy Attorney General  
Senior Deputy Attorney General

Jennifer T. Crandell  
Ann C. Pongracz

**COMMISSION STAFF IN ATTENDANCE**

Executive Director  
Deputy Executive Director  
Chief of Finance and Administration  
Assistant Director, Engineering and Operations  
Hydropower Program Manager  
Manager, Natural Resources Group  
Natural Resource Analyst  
Natural Resource Analyst  
Senior Energy Accountant  
Office Manager  
Administrative Assistant III  
Administrative Assistant II

George M. Caan  
James D. Salo  
Douglas N. Beatty  
Robert Reese  
Craig N. Pyper  
McClain L. Peterson  
Esther Valle Rojas  
Jason Thiriot  
Gail L. Benton  
Judy K. Atwood  
Janet L. Nuszbaum  
Donna Banks

**OTHERS PRESENT; REPRESENTING**

Consultant  
Overton Power District No. 5  
Southern Nevada Water Authority

Sara A. Price, Esq.  
Delmar Leatham  
Kathy Flanagan

**COLORADO RIVER COMMISSION  
OF NEVADA  
MEETING OF FEBRUARY 9, 2010**

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The Colorado River Commission meeting was called to order by Chairman Ogilvie at 1:04 p.m. followed by the pledge of allegiance.

**A. Conformance to Open Meeting Law.**

Natural Resources Group Manager McClain L. Peterson confirmed that the meeting was in compliance with the Open Meeting Law.

**B. Approval of minutes of the January 12, 2010 meeting.**

**Commissioner McCoy moved for approval of the minutes of the January 12, 2010 meeting as written. The motion was seconded by Commissioner Robison and approved by a unanimous vote.**

**C. Consideration of and possible action to approve the Lower Colorado River Multi-Species Conservation Program Water Accounting Agreement among the Bureau of Reclamation, the Arizona Department of Water Resources, the Colorado River Board of California, the Southern Nevada Water Authority, and the Colorado River Commission of Nevada.**

Sara Price, consultant for the Commission, explained that the Lower Colorado River Multi-Species Conservation Program (Program) is a 50-year comprehensive, cooperative effort between a number of federal and nonfederal parties in California, Arizona and Nevada, including the Colorado River Commission of Nevada and the Southern Nevada Water Authority, to comply with the Endangered Species Act, and allow for ongoing and future water and power operations on the lower Colorado River. More specifically, it provides for the protection of 26 endangered and threatened species on the lower Colorado River through the creation and management of over 8,100 acres of riparian, marsh and backwater habitat. The Commission originally approved of the Program on March 8, 2005, and the United States Secretary of the Interior authorized it on April 2, 2005, through the execution of a Record of Decision. Since its authorization, the Bureau of Reclamation (Bureau), as Program Manager, has been actively implementing the Program by finding, creating and restoring native habitat along the lower Colorado River.

On March 30, 2009, Congress authorized the Program through enactment of the Omnibus Public Land Management Act of 2009 (Pub. L. No. 111-11, Tit IX, Subtit E., 123 Stat. 991, 1327-29). That legislation contains a water accounting section authorizing the Secretary of the Interior to enter into an agreement with the lower basin states to use lower Colorado River water to create and maintain habitat in accordance with the Program. The Agreement clarifies how to account for Colorado River water used for Program purposes. For instance, the equivalent of Colorado River water saved from the removal of non-irrigated phreatophyte vegetation may be used to irrigate replacement native vegetation; and on lands where this is not an option, the Bureau may obtain Colorado River water from willing sellers. The Agreement does not alter any existing rights to use Colorado River water. The Agreement expires with the expiration of the Program. The Southern Nevada Water Authority approved the Agreement on January 21, 2010.

rights to use Colorado River water. The Agreement expires with the expiration of the Program. The Southern Nevada Water Authority approved the Agreement on January 21, 2010.

Staff recommended approval of the Agreement and recommended authorization for the Chairman to sign the Agreement on behalf of the Commission.

**Commissioner Collins moved for approval of the agreement. Commissioner Robison seconded, and the motion was approved by a unanimous vote.**

<p><b>D. Update on the Nevada Supreme Court ruling regarding the Nevada State Engineer's ruling on water rights applications and remand to District Court.</b></p>
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Senior Deputy Attorney General Jennifer Crandell provided an in-depth update on two Nevada Supreme Court decisions regarding the Nevada State Engineer's rulings on water rights applications. A copy of one of the decisions by the Supreme Court of the State of Nevada (126 Nev., Advance Opinion 2), is attached and made a part of the minutes. (See Attachment A.) In this case, the Supreme Court ruled on January 28, that the State Engineer's ruling approving Southern Nevada Water Authority's permit applications for the in-state groundwater project was invalid, because hearings on the applications were not held within one year of the date the applications were filed. While the Nevada Legislature did pass a law in 2003 stating that the State Engineer can postpone action on pending applications for municipal use, the Supreme Court determined that the term "pending" only pertained to applications filed one year prior to the 2003 law, not to the applications that had been pending since 1989.

As to the second case, Ms. Crandell stated that on January 27, 2009, the Supreme Court issued an Order to Show Cause in the case in which the Commission had planned to participate in as an Amicus. In that case, Judge Robison had determined that the State Engineer was incorrect in his decision-making, that he did not follow the law, and that his decision was arbitrary and capricious. Judge Robison remanded the case back to the State Engineer for a rehearing. The State Engineer, the Attorney General's office (on behalf of the State Engineer), and the Southern Nevada Water Authority, appealed Judge Robison's decision to the Supreme Court. The Supreme Court ruled that it did not have jurisdiction to hear the appeals of Judge Robison's decision, because the case should have been remanded back to the State Engineer.

Both cases are back at the State Engineer level and resolution is a number of years out.

Finally, as requested by Chairman Ogilvie, Ms. Crandell provided background information on California's Quantification Settlement Agreements and the recent January 15, 2010 invalidation of those twelve agreements by California Superior Court Judge Candee.

**E. Status update on the hydrologic conditions, drought, and climate of the Colorado River Basin, Nevada's consumptive use of Colorado River water, and other developments on the Colorado River.**

Ms. Valle Rojas, Natural Resource Analyst for the Commission, provided a report on the following:

- Storage Conditions on the Colorado River
- Unregulated Inflow into Lake Powell
- Precipitation in the Colorado River Basin
- Lake Powell Elevation Projections
- Lake Mead – Elevation Projections
- Monthly Temperature Deviations
- Monthly Precipitation in the Colorado River Basin
- Seasonal Precipitation
- Colorado River Basin Snow Pack
- Drought Conditions in the West
- Seasonal Drought Outlook
- Record of Precipitation—Las Vegas Valley

A copy of the report is attached and made a part of the minutes. (See Attachment B.)

Jason Thiriot, Natural Resource Analyst for the Commission, provided a report on the work that is being done at Hoover Dam to save capacity at lower lake levels and how to make more energy with the same (or lower) amount of water.

A copy of the report is attached and made a part of the minutes. (See Attachment C.)

**F. 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 Ogilvie asked if there were any comments or questions from the public. There were none.

**G. Comments and questions from the Commission members.**

Chairman Ogilvie asked if there were any comments or questions from the Commission members. There were none.

**H. Selection of the next possible meeting date.**

The next meeting was tentatively scheduled for 1:00 p.m. on March 9, 2010, at the Grant Sawyer Building.

<b>I. Adjournment</b>
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The meeting adjourned at 2:13 p.m.

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George M. Caan, Executive Director

APPROVED:

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George F. Ogilvie III, Chairman