

The meeting was held at 11:00 a.m. on Tuesday, June 14, 2005, at the Clark County Commission Chambers, 500 South Grand Central Parkway, Las Vegas, Nevada.

**COMMISSIONERS IN ATTENDANCE**

Commissioner  
Commissioner  
Commissioner  
Commissioner

Andrea Anderson  
Oscar B. Goodman  
Roland D. Westergard  
Myrna Williams

**COMMISSIONERS NOT IN ATTENDANCE**

Chairman  
Vice Chairman  
Commissioner

Richard W. Bunker  
Jay D. Bingham  
Ace I. Robison

**DEPUTY ATTORNEYS GENERAL**

Senior Deputy Attorney General

Gerald A. López

**COMMISSION STAFF IN ATTENDANCE**

Executive Director  
Deputy Executive Director  
Special Assistant to the Director  
Chief, Finance and Administration  
Assistant Director of Engineering and Operations  
Environmental Program Manager  
Natural Resources Technician  
Division Chief, Water  
Natural Resource Specialist  
Natural Resource Specialist  
Office Manager  
Administrative Assistant II  
Administrative Assistant II  
Administrative Aide

George M. Caan  
Gail A. Bates  
James D. Salo  
Douglas N. Beatty  
Robert Reese  
Phillip S. Lehr  
Anthony J. Miller  
James H. Davenport  
McClain Peterson  
Nicole Everett  
Deanna Bruno  
Brenda Haymore  
Janet Nuszbaum  
Maggie Carrillo

**OTHERS PRESENT; REPRESENTING**

American Pacific Corporation  
Boulder City  
Bunker & Associates  
Colorado River Commission of Nevada  
Columbia Research Corporation  
Las Vegas Valley Water District/  
Southern Nevada Water Authority  
Lincoln County Power District No.1  
Nevada Power Company  
Overton Power District No. 5  
Valley Electric Association

Jack Stonehocker  
Ned Shamo  
Melissa Trammell  
Sara A. Price  
Dan Seligman  
  
Sandra Reed Bottino  
Mick Lloyd  
Bill Carner and Edgar Patino  
Delmar Leatham  
Brad Gaskill

**COLORADO RIVER COMMISSION  
OF NEVADA  
MEETING OF MAY 10, 2005**

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**COLORADO RIVER COMMISSION  
OF NEVADA  
MEETING OF JUNE 14, 2005**

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The Colorado River Commission meeting was called to order by Commissioner Williams at 11:00 a.m. followed by the pledge of allegiance. Commissioner Williams chaired the meeting in the absence of Chairman Bunker and Vice Chairman Bingham.

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

Executive Director George Caan confirmed that the meeting was in compliance with the Open Meeting Law.

**B. Approval of the minutes of the May 10, 2005, meeting.**

**Commissioner Goodman moved for approval of the minutes of the May 10, 2005, meeting as written. Commissioner Westergard seconded the motion and it was approved by a unanimous.**

**C. Consideration of and possible action on award of Contract No. SA-05-05 for substation insulator cleaning and coating services.**

Assistant Director of Engineering and Operations, Robert Reese, reported that on April 11, 2005, CRC staff released a Request for Proposal for Insulator Cleaning for the Substation serving the Basic Complex. Based upon the evaluations seen, CRC staff believes that Energized Substation Maintenance, Inc., has submitted the proposal that best fits the interests of CRC and the customers served by the Basic substation. The proposal from ESM represents the lowest evaluated costs of the proposals received. Accordingly, staff recommended awarding Contract No. SA-05-05, for substation insulator cleaning and coating services to Energized Substation Maintenance, Inc., that would include a not-to-exceed amount of \$264,775.00 over a three-year period, expiring in June 2008. This amount is included in the operation and maintenance budget.

**Commissioner Anderson moved for approval of the award of Contract No. SA-05-05 for substation insulator cleaning and coating services to Energized Substation Maintenance, Inc. Commissioner Goodman seconded the motion and it was approved by a unanimous vote.**

**D. Consideration of and possible action on the approval of:**

- 1. Agreement to Share the Costs of the Implementation of a Lower Colorado River Multi-Species Conservation Plan among the Colorado River Commission of Nevada and the Electric Service Contractors; and**
- 2. Agreement to Share the Costs of the Implementation of a Lower Colorado River Multi-Species Conservation Plan among the Colorado River Commission of Nevada, Basic Water Company, and Southern Nevada Water Authority.**

Executive Director George Caan reported that March 8, 2005, the Commission approved the CRC's participation in the implementation of the Lower Colorado River Multi-Species Conservation Program ("LCR MSCP" or "Program"), a 50-year habitat conservation program costing approximately \$620 million (2003 dollars). The cost of the program is shared equally between the federal and non-federal parties, and split amongst the non-federal parties as follows: 50% California, 25% Arizona and 25% Nevada. Of the Nevada Obligation, the CRC is responsible for approximately \$24 million (in 2003 dollars) over the 50-year period. In return, the CRC benefits from 50 years of Endangered Species Act coverage for existing power operations. CRC's power customers have indicated their willingness to fund CRC's financial obligation as users within this State of the hydroelectric power resources generated by the Colorado River. That understanding between the CRC and the power customers has since been formalized in the "Agreement to Share the Costs of the Implementation of a Lower Colorado River Multi-Species Conservation Plan among the Colorado River Commission of Nevada and the Electric Service Contractors." Pursuant to the agreement, the power customers will have a representative on the LCR MSCP Steering Committee and that representative will also be a member of the Nevada Participant Group under the Funding and Management Agreement.

The remaining balance of the Nevada Obligation will be funded by SNWA in the approximate amount of \$54,117,000 (2003 Dollars) and Basic Water Company in the amount of \$673,770 (2003 dollars), pursuant to the second agreement, "Agreement to Share the Costs of the Implementation of a Lower Colorado River Multi-Species Conservation Plan among the Colorado River Commission of Nevada, Basic Water Company and the Southern Nevada Water Authority." This agreement provides for the CRC to collect from SNWA and Basic Water Company their respective funding obligations and to timely remit payments of the total Nevada Obligation to the Bureau of Reclamation pursuant to the Funding and Management Agreement.

**Staff recommended the Commission approve both agreements. Commissioner Goodman moved for approval. Commissioner Westergard seconded the motion and it was approved by a unanimous vote.**

**E. Consideration of and possible action to ratify a Service Agreement for Network Integration Transmission Service Retail Access Transmission Service between Nevada Power Company, the Southern Nevada Water Authority, and the Colorado River Commission of Nevada for service to certain Southern Nevada Water Authority electrical loads.**

Deputy Executive Director Gail Bates reported that one element of the implementation of the Business Accord and Master Agreement among the CRC, SNWA and Nevada Power Company and the related Administrative Services Agreement, both approved by the Commission at its May 10, 2005, meeting, required the CRC to retain NPC as its Scheduling Coordinator. It is therefore necessary for new agreements to be entered into with NPC in the place of currently effective agreements with Public Service of New Mexico ("PNM"). The new Network Integration Transmission Service Agreement ("Network TS") with NPC

has an eight-year term, from June 1, 2005, through May 31, 2013. Since the start date of June 1, 2005, predated this meeting of the Commission, it was necessary for staff to execute the agreement.

The Network TSA provides for the purchase of electric transmission service from Nevada Power in order for the CRC to provide energy to certain SNWA pumping plants pursuant to NRS 704.787 (SB211), and for any growth of loads served by the CRC under that statute. The Network TSA sets forth the specific terms and conditions that govern the use of Nevada Power's transmission network by retail customers. Nevada Power is obligated to file the new Network TSA with the Federal Energy Regulatory Commission ("FERC") as far in advance of the effective date as possible. The parties executed the agreement prior to receiving Commission approval so that Nevada Power could expeditiously make the required FERC filing. Staff requested the Commission's ratification of that action.

Commissioner Westergard asked what process was followed in terminating the services of the New Mexico group. He asked if there was an expiration clause in their agreement..

Ms. Bates stated that yes, there was a notice provision in the PNM agreement, and they were very accommodating in allowing the Commission to switch service providers.

**Commissioner Goodman moved for approval. Commissioner Westergard seconded the motion and it was approved by a unanimous vote.**

**F. Consideration of and possible action to approve an agreement with Constellation Energy Commodities Group, Inc., concerning the confidential treatment of certain financial information and to authorize the Executive Director to execute similar confidentiality agreements going forward.**

Deputy Executive Director Gail Bates reported that in today's energy marketplace, it is very important to understand the financial health of the counterparties. In some instances we can rely on major financial rating institutions like Standard & Poor's and Moody's to make an assessment of counterparties' financial health. In circumstances where an entity is not publicly traded, a counterparty can sometimes have its own set of audited financials; however, they consider those audited financials to be confidential information. In order for the Commission to do a proper assessment of the counterparty's financial health, they are requesting that a confidentiality agreement be executed. The Commission, then, can use their audited financials to make an assessment. The agreement with Constellation Energy Commodities Group satisfies Constellation's needs, and it also conforms with Nevada's Public Records Law. Staff recommended approval to enter into this agreement and also requested that the Executive Director be able to execute any other similar confidentiality agreements going forward.

Commissioner Goodman commented that during his briefing with Mr. Caan, they had a discussion about whether or not this conforms with the Open Meeting Law and the Public Records Law. He added that he had been assured, and that counsel confirmed, that it is in conformity, stating that he would support it if that were the case.

Mr. Caan stated that was correct.

**Commissioner Anderson moved for approval. Commissioner Goodman seconded the motion and it was approved by a unanimous vote.**

**G. Legislative Update.**

Executive Director George Caan reported that the 2005 legislative session ended at 2:00 a.m. on Tuesday, but a special session quickly started up one hour later, running until noon that day.

The legislative sessions were fairly quiet with respect to issues directly involving the Colorado River Commission.

The Colorado River Commission's biennial budget was adopted, with minor changes, and there will be some delay in filling certain vacant positions.

SCR 26, which creates an interim study committee to discuss water issues, was adopted. CRC plans to participate.

Commissioner Williams asked if Mr. Caan would be giving updates on what the interim study committee is doing.

Mr. Caan stated that the CRC would be happy to do that once it begins.

Mr. Westergard asked if that resolution identifies topics or issues that the interim study committee is to address.

Mr. Caan replied that SCR 26 does identify the topics to be addressed and the way that the committee is to be made up. He added that the identified topics provide the main core, if not the total subject area that is going to be looked at.

**H. Report of Columbia Research Corporation on its draft report on a comparison of major river systems.**

Mr. Dan Seligman from Columbia Research Corporation gave a presentation, a copy of which is attached hereto and made a part of these minutes.

Commissioner Goodman asked what we should glean from the Columbia Research report.

Water Division Chief Jim Davenport responded that there are lessons to be learned from this research in terms of what creative opportunities there may be for the Colorado River. This report needs to be developed past its current factual phase to include major river systems in the country. The result would be a document which summarizes all of the

factual information and then analyzes it. Then we will know the answer to Commissioner Goodman's question.

Commissioner Goodman observed that the project is at a preliminary stage. Precedent authorities are being gathered as far as the cases are concerned, analyzed in their application to various river projects and compacts, synthesized, and then used as a basis for recommendations to be made to the Commission.

Mr. Davenport responded that was correct.

Commissioner Williams observed that she did not understand why so much fresh water from the Columbia River goes into the ocean rather than be captured for use in other western states.

Mr. Davenport stated that the issue of the exportation of Columbia River water into the other states is a long-standing political issue in the west. It is not one of the subjects of the work being conducted by Columbia Research.

Commissioner Goodman added that he thought the issue raised by Commissioner Williams' was a good one. When he hears for the first time that the Columbia River has fresh water that is flowing into the Pacific, he wants to know why. He asked Mr. Davenport to provide further information on this issue. If there is water available that is being wasted, he would like to know why.

Commissioner Goodman stated that we have serious concerns about water here, and if there is availability of water, we have to at least explore how we can get it, whether it is political or not.

Mr. Davenport stated that he would be happy to prepare some information on that subject for Commissioner Goodman.

Commissioner Williams stated that she would like that as well.

Mr. Caan stated that it must be said that there would be people in the northwest that would debate whether water going into the Pacific is wasted. There would be a debate over how that is characterized, given all of the power production, fish and wildlife, and other issues they have. It is pretty clear that just in our own basin, everyone who has an allocation of water, be it current or historical, is very protective of that water right. Protective of it for what it means for them today, and also protective of what it might mean in the future. In our own basin, where we believe there are opportunities for watershed management, better opportunities for water marketing with the water that we already have, we still experience much resistance to change. There is more to this discussion that has to happen. Staff will prepare the requested material.



Commissioner Williams stated that she would like to know what role politics is playing in this issue and just how much water is not being used or is not necessary for the purposes that Mr. Caan just outlined. She stated that she does not understand, especially in times of this kind of drought, the unwillingness to share.

**I. Report on the Secretary of the Interior's policy development regarding Colorado River shortages and conjunctive management of reservoirs.**

Water Division Chief Jim Davenport reported that in December of last year, at the Colorado River Water Users Association meeting in Las Vegas, the Secretary of the Interior made a request, through one of her assistants, that the seven states begin to negotiate shortage criteria for the operation of the Colorado River in the lower basin. She asked that that work be completed, and that a proposal be made by the seven states to the Secretary, by the end of April 2005. The states began to meet. The technical committee of the seven states met numerous times. The problem was modeled. Very conservative conditions of water flow into the Colorado River system were assumed. Water was presumed to flow at the same rate it flowed in the 50's. The model predicted how soon we would hit the point where there wasn't enough water to meet the demand. Mr. Davenport had reported to the Commission at an earlier meeting that the model demonstrated there could be a shortage in about the 2009 timeframe under those assumptions, and that the total deficient volume was about 6-8% of supply. Those predictions are now out of date because of the better water year which is occurring. The analysis is going to be done again. The projected shortage year will be further out by a couple of years. The size of the problem will be smaller, perhaps somewhere between 4% and 6%, rather than 6% and 8%. The states were not able to agree on a shortage proposal by April and reported that to the Secretary. At this time, to follow up on that, the Secretary of the Interior is proposing a process which will begin with a Federal Register announcement on June 15. The notice will introduce a process which is going to be an open public process in which the Secretary will take proposals from all parties, including the states, for what shortage criteria would look like. The objective is to get shortage criteria in place by December 2007. The National Environmental Policy Act will be used and an environmental impact statement will be developed to evaluate alternatives in managing a shortage on the Colorado River. At the end of the process, a record of decision will be made, a decision much like the one the Secretary made several years ago in adopting interim surplus criteria. The states continue to meet now to come up with an alternative to recommend to the Secretary. The objective is to try to get that done this summer so that the states could get that alternative into the process that the Secretary has initiated.

Commissioner Williams asked if there were any questions.

Commissioner Westergard asked what the NEPA processes would involve and the date by which it would be concluded.

Mr. Davenport stated that the NEPA process would be completed by the end of 2007. The process will begin now. This fall, the NEPA process will be in the phase where the proposals should be provided to the Secretary so that they can be considered as alternatives within the NEPA process.

Commissioner Westergard asked if 2007 is the target date.

Mr. Davenport stated that it is the accomplishment date.

Commissioner Goodman asked Mr. Davenport who is at the table for Nevada during these discussions.

Mr. Davenport stated that typically Chairman Bunker, Director Mulroy, a few people from Director Mulroy's staff, and he are present on behalf of Nevada.

Commissioner Williams asked whether the Secretary's process would be abandoned if the states adopted interim shortage criteria in the next few months.

Mr. Davenport stated that at this point the Secretary's process is sufficiently launched so that it will run as a federal process through to its fruition next year.

**J. Comments and questions from the public.**

Commissioner Williams asked if there were any questions or comments. There were none.

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

Commissioner Williams asked if there were any questions or comments. There were none.

**L. Next meeting date selection.**

There will be no meeting in July. The next meeting is scheduled for Tuesday, August 9, 2005, at the Grant Sawyer Building.

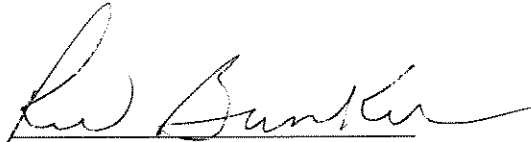
Executive Director Caan then stated that he wanted to recognize Nicole Everett, who is going to take maternity leave. Ms. Everett works for Jim Davenport and she has been doing a marvelous job for the Commission. We wish her well on her maternity leave and look forward to her coming back.

Commissioner Williams stated that the Commission all joins in that wish.

The meeting adjourned at 11:50 a.m.

  
\_\_\_\_\_  
George M. Caan, Executive Director

APPROVED:

  
\_\_\_\_\_  
Richard W. Bunker, Chairman

MAJOR INTERSTATE RIVERS:  
A Comparative Study  
*Preliminary Report*

Prepared For:  
The Colorado River Commission of Nevada  
Las Vegas, Nevada

Prepared By:  
Dan Seligman  
Attorney at Law  
Columbia Research Corporation  
Seattle, Washington

June 13, 2005

## Scope of Work

- Describe the legal regimes on major interstate river basins
- Compile information on physical facts and federal infrastructure
- Analyze interstate compacts and cooperative agreements

## Overview of Presentation

- Scope of Work
- Rivers Examined
- Conflicts
- Observations

## WHY COMPARE RIVER SYSTEMS?

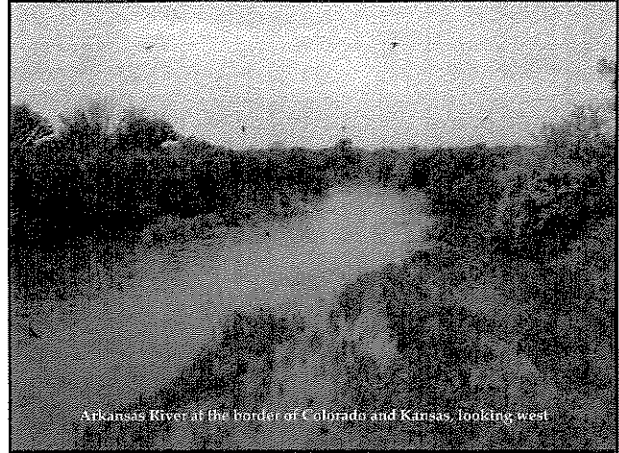
- To put Colorado River issues in context
- To identify common issues and problems on river basins around the nation
- To collect data and information that will be valuable to Nevada as it develops its Colorado River strategy

## RIVERS EXAMINED

In alphabetical order, the rivers are:

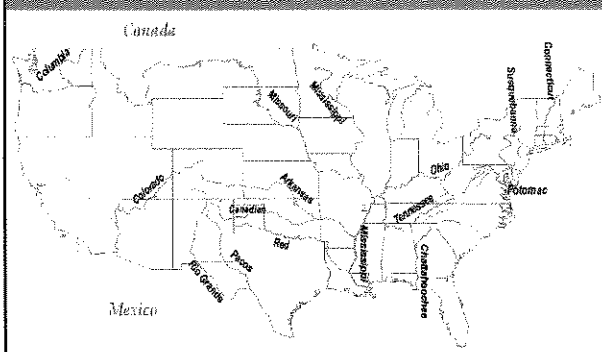
- Arkansas
- Colorado
- Columbia
- Mississippi (main stem)
- Missouri
- Potomac
- Rio Grande
- Tennessee\*

\* Tributary of the Mississippi

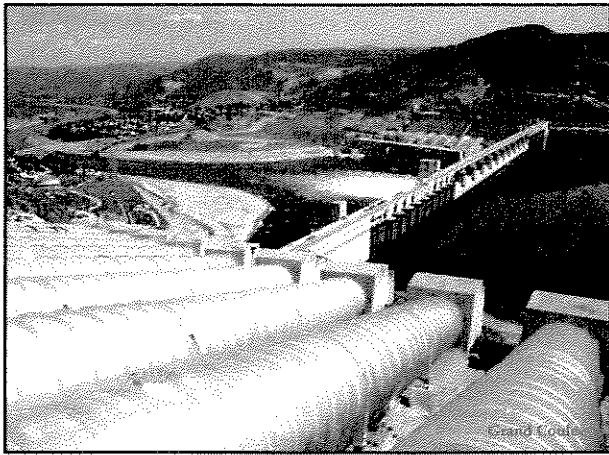
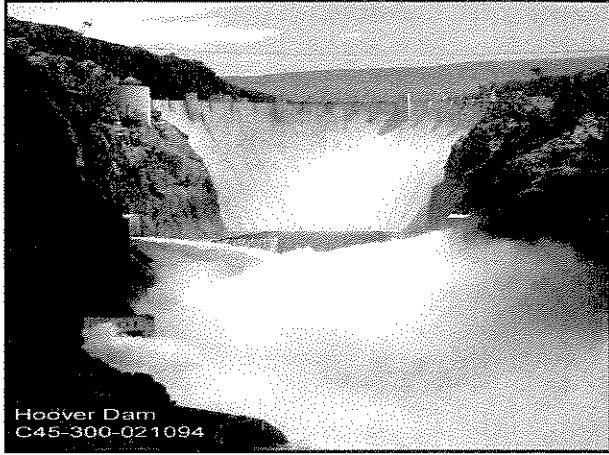


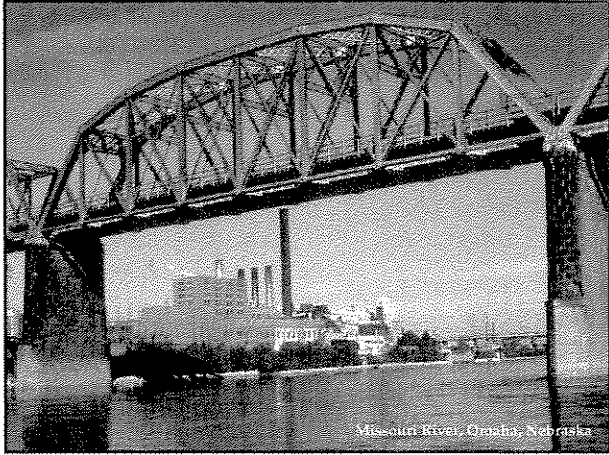
Arkansas River at the border of Colorado and Kansas, looking west

## Major Interstate Rivers in the Continental United States



Little Falls





Missouri River, Omaha, Nebraska



Mississippi River, Louisiana



Mississippi River, Minnesota

PHYSICAL FACTS

	Source	Mouth	Length (miles)	Flow (MIAF)
Mississippi	Minnesota	Gulf of Mexico	2,350	308
Columbia	Canada	Pacific Ocean	1,410	198
Missouri	Montana	Miss. River	2,174	68
Tennessee	West Virg.	Ohio River	692	25
Colorado	Colorado	Gulf of Calif.	1,450	17
Potomac	West Virg.	Chesapeake Bay	133	8
Rio Grande	Colorado	Gulf of Mexico	1,760	1



### FEDERAL INFRASTRUCTURE

	Dams	Generation (MW)	Storage MAF
Missouri	7	2,610	41.0
Colorado	13	4,200	60.0
Columbia	29	32,215	45.7
Rio Grande	20	236	19.4
Tennessee	31	3,706	3.8
Arkansas	15	494	2.0
Potomac	None	None	0.2
Mississippi	29	None	None

### WHO RUNS THE RIVER?

#### Dam-Building Agencies

- Army Corps of Engineers
- Bureau of Reclamation
- Tennessee Valley Authority

#### Federal Power Marketing Agencies

- Western Area Power Administration
- Renwickville Power Administration
- Southwestern Area Power Administration
- Southeastern Area Power Administration

#### FSA Agencies

- Fish & Wildlife Service
- NOAA Fisheries

#### Federal Courts

### MORE INFRASTRUCTURE FACTS

	Water Supply (People Served)	Irrigation (MAF)	Commercial Navigation (Miles)
Colorado	28 million	11	None
Mississippi	18 million	Unknown	2,350
Potomac	5 million	Unknown	112
Arkansas	4 million	Unknown	448
Missouri	3 million	Unknown	735
Rio Grande	1 million	?	None
Tennessee	1 million	< 1	642
Columbia	< 1 million	8	465

### WHAT ARE THE RULES OF THE RIVER?

- International Treaties
- Interstate Compacts
- Federal Statutes, Rules and Regulations
- Federal Court Decisions
- Regional Arrangements and Cooperative Agreements



### HOW IS WATER APPORTIONED?

- By Congress
  - Statute
  - Delegation to an administrative agency
    - (e.g., Secretary of the Interior)
- By the U.S. Supreme Court
  - Dividing the waters without a compact
  - Based on equitable apportionment
- By Interstate Compact – the most common method

### WATER ALLOCATION COMPACTS

- 24 agreements in effect today
  - Complex documents
  - Written in another era
  - Sometimes based on mistaken scientific analysis
  - Frequently litigated in the U.S. Supreme Court
  - Interpreted as contracts

### INTERSTATE COMPACTS

A long history dating back to the 1700s

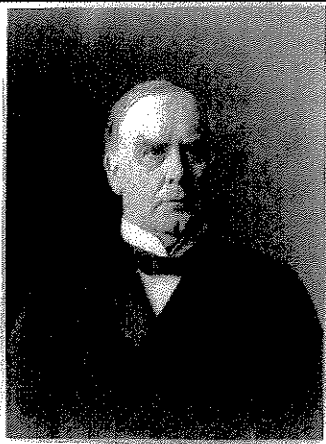
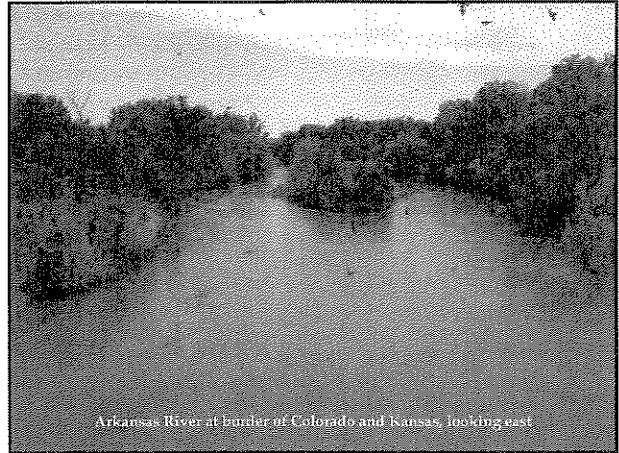
- A binding contract between two or more states
- Consented to by Congress
- Approved in identical form by the state legislatures
- Usually administered by a Commission
- Original jurisdiction of the U.S. Supreme Court

### SOURCES OF CONFLICT

- Increasing population
- Effect of diminishing groundwater supply
- Over-allocated river
- Legal regime developed in another era
- Drought
- Endangered Species Act restrictions

## SOME EXAMPLES

- The Arkansas River: the upper river litigation started in 1901



## SOME EXAMPLES (Cont.)

- The Rio Grande: two rivers, two treaties, two legal regimes
- The Missouri: multiple problems of drought, ESA restrictions, limited navigation, and reduced thermal plant operations
- The Columbia: who gets the cheap power?

## HOW ARE CONFLICTS RESOLVED?

- Administrative Allocations
- Litigation
- Infrastructure Improvements and Environmental Restoration
- Cooperative Agreements

## OBSERVATIONS

- Major river systems can be compared by examining:
  - The legal and physical infrastructure
  - The management structure
  - The value of resources (power, water, navigation, etc.)
- Colorado River problems are similar to those found elsewhere
- There's much to be learned from legal and institutional arrangements on other rivers
- The data and information should be valuable to Nevada as it develops its Colorado River strategy